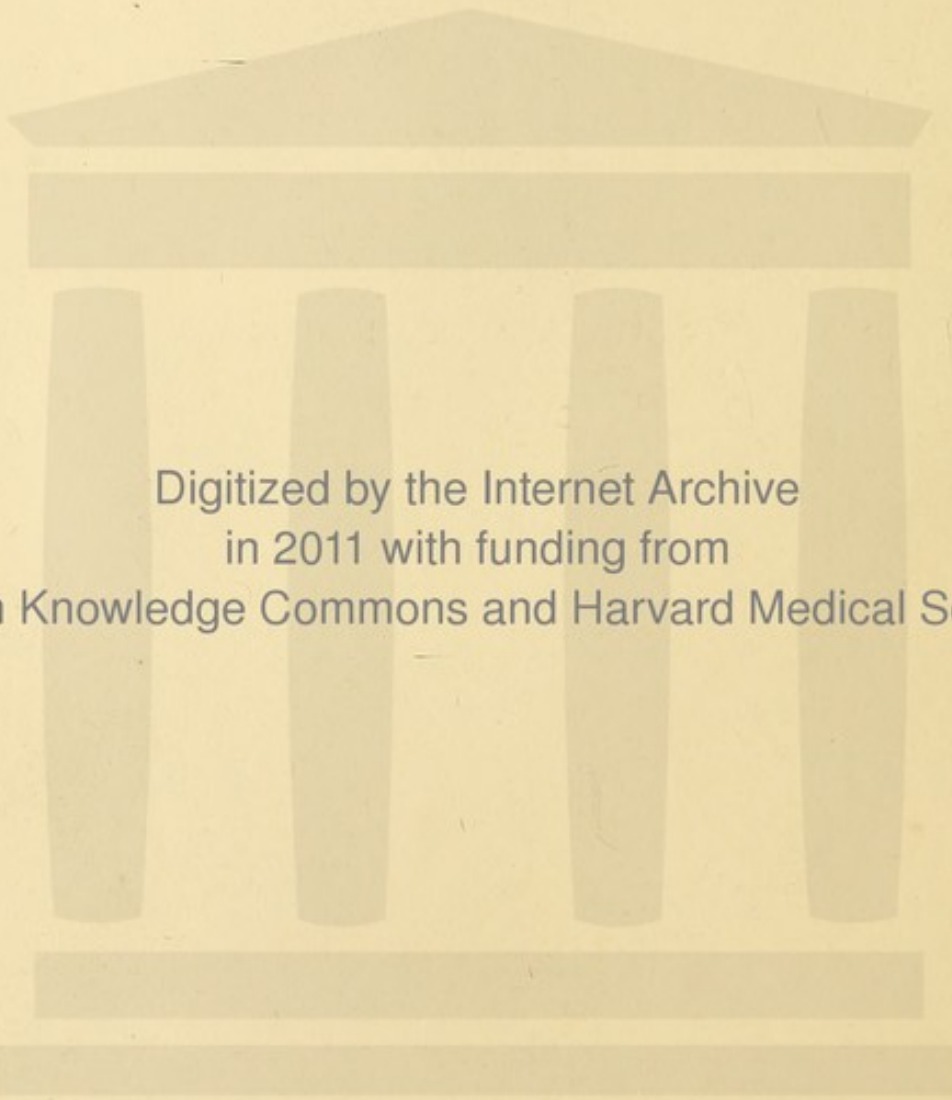
Manual of the laws relating to the public health : the powers and duties of boards of health, state inspectors of health, medical examiners and others and to the registration of vital statistics : with decisions of the Supreme Court of Massachusetts relative thereto / prepared by the Secretary of the State Board of Health.

MANUAL

OF

HEALTH LAWS.

1907.



MANUAL

OF THE

LAWS RELATING TO THE PUBLIC HEALTH,

THE POWERS AND DUTIES OF BOARDS OF HEALTH, STATE INSPECTORS OF HEALTH, MEDICAL EXAMINERS AND OTHERS, AND TO THE REGISTRATION OF VITAL STATISTICS,

WITH

DECISIONS OF THE SUPREME COURT OF MASSACHUSETTS RELATIVE THERETO.

PREPARED BY THE
SECRETARY OF THE STATE BOARD OF HEALTH.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1908.

Approved by
The State Board of Publication.

TABLE OF CONTENTS.

ORGANIZATION OF THE STATE BOARD OF HEALTH OF MASSACHUSETTS.

MEMBERS OF THE BOARD, 1908.

HENRY P. WALCOTT, M.D., *Chairman*	CAMBRIDGE.
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ROBERT W. LOVETT, M.D.	BOSTON.
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JAMES W. HULL	PITTSFIELD.
CHARLES H. PORTER	QUINCY.
JULIAN A. MEAD, M.D.	WATERTOWN.

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H. W. CLARK, *Chemist* (in charge of Experiment Station)	LAWRENCE.
THEOBALD SMITH, M.D., *Pathologist* (Pathological Laboratory), FOREST HILLS	ROXBURY.
HERMANN C. LYTHGOE, *Analyst of Food and Drugs*, STATE HOUSE	BOSTON.

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On Water Supply and Sewerage. — Messrs. MILLS, WALCOTT, HULL, LOVETT and TOBEY.

On Public Institutions. — Messrs. PORTER, WALCOTT, MILLS and LOVETT.

On Food and Drugs. — Messrs. LOVETT, WALCOTT and PORTER.

On Legislation and Legal Proceedings. — Messrs. TOBEY, MEAD and HULL.

On Health of Towns and Correspondence with Local Boards of Health. — Messrs. WALCOTT, MILLS, MEAD and LOVETT.

On Contagious Diseases. — Messrs. WALCOTT, LOVETT and PORTER.

On Publications. — Messrs. WALCOTT, HULL and LOVETT.

On Registration of Vital Statistics. — Messrs. WALCOTT, LOVETT and PORTER.

BY-LAWS OF THE STATE BOARD OF HEALTH.

ADOPTED, 1886.

1. The Board shall, on the first Thursday in June in each year, elect by ballot a chairman and a secretary, who shall each hold office for one year and until his successor shall have been chosen. In the absence or disability of the chairman or secretary, a chairman or secretary *pro tem.* may be chosen, as the Board may determine.

2. Regular meetings of the Board shall be held on the first Thursday of each month, at such hour as the Board may designate, and, unless otherwise ordered, at the office of the Board. Special meetings may be called at any time by the chairman, and shall be called by him upon the request in writing of two members of the Board.

3. At the annual meeting of the Board, or as soon thereafter as may be, the following standing committees shall be chosen by ballot: —

A committee on Finance.
A committee on Publications.
A committee on Water Supply and Sewerage.
A committee on Public Institutions.
A committee on Food and Drugs.
A committee on Legislation and Legal Proceedings.
A committee on Health of Towns.
A committee on Correspondence with Local Boards of Health.
A committee on Contagious Diseases.
A committee on Vital Statistics.

4. Four members shall make a quorum for the transaction of business.

INTRODUCTION.

This Manual of the statutes of Massachusetts relating to public health contains all health legislation enacted up to and including the year 1907. It has been prepared for the use of local boards of health, and others directly or indirectly interested in public health problems.

Under each section of the laws presented will be found references to such Supreme Judicial Court decisions as may affect it in any way, and in the Appendix the more important of these decisions are given. It has been deemed advisable to exclude those which later legislation or changed conditions have rendered obsolete.

INDEX OF STATUTES CITED IN THIS MANUAL.

MANUAL OF HEALTH LAWS.

STATE BOARD OF HEALTH.

REVISED LAWS, 75.

Provision for State Board of Health.

SECTION 1. There shall be a state board of health consisting of seven persons, one of whom shall annually be appointed by the governor, with the advice and consent of the council, for a term of seven years.

1869, 420, § 1. 1879, 291, § 2. P. S. 79, § 1. 1886, 101, § 1. 136 Mass. 578.

Meetings and Report.

SECTION 2. Said board shall hold meetings at least once in each month, shall make its own by-laws and shall annually, on or before the third Wednesday in January, make a report to the governor and council for the year ending on the preceding thirtieth day of November.

1869, 420, §§ 2, 3. 1879, 291, § 7. P. S. 79, § 3. 1886, 101, § 2. 1905, 211.

Secretary.

SECTION 3. Said board shall elect a secretary, who shall be the executive officer and shall hold office during the pleasure of the board. He shall, as directed by it, perform or superintend the work prescribed by law for the board and all other duties required by it. He shall not be ex-officio a member of the board, but the board may elect one of its members secretary pro tempore and such member may, in the absence or disability of the secretary, perform his duties. The secretary shall receive from the Commonwealth an annual salary of five thousand dollars and his necessary travelling expenses incurred in the performance of his official duties. No member of the board shall receive any compensation; but the actual personal expenses of any member while engaged in his official duties, audited by the board, shall be paid by the Commonwealth.

1869, 420, § 5. 1886, 101, § 3. 1889, 370. 1906, 425. 1907, 364.

Powers and Duties of Board.

SECTION 4. Said board shall take cognizance of the interests of health and life among the citizens of the Commonwealth, make sanitary investigations and inquiries relative to the causes of disease, and especially of epidemics, the sources of mortality and effects of localities, employments, conditions and circumstances on the public health, and rela-

tive to the sale of drugs and food and the adulterations thereof; and shall gather such information relative thereto as it considers proper for diffusion among the people. It shall advise the government relative to the location and other sanitary conditions of any public institutions; and shall have oversight of inland waters, sources of water supply and vaccine institutions, and may, for the use of the people of the Commonwealth, produce and distribute antitoxin, and vaccine lymph. It shall annually examine all main outlets of sewers and drainage of cities and towns of the Commonwealth, and the effect of sewage disposal, and shall annually report thereon to the general court, with such recommendations for the protection of the interests of persons and property and for the prevention of offensive odors and objectionable conditions as it considers expedient.

1869, 420, § 2. 1879, 291, § 3. P. S. 80, § 1. 1882, 263, § 5. 1886, 101, § 4. 1888, 375, § 1. 1894, 355. 1897, 510, § 1. 1901, 104. 1903, 480. 125 Mass. 189. 179 Mass. 385.

Duties relative to Contagious or Infectious Diseases.

SECTION 8. If smallpox or any other contagious or infectious disease dangerous to the public health exists or is likely to exist in any place within the Commonwealth, the state board shall make an investigation thereof and of the means of preventing the spread of the disease, and shall consult thereon with the local authorities. It shall have co-ordinate powers as a board of health, in every city and town, with the board of health thereof, or with the mayor and aldermen of a city or the selectmen of a town in which there is no such board.

1879, 291, § 6. P. S. 80, § 2.

Duties relative to Sale of Food and Drugs.

SECTION 5. In the performance of its duties relative to the sale of drugs and food it may appoint inspectors, analysts and chemists, and may remove them. Such inspectors shall have the same power and authority relative to drugs and food as is given by sections forty-two and fifty-two of chapter fifty-six, relative to milk, to the inspectors named therein. Whoever hinders, obstructs or in any way interferes with any such inspector, analyst or other officer appointed under the provisions of this section, while in the performance of his official duty, shall be punished by a fine of not more than fifty dollars for the first offence and of not more than one hundred dollars for each subsequent offence.

1882, 263, §§ 5, 7. 1884, 289, § 3. 1885, 352, § 5.

ACTS OF 1902, 110.

Duties relative to Inspection of Liquors.

SECTION 2. The powers and duties heretofore conferred and imposed on the inspector and assayer of liquors are hereby conferred and imposed on the state board of health.

ACTS OF 1902, 230.

May publish Parts of Annual Report, etc., and Manual of Health Laws.

SECTION 1. The state board of health is hereby authorized to publish for general distribution such parts of its annual report and such other matter as it may deem adapted to promote the interests of the public health in this Commonwealth: *provided,* that the expense of such publication is paid out of the appropriation for the general expenses of the board and does not exceed in any one year the sum of five hundred dollars. The board is also authorized to publish not oftener than once in three years, beginning with the year nineteen hundred and two, a manual of the laws relating to boards of health in this Commonwealth, together with such other information upon the same subject as the board may deem expedient, the same to be distributed among the local boards of health throughout the Commonwealth. The cost of such publications shall not exceed five hundred dollars for each edition and shall be paid out of the appropriation for general expenses of the board.

ACTS OF 1902, 272.

Shall publish Analyses and Other Information concerning Adulterated Food.

SECTION 1. The state board of health shall cause to be published as often as once each month in the official publication of said board, and also, if in its opinion the public health can be served thereby, may cause to be published in one or more papers in Massachusetts, a certificate of the examination or analysis made by authority of said board during the preceding month of any article of food manufactured or offered for sale in the Commonwealth, which is adulterated within the meaning of chapter seventy-five of the Revised Laws; and said board of health shall also cause to be published, with such certificate of examination, a statement of the trade-mark, brand mark or name, with the name and place of business of the manufacturer, which appear upon the package or box containing such adulterated article, or with the name and place of business of the wholesale dealer of whom the goods were obtained.

LOCAL BOARDS OF HEALTH.

CITY BOARDS OF HEALTH.

REVISED LAWS, 75.

The Board of Health of a City shall include One Physician.

SECTION 9. In each city except Boston the board of health shall consist of three persons, one of whom shall be a doctor of medicine and no one of whom shall be a member of the city council. Unless a different mode of appointment or election is provided in the city charter, one member shall annually in January be appointed by the mayor, subject to confirmation by the board of aldermen, for a term of three years next succeeding the first Monday in February, and if appointed under the provisions of this section, may be removed by the mayor for cause, and

vacancies shall be filled by appointment for the residue of the unexpired term. Members of the board shall receive such compensation as the city council may determine. Boards of health in towns shall be chosen as provided in section three hundred and thirty-eight of chapter eleven.

1849, 211, §§ 1, 2. G. S. 26, § 2. 1877, 133, § 1. P. S. 80, §§ 4, 8. 1894, 174. 1895, 332. 172 Mass. 417. 173 Mass. 338.

Organization, Physician, Clerks, Agents, etc.

SECTION 10. Every such board shall organize annually by the choice of one of its number as chairman. It may appoint a physician to the board, who shall hold his office during its pleasure, may choose a clerk who in a city shall not be a member of the board and may employ the necessary officers, agents and assistants to execute the health laws and its regulations. It may fix the salary or other compensation of such physician and of its clerk and other agents and assistants, but the amount of such compensation shall not exceed the appropriation therefor. It may make rules and regulations for its own government and for the government of its officers, agents and assistants.

[See also section 13, p. 5.]

1816, 44, § 7. R. S. 21, §§ 3, 4. G. S. 26, §§ 3, 4. 1877, 133, §§ 2, 3. P. S. 80, §§ 5, 6, 9, 10. 182 Mass. 39.

Annual Reports to be made in January.

SECTION 11. In each city such board shall annually, in January, make a full and comprehensive report to the city council of its acts during the preceding year and of the sanitary condition of the city. It shall also, if the city council or the standing committee thereof on finance so requires, send to the auditor of the city an estimate in detail of the appropriation required by its department for the next financial year.

1877, 133, § 4. P. S. 80, § 11.

TOWN BOARDS OF HEALTH.

REVISED LAWS, 11.

Election of Board of Health Optional. If no Board elected, Selectmen shall act.

SECTION 338. A town may elect a board of health consisting of three persons, who shall serve for terms of one, two and three years respectively, beginning with the day following the meeting at which they are elected, or until their respective successors are chosen and qualified; and thereafter such town shall, at its annual town meeting, choose one member of such board who shall hold office for three years from the day following such meeting and until another is chosen and qualified in his stead. If no such board is chosen, the selectmen shall act as a board of health. In every town having more than five thousand inhabitants as determined by the latest national or state census at least one member of the board, unless composed of the selectmen, shall be a physician.

1894, 218; 473, § 1. 1895, 506, §§ 2, 3. 1898, 548, § 334. 194 Mass. 51.

SECTION 343. The election of the board of health shall be by ballot.

REVISED LAWS, 75.

Board of Health in Towns of More than 5,000 Population shall report Deaths annually to State Board of Health.

SECTION 12. The board of health in towns which have according to the latest census more than five thousand inhabitants shall send an annual report of the deaths in such town to the state board of health upon forms to be prescribed by said state board.

1894, 218. 1897, 428, § 2.

Appointment of Agents, and Powers thereof.

SECTION 13. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency or if it cannot be conveniently assembled; and any such agent shall have all the authority which the board appointing him had; but he shall in each case report his action to the board within two days for its approval, and shall be directly responsible to it and under its direction and control. An agent who is appointed to make sanitary inspections may make complaint of violations of any law, ordinance or by-law relative to the public health in a city or town.

1866, 271. 1879, 75. P. S. 80, § 16. 143 Mass. 113.

Regulations must be published.

SECTION 14. The board of health of a town shall publish all regulations made by it in a newspaper of its town, or, if there is no such newspaper, shall post them up in a public place in the town. Such publication or posting shall be notice to all persons.

1816, 44, §§ 3, 11. R. S. 21, § 8. G. S. 26, § 6. P. S. 80, § 19. 98 Mass. 443. 186 Mass. 330, 333.

Cases to be retained by Board of Health and not by Overseers of the Poor.

SECTION 15. The board of health of a city or town shall, to the exclusion of the overseers of the poor, retain charge of any case arising under the provisions of this chapter in which it shall have acted.

1874, 121, § 1. P. S. 80, § 17.

Enforcement of Orders of Board of Health.

SECTION 141. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the board of health of a city or town, to enforce the orders of said board relative to the public health, and the provisions of sections thirty-six and thirty-seven of chapter one hundred and fifty-nine shall apply to such cases. But a jury may be summoned under the provisions of said sections if there is no sitting of the court within one month after the issues have been framed.

1893, 460, §§ 1, 2. 1899, 143.

HEALTH DISTRICTS AND STATE INSPECTORS OF HEALTH.

Acts of 1907, 537.

An Act to provide for the Establishment of Health Districts and the Appointment of Inspectors of Health.

Section 1. The state board of health shall, as soon as may be after the passage of this act, divide the Commonwealth into not more than fifteen districts,[1] to be known as health districts, in such manner as it may deem necessary or proper for carrying out the purposes of this act.

Section 2. After the division aforesaid has been made, the governor, with the advice and consent of the council, shall appoint in each health district one practical and discreet person, learned in the science of medicine and hygiene, to be state inspector of health in that district. Every nomination for such office shall be made at least seven days prior to the appointment. The said state inspectors of health shall hold their offices for a period of five years from the time of their respective appointments, but shall be liable to removal from office by the governor and council at any time.

Section 3. Every state inspector of health shall inform himself respecting the sanitary condition of his district and concerning all influences dangerous to the public health or threatening to affect the same; he shall gather all information possible concerning the prevalence of tuberculosis and other diseases dangerous to the public health within his district, shall disseminate knowledge as to the best methods of preventing the spread of such diseases, and shall take such steps as, after consulta-

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[1] The division was made on July 9, 1907. The districts are as follows: —

Health District No. 1. — Includes the counties of Barnstable, Dukes and Nantucket, and the town of Wareham.

Health District No. 2. — Includes the cities of Fall River and New Bedford, and the towns of Acushnet, Berkley, Dartmouth, Dighton, Fairhaven, Freetown, Marion, Mattapoisett, Rehoboth, Rochester, Seekonk, Somerset, Swansea and Westport.

Health District No. 3. — Includes Plymouth County, exclusive of the towns of Marion, Mattapoisett, Rochester and Wareham, and, in addition, the towns of Cohasset and Weymouth.

Health District No. 4. — Includes the cities of Quincy and Taunton, and the towns of Attleborough, Avon, Bellingham, Blackstone, Braintree, Canton, Dedham, Easton, Foxborough, Franklin, Holbrook, Hyde Park, Mansfield, Milton, Norfolk, Norton, North Attleborough, Norwood, Plainville, Randolph, Raynham, Sharon, Stoughton, Walpole, Westwood and Wrentham.

Health District No. 5. — Includes Suffolk County.

Health District No. 6. — Includes the cities of Cambridge, Everett, Malden, Medford, Melrose and Somerville, and the towns of North Reading, Reading, Stoneham and Wakefield.

Health District No. 7. — Includes the cities of Beverly, Gloucester, Lynn and Salem, and the towns of Danvers, Essex, Ipswich, Hamilton, Lynnfield, Manchester, Marblehead, Middleton, Nahant, Peabody, Rockport, Saugus, Swampscott, Topsfield and Wenham.

Health District No. 8. — Includes the cities of Haverhill, Lawrence and Newburyport, and the towns of Amesbury, Andover, Boxford, Georgetown, Groveland, Merrimac, Methuen, Newbury, North Andover, Rowley, Salisbury and West Newbury.

Health District No. 9. — Includes the cities of Lowell and Woburn, and the towns of Acton, Arlington, Ayer, Bedford, Billerica, Boxborough, Burlington, Carlisle, Chelmsford, Concord, Dracut, Dunstable, Groton, Harvard, Lexington, Lincoln, Littleton, Maynard, Pepperell, Shirley, Stow, Tewksbury, Townsend, Tyngsborough, Westford, Wilmington and Winchester.

Health District No. 10. — Includes the cities of Marlborough, Newton and Waltham, and the towns of Ashland, Belmont, Brookline, Dover, Framingham, Grafton, Holliston, Hopedale, Hopkinton, Hudson, Medfield, Medway, Mendon, Milford, Millis, Natick, Needham, Northborough, Sherborn, Shrewsbury, Southborough, Sudbury, Upton, Watertown, Wayland, Wellesley, Westborough and Weston.

tion with the state board of health and the local state authorities, shall be deemed advisable for their eradication; he shall inform himself concerning the health of all minors employed in factories within his district, and, whenever he may deem it advisable or necessary, he shall call the ill health or physical unfitness of any minor to the attention of his or her parents or employers and of the state board of health.

SECTION 4. The state inspectors of health shall be under the general supervision of the state board of health and shall perform such duties other than those hereby imposed upon them as the said board from time to time shall determine. They shall keep a record of their proceedings and observations, shall annually make a report of the same to said board on or before the thirty-first day of October, shall from time to time furnish said board with such information as it may require touching circumstances affecting the public health in their respective districts, and shall in every instance where written suggestions are made by them to the local authorities send copies of such suggestions to said board.

SECTION 5. The state inspectors of health shall, under the direction of the state board of health and in place of the inspection department of the district police, enforce the provisions of section forty-one of chapter one hundred and four of the Revised Laws so far as said section provides that factories shall be well ventilated and kept clean, sections forty-one, forty-four and forty-seven to sixty-one, inclusive, of chapter one hundred and six of the Revised Laws, chapter three hundred and twenty-two of the acts of the year nineteen hundred and two, chapter four hundred and

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Health District No. 11. — Includes the city of Worcester, and the towns of Auburn, Brookfield, Charlton, Douglas, Dudley, Leicester, Millbury, Northbridge, North Brookfield, Oxford, Southbridge, Spencer, Sturbridge, Sutton, Uxbridge, Warren, Webster and West Brookfield.

Health District No. 12. — Includes the city of Fitchburg, and the towns of Ashburnham, Ashby, Athol, Barre, Berlin, Bolton, Boylston, Clinton, Dana, Gardner, Hardwick, Holden, Hubbardston, Lancaster, Leominster, Lunenburg, New Braintree, Oakham, Paxton, Petersham, Phillipston, Princeton, Royalston, Rutland, Sterling, Templeton, Westminster, Winchendon and West Boylston.

Health District No. 13. — Includes all of Franklin County, and all of Hampshire County excepting the towns of Huntington, Middlefield and Worthington.

Health District No. 14. — Includes all of Hampden County, and, in addition, the towns of Huntington, Middlefield and Worthington.

Health District No. 15. — Includes all of Berkshire County.

On the tenth day of July, 1907, the following were appointed by the Governor to be State inspectors of health: —

District No. 1. — Dr. Charles E. Morse, Wareham.
District No. 2. — Dr. Adam S. MacKnight, 355 North Main Street, Fall River.
District No. 3. — Dr. Wallace C. Keith, 237 North Main Street, Brockton.
District No. 4. — Dr. Elliott Washburn, 50 Broadway, Taunton.
District No. 5. — Dr. Harry Linenthal, 327 Blue Hill Avenue, Roxbury.
District No. 6. — Dr. Albert P. Norris, 728 Massachusetts Avenue, Cambridge.
District No. 7. — Dr. J. William Voss, 108 Cabot Street, Beverly.
District No. 8. — Dr. William Hall Coon, 70 Newbury Street, Lawrence.
District No. 9. — Dr. Charles E. Simpson, Lowell Hospital, Lowell.
District No. 10. — Dr. William W. Walcott, 32 West Central Street, Natick.
District No. 11. — Dr. Melvin G. Overlock, 91 Chandler Street, Worcester.
District No. 12. — Dr. Lewis Fish, 7 Highland Avenue, Fitchburg.
District No. 13. — Dr. Harvey T. Shores, 177 Elm Street, Northampton.
District No. 14. — Dr. Richard S. Benner, 10 Chestnut Street, Springfield. (Resigned in October, 1907. Succeeded by Dr. Herbert S. Emerson of Springfield.)
District No. 15. — Dr. Lyman A. Jones, 170 Main Street, North Adams.

Under the rules, consideration was postponed until July 17, when the appointments were severally confirmed by the Council.

seventy-five of the acts of the year nineteen hundred and three, chapter two hundred and thirty-eight of the acts of the year nineteen hundred and five, and chapter two hundred and fifty of the acts of the year nineteen hundred and six; and the powers and duties heretofore conferred and imposed upon the members of said inspection department of the district police by section eight of chapter one hundred and eight of the Revised Laws in respect to the foregoing sections and acts, and in respect to all acts in amendment thereof or in addition thereto, and in respect to any other laws, are hereby conferred and imposed upon said state inspectors of health or such other officers as the state board of health may from time to time appoint: *provided, however,* that neither said board of health nor any inspector thereof shall have authority to require structural alterations to be made in buildings, but shall report the necessity therefor to the inspection department of the district police. Wherever in said provisions of law the words "inspector" or "inspectors of factories and public buildings", "inspection department of the district police", "inspector" or "inspectors of the district police", "district police", "factory inspector" or "inspectors", and "member" or "members of the district police" occur, they shall be taken to mean state inspector or inspectors of health. Wherever the words "chief of the district police" occur, they shall be taken to mean the state board of health.

SECTION 6. The governor, with the advice and consent of the council, shall establish the salaries of said state inspectors of health, having regard in each district to the extent of territory, the number of inhabitants, the character of the business there carried on, and the amount of time likely to be required for the proper discharge of the duties. The salaries thus established shall be paid from the treasury of the Commonwealth monthly.

SECTION 7. There may be expended out of the treasury of the Commonwealth annually, for the purposes specified in this act, for salaries, a sum not exceeding twenty-five thousand dollars, and for other expenses, a sum not exceeding five thousand dollars.

SECTION 8. For the purpose of carrying out the provisions of this act the state board of health may employ from time to time experts in sanitation.

HOSPITALS FOR DANGEROUS DISEASES.

REVISED LAWS, 75.

Towns may establish Hospitals for Contagious Diseases.

SECTION 35. A town may establish hospitals within its limits for the treatment of diseases which are dangerous to the public health. Such hospitals shall be subject to the orders and regulations of the board of health.

1792, 58, § 2. P. S. 80, §§ 70, 71. G. S. 26, §§ 40, 41. R. S. 21, §§ 35, 36. 1906, 365, § 1. 186 Mass. 282.

Town Boards of Health shall provide Accommodations for Persons with Dangerous Diseases. Wage-earners held in Quarantine shall be compensated.

SECTION 36. If a disease which is dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected with any such disease, the board of health shall immediately provide such hospital or place of reception, and such nurses and other assistance and necessaries, as is judged best for his accommodation and for the safety of the inhabitants, and the same shall be subject to the regulations of the board. The board may cause any sick or infected person to be removed to such hospital or place, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the said board, and, if necessary, persons in the neighborhood may be removed. When the board of health of a city or town shall deem it necessary in the interest of the public health to require a resident wage-earner to remain within such house or place, or otherwise to interfere with the following of his employment, he shall receive from such city or town during the period of his restraint compensation to the extent of three fourths of his regular wages: *provided, however,* that the amount so received shall not exceed two dollars for each working day.

1701-2, 9, §§ 1, 2. 1792, 58, § 5. 1797, 16, § 1. R. S. 21, §§ 16, 17, 40. 1837, 244, §§ 1, 2. 1838, 158. 1848, 119. G. S. 26, §§ 16, 17, 44. P. S. 80, §§ 40, 41, 75. 1906, 365, § 1. 1907, 445. 137 Mass. 554, 558. 140 Mass. 314, 322. 162 Mass. 176. 186 Mass. 282. 187 Mass. 150. 192 Mass. 317.

Notice of Infected Places.

SECTION 43. If such disease exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection, and shall give public notice of infected places to travellers by displaying red flags at proper distances and by all other means which in their judgment may be most effectual for the common safety. Whoever obstructs the selectmen, board of health or its agent in using such means, or wilfully removes, obliterates, defaces or handles such red flags or other signals shall forfeit not less than ten nor more than one hundred dollars for each offence.

1792, 58, § 6. R. S. 21, § 41. 1838, 158. G. S. 26, § 45. 1873, 2, § 2. P. S. 80, § 76. 140 Mass. 323.

Penalty for Violation of Regulations.

SECTION 44. If a physician or other person who is in any of said hospitals or places of reception, or who attends, approaches or is concerned with them, violates a regulation relative thereto, with respect to himself or to his or another person's property, he shall forfeit not less than ten nor more than one hundred dollars for each offence.

1792, 58, § 6. R. S. 21, § 42. 1838, 158. G. S. 26, § 46. P. S. 80, § 77.

Towns near State Border may appoint Guards.

SECTION 45. The board of health of a town near to or bordering upon an adjoining state may in writing appoint suitable persons, who shall attend at places by which travellers may pass from infected places without the Commonwealth, and who may examine such travellers as the board suspects of bringing any infection dangerous to the public health, and, if necessary, restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from an infected place, who, without such license, travels within this Commonwealth, unless to return by the most direct way to the state whence he came after he has been cautioned to depart by the persons so appointed, shall forfeit not more than one hundred dollars.

1739–40, 1, § 3. 1742–3, 17, § 3. 1797, 16, § 3. R. S. 21, § 18. G. S. 26, § 18. P. S. 80, § 42.

REVISED LAWS, 51.

Fences, etc., to prevent Spread of Disease, not to be removed.

SECTION 11. No surveyor, road commissioner or other person shall, without an order from the board of health, remove or take down fences, gates or bars which have been placed on a way for the purpose of preventing the spread of a disease dangerous to the public health.

1786, 81, § 11. R. S. 25, § 4. G. S. 44, § 9. P. S. 52, § 11.

REVISED LAWS, 75.

Warrant may issue for Removal of Infected Persons.

SECTION 46. A magistrate authorized to issue warrants in criminal cases may issue a warrant directed to the sheriff of the county or his deputy, or to any constable or police officer, requiring him, under the direction of the board of health, to remove any person who is infected with contagious disease, or to impress and take up convenient houses, lodging, nurses, attendants and other necessaries. The removal authorized by this section may be made to any hospital in an adjoining city or town established for the reception of persons having smallpox or other disease dangerous to the public health, provided the assent of the board of health of the city or town to which such removal is to be made shall first have been obtained.

1701–2, 9, § 3. 1742–3, 17, § 1. 1797, 16, § 4. R. S. 21, § 19. G. S. 26, § 19. 1877, 211, § 1. P. S. 80, § 43. 1902, 206, § 2. 1906, 365, § 2. 137 Mass. 554. 140 Mass. 322. 162 Mass. 176.

Provisions concerning Removals apply only to Boarding Houses, Hotels and Certain Others.

SECTION 56. The provisions of sections thirty-six and forty-six, so far as they confer authority for the removal of patients from their homes, shall apply only in the case of persons residing in boarding houses or hotels, or in the case of two or more families occupying the same dwell-

ing, or in other cases in which, in the opinion of the board, the case cannot properly be isolated.

1838, 158. 1840, 39. 1848, 119. G. S. 26, § 51. 1872, 189. P. S. 80, § 82. 1906, 365, § 3. 140 Mass. 314. 187 Mass. 150.

Towns shall pay Compensation for Houses, etc., impressed.

SECTION 58. If a sheriff or other officer impresses or takes up any houses, stores, lodging or other necessaries, or impresses men, the town in which such persons or property are so impressed shall pay a just compensation to the persons entitled thereto.

R. S. 21, § 24. G. S. 26, § 24. P. S. 80, § 48. 192 Mass. 317.

The Provisions of the Entire Chapter (75) apply to Cities.

SECTION 140. The provisions of this chapter shall apply to cities so far as consistent with their several charters.

G. S. 26, § 60. P. S. 80, § 106.

REVISED LAWS, 25.

Towns may make Contracts for Hospital Treatment.

SECTION 14. A town may make contracts: — For the reception, care and treatment, by hospitals established in a town, or in the vicinity thereof, which maintains and manages no hospital, of persons who by misfortune or poverty require relief during temporary illness; but this provision shall not add to the compensation now required from the Commonwealth or from any city or town for the care and treatment of any person chargeable to them respectively as a pauper, or diminish the right of the Commonwealth to require the removal to the state hospital of a pauper dependent upon it.

1902, 544, § 6.

REVISED LAWS, 75.

Cities shall maintain Isolation Hospitals.

SECTION 37. Each city shall establish and constantly be provided, within its limits, with one or more isolation hospitals for the reception of persons having smallpox or any other disease dangerous to the public health. Such hospitals shall be subject to the orders and regulations of the boards of health of the cities in which they are respectively situated. A city which, upon request of the state board of health, refuses or neglects to comply with the provisions of this section, shall forfeit not more than five hundred dollars for each refusal or neglect: *provided, however,* that if, in the opinion of the boards of health of two or more adjoining cities or towns, such hospitals can advantageously be established and maintained in common, the authorities of the said cities or towns may enter into such agreements as may be necessary for the establishment and maintenance of the same.

1901, 171. 1906, 365, § 1. 186 Mass. 282. 187 Mass. 150. 192 Mass. 317.

Physicians, Nurses, etc., in Isolation Hospitals are subject to Regulations of Local Health Boards.

SECTION 38. The physician, nurses, attendants, patients and all persons approaching or coming within the limits of such hospitals, and all furniture and other articles used or brought there, shall be subject to the regulations of the local board of health.

1792, 58, § 4. G. S. 26, § 3. 1906, 365, § 1.
R. S. 21, § 39. P. S. 80, § 74. 186 Mass. 282.

Hospitals not to be near Dwellings in Another Place, without Consent.

SECTION 39. Such hospitals shall not be established within one hundred rods of an inhabited dwelling house situated in an adjoining city or town, without the consent of such city or town.

1764-5, 12, § 5. G. S. 26, § 42. 1906, 365, § 1.
1792, 58, § 2. P. S. 80, § 72. 186 Mass. 282.
R. S. 21, § 37.

Penalty for Unlawful Use of Buildings as Hospitals.

SECTION 40. Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit not more than fifty dollars for every month during which such offence continues, and in like proportion for a portion of the month. The supreme judicial court or the superior court shall have jurisdiction in equity to restrain such occupancy or use.

1870, 306. P. S. 80, § 73. 1906, 365, § 1. 186 Mass. 282.

Treatment for Venereal Diseases required.

SECTION 41. Each city shall provide for the treatment, either in a hospital or as out patients, of indigent persons who are suffering from contagious or infectious venereal diseases.

1895, 400. 1906, 365, § 1. 186 Mass. 282.

Discrimination against Venereal Diseases forbidden.

SECTION 42. No discrimination shall be made against the treatment of venereal diseases in the out patient department of any general hospital supported by taxation in any city in which special hospitals, other than hospitals connected with penal institutions, are not provided for the treatment of such diseases at public expense; but said hospital may establish a separate ward for their treatment.

1894, 511, § 3. 1906, 365, § 1. 186 Mass. 282.

ACTS OF 1902, 206, AMENDED BY 1906, 365, § 4.

Cities and Towns may receive Sick Persons from Adjoining Towns.

SECTION 1. The board of health of any city or town which has established or which may hereafter establish within its limits a hospital for the reception of persons having smallpox or any other disease dan-

gerous to the public health, may receive for care and treatment in such hospital persons from an adjoining town who are infected with any of said diseases.

ACTS OF 1905, 330.

Certain Hospitals shall keep Records, which shall be Admissible in Court as Evidence.

SECTION 1. Hospitals supported in whole or in part by contributions from the Commonwealth or from any municipality, incorporated hospitals offering treatment to patients free of charge, and incorporated hospitals conducted as public charities, shall keep records of the cases under their care and the history of the same in books kept for that purpose.

SECTION 2. Such records shall be in the custody of the person in charge of the hospital, and shall be admissible as evidence in the courts of the Commonwealth as to all matters therein contained.

SECTION 3. Section seventeen of chapter thirty-five of the Revised Laws shall not apply to such records, and they shall not be open to public inspection until they are produced in court by the person having the custody of the same.

LYING-IN HOSPITALS.

REVISED LAWS, 75.

Lying-in Hospitals may be licensed in Towns.

SECTION 62. The selectmen of a town may issue a license, subject to revocation by them, to a person to establish or keep therein for two years, a lying-in hospital, hospital ward or other place for the reception, care and treatment of women in labor, if the board of health shall first certify to the selectmen that, in its judgment, the applicant for such license is a suitable person, and that from its inspection and examination of such hospital, hospital ward or other place aforesaid, the same is suitable for such business.

1876, 157, §§ 1, 2. P. S. 80, §§ 56, 57.

They shall be subject to Visitation.

SECTION 63. Such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the selectmen, the board of health and the chief of police, and if, during the year, it receives more than six patients, by the state board of health.

1876, 157, § 3. P. S. 80, § 58. 1886, 101, § 4.

Penalties for keeping without License.

SECTION 64. Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward or other place for the purpose mentioned in section sixty-two or is engaged in any such business, without such license, shall for the first offence be punished by a fine of not more than five hundred dollars, to be equally divided between the complainant and the town; and for any subsequent offence by imprisonment for not more than two years.

1876, 157, § 4. P. S. 80, § 59.

DISEASES DANGEROUS TO THE PUBLIC HEALTH.

REVISED LAWS, 75.

Prisoners may be removed from Jail to Hospital.

SECTION 47. If a prisoner in a jail, house of correction or workhouse has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, in writing, direct his removal to a hospital or other place of safety, there to be provided for and securely kept until its further order. If he recovers from the disease, he shall be returned to his former place of confinement. If the person so removed has been committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

1816, 44, §§ 10, 40. R. S. 21, §§ 25, 26. G. S. 26, §§ 25, 26. P. S. 80, §§ 49, 50.

Prisoners with Syphilis shall be isolated.

SECTION 48. An inmate of a public charitable institution or a prisoner in a penal institution who is afflicted with syphilis shall be forthwith placed under medical treatment, and, if, in the opinion of the attending physician, it is necessary, he shall be isolated until danger of contagion has passed or the physician determines that his isolation is unnecessary. If, at the expiration of his sentence, he is afflicted with syphilis in its contagious or infectious symptoms, or if, in the opinion of the attending physician of the institution or of such physician as the authorities thereof may consult, his discharge would be dangerous to public health, he shall be placed under medical treatment and cared for as above provided in the institution where he has been confined until, in the opinion of the attending physician, such symptoms have disappeared and his discharge will not endanger the public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the place in which he has a settlement, after notice of the expiration of his sentence and of his condition to the overseers of the poor thereof, or, if he is a state pauper, to the state board of charity.

1891, 420.

Householders shall notify Local Board of Health of the Existence of Cases of Dangerous Diseases, and shall disinfect Rooms, etc.

SECTION 49. A householder who knows that a person in his family or house is sick of smallpox, diphtheria, scarlet fever or any other infectious or contagious disease declared by the state board of health to be

dangerous to the public health [1] shall forthwith give notice thereof to the board of health of the city or town in which he dwells. Upon the death, recovery or removal of such person, the householder shall disinfect to the satisfaction of the board such rooms of his house and articles therein as, in the opinion of the board, have been exposed to infection or contagion. Should one or both eyes of an infant become inflamed, swollen and red, and show an unnatural discharge at any time within two weeks after its birth, it shall be the duty of the nurse, relative or other attendant having charge of such infant to report in writing within six hours thereafter, to the board of health of the city or town in which the parents of the infant reside, the fact that such inflammation, swelling and redness of the eyes and unnatural discharge exist. On receipt of such report, or of notice of the same symptoms given by a physician as provided by the following section, the board of health shall take such immediate action as it may deem necessary in order that blindness may be prevented. Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

[NOTE. — For provisions concerning removal of infected articles and storage or destruction thereof and payment therefor, see sections 86–90, pp. 40, 41.]

1742-3, 17, §§ 5, 6.
1792, 58, § 7.
R. S. 21, § 43.
G. S. 26, § 47.
P. S. 80, § 78.
1884, 98, § 1.
1890, 102.
1905, 251, § 1.
1907, 480, § 1.

Physicians shall give Immediate Notice of Cases of Dangerous Diseases to Local Authorities.

SECTION 50. If a physician knows that a person whom he is called to visit is infected with smallpox, diphtheria, scarlet fever or any other disease declared by the state board of health to be dangerous to the public health,[1] or if one or both eyes of an infant whom or whose mother he is called to visit become inflamed, swollen and red, and show an unnatural discharge within two weeks after the birth of such infant, he shall immediately give notice thereof in writing over his own signature to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit not less than fifty nor more than two hundred dollars for each offence.

1827, 129.
R. S. 21, § 44.
G. S. 26, § 48.
P. S. 80, § 79.
1884, 98, § 2.
1891, 188.
1905, 251, § 1.
1907, 480, § 1.

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[1] Diseases declared by the State Board of Health to be dangerous to the public health: At a meeting of the State Board of Health, held Aug. 1, 1907, the following diseases were declared to be "dangerous to the public health," and hence notifiable under the provisions of the above sections: —

Actinomycosis.
Asiatic cholera.
Cerebro-spinal meningitis.
Diphtheria.
Glanders.
Leprosy.
Malignant pustule.
Measles.
Scarlet fever.
Smallpox.
Tetanus.
Trichinosis.
Tuberculosis.
Typhoid fever.
Typhus fever.
Varicella.
Whooping-cough.
Yellow fever.

Local Boards of Health shall record All Reported Cases, and shall give Immediate Notice to School Authorities.

SECTION 51. The board of health shall keep a record, in blank books to be provided by the secretary of the Commonwealth, of all reports received pursuant to the two preceding sections, which shall contain the name and location of all persons who are sick, their disease, the name of the person who reports the case and the date of such report. Said board shall give immediate information to the school committee of all contagious diseases so reported to them.

1884, 98, §§ 3, 4.

Local Boards of Health shall notify the State Board of Health within Twenty-four Hours of receiving Notice of Cases of Dangerous Diseases.

SECTION 52. If the board of health of a city or town has had notice of a case of smallpox, diphtheria, scarlet fever or of any other disease declared by the state board of health to be dangerous to the public health [1] therein, it shall within twenty-four hours thereafter give notice thereof to the state board of health stating the name and the location of the patient so afflicted, and the secretary thereof shall forthwith transmit a copy of such notice to the state board of charity.

1883, 138, § 1. 1886, 101, § 4. 1893, 302, § 1. 1907, 480, § 1.

Forfeiture of Claims if Local Boards of Health fail to notify State Board of Health.

SECTION 53. If such board refuses or neglects to give such notice, the city or town shall forfeit its claim upon the Commonwealth for the payment of expenses as provided in section one of chapter two hundred and thirteen of the acts of the year nineteen hundred and two.

1883, 138, § 2. 1893, 302, § 2. 1902, 213, § 3.

ACTS OF 1902, 213.

Concerning Reimbursement of the Commonwealth, Cities and Towns for Expense of caring for Persons Ill with Diseases Dangerous to the Public Health.

SECTION 1. Reasonable expenses incurred by the board of health of a city or town or by the Commonwealth in making the provision required by law for persons infected with smallpox or other disease dangerous to the public health shall be paid by such person or his parents if he or they be able to pay, otherwise by the city or town in which he has a legal settlement, upon the approval of the bill by the board of health of such city or town or by the state board of charity; and such settlements shall be determined by the overseers of the poor, and by the state board of charity in cases cared for by the Commonwealth. If the person has no settlement, such expense shall be paid by the Commonwealth, upon the approval of bills therefor by the state board of charity. In all cases of persons having settlements, a written notice sent within the time required in the case of aid given to paupers, shall be sent by the board of health,

[1] See foot-note on p. 15.

or by the officer or board having the powers of a board of health in the city or town where the person is sick, to the board of health, or to the officer or board having the powers of a board of health in the city or town in which such person has a settlement, who shall forthwith transmit a copy thereof to the overseers of the poor of the place of settlement. In case the person has no settlement, such notice shall be given to the state board of health, in accordance with the provisions of section fifty-two of chapter seventy-five of the Revised Laws.

1907, 386, § 1. 2 Cushing, 52. 187 Mass. 150.

Persons treated at Public Expense for Diseases Dangerous to the Public Health shall not therefor be deemed to be Paupers.

SECTION 2. No person for whose care and maintenance a city or town or the Commonwealth has incurred expense in consequence of smallpox, scarlet fever, diphtheria, tuberculosis, dog bite requiring anti-rabic treatment, or other disease dangerous to the public health shall be deemed to be a pauper by reason of such expenditure.

1907, 386, § 2.

ACTS OF 1907, 183.

The State Board of Health to define "Dangerous," as used in Acts of 1902, 213.

SECTION 1. The state board of health is hereby authorized and directed to define what diseases shall be deemed to be "dangerous to the public health", as the term is used in chapter two hundred and thirteen of the acts of the year nineteen hundred and two.[1]

REVISED LAWS, 85.

Certain Sick Persons shall not be sent to the State Hospital.

SECTION 14. No city or town officer shall send to the state hospital any person who is infected with smallpox or other disease dangerous to the public health, or, except as provided in section ten (chap. 85, Rev. Laws), any other sick person whose health would be endangered by removal; but all such persons who are liable to be maintained by the Commonwealth shall be supported during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given in writing to the state board of charity, which may examine the case and, if found expedient, order the removal of the patient; but such notice in the case of sick persons whose health would be endangered by such removal shall be signed by the overseers of the poor or by a person appointed by them by special vote, who shall certify, after personal examination, that in their or his opinion such removal at the time of his application for aid would endanger his health. A city or town officer who

[1] At a meeting of the State Board of Health, held on Aug. 1, 1907, the following were defined as dangerous, within the meaning of chapter 213 of the Acts of 1902: —

Actinomycosis.	Glanders.	Scarlet fever.	Typhus fever.
Asiatic cholera.	Leprosy.	Smallpox.	Whooping-cough.
Cerebro-spinal meningitis.	Malignant pustule.	Tuberculosis.	Yellow fever.
Diphtheria.	Measles.	Typhoid fever.	

knowingly violates the provisions of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars.

1855, 445, § 2. 1865, 162, §§ 1, 3. 1879, 291, § 3. P. S. 86, §§ 25, 27. 1885, 211.

ACTS OF 1904, 395.

State Board of Charity may remove Infected Persons to Any Hospital provided for State Paupers.

SECTION 1. The state board of charity may, if found expedient, remove any person who is infected with a disease dangerous to the public health, and who is maintained or liable to be maintained by the Commonwealth, to any hospital provided for state paupers, or may provide such place of reception for such person as is judged best for his accommodation and the safety of the public, which place shall be subject to the regulations of the board, and may remove such person thereto.

SECTION 2. Any expenses incurred in carrying out the provisions of this act may be paid from the annual appropriation for expenses in connection with smallpox and other diseases dangerous to the public health.

ACTS OF 1905, 474.

Hospital provided for Lepers.

SECTION 1. The state board of charity, subject to the approval of the governor, shall be authorized to take in the name and for the use of the Commonwealth land in fee by purchase or eminent domain, and to erect and maintain thereon a hospital for the custody, care and treatment of persons afflicted with leprosy, and for said purpose may expend a sum not exceeding fifty thousand dollars.

PROHIBITION OF SPITTING.

ACTS OF 1906, 165.

Spitting on Sidewalks, Floors and Platforms prohibited.

SECTION 1. No person shall expectorate or spit upon any public sidewalk, or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, upon the floor in any city or town hall, in any court house or court room, in any public library or museum, in any church or theatre, in any lecture or music hall, in any mill or factory, in any hall of any tenement building occupied by five or more families, in any school building, in any ferry boat or steamboat, in any railroad car, except a smoking car, in any elevated railroad car, except a smoking car, in any street railway car, in any railroad or railway station or waiting room or on any sidewalk or platform connected therewith.

1907, 410, § 1.

Penalty and Power of Arrest.

SECTION 2. Whoever violates any provision of this act shall be punished by a fine of not more than twenty dollars. Any person detected

in the act of violating any provision of this act may be arrested by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court which has jurisdiction of such offence; and if his name is unknown to the officer who makes the arrest, he may be arrested without a warrant.

1907, 410, § 2.

PROTECTION OF INFANTS.

REVISED LAWS, 83.

Infant Boarding Houses to be licensed.

SECTION 2. The state board of charity may grant licenses to maintain boarding houses for infants. Every application therefor shall, except in Boston, first be approved by the board of health of the city or town in which such boarding house is to be maintained. Such license shall be granted for a term not exceeding one year, shall state the name of the licensee, the particular premises in which the business may be carried on, the number of infants which may be boarded there at one time, and, if required by said board, it shall be posted in a conspicuous place on the licensed premises. No greater number of infants shall be kept at one time on the premises than is authorized by the license, and no infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the state board of charity, which shall forthwith give notice to the board of health of the city or town in which the licensee resides of the granting of such license and of the terms thereof. The state board of charity and boards of health of cities and towns except Boston shall annually, and may, at any time, visit and inspect, or designate a person to visit and inspect, premises so licensed.

1889, 416, § 3. 1892, 318, §§ 3, 4.

Notice to Board of Health.

SECTION 16. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant other than the first two, give notice thereof in writing to the board of health of the place where such infant is to be so boarded, stating its name and age and the name and residence of the person so taking it to board. The board of health may enter and inspect such house or premises while such business is there carried on, and may direct and enforce the necessary sanitary precautions relative to such children and premises. Whoever violates the provisions of this section or refuses admission to the board of health shall be punished by a fine of not less than fifty nor more than five hundred dollars.

1876, 158. P. S. 80, §§ 60, 61. 162 Mass. 596.

VACCINATION.

REVISED LAWS, 75.

Children to be vaccinated.

SECTION 136. A parent or guardian who neglects to cause his child or ward to be vaccinated before the child or ward attains the age of two years, except as provided in section one hundred and thirty-nine, shall forfeit five dollars for every year during which such neglect continues.

1855, 414, §§ 1, 3. G. S. 26, § 27. P. S. 80, § 51. 1894, 415, § 1.

Vaccination to be enforced by Boards of Health.

SECTION 137. The board of health of a city or town if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination and re-vaccination of all the inhabitants thereof and shall provide them with the means of free vaccination. Whoever refuses or neglects to comply with such requirement shall forfeit five dollars.

1809, 117, § 2.
R. S. 21, § 45.
1855, 414, §§ 3, 4.
G. S. 26, §§ 28, 29.
P. S. 80, §§ 52, 53.
1894, 515, §§ 3, 4.
1902, 190, § 1.
183 Mass. 242, 244, 249.
194 Mass.
197 U. S. 11, 12.

Inmates of Factories and Institutions to be vaccinated.

SECTION 138. The board of health of a city or town in which any incorporated manufacturing company, almshouse, reform or industrial school, hospital or other establishment where the poor or sick are received, prison, jail or house of correction or any institution which is supported or aided by the Commonwealth is situated may, if it decides that it is necessary for the health of the inmates or for the public safety, require the authorities of said establishment or institution, at the expense thereof, to cause all said inmates to be vaccinated.

1855, 414, §§ 5, 6. G. S. 26, § 30. P. S. 80, § 54. 1894, 515, § 5. 1898, 433, § 23.

Exemptions.

SECTION 139. Any person over twenty-one years of age who presents a certificate signed by the register of a probate court that he is under guardianship shall not be subject to the provisions of section one hundred and thirty-seven; and any child who presents a certificate, signed by a registered physician designated by the parent or guardian, that the physician has at the time of giving the certificate personally examined the child and that he is of the opinion that the physical condition of the child is such that his health will be endangered by vaccination shall not, while such condition continues, be subject to the provisions of the three preceding sections of this chapter; and the parent or guardian of such child shall not be liable to the penalties imposed by section one hundred and thirty-six of this chapter.

1894, 515, § 2. 1902, 190, § 2. 1902, 544, § 10.

REVISED LAWS, 44.

Vaccination of School Children. Exclusion of Pupils in Household having a Contagious Disease.

SECTION 6. A child who has not been vaccinated shall not be admitted to a public school except upon presentation of a certificate, granted for cause stated therein, signed by a regular practising physician that he is not a fit subject for vaccination. A child who is a member of a household in which a person is ill with smallpox, diphtheria, scarlet fever, measles, or any other infectious or contagious disease, or a household exposed to such contagion from another household as aforesaid, shall not attend any public school during such illness until the teacher of the school has been furnished with a certificate from the board of health of the city or town, or from the attending physician of such person, stating that danger of conveying such disease by such child has passed.

1855, 414, § 2.
G. S. 41, § 8.
P. S. 47, § 9.
1884, 64.
1885, 198.
1894, 498, §§ 9, 10.
1898, 496, § 11.
1906, 371.
1907, 215.
183 Mass. 242, 244, 249.
194 Mass.
197 U. S. 11, 12.

QUARANTINE.

REVISED LAWS, 75.

Town may establish a Quarantine Ground.

SECTION 131. A town may establish a quarantine ground in a suitable place within its own limits; or, with the previous consent of another town, within the limits thereof. Two or more towns may in like manner join in establishing such quarantine ground for their common use.

R. S. 21, §§ 27, 28. G. S. 26, §§ 32, 33. P. S. 80, §§ 62, 63.

Quarantine of Vessels.

SECTION 132. The board of health in a seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make quarantine regulations for the health and safety of the inhabitants, which shall apply to all persons, goods and effects arriving in such vessels and to all persons who, for any purpose, may visit the same. Whoever violates any such regulation shall forfeit not less than five nor more than five hundred dollars.

1816, 44, § 6.
R. S. 21, §§ 29-31.
G. S. 26, §§ 34-36.
P. S. 80, §§ 64-66.
98 Mass. 443.
137 Mass. 554.
144 Mass. 523.

Quarantine of Suspected Vessels.

SECTION 133. Such board may at any time cause a vessel arriving in port, if such vessel or its cargo is, in its opinion, foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees or persons in possession of the same; and may cause all persons arriving in or

for any purpose visiting such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under its orders.

1816, 44, § 6. R. S. 21, § 32. G. S. 26, § 37. P. S. 80, § 67.

Penalty for Refusal to answer on Oath.

SECTION 134. Any person belonging to or arriving in a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails which may endanger the public health, who refuses to make answer on oath, to be administered by any member of the board, to questions relating to such infection or distemper asked by the board of health of the town to which such vessel may come shall forfeit not more than two hundred dollars.

1797, 16, § 9. R. S. 21, § 33. G. S. 26, § 38. P. S. 80, § 68.

Quarantine Expenses, how paid.

SECTION 135. All expenses incurred on account of any person, vessel or goods which are under quarantine regulations shall be paid by the owner of such vessel.

1816, 44, § 6. G. S. 26, § 39. 1893, 79. 144 Mass. 523.
R. S. 21, § 34. P. S. 80, § 69. 120 Mass. 96.

PUBLIC SCHOOLS AND MEDICAL INSPECTION OF SCHOOL CHILDREN.

REVISED LAWS, 42.

Teaching of Physiology, Hygiene and Effects of Alcohol.

SECTION 1. . . . Public schools . . . shall give instruction in . . . physiology and hygiene. . . . In each of the subjects of physiology and hygiene, special instruction as to the effects of alcoholic drinks and of stimulants and narcotics on the human system shall be taught as a regular branch of study to all pupils in all schools which are supported wholly or partly by public money, except schools which are maintained solely for instruction in particular branches.

1850, 229. 1858, 5. G. S. 38, § 1. 1885, 332.
1857, 206, § 1. 1859, 263. P. S. 44, § 1. 1898, 496, § 1.

For other sanitary laws relating to schools and scholars, see page 16, notification of contagious diseases to school committee, chap. 75, sect. 51; see page 21, exclusion of unvaccinated children and other children from infected houses from school, chap. 44, sect. 6; see pages 55, 56, inspection of school houses, chap. 104, sects. 22–25.

ACTS OF 1906, 502.

School Committees shall appoint School Physicians, except in Certain Cities, in which the Board of Health shall appoint.

SECTION 1. The school committee of every city and town in the Commonwealth shall appoint one or more school physicians, shall assign one to each public school within its city or town, and shall provide them

with all proper facilities for the performance of their duties as prescribed in this act: *provided, however,* that in cities wherein the board of health is already maintaining or shall hereafter maintain substantially such medical inspection as this act requires, the board of health shall appoint and assign the school physician.

Examination and Diagnosis of Children to be made.

SECTION 2. Every school physician shall make a prompt examination and diagnosis of all children referred to him as hereinafter provided, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require.

Authority of School Committees, etc.

SECTION 3. The school committee shall cause to be referred to a school physician for examination and diagnosis every child returning to school without a certificate from the board of health after absence on account of illness or from unknown cause; and every child in the schools under its jurisdiction who shows signs of being in ill health or of suffering from infectious or contagious disease, unless he is at once excluded from school by the teacher; except that in the case of schools in remote and isolated situations the school committee may make such other arrangements as may best carry out the purposes of this act.

Notice of Disease of Child to be sent to Parent or Guardian, etc.

SECTION 4. The school committee shall cause notice of the disease or defects, if any, from which any child is found to be suffering to be sent to his parent or guardian. Whenever a child shows symptoms of smallpox, scarlet fever, measles, chickenpox, tuberculosis, diphtheria or influenza, tonsilitis, whooping cough, mumps, scabies or trachoma, he shall be sent home immediately, or as soon as safe and proper conveyance can be found, and the board of health shall at once be notified.

Each Child's Sight and Hearing to be tested Annually.

SECTION 5. The school committee of every city and town shall cause every child in the public schools to be separately and carefully tested and examined at least once in every school year to ascertain whether he is suffering from defective sight or hearing or from any other disability or defect tending to prevent his receiving the full benefit of his school work, or requiring a modification of the school work in order to prevent injury to the child or to secure the best educational results. The tests of sight and hearing shall be made by teachers. The committee shall cause notice of any defect or disability requiring treatment to be sent to the parent or guardian of the child, and shall require a physical record of each child to be kept in such form as the state board of education shall prescribe.

State Board of Health to prescribe Methods of testing Sight and Hearing.

SECTION 6. The state board of health shall prescribe the directions for tests of sight and hearing and the state board of education shall, after consultation with the state board of health, prescribe and furnish to school committees suitable rules of instruction, test-cards, blanks, record books and other useful appliances for carrying out the purposes of this act, and shall provide for pupils in the normal schools instruction and practice in the best methods of testing the sight and hearing of children. The state board of education may expend during the year nineteen hundred and six a sum not greater than fifteen hundred dollars, and annually thereafter a sum not greater than five hundred dollars for the purpose of supplying the material required by this act.

Expenses.

SECTION 7. The expense which a city or town may incur by virtue of the authority herein vested in the school committee or board of health, as the case may be, shall not exceed the amount appropriated for that purpose in cities by the city council and in towns by a town meeting. The appropriation shall precede any expenditure or any indebtedness which may be incurred under this act, and the sum appropriated shall be deemed a sufficient appropriation in the municipality where it is made. Such appropriation need not specify to what section of the act it shall apply, and may be voted as a total appropriation to be applied in carrying out the purposes of the act.

CONTAGIOUS DISEASES OF DOMESTIC ANIMALS.

REVISED LAWS, 90.

Notice to Board of Contagious Diseases among Animals.

SECTION 11. The board of health of a city or town, any member or agent thereof or any other person who has knowledge of or reason to suspect the existence of any contagious disease among any domestic animals in this Commonwealth, or that any domestic animal is affected with such contagious disease, whether such knowledge is obtained by personal examination or otherwise, shall immediately give notice thereof in writing to the chief of the cattle bureau of the state board of agriculture. Whoever fails to give such notice shall be punished by a fine of not more than one hundred dollars; but no such notice shall be required in the city of Boston relative to glanders, farcy or rabies, which shall be cared for by the board of health of said city. Upon the receipt of such notice, the board shall inspect or cause its authorized agent to inspect any such animals, and if upon such inspection said board or agent suspects or has reason to believe that contagion exists, it or he shall proceed according to the provisions of sections eighteen to twenty-one, inclusive.

1860, 219, § 9; 221, § 5. 1878, 24. 1879, 178. P. S. 90, §§ 9, 15. 1885, 148, §§ 1, 2. 1887, 252, §§ 6, 7. 1894, 491, §§ 29, 30. 1899, 408, §§ 14, 15. 1902, 116.

HYDROPHOBIA AND DOG MUZZLING.

REVISED LAWS, 102.

Dog Licenses shall bear a Description of Symptoms of Hydrophobia.

SECTION 132. Every license issued to the owner of a dog shall have a description of the symptoms of hydrophobia printed thereon. Such description shall be supplied by the secretary of the state board of health to the clerks of the several cities and towns upon application therefor.

1877, 167, § 4. P. S. 102, § 83. 1886, 101, § 4.

Orders may be issued to muzzle or restrain Dogs.

SECTION 158. The mayor and aldermen of a city or the selectmen of a town may order that any dog within the limits of such city or town, respectively, shall be muzzled or restrained from running at large during such time as shall be prescribed by such order. After passing such order and posting a certified copy thereof in two or more public places in such city or town, or, if a daily newspaper is published in such city or town, by publishing such copy once in such newspaper, the mayor and aldermen or selectmen may issue their warrant to one or more of the police officers or constables of such city or town, who shall, after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large contrary to such order, and who shall receive such compensation therefor as is provided in section one hundred and forty-three.

1877, 167, §§ 1, 2. P. S. 102, §§ 101, 102.

Service of Order. Penalty for Non-compliance.

SECTION 159. The mayor and aldermen or selectmen may cause service of such order to be made upon the owner or keeper of the dog by causing a certified copy thereof to be delivered to him; and if he refuses or neglects for twelve hours thereafter to muzzle or restrain such dog as so required, he shall be punished by a fine of not more than twenty-five dollars.

1877, 167, § 3. P. S. 102, § 103.

Penalty for Refusal or Neglect of Officers to perform Duties.

SECTION 160. A county, city or town officer who refuses or wilfully neglects to perform the duties imposed upon him by the provisions of this chapter relating to dogs shall be punished by a fine of not more than one hundred dollars, which shall be paid, except in the county of Suffolk, into the county treasury. Whoever is aggrieved by such refusal or neglect may report the same forthwith to the district attorney of his district.

1858, 139, § 6. G. S. 88, § 66. 1867, 130, § 11.
1859, 225, § 13. 1864, 299, § 10. P. S. 102, § 104.

CEMETERIES.

REVISED LAWS, 78.

Organization of Cemetery Corporations.

SECTION 1. Five or more persons who are desirous of procuring, establishing and preparing a cemetery, or who are the majority in interest of the proprietors of an existing cemetery, may organize as a corporation in the manner provided in chapter one hundred and twenty-three; but such corporation shall not sell nor impair the right of any proprietor of an existing cemetery.

1841, 114, § 1. G. S. 28, § 1. 103 Mass. 104.
1852, 56, §§ 1, 2. P. S. 82, § 1. 168 Mass. 97.

Lots Indivisible but Inheritable.

SECTION 26. Lots in cemeteries incorporated under the provisions of section one, tombs in public cemeteries in cities, and lots and tombs in public cemeteries in towns, shall be held indivisible, and upon the decease of a proprietor of such lot, the title thereto shall vest in his heirs at law or devisees subject to the following limitations and conditions: — If he leaves a widow and children they shall have the possession, care and control of said lot or tomb in common during her life. If he leaves a widow and no children, she shall have such possession, care and control during her life. If he leaves children and no widow, they shall have in common the possession, care and control of such lots or tombs during their joint lives, and the survivor of them during his life. The persons in possession, care and control of such lots or tombs may erect a monument and make other permanent improvements thereon. The widow shall have a right of permanent interment for her own body in such lot or tomb, but it may be removed therefrom to some other family lot or tomb with the consent of her heirs. If two or more persons are entitled to the possession, care and control of such lot or tomb, they shall designate in writing to the clerk of the corporation, or if it is a tomb or lot in a public cemetery, to the board of cemetery commissioners, if any, or to the city or town clerk, which of their number shall represent the lot; and in default of such designation, the board of trustees or directors of the corporation, the board of cemetery commissioners, if any, or the board of health if such lots or tombs are in public cemeteries in cities or towns, shall enter of record which of said persons shall represent the lot during such default. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

1841, 114, § 5. 1877, 182, § 4. 1885, 302. 182 Mass. 175.
G. S. 28, § 3. P. S. 82, §§ 3, 4. 1892, 165, § 1.

Hearing as to Representation.

SECTION 27. Before entering of record the name of any person to represent such lot or tomb, the board of cemetery commissioners, if any, or the board of health of a town shall hear the parties entitled to the con-

trol thereof at such time and place as it shall have previously appointed by a notice published in a newspaper, if any, of the town; otherwise, by posting a copy in a public place therein.

1892, 165, § 2. 182 Mass. 175.

Private Land not to be used for Burial, except, etc.

SECTION 30. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same lies. For every interment in violation of the provisions of this section in a city or town in which the notice prescribed in the following section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

1855, 257, §§ 2–4. P. S. 82, §§ 18, 21. 109 Mass. 1.
G. S. 28, §§ 5–11. 99 Mass. 281. 118 Mass. 355.

Boards of Health may make Regulations.

SECTION 31. Boards of health may make regulations concerning burial grounds and interments within their cities and towns; may impose penalties not exceeding one hundred dollars for a breach of such regulations; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and may close any tomb, burial ground, cemetery or other place of burial within the city or town for such time as they consider necessary for the protection of the public health. Notice of such regulations shall be given by publishing them in a newspaper, if any, of the city or town; otherwise, by posting a copy in a public place therein. Such publication shall be notice to all persons.

R. S. 21, §§ 7, 8. G. S. 28, §§ 6, 7. 1885, 278, § 1. 8 Cush. 68.
1855, 257, §§ 5, 6. P. S. 82, §§ 19, 20. 16 Pick. 121. 13 Allen, 546.

Notice of Closing of Tombs.

SECTION 32. Before a tomb, burial ground or cemetery is closed by order of the board of health for more than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if there are so many, of the owners of such burial ground or cemetery, and notice shall be published for at least two successive weeks preceding such hearing in two newspapers if so many are published in the county.

1855, 257, § 9. G. S. 28, § 8. P. S. 82, § 22.

Appeal from Order of Board.

SECTION 33. The owner of a tomb who is aggrieved by the order of the board of health closing a tomb, burial ground or cemetery may, within six months after the date thereof, appeal therefrom to the superior court,

first giving written notice to the board fourteen days before the entry of such appeal; but the order of the board shall remain in force until the appeal has been determined.

1855, 257, § 7. G. S. 28, § 9. P. S. 82, § 23.

Trial Costs.

SECTION 34. Appeals shall be tried before a jury, and if the jury find that the tomb, burial ground or cemetery so closed was not a nuisance or injurious to the public health at the time of the order and that the closing thereof was not necessary for the protection of the public health, the court shall rescind such order so far as it affects such tomb, burial ground or cemetery, and the appellant may recover the costs of the appeal from the city or town in which the tomb, burial ground or cemetery was situated. If the order is sustained, the board of health shall recover double costs, to the use of the city or town.

1855, 257, § 7. G. S. 28, § 10. P. S. 82, § 24. 1885, 278, § 2.

REVISED LAWS, 212.

Violation of Sepulture.

SECTION 64. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the institutions commissioner or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes or conveys away a human body, or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail for not more than three years or by a fine of not more than two thousand dollars.

1814, 175. R. S. 130, § 19. 1879, 16. 8 Pick. 370. 19 Pick. 304.
1830, 57, §§ 1, 2. G. S. 165, § 37. P. S. 207, § 47. 10 Pick. 37.

Injuring or defacing Tombs, etc.

SECTION 66. Whoever wilfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone or other structure or thing which is placed or designed for a memorial of the dead, or a fence, railing, curb or other thing which is intended for the protection or ornament of a tomb, monument, gravestone or other structure before mentioned or of an enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks or injures a tree, shrub or plant placed or being within such enclosure, or wantonly or maliciously disturbs the contents of a tomb or a grave, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the jail or house of correction for not more than three years.

1834, 187, § 2. G. S. 165, § 39. P. S. 207, § 49.
R. S. 130, § 20. 1879, 39. 100 Mass. 181.

Desecration of Burial Ground.

SECTION 67. Whoever wrongfully, and by any act not included in the provisions of the preceding section, destroys, injures or removes a building, fence, railing or other thing lawfully erected in or around a place of burial or cemetery, or a tree, shrub or plant within its limits, or wrongfully injures a walk or path, or places rubbish or offensive matter or commits a nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be sufficient evidence of title.

1841, 114, § 6. G. S. 28, § 12. 2 Allen, 512. 100 Mass. 181.
1855, 257, § 8. P. S. 207, § 50. 7 Allen, 299.

CREMATION OF DEAD BODIES.

REVISED LAWS, 78.

Cemetery Corporations may cremate Bodies.

SECTION 6. Such corporation [1] may cremate bodies of the dead, and may provide the necessary buildings and appliances therefor and for the disposition of the ashes of the dead on any land within its cemetery which the state board of health determines is suitable for that purpose, and such buildings and appliances shall be a part of the cemetery and be dedicated to the burial of the dead, and shall be held by said corporations subject to the duties, and with the privileges and immunities, which they now have under general or special laws.

1898, 437, § 1.

Crematory Corporations may be formed.

SECTION 7. Five or more persons may form a corporation in the manner provided in chapter one hundred and ten, with a capital of not less than six thousand nor more than fifty thousand dollars, divided into shares of a par value of either ten or fifty dollars, for the purpose of providing the necessary appliances for the disposal by cremation of the bodies of the dead; and they shall have the same powers and privileges, and be subject to the provisions of said chapter, except as hereinafter provided.

1885, 265, § 1.

They may hold Real Estate with Approval of the State Board of Health.

SECTION 8. Such corporation may acquire by gift, devise or purchase, and hold in fee simple to an amount not exceeding fifty thousand dollars, land which is necessary and appropriate for its purposes and situated in such place as the state board of health may determine to be suitable.

1885, 265, § 2.

[1] Meaning any corporation organized for cemetery purposes as described in chap. 78, sect. 1, Rev. Laws.

They may make By-laws and Regulations, subject to Approval.

SECTION 9. Cemetery and crematory corporations may, subject to the approval of said board, make by-laws and regulations consistent with law for the reception and cremation of bodies of the dead and for the disposition of the ashes thereof, and shall conduct their business in accordance with such regulations as said board shall establish and furnish in writing to the clerk of the corporation. For each violation of the regulations of said board they shall forfeit not less than twenty nor more than five hundred dollars. Such corporation shall not erect, occupy or use any building for the purpose of cremation until the location and plans thereof with all details of construction have been submitted to and approved by said board or by some person designated by it.

1885, 265, §§ 2, 3. 1898, 437, § 2.

When Bodies may be cremated.

SECTION 37. The body of a deceased person shall not be cremated within forty-eight hours after his decease unless death was caused by a contagious or infectious disease, and, if the death occurred within the Commonwealth, the body shall not be received or cremated by any corporation authorized to cremate the bodies of the dead until its officers have received the certificate or burial permit required by law before burial, and a certificate from a medical examiner that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination or judicial inquiry concerning the same is necessary. If the death occurs without the Commonwealth, the reception and cremation of the body of a deceased person shall be governed by a by-law or regulation made or approved by the state board of health as is provided by section nine of this chapter.

1907, 138.

[NOTE. — At a meeting of the State Board of Health, held Dec. 5, 1907, the following regulations were established and forwarded in writing to the clerks of the existing corporations engaged in the business of cremation: —

1. A dead body received for cremation from without the Commonwealth shall be accompanied by the usual burial permit required by law before burial, and, if from a state in which district medical examiners are established by law, by a certificate from that officer, similar to that required in this Commonwealth. If from a state in which there are no district medical examiners, it shall be accompanied by the sworn certificate of the attending physician, if any, of the deceased, setting forth the cause of death.

2. No dead body received from without the Commonwealth shall be cremated by any corporation authorized to cremate the bodies of the dead until its officers shall have received a certificate from a medical examiner of this Commonwealth that he has viewed the body and is of

opinion that no further examination or judicial inquiry concerning the same is necessary.

3. Where the death occurred without the Commonwealth more than ten years prior to the time of the presentation of the body for cremation, it may be cremated on receipt by said corporation of the certificate or burial permit required by the law of this Commonwealth before burial.

All regulations heretofore made are hereby revoked.]

BURIAL OF BODIES OR ASHES THEREOF.

REVISED LAWS, 78.

Burial and Exhumation Permits.

SECTION 38. No undertaker or other person shall bury a human body in a city or town, or remove therefrom a human body which has not been buried, except as provided in the following section, until he has received a permit from the board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the city or town in which the person died; and no undertaker or other person shall exhume a human body and remove it from a city or town, or from one cemetery to another, until he has received a permit from the board of health or its agent aforesaid or from the clerk of the city or town in which the body is buried. No such permit shall be issued until there shall have been delivered to such board, agent or clerk, as the case may be, a satisfactory written statement containing the facts required by law to be returned and recorded, which statement, in case of an original interment, shall be accompanied by a satisfactory certificate of the attending physician, if any, as required by law, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if, for sufficient reasons, his certificate cannot be obtained early enough for the purpose, or is insufficient, the chairman of the board of health, if a physician, or any physician employed by said board or by the selectmen for the purpose, shall upon application make such certificate as is required of the attending physician. If death is caused by violence, the medical examiner only shall make such certificate. The board of health or its agent, upon receipt of such statement and certificate, shall forthwith countersign and transmit it to the clerk of the city or town for registration. The person to whom the permit is so given and the physician who certifies to the cause of death shall thereafter furnish for registration any other necessary information which can be obtained as to the deceased, or as to the manner or cause of the death, which the clerk or registrar may require.

1878, 174. P. S. 32, § 5. 1888, 306, § 2. 1893, 263, § 2. 1897, 437, § 1.

Burial of Bodies brought into Commonwealth.

SECTION 39. No undertaker or other person shall bury in a city or town a human body or the ashes thereof which have been brought into this Commonwealth until he has received a permit so to do from the

board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the city or town in which the body is to be buried or the funeral is to be held, or from a person appointed to have the care of the cemetery or burial ground in which the interment is made, if a record is kept of the names of all persons buried therein, or from a duly appointed superintendent of burials in such city or town who keeps a record of interments. Such permit shall not be issued until the undertaker or other person has delivered a certificate to said board, agent, clerk, superintendent or person having such care, giving the name of the deceased, his age as nearly as can be ascertained, the cause of death, the name of the city or town in which he last resided or from which the body was brought, or, if the death occurred at sea, the name of the vessel upon which it occurred, and any other facts required for record which could be obtained with reasonable exertion. The board of health or its agent, or the superintendent or person having such care, shall, upon receipt of such certificate, forthwith countersign and transmit it to the city or town clerk; and if the deceased was a resident of said city or town, the clerk shall record the same in the books kept for recording deaths; but if the deceased was at the time of his death a resident of any other city or town within this Commonwealth said clerk shall forthwith forward to the clerk thereof a copy of such certificate, who shall record the same.

1897, 437, § 2.

Certificates requisite to Burial or Removal.

SECTION 40. No person having the care of a cemetery or burial ground shall permit a human body to be buried therein, or such body or the ashes thereof to be removed therefrom, until the permit for such burial or removal has been delivered to him, nor permit the ashes of a human body to be buried therein until there has been delivered to him a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented.

1897, 437, § 3.

SECTION 41. An undertaker shall not bury the ashes of a human body until he has received from the person having charge of the crematory a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented.

1897, 437, § 4.

Penalty.

SECTION 42. Whoever violates any of the provisions of the four preceding sections shall forfeit not more than fifty dollars.

1897, 437, § 5.

Transportation of Dead Bodies regulated.

SECTION 43. No common carrier or other person shall convey or cause to be conveyed, through or from any city or town in this Commonwealth, the body of any person who has died of smallpox, scarlet fever, diphtheria or typhus fever until such body has been so encased and prepared as to preclude any danger of contagion or infection by its transportation; and no city or town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such body until he has received from the board of health of the city or from the selectmen of the town in which the death occurred a certificate stating the cause of death, and that said body has been prepared in the manner prescribed in this section, which certificate shall be delivered to the agent or person who receives the body. Whoever violates the provisions of this section shall forfeit not more than twenty-five dollars.

1883, 124, § 2. 1887, 335. 1897, 437, § 6.

Undertakers to be licensed.

SECTION 44. The boards of health of cities and towns shall annually, on or before the first day of May, license a suitable number of undertakers who can read and write the English language. Such license shall be issued upon such terms and conditions as the board of health may prescribe, and may be revoked at any time by the board if its terms or conditions or any requirements of law relative thereto have been violated by the undertaker. An undertaker who has been so licensed may act in any city or town.

1872, 275. P. S. 32, § 6. 1897, 437, § 7.

PROMOTION OF ANATOMICAL SCIENCE.

REVISED LAWS, 77.

Disposition of Dead Bodies.

SECTION 1. Upon the written application of the dean or other officer of any medical school established by law in this Commonwealth, the overseers of the poor of a city or town, the trustees for children, the pauper institutions trustees, the insane hospital trustees and the penal institutions commissioner, of the city of Boston, the trustees and superintendent of the state hospital, state farm or other public institution supported in whole or in part at the public expense, except the soldiers' home in Chelsea, shall give such dean or other officer permission to take, within three days after death, the bodies of such persons who die in such town, city, city institution, state hospital, state farm or public institution as are required to be buried at the public expense, to be used within the Commonwealth for the advancement of anatomical science; but such permission shall not be given to take the body of any soldier or sailor, known to be such, who served in the war of the rebellion or in the war between the United States and Spain. In giving such permission, re-

gard shall be had to preserving as far as practicable a fair proportion between the number of students in attendance at such institutions and the number of such bodies delivered to them respectively.

1830, 57, § 3. 1834, 187, § 3. R. S. 22, § 10. 1845, 242, § 1. 1855, 323, § 1. G. S. 27, § 1. 1879, 291, § 9. P. S. 81, § 1. 1891, 185, § 1; 406. 1898, 479, § 1. 1900, 333.

Bonds shall be given.

SECTION 2. Such dean or other officer, before receiving any such dead body, shall give to the board or officer surrendering the same to him a sufficient bond with condition that such body shall be used only for the promotion of anatomical science within this Commonwealth, and in such manner as in no event to outrage the public feeling, that, after having been so used, the remains shall be decently buried, that it shall not be so used for fourteen days after death and that it shall, during said fourteen days, be kept in a condition and place to be viewed by any person, at all reasonable times, for the purpose of identification.

1830, 57, § 3. 1834, 187, § 3. R. S. 22, § 12. G. S. 27, § 2. P. S. 81, § 2. 1898, 479, § 2.

When Bodies are to be buried.

SECTION 3. If the deceased person, during his last sickness, of his own accord requests to be buried or requests that his body be delivered up to any friend, or if, within fourteen days after the death of such deceased person, any person claiming to be and satisfying the authorities that he is a friend or is of kindred to the deceased asks to have the body buried or surrendered to himself, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be given up as aforesaid; but shall, in conformity with such request, be either buried or delivered to such friend or kindred.

1830, 57, § 3. 1834, 187, § 3. R. S. 22, § 11. 1845, 242, § 2. G. S. 27, § 4. P. S. 81, § 4. 1891, 185, § 2. 1898, 479, § 3.

Bodies of Executed Murderers may be dissected.

SECTION 4. Upon conviction of murder in the first degree, the court may order the body of the convict after his execution to be dissected. The warden of the state prison shall in such case deliver it to a professor of anatomy or surgery in a medical school established by law in this Commonwealth, if so requested; otherwise, he shall, unless the convict's friends desire it for interment, deliver it to any surgeon attending to receive it who will undertake to dissect it.

1784, 9, § 4. 1804, 123, § 1. R. S. 125, § 2. G. S. 160, § 8. P. S. 202, § 8. 1904, 204.

Buying or selling Dead Body.

SECTION 65. Whoever buys or sells, or has in his possession for the purpose of buying, selling or trafficking in, the dead body of a human being shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment for not less than three months nor more than three years.

1855, 323, §§ 2, 3. G. S. 165, § 38. P. S. 207, § 48.

NUISANCES, SOURCES OF FILTH AND CAUSES OF SICKNESS.

REVISED LAWS, 75.

Boards of Health to examine Nuisances, destroy them, and make Regulations relative to them.

SECTION 65. The board of health shall examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may in its opinion be injurious to the public health, shall destroy, remove or prevent the same as the case may require and shall make regulations for the public health and safety relative thereto and relative to articles which are capable of containing or conveying infection or contagion or of creating sickness which are brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit not more than one hundred dollars.

1797, 16, §§ 3, 5, 11.
R. S. 21, §§ 5, 6, 9.
G. S. 26, §§ 5, 7.
P. S. 80, §§ 18, 20.
6 Pick. 187.
11 Metcalf, 570.
97 Mass. 221.
156 Mass. 52.
163 Mass. 240.
179 Mass. 385.
182 Mass. 39, 598, 601.
186 Mass. 330, 333.
190 Mass. 442.

Boards of Health may regulate House Drainage and Connection thereof with Public Sewers.

SECTION 66. The board of health of a city, and the board of health of a town if authorized by the town, may make and enforce regulations for the public health and safety relative to house drainage and its connection with public sewers, if a public sewer abuts the estate to be drained. Whoever violates any such regulation shall forfeit not more than one hundred dollars.

1877, 133, § 5. 1881, 185. P. S. 80, § 12. 1889, 108.

Nuisances shall be abated by Owners or Occupants of Private Premises within Reasonable Time.

SECTION 67. Said board shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon, within twenty-four hours, or within such other time as it considers reasonable, after notice; and the owner or occupant shall forfeit not more than twenty dollars for every day during which he knowingly violates such order.

1797, 16, § 11.
R. S. 21, § 10.
1849, 211, § 3.
1855, 368.
G. S. 26, § 8.
P. S. 80, § 21.
11 Metcalf, 570.
98 Mass. 431.
132 Mass. 71.
139 Mass. 198, 426.
143 Mass. 113.
186 Mass. 330, 334.
190 Mass. 442.

Form of Order and Method of Service.

SECTION 68. Such order shall be in writing, and may be served personally on the owner, occupant or his authorized agent by any person authorized to serve civil process, or a copy of the order may be left at the last and usual place of abode of the owner, occupant or agent, if he is known and within the Commonwealth. If the premises are unoccupied and the residence of the owner or agent is unknown or is without

the Commonwealth, the board may order the notice to be served by posting it on the premises and by advertising it in one or more newspapers.

1849, 211, § 4. G. S. 26, § 9. P. S. 80, § 22. 143 Mass. 113. 186 Mass. 330, 334. 190 Mass. 442.

In Case of Failure to comply with Order, the Board of Health shall cause Removal at Owner's Expense.

SECTION 69. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

1797, 16, § 11. R. S. 21, § 11. 1849, 211, § 5. G. S. 26, § 10. P. S. 80, § 23. 98 Mass. 445.

Location of Privy Vaults regulated. Vaults may be declared Nuisances and their Continuance forbidden.

SECTION 70. If the city council of a city or a town having a population of more than five thousand accepts the provisions of this section, or has accepted the corresponding provisions of earlier laws, no privy vault shall be constructed upon premises which are connected with a public or private sewer or which abut on a public or private street, court or passageway in which there is a public sewer opposite thereto, without permission in writing having first been obtained from the board of health of such city or town. And if, in the opinion of said board, a privy vault so situated is injurious to the public health, it shall declare the same to be a nuisance and shall forbid its continuance, and the provisions of the three preceding sections shall apply thereto.

1890, 74. 1899, 184.

Boards of Health may condemn Unfit Dwellings, order Improvements and cause Removal of Occupants.

SECTION 71. The board, if satisfied upon examination that a building, tenement, room or cellar in its town which is occupied as a dwelling place, has become, by reason of the number of occupants, uncleanliness or other cause, unfit for such purpose, and is liable to become a nuisance or be a cause of sickness to the occupants or to the public, may issue a notice in writing to such occupants or any of them, requiring the premises to be put into a cleanly condition, or to be vacated within such time as the board may deem reasonable. If the persons so notified neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owner, or may remove the occupants forcibly and close up the premises, which shall not be again occupied as a dwelling place without its permission in writing. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

1850, 108. G. S. 26, § 11. P. S. 80, § 24.

Nuisances may be ordered removed after Conviction on Indictment.

SECTION 72. If a person is convicted on an indictment for a common nuisance injurious to the public health, the court may order the nuisance to be removed or destroyed at the expense of the defendant, under the direction of the board of health.

1801, 16, § 3. R. S. 21, § 12. G. S. 26, § 12 P. S. 80, § 25.

Maintenance of Nuisance may be enjoined.

SECTION 73. The superior court shall have jurisdiction in equity, either before or pending a prosecution for a common nuisance affecting the public health, to enjoin the maintenance of such nuisance until the matter is decided or the injunction is dissolved.

1827, 88. R. S. 21, § 13. G. S. 26, § 13. P. S. 80, § 26.

Boards of Health may enter Premises for Various Purposes, and if obstructed shall have Assistance.

SECTION 74. If the board considers it necessary for the preservation of life or health to enter any land, building or premises, or go on board a vessel within its town, for the purpose of examining into and destroying, removing or preventing a nuisance, source of filth or cause of sickness, and the board, or any agent thereof sent for that purpose, is refused such entry, any member of the board or such agent may make complaint to a justice of any court of record or to a magistrate authorized to issue warrants in criminal cases, who may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such member or agent of the board, or to any constable of such town, commanding him to take sufficient aid and at any reasonable time repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and to destroy, remove or prevent the same, under the direction of the board.

1816, 44, § 2. G. S. 26, § 14. 1877, 211, § 1.
R. S. 21, § 14. 1873, 2, § 1. P. S. 80, § 27.

Wet Land and Stagnant Water to be deemed Nuisances.

SECTION 75. Land which is wet, rotten, or spongy, or covered with stagnant water, so that it is offensive to residents in its vicinity or injurious to health, shall be deemed a nuisance, which the board of health of the city or town where it lies, upon petition and hearing, may abate in the manner provided in the following sections; but if the expenses of abatement will exceed two thousand dollars, such abatement shall not be made without a previous appropriation therefor.

1868, 160, § 1. 1887, 338, § 1. 135 Mass. 490. 163 Mass. 240.
P. S. 80, § 28. 132 Mass. 71. 160 Mass. 486.

Boards of Health shall examine Such Nuisances on Petition

SECTION 76. Whoever is injured by such nuisance may, by petition describing the premises upon which it is alleged to exist and stating the nature of the nuisance complained of, apply to the board for its abate-

ment; whereupon such board shall view the premises and examine into the nature and cause of such nuisance.

1868, 160, § 2. P. S. 80, § 29.

Hearings upon Methods of Abatement, Questions of Damages and of Assessment of Expenses.

SECTION 77. Upon such examination, if the board is of opinion that the petition should be granted, it shall appoint a time and place for a hearing, first giving reasonable notice thereof to the petitioners, to the persons whose lands it may be necessary to enter upon to abate the nuisance and to any other persons who may be damaged or benefited by the proceedings, and to the mayor or the chairman of the selectmen, unless the selectmen constitute the board of health, that they may be heard upon the necessity and mode of abating such nuisance, the question of damages and of the assessment and apportionment of the expenses of the abatement.

1868, 160, § 3. P. S. 80, § 30. 135 Mass. 490. 166 Mass. 399.

Form of Notice, and how served.

SECTION 78. Such notice shall be in writing, and may be served by any person authorized to serve civil process, by personal service upon the mayor or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the land is unoccupied and the owner or agent is unknown or out of the Commonwealth, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more newspapers in such manner and for such length of time as the board may order.

1868, 160, § 4. P. S. 80, § 31. 166 Mass. 399.

Abatement, Damages and Assessments.

SECTION 79. At the time and place appointed therefor, the board shall hear the parties, and thereafter may, in its discretion, cause such nuisance to be abated by entering upon any land and by making such excavations, embankments and drains therein and under and across any streets and ways, as may be necessary; and shall also determine in what manner and at whose expense the improvements shall be kept in repair, shall estimate and award the damage sustained by, and the benefit accruing to, any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by the persons benefited thereby. The board shall forthwith give notice of its decision, in the manner required in the preceding section, to the parties to whom notice is required to be given by section seventy-seven and to the assessors of said city or town. The expense of making and keeping such improvements in repair shall be assessed by

the assessors upon the persons benefited thereby, as ascertained by said decision, shall be included in their taxes, shall be a lien upon the land benefited thereby and shall be collected in the same manner as other taxes upon land.

1868, 160, § 5. P. S. 80, § 32. 135 Mass. 490.

Appeal from Decision to the Superior Court.

SECTION 80. A person entitled to notice under the provisions of section seventy-seven who is aggrieved by the decision of said board or of the commissioners who may be appointed under section eighty-three that the land described in the petition is a nuisance may appeal therefrom to the superior court, if, within twenty-four hours after notice of such decision, he gives notice in writing to said board of his intention so to do and within seven days after such notice presents a petition to the superior court stating his grievance and the action of said board thereon, and enters into such recognizance as said court shall order. The superior court may hear and determine such appeal, pending which all proceedings by the board of health relative to such nuisance shall be stayed.

1887, 338, § 2.

Appeal from Assessment.

SECTION 81. Whoever is aggrieved by such decision in the award of damages or in the determination of benefits accrued or in the apportionment of the expense may, within three months after notice thereof, apply for a jury, first giving one month's notice in writing to the mayor and aldermen or selectmen of his intention so to do, and particularly specifying therein his objections to said decision. Such application for a jury shall otherwise be made in like manner and the proceedings thereon shall be the same as in case of land taken for laying out highways, except that at the trial the petitioner shall be confined to the objections specified in his notice.

1887, 338, § 3.

Boards of Health shall make Returns to City or Town Clerks.

SECTION 82. The board shall, within thirty days after any such abatement, make return of its doings to the city or town clerk who shall record them in the city or town records.

1868, 160, § 6. P. S. 80, § 33.

On Refusal or Neglect of Boards of Health to proceed, Petitioner may apply to Superior Court.

SECTION 83. If the board unreasonably refuses or neglects to proceed in the matter of said petition, the petitioner may apply to the superior court which, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

1868, 160, § 7. P. S. 80, § 34.

On Refusal or Neglect of Board of Health to abate a Nuisance, an Aggrieved Person may apply to the County Commissioners.

SECTION 84. Whoever is aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance may apply to the county commissioners, who may hear and determine such application and exercise in such case all the powers of such board. The applicant shall, within twenty-four hours after such neglect or refusal, file with said board a written notice to the adverse party of his intention so to apply and within seven days shall present a petition to one of the county commissioners, stating the grievances complained of and the action of the board of health thereon.

1866, 211, §§ 1, 2. P. S. 80, §§ 36, 37.

Costs and Expenses, how paid.

SECTION 85. Each commissioner, when acting under the provisions of the preceding section, shall tax three dollars a day for time and five cents a mile for travel to and from the place of meeting, which shall be paid into the county treasury; and such costs shall in the first instance be paid by the applicant, and the commissioners may award that costs of the proceeding shall be paid by any party thereto.

1866, 211, § 3. P. S. 80, § 38.

Permits may be granted to remove Nuisances, Infected Articles and Sick Persons.

SECTION 86. The board of health of a town may grant permits for the removal of any nuisance, infected articles or sick person within the limits of its town.

1816, 44, § 12. R. S. 21, § 15. G. S. 26, § 15. P. S. 80, § 39.

Infected Articles may be seized and Houses placed under Guard.

SECTION 87. If, upon the application of the board, it appears to a magistrate authorized to issue warrants that there is just cause to suspect that baggage, clothing, or goods, found within the town, are infected with any disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy or to any constable, require him to impress as many men as said magistrate may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place containing such articles to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

1751-2, 12, § 1. R. S. 21, § 20. 1877, 211, § 1.
1797, 16, § 5. G. S. 26, § 20. P. S. 80, § 44.

Houses or Stores may be impressed as Storage Places.

SECTION 88. The magistrate may, by the same warrant, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the

board may cause them to be removed thereto or otherwise detained until, in the opinion of the board, they are freed from infection.

G. S. 26, § 21. 1877, 211, § 1. P. S. 80, § 45.

Officers may break open Houses containing Infected Articles and may command Aid.

SECTION 89. The officers, in the execution of the warrant, may command aid and may break open any house, shop or other place mentioned in the warrant where such articles are found. Whoever, being commanded by said officers to assist in the execution of the warrant, neglects or refuses so to do, shall forfeit not more than ten dollars.

P. S. 80, § 46.

Expenses, how paid. Owners of Destroyed Furniture and Wearing Apparel may be reimbursed.

SECTION 90. The expense of securing, transporting and purifying such articles, as fixed by the board, shall be paid by the owners or by the city or town, as the board may determine. For any article of furniture or wearing apparel ordered to be destroyed by an order of the board of health, the city or town may recompense the owner to an amount not exceeding fifty dollars.

G. S. 26, § 23. P. S. 80, § 47. 1903, 306. 140 Mass. 314.

Expenses incurred in Removal of Nuisances, etc., how recovered.

SECTION 54. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be recovered in an action of contract.

1849, 211, § 6. G. S. 26, § 49. P. S. 80, § 80. 98 Mass. 442. 187 Mass. 150.

Disposition of Forfeitures.

SECTION 55. Fines and forfeitures which are incurred under the general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relative to health, shall inure to the use of such town.

R. S. 21, § 46. 1849, 211, § 7. G. S. 26, § 50. P. S. 80, § 81. 5 Cush. 408. 153 Mass. 216.

SMOKE NUISANCE.

REVISED LAWS, 102.

Emission of Dark Smoke declared a Nuisance. Permits may be granted.

SECTION 122. The emission, except by locomotive engines or by brick kilns, into the open air of dark smoke or dense gray smoke for more than five minutes continuously, or the emission, except as aforesaid, of such smoke during ninety minutes of any continuous period of twelve hours, within a quarter of a mile of a dwelling, is hereby declared a nuisance, unless such emission is under a permit which may be granted annually by the mayor and aldermen of cities or the selectmen of towns.

1901, 427, §§ 1, 5, 9.

Permits shall be signed and recorded.

SECTION 123. Such permit shall be signed by the mayor or by a majority of the board of selectmen and by the city or town clerk, and be recorded in the office of said clerk. It shall name the person, firm or corporation to whom or to which it is granted, and definitely and clearly describe the location and limits of the premises to which it applies, and shall remain in force until the first day of May next after its date, unless sooner forfeited or rendered void. Notice of applications for such permit shall be published at the expense of the applicant in the manner prescribed by section fourteen of chapter one hundred relative to applications for liquor licenses. The board granting the permit may establish fees for its issue, not exceeding one dollar each, to be paid to the treasurer of the municipality.

1901, 427, §§ 5, 6, 8.

Objections to Permits may be filed, and Public Hearings granted.

SECTION 124. If, before the expiration of the ten days following the publication of the notice, the owner of a dwelling within a quarter of a mile of the premises described therein gives written notice to the board having authority to grant the permit that he objects to the granting thereof, it shall not be granted, unless said board, after a public hearing of the persons interested, decides that no just ground for objection exists, or that the public good requires that it be granted; but the granting of a permit shall not prejudice any right of damages which a person may have under the laws of the Commonwealth against the person receiving the permit. In case a permit is granted after objection is filed, and without a hearing as aforesaid, or without proper advertisement as herein provided, the owner of such dwelling may apply to the police, district or municipal court, or to a trial justice within whose jurisdiction the premises are situated, for a hearing in the case; and said court or trial justice, if it appears that said permit was granted without compliance with the provisions of this and the preceding section, shall revoke the permit, and notice of such revocation shall be sent to the board granting, and to the person receiving the permit.

1901, 427, § 7.

Enforcement of Provisions.

SECTION 125. The mayor of a city or the selectmen of a town may, in January of each year, designate some proper person or persons who shall be charged with the enforcement of this section, the three preceding sections and the following section during the year in which they are appointed; but such designation shall be subject to change at any time. An officer so designated may apply to the supreme judicial court, or to the superior court, for an injunction to restrain the further operation of any furnace, steam boiler or boilers which are being operated in such a man-

ner as to create a nuisance as above defined; and said court may after hearing the parties enjoin the further operation of such furnace, boiler or boilers.

1901, 427, §§ 3, 4.

Penalty.

SECTION 126. Whoever commits such nuisance as is defined in section one hundred and twenty-two, or suffers the same to be committed on any premises owned or occupied by him, or in any way participates in committing the same, shall be punished by a fine of not more than one hundred dollars for each week during any part of which such nuisance exists.

1901, 427, § 2.

Acceptance of Provisions by City or Town.

SECTION 127. The provisions of the five preceding sections shall not be operative in a city unless they shall be, or the corresponding provisions of earlier laws have been, accepted by a majority vote of the city council of the city, nor operative in a town unless they shall be accepted by a majority of the voters of the town voting thereon at an annual town meeting.

1901, 427, § 10.

GARBAGE AND GARBAGE DISPOSAL.

REVISED LAWS, 25.

Towns may contract for Garbage Disposal.

SECTION 14. A town may make contracts: —

For the disposal of its garbage, refuse and offal by contract for a term of years made by the selectmen, board of health or other officers having charge thereof.

R. S. 15, § 11. G. S. 18, § 9. P. S. 27, § 9. 1889, 377. 182 Mass. 39.

OFFENSIVE TRADES.

REVISED LAWS, 75.

Boards of Health may assign Places for carrying on Offensive Trades, may revoke Assignments made and may prohibit Conduct of Such Trades in Places not so assigned.

SECTION 91. The board of health of a city or town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, injurious to their estates, dangerous to the public health or is attended by noisome and injurious odors, and may prohibit the exercise thereof within the limits of the city or town or in places not so assigned. Such assignments shall be entered in the records of the city or town, and may be revoked when the board shall think proper.

1692-3, 23, § 1. R. S. 21, § 47. 16 Gray, 231, 233. 116 Mass. 260. 181 Mass. 565.
1696, 13. 1855, 391, § 1. 8 Allen, 325. 125 Mass. 191. 183 Mass. 491.
1710-11, 8, § 1. G. S. 26, § 52. 11 Allen, 398. 135 Mass. 526. 190 Mass. 442.
1785, 1, § 1. P. S. 80, § 84. 97 Mass. 223. 151 Mass. 563.

Superior Court may revoke Such Assignments.

SECTION 92. If a place or building so assigned becomes a nuisance by reason of offensive odors or exhalations therefrom, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the superior court may, on complaint of any person, revoke such assignment, prohibit such further use of such place or building and cause the nuisance to be removed or prevented.

1710-11, 8, § 2.
1785, 1, § 2.
R. S. 21, § 48.
G. S. 26, § 53.
P. S. 80, § 85.
190 Mass. 442.

Damages to Persons injured by Nuisances.

SECTION 93. Whoever is injured in the comfort or enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

1799, 75, § 2. R. S. 21, § 49. G. S. 26, § 54. P. S. 80, § 86. 190 Mass. 442.

Orders of Prohibition. Penalty for Refusal or Neglect to obey

SECTION 94. Orders of prohibition which may be issued under the provisions of section ninety-one shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If he refuses or neglects for twenty-four hours thereafter to obey the same, he shall forfeit not less than fifty nor more than five hundred dollars, and the board shall take all necessary measures to prevent such exercise.

1855, 391, § 2.
G. S. 26, § 55.
P. S. 80, § 87.
8 Allen, 325.
11 Allen, 398.
116 Mass. 262.
135 Mass. 526.
143 Mass. 113.
190 Mass. 442.

Appeal from Order of Board of Health to Superior Court and Petition for Jury Trial.

SECTION 95. Whoever is aggrieved by an order passed under the provisions of section ninety-one or one hundred and nine may, within three days after the service of the order upon him, give written notice of appeal to the board and file a petition for a jury in the superior court in the county in which the premises affected are located, and, after notice to the board, may have a trial at the bar of the court in the same manner as other civil cases are tried by jury. If, by mistake of law or fact or by accident, he fails within said three days to apply as aforesaid, and if it appears to the court that such failure was caused by such mistake or accident, and that he has not, since the service of such order upon him, violated it, he may within thirty days after the service of the order upon him apply for a jury.

1855, 391, § 3.
G. S. 26, § 56.
1865, 263.
P. S. 80, § 88.
1883, 133.
1889, 193, § 1.
11 Allen, 398.
116 Mass. 254.
125 Mass. 182, 190.
131 Mass. 197.
135 Mass. 526.
183 Mass. 491, 494.
190 Mass. 442.

While Proceedings are pending, the Trade shall not be exercised unless Permission is granted by the Board of Health.

SECTION 96. Such trade or employment shall not be exercised contrary to the order while such proceedings are pending, unless specially authorized by said board, and if so specially authorized, all further proceedings by said board shall be stayed while such proceedings are pending. Upon any violation of the order, unless specially authorized as aforesaid, the proceeding shall forthwith be dismissed.

1855, 391, § 4. G. S. 26, § 57. P. S. 80, § 89. 1889, 193, § 1. 190 Mass. 442.

Effect of Verdict.

SECTION 97. The verdict may either alter, affirm or annul the order, and shall be returned to the court for acceptance; and if accepted, shall have the authority and effect of a valid order of the board, and may also be enforced by the court in equity.

1855, 391, § 5. G. S. 26, § 58. P. S. 80, § 90. 1889, 193, § 2. 125 Mass. 182. 190 Mass. 442.

Costs and Damages.

SECTION 98. If the order is affirmed by the verdict, the board shall recover costs to the use of the town; if it is annulled and the petitioner has not been specially authorized by said board to exercise such trade or employment during the proceedings, he shall recover damages and costs against the town; if it is annulled and the petitioner has been specially authorized as aforesaid, or if it is altered, he shall not recover damages, and the court may render judgment for costs in its discretion.

1855, 391, § 6. G. S. 26, § 59. P. S. 80, § 91. 1889, 193, § 1. 190 Mass. 442.

Slaughtering, Canning, Rendering and Other Establishments, and Sausage Factories, shall be licensed annually.

SECTION 99. The proprietor of every slaughter-house, canning, salting, smoking or rendering establishment, and of every establishment used for the manufacture of sausages or chopped meat of any kind, who is engaged in the slaughter of neat cattle, sheep or swine, the meat or product of which is to be sold or used for food, shall annually in April apply for a license to the mayor and aldermen of the city, the selectmen of the town or, in a town having a population of more than five thousand, to the board of health, if any, in which such slaughter-house or establishment is located. The application shall be in writing, signed and sworn to by one or more of the owners or by one or more of the persons carrying on such business, or, if a corporation, by some authorized officer thereof, shall state the name and address of all the owners or persons carrying on said business, the location of the slaughter-house or establishment in which said business is to be conducted, the estimated num-

ber of neat cattle, sheep or swine to be slaughtered per week, the days of the week upon which they are to be slaughtered and the nature of the products thereof to be sold or used for food.

1894, 491, § 17. 1895, 496, § 3. 1897, 428, § 2. 109 Mass. 315, 320.

License shall be in Force for One Year, unless sooner revoked or rendered Void.

SECTION 100. The mayor and aldermen, selectmen, or such other officers as they shall designate, or in a town having a population of more than five thousand, the board of health, if any, may annually issue licenses to carry on the business of slaughtering neat cattle, sheep or swine to applicants therefor. The fee for each license shall be one dollar. The license shall name the persons licensed to conduct such business, and the building or establishment in which it is to be carried on, and it shall continue in force until the first day of May of the year next ensuing, unless sooner forfeited or rendered void. A record shall be kept by the board or officers authorized to issue licenses of all applications for licenses under the provisions of the preceding section and of all licenses issued, which shall be evidence of the issue of any such license. Such board or officers shall annually, on or before the first day of June, send to the chief of the cattle bureau of the state board of agriculture a copy of every application made to them under the provisions of the preceding section and their action thereon, and a list of all persons with their addresses, who although engaged in the business named in the preceding section on the last day of the previous April, failed to make application for a license.

1894, 491, § 18. 1895, 496, § 4. 1897, 428, § 2. 1902, 116. 1907, 243, § 1. 181 Mass. 565.

Slaughtering shall be done only on Specified Days, except in the Presence of Certain Officials.

SECTION 101. A licensee under the provisions of the preceding section shall not slaughter any such animals, or cause them to be slaughtered at such slaughter-house or establishment, on any days other than those specified in the application for such license, except in the presence of a member of the board of health or of an inspector appointed therefor by said board; but he may at any time change the days for slaughtering such animals, by giving at least seven days' written notice thereof to the board or officer authorized to issue licenses, who shall immediately give written notice of such change to such inspector of such city or town.

1894, 491, § 19. 1895, 496, § 5.

Inspectors shall be present when Animals are slaughtered, and shall examine All Carcasses then and there.

SECTION 102. Such inspector as has been appointed by the board of health shall be present at all licensed slaughter-houses or establishments upon the days designated for slaughter by the licensee, as provided in the preceding section, and there carefully examine the carcasses of all ani-

mals at the time of slaughter. Such inspection shall be made in such manner and under such rules and regulations as the chief of the cattle bureau may determine and direct. If, in the opinion of an inspector, any carcass, or any meat or product thereof is diseased, corrupted, unwholesome or unfit for food, he shall seize it and cause it to be destroyed, as provided in section seventy of chapter fifty-six.

1894, 491, § 20. 1895, 496, § 6. 1902, 116.

Carcasses shall be stamped with Stamps furnished Boards of Health by the Chief of the Cattle Bureau.

SECTION 103. In a slaughtering establishment wherein inspection and branding is not carried on under the rules and regulations for the inspection of live stock and other products, established by the United States department of agriculture in accordance with acts of congress in force on the fifteenth day of June in the year nineteen hundred and one, the carcasses of animals slaughtered under the provisions of the four preceding sections shall at the time of slaughter, if not condemned, be stamped or branded by the inspector thereof in like manner as those inspected by the United States bureau of animal industry for interstate trade, by a stamp or brand designed for the purpose by the cattle bureau of the state board of agriculture, which shall be furnished by it to the board of health of a city or town applying therefor. Such stamps shall be uniform in design throughout the Commonwealth, but shall contain the name of the city or town in which they are used.

1903, 220, § 1.

Unstamped Carcasses shall be deemed Unfit for Human Food, and shall not be sold.

SECTION 104. The carcasses of animals slaughtered under the provisions of the five preceding sections and not stamped or branded as provided in the preceding section shall be deemed unfit for human food and shall not be sold or offered for sale. Whoever sells, or offers for sale, or has in his possession with intent to sell, a carcass or any part thereof required by the provisions of the preceding section to be stamped or branded, which has not been stamped or branded at therein provided, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

1903, 220, § 1.

A Person not engaged in Slaughtering Business may slaughter his Own Cattle, Sheep and Swine on his Own Premises, without a License. Provisions concerning Inspection.

SECTION 105. The provisions of the six preceding sections shall not apply to a person not engaged in such business, who, upon his own premises and not in a slaughter-house, slaughters his own neat cattle, sheep or swine, but the carcass of any such animals shall be inspected by an inspector at the time of slaughter, unless said animal is less than six

months old or has been duly inspected under the provisions of chapter ninety, within six months prior to such slaughter and a certificate of health has been delivered to the owner or person in charge thereof.

1894, 491, § 21. 1895, 496, § 7. 1902, 312, § 2. 1903, 220, § 2.

Penalties for Violation of Sections 100, 101, 102 and 105, and for Other Acts.

SECTION 106. Whoever violates the provisions of sections one hundred, one hundred and one, one hundred and two and one hundred and five, or, being engaged in the business of slaughtering neat cattle, sheep or swine, slaughters the same, without a license, or knowingly authorizes or causes the same to be slaughtered with intent to sell the meat or product thereof for food, or, having such license, slaughters or knowingly authorizes or causes to be slaughtered any neat cattle, sheep or swine without causing the carcass thereof to be inspected as provided in section one hundred and two, or whoever sells or authorizes or causes to be sold any carcass or the meat or product thereof knowing that such carcass has not been inspected according to the provisions of sections one hundred and two and one hundred and five, or whoever slaughters or knowingly authorizes or causes to be slaughtered any neat cattle, sheep or swine upon his own premises other than a slaughter-house or establishment mentioned in section ninety-nine, without causing the carcass of such animal to be inspected, except as provided in the preceding section, or whoever sells, or authorizes or causes to be sold, the carcass or any meat or product thereof of any such animal slaughtered upon his own premises, knowing that the same has not been inspected as provided in the preceding section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

1894, 491, § 22. 1895, 496, § 8.

Conviction renders License void.

SECTION 107. A conviction under the provisions of the preceding section of any person licensed under the provisions of section one hundred shall render his license void, and no new license shall be granted to him for the balance of the term.

1894, 491, § 23.

Penalty for carrying on Slaughtering, Rendering or Other Offensive Trades without Written Consent. Exemption.

SECTION 108. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city and of the common council if there be such a board, or of the selectmen or, in any town having a population of more than five

thousand, of the board of health, if any, of the town in which the building or premises are situated shall forfeit not more than two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time. The provisions of this section shall not apply to any building or premises which were occupied or used for said trades or occupations on the eighth day of May in the year eighteen hundred and seventy-one; but no person who used or occupied any building or premises on said date for said trades or occupations shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen, and of the common council if there is such a board, or the selectmen, or, in any town having a population of more than five thousand, of the board of health, if any.

1692–3, 23, § 1.
1696, 13.
1710–11, 8, § 1.
1785, 1, § 1.
R. S. 21, § 47.
1871, 167, § 1.
1874, 308.
P. S. 80, § 92.
1893, 106.
1897, 428, § 2.
109 Mass. 315, 320.
114 Mass. 353.
185 Mass. 448.

State Board of Health may prohibit Continuance of Use of Premises for Offensive Trades.

SECTION 109. If any buildings or premises are so occupied or used, the state board of health shall, upon application, appoint a time and place for hearing the parties and, after due notice thereof to the party against whom the application is made and a hearing, may, if in its judgment the public health, comfort or convenience so require, order any person to desist from further carrying on said trades or occupations in such buildings or premises; and whoever thereafter continues so to occupy or use such buildings or premises shall forfeit not more than two hundred dollars for every month of such occupancy and use, and in like proportion for a shorter time.

1710–11, 8, § 2.
1785, 1, § 2.
R. S. 21, § 48.
1871, 167, § 2.
1874, 308.
P. S. 80, § 93.
1886, 101, § 4,
125 Mass. 182, 190, 191.

Restraint of Offensive Trades and Enforcement of Orders of the State Board of Health in Relation thereto.

SECTION 110. The superior court shall have jurisdiction in equity to restrain the unauthorized occupancy, use or extension of any building or premises which were occupied or used for the trades or occupations aforesaid, and to enforce the orders of the state board of health issued under the provisions of the preceding section; but the provisions of this and the two preceding sections shall not impair any other remedies against nuisances.

1871, 167, § 3.
1874, 290.
P. S. 80, §§ 94, 95.
109 Mass. 315.
116 Mass. 254.
185 Mass. 448.

Persons engaged in killing Horses or carrying on Melting or Rendering shall be licensed.

SECTION 111. A person, partnership or corporation engaged in or desiring to engage in the business of killing horses, or in the carrying on of a melting or rendering establishment, shall annually, in March, apply

for a license to the board of health of the city or town in which such business is to be carried on. The application shall be in writing and signed by the person or persons who desire to carry on such business, or, if the applicant is a corporation, by a duly authorized officer thereof. It shall state the names in full and the addresses of all the persons who desire to carry on such business, or, if a corporation is the applicant, the names of all the officers thereof and the street or other place where the business is to be conducted. The board of health of a city or town may grant such licenses after it is satisfied that the applicants have a suitable building and plant in a situation approved by said board and that they have suitable trucks or wagons for the removal of dead animals. The license shall state the name of the licensee, the situation of the building or establishment in which the business is to be carried on, and shall continue in force until the first day of April of the year next ensuing, unless sooner revoked. The board of health shall keep a record of such licenses which are granted by it, and shall notify the chief of the cattle bureau of the state board of agriculture of the granting of any such license, giving the name and address of the licensee. The fee for a license shall not exceed one dollar, and a license may be revoked at any time by the board of health. Licensees shall report to the chief of the cattle bureau of the state board of agriculture, in such form and at such times as it may order, every animal received by them which is found to be infected with a contagious disease. No unlicensed person shall carry on the business of killing horses or of melting and rendering. So much of section twenty-five of chapter ninety as provides that no person shall knowingly sell an animal with a contagious disease shall not apply to any person who sells such animal to a licensee under the provisions of this section, if such animal is to be killed or rendered at the establishment of such licensee. Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

1901, 134. 1902, 116. 1907, 243, § 1. 185 Mass. 448.

STABLES.

REVISED LAWS, 102.

Erection, etc., of Stables in Certain Cities regulated.

SECTION 69. No person shall erect, occupy or use for a stable any building in a city whose population exceeds twenty-five thousand unless such use is licensed by the board of health of said city, and, in such case, only to the extent so licensed. The provisions of this section shall not prevent any such occupation and use which was authorized by law on the fourth day of May in the year eighteen hundred and ninety-five, to the extent and by the person so authorized, but the board of health of such a city may make such regulations or orders relative to the drainage, ven-

tilation, number of animals and the storage and handling of manure in any stable existing on said date in their respective cities as in their judgment the public health requires.

1890, 230, 395.
1891, 220, §§ 1, 3.
1895, 213, §§ 1, 2.
1896, 332.
1897, 300, § 3.
157 Mass. 12.
159 Mass. 409.
166 Mass. 83.
168 Mass. 79.
189 Mass. 70.
192 Mass. 440.

Stables in Vicinity of Church regulated.

SECTION 70. No person shall erect, occupy or use a building, in a city whose population does not exceed twenty-five thousand, for a stable for more than four horses unless first licensed so to do by the board of health of said city, and in such case, only to the extent so licensed. No person shall, in a city, occupy or use a building for a livery stable or a stable for taking or keeping horses and carriages for hire or to let within two hundred feet of a church or meeting house erected and used for the public worship of God without the consent in writing of the religious society or parish worshipping therein; but the provisions of this section shall not prevent such occupation and use which was authorized by law on the seventeenth day of May in the year eighteen hundred and ninety-one, to the extent authorized at that time.

1891, 220, §§ 1-3. 166 Mass. 83. 187 Mass. 236.

Penalty.

SECTION 71. Whoever violates the provisions of the two preceding sections or of a regulation or order made pursuant thereto, shall be punished by a fine of five dollars for each day such offence continues. The superior court shall have jurisdiction in equity to restrain such erection, occupation or use contrary to the provisions of said sections.

1891, 220, § 4. 1895, 213, § 3. 168 Mass. 79. 189 Mass. 70.

Stables in Towns.

SECTION 72. The board of health in towns having a population of more than five thousand and the selectmen of other towns may license suitable persons to keep more than four horses in specified buildings or places within their respective towns, and may revoke such licenses at pleasure. Whoever, not being licensed as aforesaid, occupies or uses a building or place for a stable for more than four horses shall forfeit not more than fifty dollars for every month he so occupies or uses such building or place, and in like proportion for a shorter time. The superior court shall have jurisdiction in equity to restrain such occupancy or use without such license.

1851, 319.
1852, 129.
1853, 362.
G. S. 88, § 32.
P. S. 102, § 39.
1890, 230, 395.
1897, 428, § 2.
157 Mass. 12.
159 Mass. 409.
166 Mass. 83.
167 Mass. 380.
168 Mass. 79.
189 Mass. 70.

BAKERIES.

REVISED LAWS, 75.

Sanitation of Bakeries.

SECTION 28. All buildings which are occupied as biscuit, bread or cake bakeries shall be properly drained and plumbed. They shall be provided with a proper wash room and water closets, having ventilation apart from the bake room or rooms where food products are manufactured; and no water closet, earth closet, privy or ash pit shall be within or communicate directly with the bake room of any bakery.

1896, 418, §§ 1, 4.

Construction of Bake Rooms.

SECTION 29. Every room which is used for the manufacture of flour or meal food products shall, if required by the board of health, have an impermeable floor constructed of cement or of tiles laid in cement, and an additional floor of wood properly saturated with linseed oil. The walls and ceiling of such room shall be plastered or wainscoted, and, if required by the board of health, shall be whitewashed at least once in three months. The furniture and utensils therein shall be so arranged that they and the floor may at all times be kept clean and in good sanitary condition.

1896, 418, § 2.

Sleeping Rooms shall be Separate from the Bake Room.

SECTION 30. The sleeping-places for persons who are employed in a bakery shall be separate from the rooms in which flour or meal food products are manufactured or stored.

1896, 418, § 5.

Storage of Products.

SECTION 31. The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

1896, 418, § 3.

Alterations of Premises.

SECTION 32. The owner, agent or lessee of any property affected by the provisions of sections twenty-eight and twenty-nine shall, within sixty days after service of notice requiring any alterations to be made in such property, comply therewith. Such notice shall be in writing, and may be served upon such owner, agent or lessee personally or by mail directed to his last known address.

1896, 418, § 7.

Penalties.

SECTION 33. Whoever violates the provisions of the five preceding sections, or refuses to comply with any requirement of the board of health authorized therein, shall, for the first offence, be punished by a fine of not less than twenty nor more than fifty dollars; for the second offence, by a fine of not less than fifty nor more than one hundred dollars or by imprisonment for not more than ten days; for the third offence, by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than thirty days or by both such fine or imprisonment.

1896, 418, § 6.

Boards of Health may make Further Regulations.

SECTION 34. The board of health of a city or town may make such further regulations as the public health may require, and shall cause such regulations, together with the six preceding sections, to be printed and posted in all such bakeries and places of business.

1896, 418, § 8. 1902, 403, § 1.

ACTS OF 1907, 550.

Bakeries shall not be maintained in Tenement Houses in Boston unless Fireproof.

SECTION 53. No bakery and no place of business in which fat is boiled shall be maintained in any tenement house which is not fireproof throughout, unless the ceiling and side walls of said bakery or of the said place where fat boiling is done are made safe by fireproof materials around the same, and there shall be no openings either by door or window, dumbwaiter shafts or otherwise, between said bakery or said place where fat is boiled in any tenement house and the other parts of the building.

MANUFACTURE OF CLOTHING IN DWELLINGS AND TENEMENT HOUSES.

REVISED LAWS, 106.

Persons working on Clothing in Tenements and Dwellings shall be licensed; the Rooms in which Such Work is done shall be kept Clean; and Employers of Such Licensees shall submit a Copy of a Register of the Names and Addresses of Said Licensees to the State Board of Health Every Month.

SECTION 56. A room or apartment in a tenement or dwelling house shall not be used for the purpose of making, altering, repairing or finishing therein coats, vests, trousers or wearing apparel of any description, except by the members of the family dwelling therein; and a family which desires to make, alter, repair or finish coats, vests, trousers or wearing apparel of any description in a room or apartment in a tenement or dwelling house shall first procure a license therefor from a state inspector of health, which shall be approved by the state board of health. A license may be applied for by, and issued to, any member of a family which desires to do such work. No person, partnership or corporation shall hire,

employ or contract with a member of a family which does not hold a license therefor to make, alter, repair or finish garments or articles of wearing apparel as aforesaid, in any room or apartment in a tenement or dwelling house as aforesaid. Every room or apartment in which garments or articles of wearing apparel are made, altered, repaired or finished shall be kept in a cleanly condition and shall be subject to the inspection and examination of the state inspectors of health for the purpose of ascertaining whether said room or apartment or said garments or articles of wearing apparel or any parts thereof are clean and free from vermin and from infectious or contagious matter. A room or apartment in a tenement or dwelling house which is not used for living or sleeping purposes and which is not connected with a room or apartment used for living or sleeping purposes and which has a separate and distinct entrance from the outside shall not be subject to the provisions of this section, nor shall the provisions of this section prevent the employment of a tailor or seamstress by any person or family for the making of wearing apparel for the use of such person or family. Every person, firm or corporation hiring, employing or contracting with a member of a family holding a license under this section for the making, altering, repairing or finishing of garments or wearing apparel to be done outside the premises of such person, firm or corporation, shall keep a register of the names and addresses plainly written in English of the persons so hired, employed or contracted with, and shall forward a copy of such register once a month to the state board of health.

1891, 357, § 1.
1892, 296, § 1.
1893, 246, § 1.
1894, 508, § 44.
1898, 150, § 1.
1905, 238.
1907, 537, § 5.

Evidence of the Existence of Vermin or Contagious Disease where Clothing is made shall be reported.

SECTION 57. If said inspector finds evidence of infectious or contagious disease or of vermin present in a workshop or in a room or apartment in a tenement or dwelling house in which garments or articles of wearing apparel are made, altered or repaired, or in goods manufactured or in process of manufacture therein, he shall report the same to the state board of health, who shall then notify the local board of health to examine said workshop, room or apartment and the materials used therein; and if the board of health finds that said workshop or tenement or dwelling house is in an unhealthy condition and that the clothing and materials used therein are unfit for use, it shall issue such orders as the public safety may require.

1891, 357, § 2. 1893, 246, § 2. 1894, 508, § 45. 1898, 150, § 2.

Clothing made in Tenements and Dwellings by Unlicensed Persons shall not be sold unless marked "Tenement-made."

SECTION 58. Whoever sells or exposes for sale coats, vests, trousers or wearing apparel of any description which have been made in a tenement or dwelling house in which the family dwelling therein has not procured

a license, as required by section fifty-six, shall have affixed to each of said garments a tag or label not less than two inches in length and one inch in width, upon which shall be legibly printed or written the words "tenement made" and the name of the state and the city or town in which the garment was made.

1891, 357, § 4. 1892, 296, § 3. 1893, 246, § 4. 1894, 508, § 47. 1898, 150, § 3.

SECTION 59. No person shall sell or expose for sale any of said garments without a tag or label as aforesaid affixed thereto, nor wilfully remove, alter or destroy such tag or label upon any of said garments when exposed for sale, nor sell or expose for sale any of said garments with a false or fraudulent label affixed thereto.

1891, 357, § 5. 1893, 246, § 5. 1894, 508, § 48.

Clothing made under Unhealthy Conditions and shipped into This Commonwealth shall be inspected.

SECTION 60. If it is reported to said inspector or to the state board of health that ready-made coats, vests, trousers, overcoats or other garments are being shipped to this Commonwealth, having been manufactured under unhealthy conditions, said inspector shall examine said goods and the condition of their manufacture, and if they are found to contain vermin or to have been made in improper places or under unhealthy conditions, he shall so report to the state board of health, which shall thereupon make such orders as the public safety may require.

1891, 357, § 3. 1892, 296, § 2. 1893, 246, § 3. 1894, 508, § 46. 1907, 537, § 5.

Penalty for Violation of the Five Preceding Sections.

SECTION 61. Whoever violates any of the provisions of the five preceding sections shall be punished by a fine of not less than fifty nor more than five hundred dollars.

1891, 357, § 7. 1893, 246, § 6. 1894, 508, §§ 63, 76.

CONSTRUCTION OF PUBLIC BUILDINGS, SCHOOLS, FACTORIES, ETC.

REVISED LAWS, 104.

Construction of Public Buildings, Schoolhouses, etc., regulated.

SECTION 22. No building which is designed to be used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theatre, public hall, place of assemblage or place of public resort, and no building more than two stories in height which is designed to be used above the second story, in whole or in part, as a factory, workshop or mercantile or other establishment and has accommodations for ten or more employees above said story, and no building more than two stories in height designed to be used above the second story, in whole or in part, as a hotel, family hotel, apartment house, boarding house, lodging house or tenement house, and has ten or more rooms above said story, shall be erected until a copy of the plans thereof has been deposited with the in-

spector of factories and public buildings for the district in which it is to be erected by the person causing its erection, or by the architect thereof. Such plans shall include the method of ventilation provided therefor and a copy of such portion of the specifications therefor as the inspector may require. Such building shall not be so erected without sufficient egresses and other means of escape from fire, properly located and constructed. The certificate of the inspector, indorsed with the approval of the chief of the district police, shall be conclusive evidence of a compliance with the provisions of this chapter unless, after it is granted, a change is made in the plans or specifications of such egresses and means of escape without a new certificate therefor. Such inspector may require that proper fire stops shall be provided in the floors, walls and partitions of such buildings, and may make such further requirements as may be necessary or proper to prevent the spread of fire therein or its communication from any steam boiler or heating apparatus.

1888, 316, § 1. 1893, 199, § 1. 1894, 382, § 3; 481, § 25.

Wooden Flues, Air Ducts, etc., prohibited.

SECTION 23. No wooden flue or air duct for heating or ventilating purposes shall be placed in any building which is subject to the provisions of sections twenty-four and twenty-five and no pipe for conveying hot air or steam in such building shall be placed or remain within one inch of any woodwork, unless protected to the satisfaction of said inspector by suitable guards or casings of incombustible material.

1885, 326. 1888, 316, § 1; 426, § 8. 1893, 199, § 1. 1894, 481, §§ 25, 33.

Penalty.

SECTION 24. Whoever erects or constructs a building, or an architect or other person who draws plans or specifications or superintends the erection or construction of a building, in violation of the provisions of this chapter, shall be punished by a fine of not less than fifty nor more than one thousand dollars.

1888, 316, § 2. 1893, 199, § 2. 1894, 382, § 3; 481, § 26.

Egresses and Fire Escapes.

SECTION 25. A building which is used, in whole or in part, as a public building, public or private institution, school house, church, theatre, public hall, place of assemblage or place of public resort, and a building in which ten or more persons are employed above the second story in a factory, workshop, mercantile and other establishment, and a hotel, family hotel, apartment house, boarding house, lodging house or tenement house in which ten or more persons lodge or reside above the second story, and a factory, workshop, mercantile or other establishment the owner, lessee or occupant of which is notified in writing by an inspector of factories and public buildings that the provisions of this chapter are deemed by him applicable thereto shall be provided with proper egresses or other means of escape from fire, sufficient for the use of all persons accommo-

dated, assembled, employed, lodged or resident therein; but no owner, lessee or occupant of such building shall be deemed to have violated this provision unless he has been notified in writing by such inspector what additional egresses or means of escape from fire are necessary and has neglected or refused to supply the same. The egresses and means of escape shall be kept unobstructed, in good repair and ready for use, and every such egress shall be provided with a sign having on it the word "Exit" in letters not less than five inches in height and so as plainly to indicate to persons within the building the location of such egresses. Stairways on the outside of the building shall have suitable railed landings at each story above the first, accessible at each story from doors or windows, and such landings, doors and windows shall be kept clear of ice, snow and other obstructions. Portable seats shall not be allowed in the aisles or passageways of such buildings during any service or entertainment held therein. If the inspector so directs in writing, women or children shall not be employed in a factory, workshop, mercantile or other establishment, in a room above the second story from which there is only one egress, and all doors and windows in any building which is subject to the provisions of this section shall open outwardly, and every room above the second story in any such building, in which ten or more persons are employed, shall be provided with more than one egress by stairways or by such other way or device, approved in writing by the inspector, as the owner may elect, on the inside or outside of the building, placed as near as practicable at each end of the room. The certificate of the inspector shall be conclusive evidence of a compliance with such requirements.

1877, 214, §§ 4, 5. 1880, 197. P. S. 104, §§ 15, 16, 18–20. 1882, 266, §§ 1, 2. 1883, 251, § 2. 1888, 207; 426, § 1. 1894, 481, § 24. 1900, 335, § 1. 1907, 503, § 1. 126 Mass. 84. 161 Mass. 35.

Fire Extinguishers.

SECTION 26. Each story above the second story of a building which is subject to the provisions of the preceding section shall be supplied with the means of extinguishing fire, consisting of pails of water or other portable apparatus or of a hose attached to a suitable water supply and capable of reaching any part of such story; and such appliances shall be kept at all times ready for use and in good condition.

1877, 214, § 4. P. S. 104, § 19. 1888, 426, § 9. 1894, 481, § 34.

ACTS OF 1905, 347.

Obstruction of Fire Escapes prohibited.

SECTION 1. Any article or thing placed upon a fire escape or an outside means of egress of any building is hereby declared a common nuisance. Any court authorized to issue warrants in criminal cases may, upon complaint under oath made by any police officer that any article or thing is placed or maintained upon a fire escape or outside means of egress of any building, issue a warrant to bring such article or thing

when found before a court having jurisdiction of the same, and all articles or things seized under the authority of such a warrant shall be disposed of as provided in sections three to eight inclusive of chapter two hundred and seventeen of the Revised Laws relative to articles seized under clause eleven of section one of said chapter. Any owner, lessee, tenant or occupant of any building who maintains or permits to remain upon any fire escape or outside means of egress of any building any article or thing for more than twenty minutes shall be punished by a fine of not more than one hundred dollars. The existence of any article or thing upon a fire escape or outside means of egress of any building shall be prima facie evidence that such article or thing was so placed, maintained or permitted to remain by the occupant of the premises having access from said building to said fire escape or outside means of egress.

Stairways shall be kept Free and Unobstructed.

SECTION 2. Every stairway of every building shall be kept free and unobstructed, and any person who permits any article or thing to remain in any stairway of any building in such a manner as may impede the egress of any person lawfully in said building, or the ingress of any person lawfully entitled to enter said building shall be punished by a fine of not more than five hundred dollars. The existence of any article or thing in any such stairway in any building shall be prima facie evidence that it was placed or permitted to remain therein by the owner, lessee, tenant or occupant of the building.

FACTORIES, WORKSHOPS AND PUBLIC BUILDINGS.

REVISED LAWS, 104.

All Factories shall be well lighted, well ventilated and kept Clean.

SECTION 41. The belting, shafting, gearing and drums of all factories, if so placed as, in the opinion of the inspectors of factories and public buildings, to be dangerous to employees therein while engaged in their ordinary duties, shall be as far as practicable securely guarded. No machinery except steam engines in a factory shall be cleaned while running if objection in writing is made by one of said inspectors. All factories and workshops shall be well lighted, well ventilated and kept clean. Suitable receptacles for expectoration shall be provided in all factories and workshops by the proprietors thereof, the same to be of such form and construction and of such number as shall be satisfactory to the board of health of the city or town in which the factory or workshop is situated.

1877, 214, § 1. P. S. 104, § 3. 1894, 481, § 23. 1907, 503, § 2. 149 Mass. 294.

REVISED LAWS, 106.

Women Employees shall be provided with Suitable Seats.

SECTION 41. A person who employs females in any manufacturing, mechanical or mercantile establishment shall provide suitable seats for their use, and shall permit the use of such seats by them when they are

not necessarily engaged in the active duties of their employment. Whoever violates the provisions of this section shall be punished by a fine of not less than ten nor more than thirty dollars for each offence.

1882, 150, § 1. 1894, 508, §§ 30, 72.

Employment of Minors in the Manufacture of Acids.

SECTION 44. The state board of health shall, upon the application of any citizen of the Commonwealth, determine, after such investigation as it considers necessary, whether or not the manufacture of a particular acid is dangerous or injurious to the health of minors under eighteen years of age; and its decision shall be conclusive evidence thereof. Whoever employs a child under eighteen years of age in the manufacture of an acid after the state board of health has determined that such manufacture is dangerous or injurious to his health shall be punished by a fine of one hundred dollars for each offence.

1901, 164.

Factories shall be provided with Proper Water Closets for Both Sexes.

SECTION 47. Every factory in which five or more persons are employed, and every factory, workshop, mercantile or other establishment or office in which two or more children, under eighteen years of age or women are employed, shall be kept clean and free from effluvia arising from any drain, privy or nuisance, and shall be provided, within reasonable access, with a sufficient number of proper water closets, earth closets or privies; and wherever two or more males and two or more females are employed together, a sufficient number of separate water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated; and no person shall be allowed to use a closet or privy which is provided for persons of the other sex.

1887, 103, §§ 1, 2. 1888, 305. 1894, 508, § 33.

Occupant may recover Expense of Changes, etc.

SECTION 48. The owner, lessee or occupant of any premises which are used as described in the preceding section shall make the changes necessary to conform thereto. If such changes are made upon the order of a state inspector of health by the occupant or lessee of the premises, he may, within thirty days after the completion thereof, bring an action against any other person who has an interest in such premises, and may recover such proportion of the expense of making such changes as the court adjudges should justly and equitably be borne by the defendant.

1888, 305. 1894, 508, § 34. 1907, 537, § 5.

Notice of Defective Sanitary Arrangements.

SECTION 49. If it appears to a state inspector of health that any act, neglect or fault in relation to any drain, water closet, earth closet, privy, ashpit, water supply, nuisance or other matter in a factory or workshop included under the provisions of section forty-seven, is punishable or

remediable under the provisions of chapter seventy-five or any other law relative to the preservation of the public health, but not under the provisions of this chapter, he shall give notice in writing thereof to the board of health of the city or town in which such factory or workshop is situated, and such board of health shall thereupon inquire into the subject of the notice and enforce the laws relative thereto.

1887, 103, § 3. 1894, 508, § 35. 1907, 537, § 5.

Criminal Prosecution for Violation of Certain Sections.

SECTION 50. A criminal prosecution shall not be instituted against a person for a violation of the provisions of sections forty-seven and forty-eight until four weeks after notice in writing by a state inspector of health of the changes necessary to be made to comply with the provisions of said sections has been sent by mail or delivered to such person, nor if such changes shall have been made in accordance with such notice. A notice shall be sufficient under the provisions of this section if given to one member of a firm, or to the clerk, cashier, secretary, agent or any other officer who has charge of the business of a corporation, or to its attorney; and in case of a foreign corporation, to the officer who has the charge of such factory or workshop; and such officer shall be personally liable for the amount of any fine if a judgment against the corporation is returned unsatisfied.

1887, 103, § 4. 1894, 508, § 36. 1907, 537, § 5.

Penalty.

SECTION 70. Whoever violates a provision of this chapter for which no specific penalty is provided shall be punished by a fine of not more than one hundred dollars.

ACTS OF 1906, 250.

Foundries shall be provided with Adequate Washing Facilities and Water Closets.

SECTION 1. The proprietor of every foundry engaged in the casting of iron, brass, steel or other metal, and employing ten or more men, shall establish and maintain, except in cities or towns where to do so would be impracticable by reason of the absence of public or private sewerage or of any running water system, toilet room of suitable size and condition for the men to change their clothes therein, and provided with wash bowls, sinks or other suitable set appliances connected with running hot and cold water, and also a water closet connected with running water and separated from the said toilet room. The said water closet and toilet room shall be connected directly with the foundry building, properly heated, ventilated and protected, so far as may be reasonably practicable, from the dust of the foundry.

Penalty.

SECTION 2. Whoever fails to comply with the provisions of this act, after being requested so to do by a state inspector of health, shall be fined not more than fifty dollars for each offence.

1907, 537 § 5.

REVISED LAWS, 106.

Factories shall be properly ventilated.

SECTION 51. A factory in which five or more persons and a workshop in which five or more women or young persons are employed shall, while work is carried on therein, be so ventilated that the air shall not become so impure as to be injurious to the health of the persons employed therein and so that all gases, vapors, dust or other impurities injurious to health, which are generated in the course of the manufacturing process or handicraft carried on therein shall, so far as practicable, be rendered harmless.

1887, 173, § 1. 1894, 508, § 37.

State Inspectors of Health may require Installation of Mechanical Ventilating Apparatus.

SECTION 52. If, in a workshop or factory which is within the provisions of the preceding section, any process is carried on by which dust is caused which may be inhaled to an injurious extent by the persons employed therein, and it appears to a state inspector of health that such inhalation would be substantially diminished without unreasonable expense by the use of a fan or by other mechanical means, such fan or other mechanical means, if he so directs, shall be provided, maintained and used.

1887, 173, § 2. 1894, 508, § 38. 1907, 537, § 5.

Criminal Prosecution for Violation of Two Preceding Sections.

SECTION 53. A criminal prosecution shall not be instituted for any violation of the provisions of the two preceding sections unless such employer neglects, for four weeks after the receipt of a notice in writing, to make such changes in his factory or workshop as shall be ordered by a state inspector of health.

1887, 173, § 3. 1894, 508, § 39. 1907, 537, § 5.

Public Buildings and Schools shall be properly provided with Water Closets and adequately ventilated.

SECTION 54. Every public building and every school house shall be kept clean and free from effluvia arising from any drain, privy or nuisance, shall be provided with a sufficient number of proper water closets, earth closets or privies, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health. The provisions of this section shall be enforced by the state inspectors of health.

1888, 149, §§ 1, 2. 1894, 508, §§ 40, 41. 1907, 537, § 5.

Inspector may order Change in Sanitary Provisions.

SECTION 55. If it appears to a state inspector of health that further or different sanitary or ventilating provisions, which can be provided without unreasonable expense, are required in any public building or school house, he may issue a written order to the proper person or authority, directing such sanitary or ventilating provisions to be provided. A school committee, public officer or person who has charge of, owns or leases any such public building or school house who neglects for four weeks to com-

ply with the order of such inspector shall be punished by a fine of not more than one hundred dollars. Whoever is aggrieved by the order of an inspector issued as above provided and relating to a public building or a school house may, within thirty days after the day of the service thereof, apply in writing to the board of health of the city or town to set aside or amend the order; and thereupon, the board, after notice to all parties interested, shall give a hearing upon such order and may alter, annul or affirm it.

1888, 149, §§ 3, 4. 1891, 261. 1894, 508, §§ 42, 43, 75. 1900, 239. 1907, 537, § 5.

ACTS OF 1903, 475.

Emery Wheels and Belts and Buffing Wheels and Belts shall be provided with Hoods, Suction Pipes and Fans or Blowers, for the Protection of Employees against Dust.

SECTION 1. Any person, firm or corporation operating a factory or workshop in which emery wheels or belts or buffing wheels or belts injurious to the health of employees are used shall, within three months after this act takes effect, provide such wheels and belts with a hood or hopper connected with suction pipes, and with fans or blowers, in accordance with the provisions hereinafter contained, which apparatus shall be placed and operated in such a manner as to protect any person or persons using any such wheel or belt from the particles or dust produced by the operation thereof, and to convey the said particles or dust either outside of the building or to some receptacle so placed as to receive and confine the said particles or dust.

The Fans and Blowers installed shall be of Proper Size and run at Effective Speed.

SECTION 2. Every such wheel shall be fitted with a sheet iron or cast iron hood or hopper of such form and so placed that the particles or dust produced by the operation of the wheel or of any belt connected therewith shall fall or will be thrown into such hood or hopper by centrifugal force; and the fans or blowers aforesaid shall be of such size and shall be run at such speed as will produce a volume and velocity of air in the suction and discharge pipes sufficient effectually to convey all particles or dust from the hood or hopper through the suction pipes and so outside of the building or to a receptacle as aforesaid.

Pipes and Connections shall be approved by the State Inspectors of Health.

SECTION 3. The suction pipes and connections shall be suitable and efficacious, and such as shall be approved by the state inspectors of health.

1907, 537, § 5.

Not to apply to Certain Grinding Machines and Emery Wheels.

SECTION 4. This act shall not apply to grinding machines upon which water is used at the point of grinding contact, nor to solid emery wheels used in saw mills or in planing mills or in other wood-working establishments, nor to any emery wheels six inches and under in diameter used in establishments where the principal business is not emery wheel grinding.

Powers and Duties of State Inspectors of Health.

SECTION 5. It shall be the duty of the state inspectors of health, upon receiving notice in writing, signed by any person having knowledge of the facts, that any factory or workshop as aforesaid is not provided with the apparatus herein prescribed, to visit such factory or workshop and inspect the same, and for that purpose they are hereby authorized to enter any such factory or workshop during working hours; and if they ascertain, in the foregoing or in any other manner, that the owner, proprietor or manager of any such factory or workshop has failed to comply with the provisions of this act, they shall make complaint of the same in writing, before a court or judge having jurisdiction, and cause such owner, proprietor or manager to be proceeded against for violation of this act; and it is made the duty of the district attorney to prosecute all cases arising under this act.

1907, 537, § 5.

Penalty.

SECTION 6. Any person failing to comply with any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and in case of a second offence he shall be punished by the aforesaid fine, or by imprisonment in the county jail for a term not exceeding sixty days, or by both such fine and imprisonment.

ACTS OF 1907, 164.

Medical and Surgical Appliances shall be kept in Factories.

SECTION 1. Every person, firm or corporation operating a factory or shop in which machinery is used for any manufacturing purpose, or for any other purpose except for elevators, or for heating or hoisting apparatus, shall at all times keep and maintain, free of expense to the employees, such a medical and surgical chest as shall be required by the local board of health of any city or town where such machinery is used, containing plasters, bandages, absorbent cotton, gauze, and all other necessary medicines, instruments and other appliances for the treatment of persons injured or taken ill upon the premises.

SECTION 2. Any person, firm or corporation violating this act shall be subject to a fine of not less than five dollars nor more than five hundred dollars for every week during which such violation continues.

REVISED LAWS, 108.

Enforcement of the Laws concerning the Employment of Women, Minors and Children, the Ventilation and Sanitation of Factories and Workshops, and the Manufacture of Clothing in Unsanitary Places.

SECTION 8. The state inspectors of health shall, except as otherwise provided in chapters one hundred and four, one hundred and five and one hundred and six, enforce the provisions thereof and all other provi-

sions of law relative to the employment of women and minors in manufacturing, mechanical and mercantile establishments, the employment of children, young persons or women in factories or workshops, the lighting and the ventilation of factories or workshops, the keeping of them clean, and the securing of proper sanitary provisions therein, and the making of clothing in unsanitary conditions. For such purposes, said inspectors may enter all buildings and parts thereof which are subject to the provisions of said chapters and examine the methods of protection from accident, the means of escape from fire, the sanitary provisions, the lighting and the means of ventilation, and may make investigations as to the employment of children, young persons and women.

1907, 413, § 1. 1907, 537, § 5.

ACTS OF 1907, 499.

Appeals to State Board of Health from Certain Requirements of the District Police.

SECTION 1. In all cases where requirements are made, under authority of law, by the inspectors of the district police or by the chief of the district police, in respect to heating, ventilating, plumbing or other matters, there shall be a right of appeal to the state board of health, whose decision in the matter shall be final.

THE SUPERVISION OF PLUMBING.

REVISED LAWS, 103.

Plumbers, etc., to be licensed.

SECTION 1. No person, firm or corporation shall engage in or work at the business of plumbing, either as a master or employing plumber or as a journeyman plumber, unless he or it has received a license or certificate therefor in accordance with the provisions of this chapter. The words "practical plumber", as used in this chapter, shall mean a person who has learned the business of plumbing by working for at least two years as an apprentice or under a verbal agreement for instruction, and who has then worked for at least one year as a first class journeyman plumber. The word "journeyman", as used in this chapter, shall mean a person who himself does any work in plumbing which is by law, ordinance, by-law, rule or regulation subject to inspection.

1894, 455, § 1.

Examination of Applicants.

SECTION 2. Any person who, not having been engaged in or working at the business of plumbing prior to the tenth day of July in the year eighteen hundred and ninety-three, desires to engage in or work at said business, either as a master or employing plumber or as a journeyman plumber, shall apply to the board of health of the city or town in which he intends to engage in or work at said business, or to the inspector of buildings in cities or towns in which such inspector has control of the enforcement of the regulations relative to plumbing, and shall, at a time

and place designated by the board of examiners provided for in the following section, to whom such applications shall be referred, be examined as to his qualifications for such business. A license, or the certificate of a plumber registered prior to the first day of September in the year eighteen hundred and ninety-four, issued to one member of the firm or the manager of the corporation shall satisfy the requirements of this chapter.

1894, 455, § 2.

Boards of Examiners of Plumbers.

SECTION 3. In every city, and in every town of five thousand inhabitants or more, and in every town having a system of water supply or sewerage, there shall be a board of examiners of plumbers consisting of the chairman, or such other member of the board of health as said board may designate, and the inspector of buildings in cities and towns having such inspector, who shall be members ex officiis and serve without compensation, and of a third member who shall be a practical plumber and who shall have had continuous practical experience either as a master or as a journeyman during the five years last preceding the date of appointment. Said third member shall annually, before the first day of June, be appointed by the board of health of said city or town for a term of one year and shall be paid by the city or town not more than five dollars for each day of actual service. If, in any city or town there is no inspector of buildings, the board of health shall also appoint the second member of said board of examiners, whose term of office and compensation shall be the same as that of said third member.

1893, 477, § 3. 1894, 455, § 3.

Licenses, Fees, etc.

SECTION 4. The board of examiners shall, as soon as may be after the appointment of said third member, choose a chairman, and shall then designate the times and places for the examination of all applicants for licenses to engage in or work at the business of plumbing within their respective cities or towns. The board shall examine each applicant as to his practical knowledge of plumbing, house drainage and plumbing ventilation, shall subject him to a satisfactory practical test and if satisfied of his competence shall so certify to the board of health or inspector of buildings who shall thereupon issue to him a license authorizing him to engage in or work at the business of plumbing, either as a master or employing plumber or as a journeyman plumber. Said licenses shall be valid and have force throughout the Commonwealth, and shall be renewed annually upon a payment of a fee of fifty cents. Upon the removal of a licensee from the city or town of the board or inspector issuing the original license, it may be renewed by any board having like authority. The fee for a license for a master or employing plumber shall be two dollars, and for a journeyman plumber, fifty cents.

1893, 477, § 4. 1894, 455, § 4.

Inspectors of Plumbing.

SECTION 5. The inspector of buildings of each city and town which is subject to the provisions of this chapter, if he has control of the enforcement of the regulations relative to plumbing or, if he has not such control, the board of health, shall, within three months after the acceptance of the provisions of this chapter, appoint one or more inspectors of plumbing, who shall be practical plumbers and shall have had practical experience, either as masters or as journeymen, continuously, during the five years last preceding the date of appointment, and who shall hold office until removed by said board or inspector for cause shown. All such inspectors shall, before appointment, be subjected to an examination before the civil service commission. The compensation of such inspectors shall be determined by the board or inspector appointing them, subject to the approval of the city council or selectmen, and shall be paid from the treasury of their respective cities or towns. Said inspectors shall inspect all plumbing for which permits are granted within their respective cities or towns, which is in process of construction, alteration or repair, and shall report to said board or inspector all violations of any law, ordinance, by-law, rule or regulation relative to plumbing; and also perform such other appropriate duties as may be required. The approval of plumbing by any inspectors other than those provided for by this chapter shall not be a compliance with the provisions hereof.

1893, 477, § 5. 1894, 455, § 5. 1895, 453.

Additional Inspectors, Appointment, etc.

SECTION 6. No inspector of plumbing shall inspect or approve any plumbing work done by himself, or by any person by whom he is employed, or who is employed by or with him, but in a city or town which is subject to the provisions of this chapter the inspector of buildings or the board of health, as provided in the preceding section, shall appoint an additional inspector of plumbing, in the same manner and subject to the same qualifications as the regular inspector of plumbing, who shall inspect, in the manner prescribed in this chapter, plumbing done by the regular inspector or by any person by whom he is employed, or who is employed by or with him. Said additional inspector may act in case of the absence or inability of the regular inspector, and shall receive for his services the same compensation as the regular inspector for a like duty. The provisions of this section shall not apply to any city or town which has established or shall establish an annual salary for the inspector of plumbing, and in any such city or town, the inspector of plumbing shall not engage in or work at the business of plumbing.

1894, 455, § 6.

Regulations concerning Plumbing shall be prescribed.

SECTION 7. Each city, except Boston, the city council of which accepts the provisions of this section or has accepted the corresponding provisions of earlier laws and each town of five thousand inhabitants or more,

or which has a system of water supply or sewerage, shall by ordinance or by-law prescribe regulations for the materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by and through which waste water or sewage is used and carried; and shall provide that such pipes, tanks, faucets, valves or other fixtures shall not be placed in any building in such city or town, except in accordance with plans approved by the inspector of buildings, if he has control as provided in section five, or if he has not such control, by the board of health; and shall further provide that no plumbing shall be done, except to repair leaks, without a permit first being issued therefor, upon such terms and conditions as such cities or towns shall prescribe. The provisions of this section shall not prevent boards of health from making such regulations relative to plumbing and house drainage authorized by law prior to the sixth day of July in the year eighteen hundred and ninety-four as are not inconsistent with any ordinance or by-law made under the authority of this section.

1888, 105, § 1. 1893, 477, § 6. 1894, 455, § 7. 1895, 453, § 1.

Penalties.

SECTION 8. Whoever violates any provision of this chapter or any ordinance, by-law or regulation made hereunder shall be punished by a fine of not more than fifty dollars for each offence, and, if he holds a license under the provisions of this chapter, his license may be revoked by the inspector or board which issued it. If the offence was committed in a city or town other than that in which he received his license, the person or board authorized to grant licenses to plumbers in such city or town may forbid him to engage in or work at the business of plumbing for not more than one year in such city or town. If a registered plumber to whom a certificate has been issued violates any provision of this chapter or any ordinance, by-law or regulation made hereunder, either the inspector of buildings or board of health which issued his certificate, or the person or board authorized to grant licenses to plumbers of the city or town in which the offence was committed, may forbid him to engage in or work at the business of plumbing in such city or town for not more than one year. Whoever engages in or works at the business of plumbing in any city or town in which he has been forbidden so to do under the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence. Any city or town subject to the provisions of this chapter which refuses to comply with any of its provisions shall forfeit fifty dollars to the use of the Commonwealth for each month during which such neglect continues.

1888, 105, § 2. 1893, 477, § 7. 1894, 455, § 8.

Chapter to apply to Persons learning Business.

SECTION 9. The provisions of this chapter shall apply to all persons learning the business of plumbing when they are sent out to do the work of a journeyman plumber.

1894, 455, § 9.

Tenure of Office of Inspectors.

SECTION 10. Any person who held an appointment as inspector of plumbing on the sixth day of July in the year eighteen hundred and ninety-four may retain his position, and, without further examination, be deemed to have been appointed under the provisions of this chapter.

1894, 455, § 10.

Expenditure of Fees.

SECTION 11. Inspectors of buildings and boards of health may expend such portion of the fees collected by them under the provisions of this chapter as is necessary to properly perform the duties imposed thereby, and they shall annually, before the first day of June, make a full report in detail to their respective cities or towns of all their proceedings during the year under the provisions of this chapter.

1894, 455, § 11.

Acceptance of Chapter.

SECTION 12. The provisions of this chapter shall not be operative in any town until accepted by a vote of the inhabitants thereof, nor in such portion of the territory of a city lying outside of the limits of the water supply thereof or unconnected with a common sewer, as the city council votes to exempt from its operation.

1895, 453.

WATER SUPPLY AND SEWERAGE.

REVISED LAWS, 75.

The State Board of Health shall have General Supervision of Inland Waters. (See Section 123 for Exceptions.)

SECTION 112. The state board of health shall have the general oversight and care of all inland waters and of all streams and ponds used by any city, town or public institution or by any water or ice company in this Commonwealth as sources of water supply and of all springs, streams and water courses tributary thereto. It shall be provided with maps, plans and documents suitable for such purposes and shall keep records of all its transactions relative thereto.

1886, 274, § 1. 1888, 375, § 1. 1890, 441, § 1. 1897, 516, § 1. 179 Mass. 385.

Examinations of Water Supplies. Rules and Regulations for Sanitary Protection of Water Supplies.

SECTION 113. Said board may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent the pollution and to secure the sanitary protection, of all such waters as are used as sources of water supply. Said board may delegate

the granting and withholding of any permit required by such rules or regulations to state boards and commissions and to selectmen in towns and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, boards and commissions, subject to such recommendation and direction as shall be given from time to time by the state board of health; and upon complaint of any person interested said board shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health.

1886, 274, § 2. 1888, 375, § 2. 1890, 441, § 1. 1897, 510, § 1. 1907, 467, § 1. 189 Mass. 247. 191 Mass. 384.

Publication of Rules and Regulations shall be Legal Notice.

SECTION 114. The publication of an order, rule or regulation made by the board under the provisions of the preceding section or section one hundred and eighteen in a newspaper of the city or town in which such order, rule or regulation is to take effect or, if no newspaper is published in such city or town, the posting of a copy of such order, rule or regulation in a public place in such city or town shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed and recorded with a copy of the notice, in the office of the clerk of such city or town shall be admitted as evidence of the time at which, and the place and manner in which the notice was given.

1899, 308.

Report and Recommendations.

SECTION 115. Said board shall annually, on or before the tenth day of January, make a report to the general court of its doings for the preceding year, recommend measures for the prevention of the pollution of such waters and for the removal of polluting substances in order to protect and develop the rights and property of the Commonwealth therein and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, streams and inland waters of the Commonwealth. It shall also give notice to the attorney-general of any violation of law relative to the pollution of water supplies and inland waters.

1886, 274, §§ 1-3. 1888, 375, §§ 1-3.

Agents, Engineers and Expert Assistants.

SECTION 116. Said board may appoint, employ and fix the compensation of such agents, clerks, servants, engineers and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water supply and of the rules and regulations of said board to be enforced.

1886, 274, §§ 1, 2. 1888, 375, §§ 1, 2. 1897, 510, § 2.

Advice shall be given to Cities, Towns and Others on Water Supply and Sewerage. Plans shall be submitted to Board for Approval.

SECTION 117. Said board shall consult with and advise the authorities of cities and towns and persons having, or about to have, systems of water supply, drainage or sewerage as to the most appropriate source of water supply, and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns or persons which may be affected thereby. It shall also consult with and advise persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice or experiments. Cities, towns and persons shall submit to said board for its advice their proposed system of water supply or of the disposal of drainage or sewage, and all petitions to the general court for authority to introduce a system of water supply, drainage or sewerage shall be accompanied by a copy of the recommendation and advice of said board thereon. In this section the term "drainage" means rainfall, surface and subsoil water only and "sewage" means domestic and manufacturing filth and refuse.

1886, 274, §§ 2, 3. 1888, 375, §§ 2–4.

Board may prohibit Pollution after a Hearing.

SECTION 118. Upon petition to said board by the mayor of a city or the selectmen of a town, the managing board or officer of any public institution, or by a board of water commissioners, or the president of a water or ice company, stating that manure, excrement, garbage, sewage or any other matter pollutes or tends to pollute the waters of any stream, pond, spring or water course used by such city, town, institution or company as a source of water supply, the board shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after notice thereof to parties interested and a hearing, if in its judgment the public health so requires, shall, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the board shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Said board shall not prohibit the use of any structure which was in existence on the eleventh day of June in the year eighteen hundred and ninety-seven upon a complaint made by the board of water commissioners of any city or town or by any water or ice company unless such board of water commissioners or company files with the state board

a vote of its city council, selectmen or company, respectively, that such city, town or company will at its own expense make such changes in said structure or its location as said board shall deem expedient. Such vote shall be binding on such city, town or company. All damages caused by such changes shall be paid by such city, town or company; and if the parties cannot agree thereon, the damages shall, on petition of either party, filed within one year after such changes are made, be assessed by a jury in the superior court for the county where such structure is located.

1890, 441, §§ 2, 7. 1897, 510, §§ 3, 9. 189 Mass. 247, 253.

Appeal from Order.

SECTION 119. Whoever is aggrieved by an order passed under the provisions of the preceding section may appeal therefrom in the manner provided in sections ninety-five and ninety-seven; but such notice as the court shall order shall also be given to the board of water commissioners and mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending the order of the board shall be complied with, unless otherwise authorized by the board.

1890, 441, § 3. 1897, 510, § 4. 131 Mass. 197. 186 Mass. 330. 189 Mass. 247, 253.

Enforcement of Law.

SECTION 120. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the state board of health or of any party interested, to enforce its orders, or the orders, rules and regulations of said board of health, and to restrain the use or occupation of the premises or such portion thereof as said board may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules and regulations of said board have been complied with.

1890, 441, § 4. 1897, 510, § 5.

Entry on Premises.

SECTION 121. The agents and servants of said board may enter any building, structure or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations and orders aforesaid are obeyed. Their compensation for services rendered in connection with proceedings under the provisions of section one hundred and eighteen shall be fixed by the board and shall in the first instance be paid by the Commonwealth; but the whole amount so paid shall, at the end of each year, be justly and equitably apportioned by the tax commissioner between such cities, towns or companies as, during said year, have instituted said proceedings, and may be recovered in an action by the treasurer and receiver general, with interest from the date of the demand.

1897, 510, § 2.

Penalties.

SECTION 122. Whoever violates any rule, regulation or order made under the provisions of section one hundred and thirteen or one hundred and eighteen shall be punished for each offence by a fine of not more than five hundred dollars, to the use of the Commonwealth, or by imprisonment for not more than one year, or by both such fine and imprisonment.

1890, 441, § 5. 1897, 510, § 6.

Exemptions.

SECTION 123. The provisions of the eleven preceding sections shall not apply to the Merrimac or Connecticut rivers, nor to so much of the Concord river as lies within the limits of the city of Lowell, nor to springs, streams, ponds or water courses over which the metropolitan water board has control.

1890, 441, § 6. 1897, 510, § 7. 1895, 488.

Pollution of Sources of Water Supply forbidden.

SECTION 124. No sewage, drainage, refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a city, town, public institution or water company for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into any feeders of such pond or stream within twenty miles above the point where such supply is taken.

1878, 183, §§ 1, 2. 1896, 252, § 1. 185 Mass. 10.
P. S. 80, § 96. 137 Mass. 277. 189 Mass. 247.

Prescriptive Rights unaffected. Application limited.

SECTION 125. The provisions of the preceding section shall not destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; nor shall it be applicable to the Merrimac or Connecticut rivers, or to so much of the Concord river as lies within the limits of the city of Lowell.

1878, 183, § 3. P. S. 80, § 97. 133 Mass. 215. 189 Mass. 247.

Injunction against Pollution of Water Supply.

SECTION 126. The supreme judicial court or the superior court, upon application of the mayor of a city, the selectmen of a town, managing board or officer of a public institution, or a water or ice company interested, shall have jurisdiction in equity to enjoin the violation of the provisions of section one hundred and twenty-four.

1884, 154, § 1. 1896, 252, § 2. 133 Mass. 228. 139 Mass. 183.

Penalty for wilfully corrupting a Spring or Other Source of Water or a Reservoir, or injuring Pipes, etc.

SECTION 127. Whoever wilfully and maliciously defiles or corrupts any spring or other source of water, or reservoir, or destroys or injures any pipe, conductor of water or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year.

1843, 65, § 2. G. S. 106, § 6. P. S. 208, § 7.

Persons defiling a Water Supply may be arrested without a Warrant.

SECTION 128. Whoever wilfully deposits excrement or foul or decaying matter in water which is used for the purpose of domestic water supply, or upon the shore thereof within five rods of the water, shall be punished by a fine of not more than fifty dollars, or by imprisonment for not more than thirty days; and a police officer or constable of a city or town in which such water is wholly or partially situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, public institution or water company furnishing water or ice for domestic purposes, acting upon the premises of such board, institution or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But the provisions of this section shall not interfere with the sewage of a city, town or public institution, or prevent the enriching of land for agricultural purposes by the owner or occupant thereof.

1879, 224. P. S. 208, § 8.

Bathing in Water Supplies prohibited. Penalty.

SECTION 129. Whoever bathes in a pond, stream or reservoir, the water of which is used for the purpose of domestic water supply for a city or town, shall be punished by a fine of not more than ten dollars.

1884, 172.

Penalty for driving on Ice of Pond used for Water Supply.

SECTION 130. Whoever, not being engaged in cutting or harvesting ice, or in hauling logs, wood or lumber, drives any animal on the ice of a pond or stream which is used for the purpose of domestic water supply for a city or town shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than thirty days.

1880, 185. P. S. 80, §§ 101, 102.

REVISED LAWS, 25.

Temporary Taking of Water Supply in Cases of Emergency.

SECTION 35. The city council of a city or the selectmen or water commissioners of a town which has a system of water supply may, in cases of emergency, take water from any brook, stream, river, lake, pond or reservoir which is not already appropriated to uses of a municipal water supply, for a period of not more than six months in any one year, in such quantities as may be necessary to relieve the emergency; but no such taking shall be made until after the state board of health has approved the water as a proper source of water supply, and selectmen or water commissioners of towns shall not make such taking unless they have first been so authorized by a vote of the inhabitants at a town meeting. They may also take rights to use any land for such time as it may be necessary to use such water. The vote of a city council or of the inhabitants of a town to make or authorize such taking shall be conclusive evidence of the existence of the emergency.

1901, 313, § 1. 1902, 361.

Record of Taking.

SECTION 36. The city council of a city or the selectmen or water commissioners of a town which takes such water and land shall, within thirty days after such taking, cause a description of the water and land taken, sufficiently accurate for identification, and a statement of the purpose and the time for which it is taken, signed by the mayor of the city or by the chairman of the selectmen or of the water commissioners of the town, to be recorded in the registry of deeds for the county or district in which such water and land are situated. Upon such recording, the right to use such land and water for the time named in such statement shall vest in such city or town.

1901, 313, § 2.

Damages.

SECTION 37. The city council of a city or the selectmen or water commissioners of a town shall, within sixty days after the termination of the exercise of any right taken under the provisions of the two preceding sections, estimate and determine, as nearly as may be, the actual damages sustained by any person by the taking of any water and of the rights to use any land under the provisions of said sections. A person who is aggrieved by such determination may have his damages assessed by a jury in the superior court in the manner provided for the assessment of damages sustained by the laying out of ways. If, upon the trial, the damages are increased the petitioner shall recover costs; otherwise, he shall pay costs; and costs shall be taxed as in civil cases. No petition for such damages shall be brought after the expiration of two years from the date of the recording of the description and statement aforesaid.

1901, 313, § 3.

Taking in Cities and Towns using Metropolitan Water Supply.

SECTION 38. The powers conferred upon, and the duties to be performed by, the mayor or city council of a city under the provisions of the three preceding sections shall, within such cities and towns as use the metropolitan water supply, be exercised and performed by the metropolitan water and sewerage board.

1901, 313, § 4.

ACTS OF 1902, 322.

Employees in Factories shall be supplied with Pure Drinking Water.

SECTION 1. All manufacturing establishments in this Commonwealth shall provide fresh and pure drinking water, to which their employees shall have access during working hours.

Penalty.

SECTION 2. Any corporation, association, firm or person owning, in whole or in part, managing, controlling or superintending any manufacturing establishment in which the provision of this act is violated shall, upon complaint of the board of health of the city or town, or of the selectmen of the town in which the establishment is located, be liable to a fine of one hundred dollars for each offence.

REVISED LAWS, 213.

Occupants of Premises shall not be refused Water on Account of Arrears of Previous Occupants.

SECTION 10. A corporation which, being engaged in selling or distributing water, refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water previously furnished to or for said building or premises, or to or for any other building or premises, be punished by a fine of not less than ten nor more than twenty dollars.

1898, 168. 171 Mass. 329.

PUBLIC BATHS.

REVISED LAWS, 25.

Public Baths, etc.

SECTION 20. A town which accepts the provisions of this and the following section, or has accepted the corresponding provisions of earlier laws, by a two-thirds vote at an annual meeting, may purchase or lease land, and erect, alter, enlarge, repair and improve buildings for public baths and wash-houses, either with or without open drying grounds, and may make open bathing places, provide them with the requisite furni-

ture, fittings and conveniences, provide instruction in swimming, and may raise and appropriate money therefor.

1874, 214, §§ 1, 3. P. S. 27, § 13. 1898, 125, § 2. 137 Mass. 175.

Regulations for Government of Public Baths.

SECTION 21. Such town may establish rates for the use of such baths and wash-houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make regulations for the management thereof and for the use thereof by non-residents of said town.

1874, 214, § 2. P. S. 27, § 14. 1898, 125, § 1.

SHELL FISH IN POLLUTED WATERS

REVISED LAWS, 91.

Taking of Shell Fish from Contaminated Waters prohibited.

SECTION 113. The state board of health may examine all complaints which may be brought to its notice relative to the contamination of tidal waters and flats in this Commonwealth by sewage or other causes, may determine, as nearly as may be, the bounds of such contamination, and, if necessary, mark such bounds. It may also, in writing, request the commissioners on fisheries and game to prohibit the taking from such contaminated waters and flats of any oysters, clams, quahaugs and scallops. Upon receipt of such request, said commissioners shall prohibit the taking of such shell fish from such contaminated waters or flats for such period of time as the state board of health may prescribe.

1901, 138, §§ 1, 2.

Penalties.

SECTION 114. Whoever takes any oysters, clams, quahaugs or scallops from tidal waters or flats from which the taking has been prohibited as provided in the preceding section shall forfeit not less than five nor more than ten dollars for the first offence, and not less than fifty nor more than one hundred dollars for each subsequent offence; but such penalties shall not be incurred until one week after the commissioners on fisheries and game shall have caused notice of such prohibition, with a description, or the bounds, of the tidal waters or flats to which such prohibition applies, to be published in a newspaper published in the town or county in which or adjacent to which the tidal waters or flats to which such prohibition applies are situated.

1901, 138, § 3.

ACTS OF 1907, 285.

Boards of Health may grant Permits for the Taking of Clams and Quahaugs from Polluted Flats for Bait only.

SECTION 1. Whenever, upon the request of the state board of health under the provisions of section one hundred and thirteen of chapter ninety-one of the Revised Laws, the commissioners on fisheries and game

have prohibited or may hereafter prohibit the taking from contaminated waters or flats in any city or town of any clams or quahaugs, the board of health of such city or town may grant permits in writing to any person to take from such waters clams or quahaugs to be used for bait only, and in such quantities and upon such conditions as they shall express in their permit.

Permits shall be carried and shown.

SECTION 2. Any person holding a permit from the board of health of a city or town shall keep in his possession, and on his person, while acting thereunder, any permit obtained by him from said board of health, and shall at all times display the same upon the request of any person authorized to enforce the provisions of this act. Violation of this section shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and in addition the permit shall be revoked and shall not thereafter be issued within twelve months.

Forfeiture of Permit.

SECTION 3. Any person who violates any of the provisions of such permit shall forfeit the permit and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment.

Sale or Purchase of Shell Fish so taken prohibited.

SECTION 4. Whoever sells, or exchanges, or exposes or offers for sale or exchange, or buys any clams or quahaugs, taken under the provisions of this act, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment.

SEWERS AND DRAINS.

REVISED LAWS, 49.

Cities and Towns may lay Drains or Sewers.

SECTION 1. The mayor and aldermen of a city and the sewer commissioners, selectmen or road commissioners of a town may lay, make, repair and maintain all such main drains or common sewers as they adjudge necessary for the public convenience or the public health, in public or private ways or in the land of any person, and may take land which may be necessary therefor. Main drains and common sewers so laid shall be the property of the city or town. Cities and towns may with the approval of the state board of health, after a public hearing by said board of all parties interested, of which notice shall be given by publication in one or more newspapers, purchase or take land within their respective limits for the purification and disposal of sewage.

1841, 115, §§ 1, 6.
1857, 225, § 1.
G. S. 48, §§ 1, 3.
1869, 111, § 1.
1871, 158, § 2.
1873, 51.
P. S. 50, § 1.
1890, 124.
1893, 304, § 2; 423, § 24.
4 Allen, 41.
8 Allen, 127.
104 Mass. 13.
122 Mass. 255, 359.
124 Mass. 564.
126 Mass. 431.
128 Mass. 396.
134 Mass. 476.
146 Mass. 298, 336.
150 Mass. 12.
151 Mass. 174.
159 Mass. 324.
163 Mass. 303.
185 Mass. 142.

Owners or Lessees of Buildings may be required to connect the Same with Public Sewers.

SECTION 30. The board of health of a city or town may require the owner or lessee of any building upon land abutting on a public or private way in which there is a public sewer to connect the same therewith by a sufficient drain, and such owner or lessee who fails or neglects to comply with such order shall be punished by a fine of not more than two hundred dollars.

1890, 132. 160 Mass. 282. 163 Mass. 240.

Connection and Assessment of Cost.

SECTION 32. If the board of health of a city or town making such appropriation shall order land abutting upon a public or private street, court or passage way in which a public sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer authorized to lay sewers application to connect his land with a public sewer, such board or officer authorized to lay sewers shall make such connection and shall assess the cost thereof upon such land.

1899, 319, § 2. 1900, 112.

Repair of Private Drains.

SECTION 35. If the city council of a city or a town accepts the provisions of this section or has accepted the corresponding provisions of earlier laws, the board of health may require the owner or lessee of an estate which drains into a private drain in a public or private way to put such drain in good repair and condition. If he fails to comply with said order within ten days after notice thereof, he shall be punished by a fine of not more than twenty dollars for every day during which such neglect continues.

1893, 312.

ACTS OF 1903, 383.

Surface Water to be separated from Sewage.

SECTION 1. The owner of every estate abutting on a public way in which a drain, namely, a conduit for surface or storm water and such waters as shall be specified by the state board of health; and a sewer, namely, a conduit for all other waters and for sewage, all such other waters to be considered sewage, shall have been provided by a city or town, and the owner of any other estate, using any such drain or sewer, shall make or change the plumbing of his estate so that the waters shall be kept separate from the sewage; and shall, as directed by the officer having charge of the maintenance of sewers in such city or town, make connections for, and conduct, the waters into the drain and the sewage into the sewer.

Plumbing of Certain Estates to be so arranged as to keep Waters separate from Sewage, etc.

SECTION 2. The owner of every estate whose sewage is to be taken into any metropolitan sewer shall hereafter, in plumbing his estate, so arrange the plumbing as to keep the waters separate from the sewage, and shall, as directed by said officer, make connections for, and conduct, the waters into the drain and the sewage into the sewer; but where only one conduit shall have been provided in the street by the city or town, such owner shall, as directed by said officer, construct said connections into the street and connect them with the conduit so provided, and the city or town shall provide the other conduit and all necessary connections with either conduit.

Branch Intercepting Sewers, etc., to be constructed in Certain Cities and Towns.

SECTION 3. Any city or town using any metropolitan sewer may, in any year, and shall in any year specified by the officer or board having charge of said sewers, expend one twentieth of one per cent. of its taxable valuation, to be met by loan outside the debt limit, in the construction, in connection with said sewers, of branch intercepting sewers, connections of existing sewers with intercepting sewers, branch drains, sewers or drains in any street where one thereof only shall have been built, and the necessary connections aforesaid.

Supreme Court may enforce Act.

SECTION 4. The supreme judicial court shall have jurisdiction in equity to enforce the provisions of this act.

REVISED LAWS, 25.

Towns may make Contracts for Cost of building Certain Sewers.

SECTION 14. A town may make contracts: —

To contribute to the cost of building, by any other city or town situated in the water shed of *its* water supply, a sewer or system of sewers to aid in protecting such water supply from pollution.

R. S. 15, § 11. G. S. 18, § 9. P. S. 27, § 9. 1888, 160. 167 Mass. 115.

ICE SUPPLIES.

REVISED LAWS, 26.

Inspection of Ice.

SECTION 18. A city may establish ordinances to secure the inspection of ice sold within its limits and to prevent the sale of impure ice, and may affix penalties of not more than twenty dollars for each violation thereof.

1895, 338.

REVISED LAWS, 75.

State Board of Health may make Orders concerning the Sale of Impure Ice.

SECTION 59. The state board of health, upon complaint in writing of not less than twenty-five consumers of ice cut from any pond or stream and sold or held for sale, alleging that said ice is impure and injurious to health, after notice to the parties interested of the time and place appointed for the hearing, and after hearing said parties, may make such orders relative to the sale of said ice as in its judgment the public health requires.

1886, 287, § 1.

Enforcement of Orders.

SECTION 60. Such orders shall be served upon any person who sells or offers for sale impure ice, and may be enforced in equity by the supreme judicial court or the superior court.

1886, 287, §§ 2, 3.

Appeal.

SECTION 61. A person who is aggrieved by such orders may appeal therefrom in the manner prescribed by section ninety-five, and shall be subject to the provisions of sections ninety-six and ninety-seven, and the court may award costs in its discretion.

1886, 287, § 3.

LAWS RELATING TO FOODS AND DRUGS.

GENERAL LAWS.

REVISED LAWS, 75.

Appropriation for Enforcement of Food and Drug Law.

SECTION 6. The state board of health may annually expend not more than fourteen thousand five hundred dollars for the enforcement of the provisions of sections sixteen to twenty-seven, inclusive; but not less than three-fifths of said amount shall be annually expended for the enforcement of the laws against the adulteration of milk and milk products.

1882, 263, § 5. 1883, 263, § 1. 1884, 289, § 1. 1891, 319. 1903, 467. 1907, 208.

Sale of Adulterated Foods and Drugs forbidden.

SECTION 16. No person shall manufacture, offer for sale or sell, within this Commonwealth, any drug or article of food which is adulterated within the meaning of section eighteen; but no employee, other than a manager or superintendent, shall be punished for a violation of this section unless such violation was intentional on the part of the said employee.

1882, 263, § 1. 1897, 344, § 1. 1903, 367.

Drugs and Foods defined.

SECTION 17. The term "drug", as used in sections sixteen to twenty-seven, inclusive, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used therein shall include all articles, simple, mixed or compound, used in food or drink by man.

1882, 263, § 2. 1886, 171. 1897, 344, § 2.

Adulteration defined.

SECTION 18. A drug shall be deemed to be adulterated: 1. If, when sold under or by a name recognized in the United States pharmacopœia, it differs from the standard of strength, quality or purity prescribed therein, unless the order therefor requires an article inferior to such standard or unless such difference is made known or so appears to the purchaser at the time of the sale. 2. If, when sold under or by a name not recognized in the United States pharmacopœia but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity prescribed in such work. 3. If its strength, quality or purity falls below the professed standard under which it is sold.

Food shall be deemed to be adulterated: 1. If any substance has been mixed with it so as to reduce, depreciate or injuriously affect its quality, strength or purity. 2. If an inferior or cheaper substance has been substituted for it wholly or in part. 3. If any valuable or necessary constituents or ingredients have been wholly or in part taken from it. 4. If it is in imitation of or is sold under the name of another article. 5. If it consists wholly or in part of a diseased, decomposed, putrid, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in case of milk, if it is produced by a diseased animal. 6. If it is colored, coated, polished or powdered in such a manner as to conceal its damaged or inferior condition, or if by any means it is made to appear better or of greater value than it is. 7. If it contains any added substance or ingredient which is poisonous or injurious to health. 8. If it contains any added antiseptic or preservative substance, except common table salt, saltpetre, cane sugar, alcohol, vinegar, spices, or, in smoked food, the natural products of the smoking process; but the provisions of this definition shall not apply to any such article if it bears a label on which the presence and the percentage of every such antiseptic or preservative substance are clearly indicated, nor shall it apply to such portions of suitable preservative substances as are used as a surface application for preserving dried fish or meat, or as exist in animal or vegetable tissues as a natural component thereof, but it shall apply to additional quantities. The provisions of this and the two preceding sections relative to food shall not apply to mixtures or compounds not injurious to health and which are recognized as ordinary articles or ingredients of articles of

food, if every package sold or offered for sale is distinctly labelled as a mixture or compound with the name and per cent of each ingredient therein.

1882, 263, § 3. 1884, 289, §§ 5, 7. 1897, 344, § 3. 1901, 341.

Requirements concerning Labels "Compounds" and chemically Preserved Foods.

SECTION 19. If a statement of any of the ingredients of an article of food or drink or of an article entering into food or drink is required by law to be stated upon the label of such article, such statement and the name and address of the manufacturer or vendor of the article shall be distinctly and conspicuously printed on the label in straight, parallel lines of plain, uncondensed, legible type, well spaced on a plain ground. The statement of ingredients shall be clearly separated from and not interspersed or confused with other matter, shall specify every such ingredient by its ordinary name, and shall be in the English language. The letters of said type shall be not less than one-twelfth of an inch long, and shall be larger than those of any other printed matter on the label or package, except the name of the compound or chief article enclosed therein which may be in larger type. The required label shall be firmly attached to or printed on the exterior of the package or envelope of the said article, on the top or side thereof and in plain sight. But the state board of health may in writing approve specific labels not strictly in accordance with the above provisions, if it is of opinion that the information required by law is set forth thereon clearly enough for the reasonable protection of the purchaser. Goods labelled in violation of the provisions of this section shall be subject to the provisions of law relative to adulteration of food which is unlabelled.

1901, 396, §§ 1-3, 5.

Samples for Analysis shall be furnished.

SECTION 20. Whoever offers or exposes for sale or delivers to a purchaser any drug or article of food shall, upon application of an inspector, analyst or other officer or agent of the state board of health and upon tender to him of the value thereof, furnish a sample sufficient for the analysis of any such drug or article of food which is in his possession.

1882, 263, § 6.

Portion of Sample to be reserved and sealed.

SECTION 21. Before such sample is analyzed, a portion thereof shall be reserved and sealed by the analyst; and, upon a complaint against any person, such reserved portion shall, upon application, be delivered to the defendant or his attorney.

1884, 289, § 8.

Canned Goods must be marked as to Grade.

SECTION 22. Canned articles of food shall not be offered for sale unless they bear a mark to indicate the grade or quality thereof and the name and address of the person who packed or who sells them.

1897, 344, § 1.

Soaked Canned Goods must be so marked.

SECTION 23. All canned articles of food which have been prepared from dried products and have been soaked before canning shall be plainly marked by an adhesive label having on its face the word "*soaked*" in letters of legible type not smaller than two line pica.[1] All cans, jugs and other packages containing maple syrup or molasses shall be plainly marked by an adhesive label having on its face the name and address of the person who made and prepared the same with the name and quality of the ingredients of the goods in letters of the size and description aforesaid.

1897, 344, § 5.

Penalties.

SECTION 24. Whoever falsely stamps or labels any cans, jars or other packages containing fruit or food of any kind, or knowingly permits such stamping or labelling, or, except as hereinafter provided, violates any of the provisions of sections sixteen to twenty-seven, inclusive, shall be punished by a fine of not less than twenty-five nor more than five hundred dollars; and whoever sells such goods so falsely stamped or labelled shall be punished by a fine of not less than ten nor more than one hundred dollars.

1882, 263, § 7. 1897, 344, § 6. 1905, 236. 1906, 305.

Fraudulent Adulteration of Foods.

SECTION 25. Whoever, for the purpose of sale, fraudulently adulterates food with any substance injurious to health, or knowingly barters, gives away, sells or has in his possession with intent to sell any substance intended for food which has been adulterated with any substance injurious to health, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year; and the articles so adulterated shall be forfeited and destroyed under the direction of the court.

R. S. 131, § 12. G. S. 166, § 3. 1878, 76. P. S. 208, § 3. 125 Mass. 202.

Fraudulent Adulteration of Drugs.

SECTION 26. Whoever, for the purpose of sale, fraudulently adulterates any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing it to be adulterated, shall be punished by a fine of not more than four hundred dollars or by imprisonment for not more than one year; and such adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court.

R. S. 131, § 3. 1853, 394. G. S. 166, § 5. P. S. 208, § 5. 1896, 397, § 19.

Prosecution as to Pharmacopœial Drugs limited.

SECTION 27. If the standard of strength or purity of any drug has been raised since the issue of the last edition of the United States pharmacopœia, no prosecution relative to it shall be maintained until such change of standard has been published throughout the Commonwealth.

1882, 263, § 4. 1884, 289, § 5.

State Board of Health shall report annually on Prosecutions and Expenditures.

SECTION 7. Said board shall annually report to the general court the number of prosecutions made under the provisions of sections sixteen to twenty-seven, inclusive, and an itemized account of the money expended in carrying out the provisions thereof.

1884, 289, § 2.

ACTS OF 1905, 220.

Penalty for selling Food or Medicine containing Wood Alcohol.

SECTION 2. Whoever, himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges or delivers, or has in his possession with intent to sell, exchange or deliver, any article of food or drink, or any drug intended for internal use, containing any wood alcohol, otherwise known as methyl alcohol, shall be punished by a fine of not less than two hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

PATENT OR PROPRIETARY MEDICINES OR FOODS.

ACTS OF 1906, 386.

SECTION 1. Upon every package, bottle or other receptacle holding any proprietary or patent medicine, or any proprietary or patent food preparation, which contains alcohol, morphine, codeine, opium, heroin, chloroform, cannibis indica, chloral hydrate, or acetanilid, or any derivative or preparation of any such substances, shall be marked or inscribed a statement on the label of the quantity or proportion of each of said substances contained therein. The size of type in which the names of the above substances shall be printed on the labels as above, shall not be smaller than eight point (brevier) caps: *provided,* that in case the size of the package will not permit the use of eight point cap type the size of the type may be reduced proportionately. The provisions of section nineteen of chapter seventy-five of the Revised Laws, so far as they are consistent herewith, shall apply to the manner and form in which such statements shall be marked or inscribed. [*In effect on and after March 1, 1908.*]

SECTION 2. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber or manufacturer residing in this Commonwealth, from whom he purchases such articles, to the effect that the same is not misbranded within the meaning of this act, designating it. Such guaranty, to afford protection,

shall contain the name and address of the party or parties making the sale of such articles to such dealer; and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of this act. [*In effect on and after March 1, 1908.*]

SECTION 3. It shall be unlawful for any person to sell, or to expose or offer for sale, or to give or exchange, any patent or proprietary medicine or article containing cocaine or any of its salts, or alpha or beta eucaine or any synthetic substitute of the aforesaid.

SECTION 4. It shall be unlawful for any person to sell, or to expose or offer for sale, or to give or exchange any cocaine or alpha or beta eucaine or any synthetic substitute of the aforesaid, or any preparation containing the same, or any salts or compounds thereof, except upon the written prescription of a physician, dentist or veterinary surgeon registered under the laws of the Commonwealth; the original of which prescription shall be retained by the druggist filling the same and shall not again be filled.

SECTION 5. The provisions of sections three and four shall not apply to sales at wholesale made to retail druggists or dental depots nor to sales made to physicians, dentists or regularly incorporated hospitals.

SECTION 6. Whoever manufactures, sells or offers for sale any medicine or food preparation in violation of the provisions of this act shall be punished by a fine of not less than five nor more than one hundred dollars. It shall be the duty of the state board of health to cause the prosecution of all persons violating the provisions of this act; but no prosecution shall be brought for the sale at retail, or for the gift or exchange of any patent or proprietary medicine or food preparation containing any drug or preparation the sale of which is prohibited or restricted as aforesaid, unless the said board has, prior to such sale, gift or exchange, given public notice in such trade journals or newspapers as it may select that the gift, exchange or sale at retail of the said medicine or food preparation would be contrary to law.

1907, 259.

ACTS OF 1907, 180.

Public Distribution of Harmful Drugs prohibited.

SECTION 1. No person shall distribute, deliver or give away in any public street or highway or from house to house or place to place, any bottle, box, envelope or package containing any liquid, medicine, pill, powder, tablet or other article which is composed of any drug, poison or other ingredient or substance which may be in any way injurious or harmful to any child or other person who may taste, eat, drink or otherwise use the same.

Penalty.

SECTION 2. Whoever violates the provisions of this act shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Sale of Poisons.

Revised Laws, 213.

Certain Poisons must bear Red Labels, and their Sale shall be recorded.

Section 2. Whoever sells arsenic (arsenious acid), atropia or any of its salts, chloral hydrate, chloroform, cotton root and its fluid extract, corrosive sublimate, cyanide of potassium, Donovan's solution, ergot and its fluid extract, Fowler's solution, laudanum, McMunn's elixir, morphia or any of its salts, oil of pennyroyal, oil of savin, oil of tansy, opium, Paris green, Parson's vermin exterminator, phosphorus, prussic acid, "rough on rats", strychnia or any of its salts, tartar emetic, tincture of aconite, tincture of belladonna, tincture of digitalis, tincture of nux vomica, tincture of veratrum viride, or carbolic acid, without the written prescription of a physician, shall affix to the bottle, box or wrapper containing the article sold a label of red paper upon which shall be printed in large black letters the name and place of business of the vendor and the words *Poison* and *Antidote,* and the label shall also contain the name of an antidote, if any, for the poison sold. He shall also keep a record of the name and quantity of the article sold and of the name and residence of the person or persons to whom it was delivered, which shall be made before the article is delivered and shall at all times be open to inspection by the officers of the district police and by the police authorities and officers of cities and towns; but no sale of cocaine or its salts shall be made except upon the prescription of a physician. Whoever neglects to affix such label to such bottle, box or wrapper before delivery thereof to the purchaser or whoever neglects to keep or refuses to show to said officers such record or whoever purchases any of said poisons and gives a false or fictitious name to the vendor shall be punished by a fine of not more than fifty dollars. The provisions of this section shall not apply to sales by wholesale dealers or manufacturing chemists to retail dealers, or to a general merchant who sells Paris green, London purple or other arsenical poisons in unbroken packages containing not less than one-quarter of a pound, for the sole purpose of destroying potato bugs or other insects upon plants, vines or trees, except that he shall record each sale and label each package sold, as above provided.

1857, 280.
G. S. 166, § 7.
P. S. 208, § 6.
1887, 38.
1888, 209.
1896, 397, § 20.
1898, 192.

Acts of 1905, 220.

Wood Alcohol must be labelled "Poison."

Section 1. Whoever, himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges or delivers any wood alcohol, otherwise known as methyl alcohol, shall affix to the vessel containing the same and shall deliver therewith a label bearing the words "Wood Alcohol, Poison", in black letters of uncondensed Gothic

type not less than one fourth of an inch in height. Whoever violates the provisions of this section shall pay a fine of not less than fifty dollars nor more than two hundred dollars.

MILK.

REVISED LAWS, 56.

Appointment of Milk Inspectors.

SECTION 51. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more inspectors of milk for their respective cities and towns. Each inspector shall be sworn before entering upon the performance of his official duties and shall publish a notice of his appointment for two weeks in a newspaper published in his city or town, if any; otherwise he shall post such notice in two or more public places in such city or town. He shall receive such compensation as the mayor and aldermen or selectmen may determine.

1859, 206, §§ 1, 3.
G. S. 49, § 148.
1864, 122, §§ 1, 2.
P. S. 57, §§ 1, 2.
1884, 310, § 3.
1885, 352, § 4.
1886, 318, § 1.

Duties and Powers of Inspectors.

SECTION 52. Such inspectors shall keep an office and shall record, in books kept for the purpose, the names and places of business of all persons engaged in the sale of milk within their city or town. They may, with the approval of the mayor or selectmen, employ collectors of samples of milk, who shall be sworn before entering upon their duties. The inspectors or collectors may enter all places in which milk is stored or kept for sale and all carriages used for the conveyance of milk, and may take therefrom samples for analysis. They shall, upon request made at the time such sample is taken, seal and deliver to the owner or person from whose possession the milk is taken a portion of each sample, and a receipt therefor shall be given to the inspector or collector. Inspectors shall cause such samples to be analyzed or otherwise satisfactorily tested, and shall record and preserve as evidence the results thereof; but no evidence of the result of such analysis or test shall be received if the inspector or collector on request, refuses or neglects to seal and deliver a portion of the sample taken as aforesaid to the owner or person from whose possession it is taken.

1859, 206, §§ 1, 2.
G. S. 49, § 149.
1860, 165, § 2.
1864, 122, § 2.
P. S. 57, § 2.
1884, 310, §§ 3, 4.
1885, 352, § 4.
1886, 318, §§ 1, 3.
11 Allen, 264.
132 Mass. 12.
141 Mass. 135.
143 Mass. 172, 418.
144 Mass. 132.
157 Mass. 460.

Vendors of Milk in Carriages, etc., must be licensed.

SECTION 53. Whoever, in cities and in towns in which an inspector of milk is appointed, conveys milk in carriages or otherwise for the purpose of selling it in such city or town shall annually, before the first day of June, be licensed by the inspector of milk of such city or town to sell

milk within the limits thereof, and shall pay to such inspector fifty cents to the use of the city or town. The inspector shall pay over monthly to the city or town treasurer all money collected by him. Licenses shall be issued only in the names of the owners of carriages or other vehicles. They shall, for the purposes of this chapter, be conclusive evidence of ownership and shall not be sold, assigned or transferred. Each license shall contain the number thereof, the name, residence, place of business, number of carriages or other vehicles used by the licensee and the name of every driver or other person employed by him in carrying or selling milk. Each licensee shall, before engaging in the sale of milk, cause his name, the number of his license and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector any change of driver or other person who may be employed by him occurring during the term of his license. Whoever, without being first so licensed, sells milk or exposes it for sale from carriages or other vehicles, or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall for a first offence be punished by a fine of not less than thirty nor more than one hundred dollars, for a second offence by a fine of not less than fifty nor more than three hundred dollars and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than thirty nor more than sixty days.

1859, 206, § 2. G. S. 49, § 151. 1864, 122, § 4. 1880, 209, § 1. P. S. 57, § 3.

Vendors of Milk in Stores must be registered.

SECTION 54. Every person, before selling milk or offering it for sale in a store, booth, stand or market-place in a city or in a town in which an inspector of milk is appointed, shall register in the books of such inspector his name and proposed place of sale, and shall pay to him fifty cents to the use of such city or town. Whoever neglects so to register shall be punished by a fine of not more than twenty dollars.

1864, 122, § 4. 1880, 209, § 2. P. S. 57, § 4. 1 Allen, 593. 2 Allen, 157.

Sale of Adulterated, Diseased or Skimmed Milk. Penalties.

SECTION 55. Whoever, himself or by his servant or agent, or as the servant or agent of another person, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver or exposes or offers for sale or exchange, adulterated milk or milk to which water or any foreign substance has been added, or milk produced from cows which have been fed on the refuse of distilleries, or from sick or diseased cows, or, as pure milk, milk from which the cream or a part thereof has been removed, and whoever sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent of milk solids exclusive of fat, shall for a first offence be punished by a fine of not less than fifty nor more than two hundred dollars, for a second

offence by a fine of not less than one hundred nor more than three hundred dollars and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than sixty nor more than ninety days.

1856, 222.
1859, 206, §§ 4, 5.
G. S. 49, § 151.
1860, 165, § 1.
1863, 140, § 2.
1864, 122, § 4.
1868, 263, § 1.
1869, 150, § 1.
1870, 311.
1872, 319, §§ 1-3.
1880, 209, §§ 3, 4.
P. S. 57, §§ 5, 6.
1885, 352, § 8.
1886, 318, § 2.
1900, 300, § 1.
9 Allen, 489.
10 Allen, 199.
11 Allen, 264.
103 Mass. 444.
107 Mass. 194.
130 Mass. 42.
132 Mass. 11.
139 Mass. 193.
140 Mass. 483.
141 Mass. 129.
143 Mass. 169, 418.
144 Mass. 357.
146 Mass. 38, 128, 512.
149 Mass. 9.
153 Mass. 159.
155 Mass. 442.
159 Mass. 8.
160 Mass. 533.
165 Mass. 38.

Definition of Milk not of Good Standard Quality.

SECTION 56. In prosecutions under the provisions of sections fifty-one to sixty-four, inclusive, milk which, upon analysis, is shown to contain in April, May, June, July, August and September less than twelve per cent of milk solids, or less than nine per cent of milk solids exclusive of fat, or less than three per cent of fat, and in the other months to contain less than thirteen per cent of milk solids, or less than nine and three-tenths per cent of milk solids exclusive of fat, or less than three and seven-tenths per cent of fat, shall not be considered milk of good standard quality.

1880, 209, § 7.
P. S. 57, § 9.
1885, 352, § 6.
1886, 318, § 2.
1896, 398, § 2.
1899, 223.
132 Mass. 11.
139 Mass. 193.
143 Mass. 418.
184 Mass. 207.
189 Mass. 342.

Sale of Milk not of Good Standard Quality. Penalties.

SECTION 57. Whoever, himself or by his servant or agent or as the servant or agent of another person, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver, milk which is not of good standard quality shall for a first offence be punished by a fine of not more than fifty dollars, for a second offence by a fine of not less than one hundred nor more than two hundred dollars, and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than sixty nor more than ninety days.

1880, 209, § 4. P. S, 57, § 6. 1886, 318, § 2. 1900, 300, § 2.

Skimmed Milk must be marked.

SECTION 58. Whoever, himself or by his agent, sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, milk from which the cream or a part thereof has been removed, not having the words "*skimmed milk*" distinctly marked upon a light ground in plain, dark, uncondensed gothic letters at least one inch in length in a conspicuous place upon every vessel, can or package from or in which such milk is, or is intended to be, sold, exchanged or delivered shall be punished as provided in section fifty-five. If such vessel, can or package is of the capacity of not more than two quarts, said words may be placed upon a detachable label or tag attached thereto and said letters may be less than one inch in length.

1880, 209, § 5. P. S. 57, § 7. 1885, 352, § 7. 1896, 398, § 1. 141 Mass. 129.

Condensed Milk must be marked.

SECTION 59. Whoever sells, or offers for sale or exchange, condensed milk or condensed skimmed milk in hermetically sealed cans without having such cans distinctly labelled with the name of the manufacturer of such milk, the brand under which it is made and the contents of the can; and whoever sells condensed milk from cans or packages not hermetically sealed without having such cans or packages branded or labelled with the name of the manufacturer, shall be punished as provided in section fifty-five.

1896, 264.

Penalty for using Counterfeit Seal or tampering with Sample.

SECTION 60. Whoever makes, causes to be made, uses or has in his possession, an imitation or counterfeit of a seal used by an inspector of milk, collector of samples or other officer engaged in the inspection of milk, and whoever changes or tampers with a sample taken or sealed as provided in section fifty-two, shall be punished by a fine of one hundred dollars and by imprisonment for not less than three nor more than six months.

1886, 318, § 4. 1896, 398, § 3.

Penalty for Connivance or Obstruction.

SECTION 61. An inspector of milk, or his servant or agent, who wilfully connives at or assists in a violation of the provisions of sections fifty-one to sixty-four, inclusive, or of section seventy, or whoever, except as provided in section forty-two, hinders, obstructs or interferes with an inspector of milk or his servant or agent in the performance of his duty, shall be punished by a fine of not less than one hundred nor more than three hundred dollars or by imprisonment for not less than thirty nor more than sixty days.

1880, 209, § 6. P. S. 57, § 8. 1884, 310, § 5. 141 Mass. 135.

Liability of Producer of Milk limited.

SECTION 62. A producer of milk shall not be liable to prosecution for the reason that the milk produced by him is not of good standard quality unless such milk was taken upon his premises or while in his possession or under his control by an inspector of milk, by a collector of samples of milk, or by an agent of the dairy bureau or of the state board of health, and a sealed sample thereof was given to him.

1894, 425. 165 Mass. 38.

Results of Analysis to be sent to Dealer.

SECTION 63. An officer of the state board of health or of the dairy bureau, an inspector of milk or collector of samples or other state, city or town officer who obtains a sample of milk for analysis shall, within ten

days after obtaining the result of the analysis, send it to the person from whom the sample was taken or to the person responsible for the condition of such milk.

1899, 169. 176 Mass. 292.

Inspectors must act on Information and Evidence.

SECTION 64. An inspector shall make a complaint for a violation of any of the provisions of sections fifty-one to sixty-nine, inclusive, upon the information of any person who lays before him satisfactory evidence by which to sustain such complaint.

1859, 206, § 1. 1868, 263, § 3. P. S. 57, § 10.
G. S. 49, § 149. 1869, 150, § 3. 141 Mass. 129.

ACTS OF 1906, 116.

Misuse of Milk Cans and Bottles prohibited.

SECTION 1. Whoever by himself or by his servant or agent or as the servant or agent of any other person, firm or corporation, having custody of a milk can, measure or other vessel used as a container for milk destined for sale, places or causes or permits to be placed therein any offal, swill, kerosene, vegetable matter or any article other than milk, skimmed milk, buttermilk, cream, or water or other agent used for cleansing said can, measure or other vessel, shall be punished by a fine of not more than ten dollars for each vessel so misused.

SECTION 2. Whoever by himself or by his servant or agent or as the servant or agent of any other person, firm or corporation, sends, ships, returns or delivers, or causes or permits to be sent, shipped, returned or delivered to any producer of milk any milk can, measure or other vessel used as a container for milk, containing any offal, swill, kerosene, vegetable matter, or any other offensive material, shall be punished by a fine of not more than ten dollars for every such vessel.

ACTS OF 1906, 116.

Milkmen may not use Cans, etc., not their Own.

SECTION 3. Every licensed milk dealer who, directly or indirectly, receives milk contained in receptacles which are the property of another person, firm or corporation, shall, before selling said milk, transfer it to other clean vessels bearing his name, or the name under which his business is conducted, and no other; and said milk shall not be sold by him except from or in said vessels.

SECTION 4. Whoever violates the provisions of the preceding section shall be punished by a fine of not more than ten dollars for each offence.

REVISED LAWS, 213.

Feeding of Garbage to Milch Cows prohibited.

SECTION 5. Whoever knowingly feeds or has in his possession with intent to feed to a milch cow any garbage, refuse or offal collected by a city or town, or by any person having authority from any city or town,

by contract or otherwise, shall be punished by imprisonment for not more than sixty days or by a fine of not more than one hundred dollars; and whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse or offal collected by a city of more than thirty thousand inhabitants, by contract or otherwise, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

1889, 326. 1895, 385.

Cream.

Acts of 1907, 216.

Standard established.

Whoever, himself or by his agent, or as the servant or agent of another person, sells, exposes for sale, or has in his custody or possession with intent to sell, cream containing less than fifteen per cent milk fat shall for a first offense be punished by a fine of not more than fifty dollars; for a second offense by a fine of not less than fifty nor more than one hundred dollars; and for a subsequent offense by a fine of not less than one hundred nor more than two hundred dollars.

Oleomargarine, Imitation Cheese and Renovated Butter.

Revised Laws, 56.

Definition of "Oleomargarine," "Butter" and "Cheese."

Section 35. For the purposes of sections thirty-six to forty-seven, inclusive, the word "oleomargarine" shall, in addition to its ordinary meaning, include "butterine", "imitation butter" and any article, substance or compound made in imitation or semblance of butter or as a substitute for butter and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, and for the purposes of sections thirty-seven, thirty-eight and forty-one to forty-seven, inclusive, the terms "butter" and "cheese" shall mean the products which are usually known by these names and are manufactured exclusively from milk or cream, with salt and rennet, and with or without coloring matter.

1881, 292, § 5. P. S. 56, § 21.

Oleomargarine to be marked.

Section 36. Whoever, himself or by his agent, sells, exposes for sale or has in his possession with intent to sell, oleomargarine shall have the word "*oleomargarine*" or "*butterine*" stamped, labelled or marked, so that said word cannot be easily defaced, upon the top, side and bottom of every tub, firkin, box or package containing any of said oleomargarine. Whoever, himself or by his agent, exposes or offers for sale oleomargarine not in the original package shall attach thereto in a conspicuous place a label bearing the words "*imitation butter*", or the word "*oleomarga-*

rine" or "*butterine*". In retail sales of oleomargarine not in the original package the seller shall attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*imitation butter*", or the word "*oleomargarine*" or "*butterine*". All said stamps, labels and marks shall be in printed letters in a straight line of plain, uncondensed gothic type, not less than one-half inch in length.

1878, 106, § 1. 1881, 292, § 1. P. S. 56, § 17. 1884, 310, § 1. 1885, 352, § 1. 1886, 317, § 1. 148 Mass. 172. 150 Mass. 327. 157 Mass. 392, 405, 407.

Imitation Cheese to be marked.

SECTION 37. Whoever, himself or by his agent, sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of cheese or as a substitute for cheese, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "*imitation cheese*" stamped, labelled or marked in printed letters of plain, uncondensed gothic type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of every cheese-cloth or band around the same, and upon the top and side of every tub, firkin, box or package containing any of said article, substance or compound. In retail sales of any of said article, substance or compound not in the original packages, the seller shall attach to each package so sold at retail, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*imitation cheese*", in printed letters of plain uncondensed gothic type, not less than one-half inch in length.

1881, 292, § 2. P. S. 56, § 18. 1885, 352, § 2.

Removal of Marks and Use of Words "Creamery," "Dairy," etc., on Packages of Oleomargarine and Imitation Cheese prohibited.

SECTION 38. Whoever sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of butter or cheese or as a substitute for butter or cheese, except as provided in the two preceding sections, and whoever, with intent to deceive, defaces, erases, cancels or removes any mark, stamp, brand, label or wrapper provided for in said sections, or in any manner shall falsely label, stamp or mark any box, tub, article or package marked, stamped or labelled as aforesaid, or whoever, himself or by his agent, sells, exposes for sale, or has in his possession with intent to sell, oleomargarine, contained in any box, tub, article or package, marked or labelled with the word "*dairy*", or the word "*creamery*", or the name of any breed of dairy cattle, shall for the first offence forfeit one hundred dollars, and for each subsequent offence two hundred dollars to the use of the city or town in which the offence was committed.

1878, 106, § 2. 1880, 199. 1881, 292, § 3. P. S. 56, § 19. 1886, 317, §§ 2, 3. 1894, 280, § 1.

Peddlers of Oleomargarine shall be licensed.

SECTION 39. Every person who conveys oleomargarine in carriages or otherwise, for the purpose of selling the same in any city or town, shall annually, in May, be licensed by an inspector of milk of such city or town to sell the same within the limits thereof, and shall pay therefor to such inspector fifty cents to the use of the city or town. The inspector shall pay over monthly to the treasurer of such city or town all money collected by him. In towns in which there is no inspector of milk, licenses shall be issued by the town clerk. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall be conclusive evidence of ownership. No license shall be sold, assigned or transferred. Each license shall be numbered and shall state the name, residence, place of business, number of carriages or other vehicles used, and the name and residence of every driver or other person engaged in carrying oleomargarine. Each licensee shall before engaging in the sale of oleomargarine cause his name, the number of his license and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale thereof, in gothic letters not less than one inch in length, and he shall report to the inspector any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed, sells oleomargarine, or exposes or offers it for sale from carriages or other vehicles or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall, for a first offence, be punished by a fine of not less than thirty nor more than one hundred dollars, and, for a second offence, by a fine of not less than fifty nor more than three hundred dollars.

1886, 317, § 4.

Storekeepers dealing in Oleomargarine shall be registered.

SECTION 40. Every person, before selling or offering for sale oleomargarine in a store, booth, stand or market-place in a city or in a town in which an inspector of milk is appointed, shall annually, in May, register in the books of such inspector, or if there is no inspector then in the books of the town clerk, his name and proposed place of sale, and shall pay fifty cents for the registering to the use of such city or town. Whoever neglects so to register shall be punished by a fine of not more than twenty dollars.

1886, 317, § 5.

Manufacture, Possession or Sale of Any Article made in Imitation of Yellow Butter prohibited.

SECTION 41. Whoever, himself or by his agent or servant, renders, manufactures, sells, offers for sale, exposes for sale, takes orders for the future delivery of, has in his possession, keeps in storage, distributes, delivers, transfers or conveys with intent to sell, within the Commonwealth,

any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than one year; but the provisions of this section shall not prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will inform the consumer of its real character, free from any coloration or ingredient which causes it to look like butter.

1891, 58, §§ 1, 2. 156 Mass. 236. 163 Mass. 169.
1894, 280, § 6. 158 Mass. 172. 176 Mass. 132.
1896, 377, § 1. 162 Mass. 520. 155 U. S. 461, 462.

Powers and Duties of Milk Inspectors in enforcing Laws relative to Oleomargarine, etc.

SECTION 42. Inspectors of milk shall, if they have reasonable cause to believe that the provisions of sections thirty-six to forty-seven, inclusive, have been violated, and on the information of any person who lays before them satisfactory evidence by which to sustain such complaints, institute complaints for violations of said sections. They may enter all places in which butter, cheese or imitations thereof are stored or kept for sale, and shall take samples of suspected butter, cheese or imitations thereof and cause them to be analyzed or otherwise satisfactorily tested, and shall record and preserve the result of such analysis or test as evidence. Before commencing the analysis of any sample in proceedings under sections thirty-six, thirty-seven and thirty-eight, the analyst shall reserve and seal a portion of the sample, and, upon a complaint against any person, such reserved portion of the sample alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the expenses of such prosecutions. Whoever hinders, obstructs or in any way interferes with an inspector or his agent in the performance of his duty under the provisions of this section shall be punished by a fine of fifty dollars for the first offence and of one hundred dollars for each subsequent offence.

1881, 292, § 4. 1884, 310, §§ 2, 4. 132 Mass. 12. 177 Mass. 67.
P. S. 56, § 20. 1891, 58, § 3. 176 Mass. 132.

Sale of Oleomargarine when Butter is called for prohibited.

SECTION 43. Whoever, himself or by his agent, sells or offers for sale to any person who asks, sends or inquires for butter, any oleomargarine, shall be punished by a fine of one hundred dollars for each offence.

1891, 412, § 1. 1894, 280, § 2. 156 Mass. 236. 155 U. S. 461.

Marks required on Tubs, etc.

SECTION 44. Whoever exposes for sale oleomargarine which is not marked and distinguished by all the marks, words and stamps required by law, and does not have upon the exposed contents of every open tub,

package or parcel thereof a conspicuous placard with the word "*oleomargarine*" printed thereon in plain, uncondensed gothic letters, not less than one inch long, shall be punished by a fine of one hundred dollars for each offence.

1891, 412, § 2. 1894, 280, § 3. 148 Mass. 172. 150 Mass. 327.

Placard required in Store where Oleomargarine is sold.

SECTION 45. Whoever sells oleomargarine from any dwelling, store, office or public mart which does not have conspicuously posted thereon the placard or sign, in letters not less than four inches in length, "*oleomargarine sold here*", or "*butterine sold here*", approved by the dairy bureau, shall be punished by a fine of one hundred dollars for the first offence and one hundred dollars for each day's neglect after conviction for the first offence.

1891, 412, § 3. 156 Mass. 236, 239.

Placard required on Cart from which Oleomargarine is peddled.

SECTION 46. Whoever, himself or by his agent, peddles, sells, solicits orders for the future delivery of or delivers from any cart, wagon or other vehicle, oleomargarine, not having on both sides of said cart, wagon or other vehicle the placard in uncondensed gothic letters, not less than three inches in length, "*licensed to sell oleomargarine*" shall be punished by a fine of one hundred dollars or by imprisonment for thirty days for each offence.

1891, 412, § 4. 1894, 280, § 4. 158 Mass. 218. 162 Mass. 506.

Persons served with Oleomargarine in Restaurants shall be notified.

SECTION 47. Whoever furnishes oleomargarine or causes it to be furnished in any hotel, restaurant or boarding house or at any lunch counter, to a guest or patron thereof, instead of butter, without notifying said guest or patron that the substance so furnished is not butter shall be punished by a fine of not less than ten nor more than fifty dollars for each offence.

1891, 412, § 5. 1896, 377, § 2. 159 Mass. 113.

Disposition of Fines.

SECTION 50. All fines recovered under the provisions of sections forty-three, forty-four, forty-five, forty-six and forty-seven shall be payable to the Commonwealth.

1891, 412, § 12.

Renovated Butter to be marked.

SECTION 48. Whoever, himself or by his agent, or as the servant or agent of another person, sells, exposes for sale or has in his custody or possession with intent to sell, any article or compound which is produced by taking original packing stock or other butter, or both, melting the same, so that the butter fat can be drawn off, mixing the said butter

fat with skimmed milk, or milk, or cream, or other milk product, and rechurning the said mixture, or by any similar process, and is commonly known as process butter, shall have the words "*renovated butter*" conspicuously stamped, labelled or marked, in a straight line in printed letters, not less than one-half inch in length, of plain, uncondensed gothic type, so that said words cannot be easily defaced, upon the top, side and bottom of every tub, firkin, box or package containing said article or compound. The seller at retail of said article or compound, which is not in the original package, shall himself or by his agent, attach to each package so sold and deliver therewith to the purchaser a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*renovated butter*" in printed letters not less than one-half inch in length in a straight line of plain uncondensed gothic type. Whoever violates any provision of this section shall for a first offence be punished by a fine of not less than twenty-five nor more than one hundred dollars, for a second offence by a fine of not less than one hundred nor more than three hundred dollars, and for a subsequent offence by a fine of five hundred dollars or by imprisonment for not less than sixty nor more than ninety days.

1899, 340. 1903, 361.

LARD.

REVISED LAWS, 56.

Wrappers of Adulterated Lard to be marked, and the Words "Pure," "Refined" and "Family" may not be used.

SECTION 49. No person shall sell, deliver, prepare, put up, expose or offer for sale any lard, or any article intended for use as lard, which contains any ingredient except the pure fat of swine, in any tierce, bucket, pail or other vessel or wrapper, or under any label, bearing the words "*pure*", "*refined*", "*family*", or either of them, alone or in combination with other words; but every vessel, wrapper or label in or under which such article is sold, delivered, prepared, put up or exposed for sale by him shall bear on the top or outer side thereof, in letters not less than one-half inch in length and plainly exposed to view, the words "*compound lard*". Whoever violates the provisions of this section shall be punished by a fine of not more than fifty dollars for the first offence or of not more than one hundred dollars for a subsequent offence.

1887, 449.

MEAT AND PROVISIONS.

REVISED LAWS, 56.

Boards of Health may inspect All Meat, Fish, Vegetables, and Other Provisions.

SECTION 70. Boards of health of cities and towns may inspect the carcasses of all slaughtered animals and all meat, fish, vegetables, produce, fruit or provisions of any kind found in their cities or towns, and for such purpose may enter any building, enclosure or other place in which

such carcasses or articles are stored, kept or exposed for sale. If, on such inspection, it is found that such carcasses or articles are tainted, diseased, corrupted, decayed, unwholesome or, from any cause, unfit for food, the board of health shall seize the same and cause it or them to be destroyed forthwith or disposed of otherwise than for food. All money received by the board of health for property disposed of as aforesaid shall, after deducting the expenses of said seizure, be paid to the owner of such property. If the board of health seizes or condemns any such carcass or meat for the reason that it is affected with a contagious disease, it shall immediately give notice to the chief of the cattle bureau of the state board of agriculture of the name of the owner or person in whose possession it was found, the nature of the disease and the disposition made of said meat or carcass.

1872, 231, 2. 1875, 29, § 2. 1876, 180, § 2. P. S. 58, § 2. 1892, 195, § 2. 1894, 491, §§ 10, 11, 13. 1899, 408, § 20.

Inspection of Veal. Seizure.

SECTION 71. The board of health may inspect all veal found, offered or exposed for sale or kept with the intent to sell in its city or town and if, in its opinion, said veal is that of a calf less than four weeks old when killed, the board shall seize and destroy or dispose of it as provided in the preceding section, subject, however, to the provisions thereof relative to the disposal of money.

1866, 253, § 1. 1872, 231, § 3. 1875, 29, § 3. 1876, 180, § 3. P. S. 58, § 3; 208, § 2. 1894, 491, § 12. 1899, 408, § 20.

Penalty for obstructing Inspector, etc.

SECTION 72. Whoever prevents, obstructs or interferes with the board of health in the performance of its duties as provided herein, or hinders, obstructs or interferes with any inspection or examination by it, or whoever secretes or removes any carcass, meat, fish, vegetables, fruit or provisions of any kind, for the purpose of preventing the same from being inspected or examined under the provisions of sections seventy to seventy-six, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

P. S. 58, § 2. 1894, 491, § 13.

Sale of Unwholesome Food. Penalties.

SECTION 73. Whoever knowingly sells, offers or exposes for sale or has in his possession with intent to sell for food any diseased animal or any product thereof, or any tainted, diseased, corrupted, decayed or unwholesome carcass, meat, fish, vegetables, produce, fruit or provisions of any kind shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment; and whoever knowingly sells any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making their condition fully known to the buyer shall be pun-

ished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

1784, 50. R. S. 131, § 1. G. S. 166, § 1. 1872, 231, § 5. 1875, 29, § 5. 1876, 180, § 5. P. S. 58, § 5; 208, § 1. 1894, 491, § 15. 1 Pick. 524. 11 Pick. 484. 12 Cush. 499.

ACTS OF 1907, 293.

Section 73 not to apply in Certain Cases.

SECTION 1. The provisions of section seventy-three of chapter fifty-six of the Revised Laws shall not apply to persons, firms or corporations engaged in the wholesale fruit and vegetable business, who, at the time of sale of fruit or vegetables in the original package, make known to the purchaser the partly decayed condition of the articles in said packages.

REVISED LAWS, 56.

Sale of Immature Veal forbidden.

SECTION 74. Whoever kills or causes to be killed or knowingly sells, offers or exposes for sale or has in his possession with intent to sell for food the veal of a calf killed when less than four weeks old shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

1855, 239. G. S. 106, § 2. 1866, 253, § 1. 1872, 231, § 5. 1875, 29, § 5. 1876, 180, § 5. P. S. 208, § 2. 1894, 491, § 15. 97 Mass. 567.

Board of Health may cause Publication of Certain Facts.

SECTION 75. The board of health for the city or town in which any animal or property has been condemned under the provisions of sections seventy and seventy-one may cause a description of the place in which such condemned property was found, the name of every person in whose possession it was found and the name of every person convicted of an offence under the provisions of the two preceding sections to be published in two newspapers published in the county in which such property was found.

1872, 231, § 6. 1875, 29, § 6. 1876, 180, § 6. P. S. 58, § 6. 1894, 491, § 16.

REVISED LAWS, 213.

Penalty for Use of Injurious Colors in Sausages.

SECTION 9. Whoever, in the manufacture of sausages, uses any coloring matter injurious to health shall be punished by a fine of not more than one hundred dollars for each offence.

1898, 193.

POULTRY.

REVISED LAWS, 56.

Sale of Poultry regulated.

SECTION 76. Whoever knowingly sells or exposes for sale poultry, unless it is alive, before it has been properly dressed by the removal of the crop and entrails if they contain food, shall be punished by a fine of not

less than five nor more than fifty dollars for each offence. Boards of health shall cause the provisions of this section to be enforced in their respective cities and towns.

1883, 230. 1887, 94.

Fish.

Revised Laws, 56.

Penalty for selling Tainted Fish for Food.

Section 25. Whoever sells within this Commonwealth or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

1869, 120, § 3. R. S. 28, § 90. G. S. 49, § 57. P. S. 56, § 45.

Vinegar.

Revised Laws, 57.

Penalty for selling Adulterated Vinegar.

Section 66. Whoever, himself or by his servant or agent or as the servant or agent of another person, sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange, or deliver or exposes or offers for sale or exchange adulterated vinegar, or whoever labels, brands, or sells, as cider vinegar or as apple vinegar, any vinegar not the legitimate product of pure apple juice or not made exclusively from apple cider, shall be punished by a fine of not more than one hundred dollars.

1880, 113, § 1. P. S. 60, § 69. 1883, 257, § 1. 1884, 307, §§ 1, 4.

Qualities of Vinegar defined.

Section 67. Vinegar shall contain no artificial coloring matter, and shall have an acidity equal to the presence of not less than four and one-half per cent by weight of absolute acetic acid. Cider vinegar shall, in addition, contain not less than two per cent by weight of cider vinegar solids upon full evaporation over boiling water. If vinegar contains any artificial coloring matter, or less than the required amount of acidity, or if cider vinegar contains less than the required amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated.

1884, 307, § 2. 1885, 150.

Penalty for selling Poisonous Vinegar.

Section 68. Every person who manufactures for sale, or offers or exposes for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredient injurious to health shall for each such offence be punished by a fine of not less than one hundred dollars.

1880, 113, § 2. P. S. 60, § 70.

Enforcement of Law.

SECTION 69. Inspectors of milk shall cause the provisions of the three preceding sections to be enforced.

1880, 113, § 2. P. S. 60, § 71. 1883, 257, § 2. 1884, 307, § 3.

CHOCOLATE.

REVISED LAWS, 57.

Chocolate, how to be stamped.

SECTION 8. Chocolate in cakes shall be made in pans in which shall be stamped the name of the manufacturer, the town in which he resides, the quality of the chocolate in figures, "No. 1", "No. 2", "No. 3", as the case may be, and the letters MASS.

1802, 133. 1803, 54, § 1. R. S. 28, § 60. G. S. 49, § 24. P. S. 60, § 8.

Chocolate, Ingredients of. Boxes, how branded.

SECTION 9. Quality number one shall be made of cocoa of the first quality and quality number two of cocoa of the second quality, and both shall be free from adulteration; quality number three may be made of the inferior kinds and qualities of cocoa. Each box containing chocolate shall be branded on the end thereof with the word "*chocolate*", the name of the manufacturer of the chocolate, the town in which it was manufactured and the quality, as described and directed in the preceding section for the pans.

1802, 133. 1803, 54, § 2. R. S. 28, § 61. G. S. 49, § 25. P. S. 60, § 9.

Chocolate, Seizure of.

SECTION 10. If chocolate manufactured in this Commonwealth is offered for sale or found and is not of one of the qualities described in the two preceding sections or marked as therein directed, it may be seized and libelled.

1802, 133. 1803, 54, §§ 3, 4. R. S. 28, § 62. G. S. 49, § 26. P. S. 60, § 10.

ADULTERATED LIQUOR.

REVISED LAWS, 213.

Adulteration of Liquor used for Drink.

SECTION 1. Whoever, for the purpose of sale, adulterates any liquor used or intended for drink with Indian cockle, vitriol, grains of paradise, opium, alum, cochineal, capsicum, copperas, laurel water, logwood, Brazil wood, sugar of lead or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison for not more than three years; and the articles so adulterated shall be forfeited.

1855, 356. G. S. 166, § 4. P. S. 208, § 4.

Baking Powders.

Acts of 1902, 540.

Baking Powders shall be labelled, showing Ingredients.

Section 1. Whoever manufactures for sale within this state, or offers or exposes for sale or sells any baking powder or mixture or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound, a label distinctly printed in brevier gothic capital letters, in the English language, containing the name and residence of the manufacturer and the ingredients of the baking powder, mixture or compound.

Penalty.

Section 2. Whoever violates any provision of this act shall be punished by a fine of not less than ten nor more than one hundred dollars for each offence.

Miscellaneous.

Revised Laws, 213.

Sale of Cigarettes or Tobacco to Minors.

Section 3. Whoever sells a cigarette to a person under eighteen years of age, or whoever sells snuff or tobacco in any of its forms to a person under sixteen years of age, or, not being his parent or guardian, gives a cigarette to a person under eighteen years of age, or gives snuff or tobacco in any of its forms to a person under sixteen years of age, shall be punished by a fine of not more than fifty dollars.

1886, 72. 1901, 373.

Sale of Candy containing Alcohol.

Section 4. Whoever sells to a person under sixteen years of age any candy or other article enclosing liquid or syrup containing more than one per cent of alcohol shall be punished by a fine of not less than fifty nor more than one hundred dollars.

1891, 333.

Sale of Toys or Candy containing Arsenic.

Section 6. Whoever himself or by his agent or servant, or as the agent or servant of another person, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, any toys or confectionery, containing or coated wholly or in part with arsenic, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

1891, 374, § 1.

Samples of Paper, Fabrics, etc., shall be furnished.

SECTION 7. Whoever offers or exposes for sale or exchange any paper, fabric or other article shall furnish a sample thereof sufficient for the purpose of ascertaining by analysis the existence of arsenic therein, if such sample can be obtained without damage to the remaining portion, to any inspector, chemist or other agent or officer of the state board of health who applies therefor and tenders the value thereof; and for a violation of the provisions of this section shall be punished as provided in the preceding section.

1891, 374, § 3.

Sale of Fabrics or Paper containing Arsenic.

SECTION 8. Whoever himself or by his agent or servant manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, any woven fabric or paper containing arsenic in any form, or any article of dress or household use composed wholly or in part of such woven fabric or paper, shall be punished by a fine of not less than fifty nor more than two hundred dollars; but the provisions of this section shall not apply to articles intended for the destruction of insects, having the word "*Poison*" plainly printed in uncondensed gothic letters not less than one inch long on both sides of each sheet and square foot of the fabric, or to dress goods or articles of dress containing not more than one one-hundredth grain, or to other materials or articles containing not more than one-tenth grain of arsenic for each square yard of the material. The state board of health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists and adopt such measures as are necessary to enforce the provisions of this section.

1900, 325. 1901, 188.

RETURN AND REGISTRY OF BIRTHS, MARRIAGES AND DEATHS.

REVISED LAWS, 29.

Facts to be recorded by City and Town Clerks.

SECTION 1. Each city and town clerk shall receive or obtain and record in separate columns the following facts relative to the births, marriages and deaths in his city or town: —

In the record of births, the date of the record, the date of birth, the place of birth, the name of the child, the sex and color of the child, the names and places of birth of the parents, including the maiden name of the mother, the occupation of the father, and the residence of the parents. In the record of the birth of an illegitimate child the name of, and other facts relating to, the father shall not be recorded except at the request in writing of both father and mother. The term "illegitimate" shall not

be used in the record of a birth unless the illegitimacy has been legally determined, or has been admitted by the sworn statement of both the father and mother.

In the record of marriages, the date of the record, the date of the marriage, the place of the marriage, the name, residence and official station of the person by whom it was solemnized, the names and places of birth of the parties married, the residence of each, the age and color of each, the number of the marriage (as the first or second) and if previously married, whether widowed or divorced, the occupation of each and the names of their parents, and the maiden names of the mothers. If the woman is a widow or divorced, her maiden name shall also be given.

In the record of deaths, the date of the record, the date of the death, the name of the deceased, the sex, the color, the condition (whether single, widowed, married or divorced), the supposed age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the maiden name of the mother, the disease or cause of death, the place of burial, the name of the cemetery, if any, and if the deceased was a married or divorced woman or a widow, her maiden name and the name of her husband. The word "residence", as used in this section, shall be held to include the name of the street and the number, if any, of the house on the street.

A. C. 43.	1695–6, 2.	1844, 159, § 1.	P. S. 32, § 1.	1897, 444, § 1.
C. L. 130, § 2.	1795, 69, § 1.	1849, 202, § 1.	1887, 202, § 5.	24 Pick. 127.
1692–3, 48.	R. S. 15, § 46.	G. S. 21, § 1.	1890, 402.	

Separate Record and Indexes.

SECTION 2. Births, marriages and deaths shall be recorded separately, separate indexes thereof shall be kept and each entry shall be numbered in its order. All returns of births, marriages and deaths shall be preserved by the city or town clerk and conveniently arranged for examination.

1887, 202, § 2. 1897, 444, §§ 1, 2, 16.

Returns of Births Monthly.

SECTION 3. Physicians and midwives shall, on or before the fifth day of each month, report to the clerk of each city or town a correct list of all children born therein during the preceding month at whose birth they were present, stating the date and place of each birth, the name, if any, of the child, its sex and color, and the name, place of birth and residence of the parents, the maiden name of the mother, and the occupation of the father. If the child is illegitimate the name of, and other facts relating to, the father shall not be stated, except at the request in writing of both father and mother, filed with the return. The fee of the physician or midwife shall be twenty-five cents for each birth so reported, which shall be paid by the city or town where the report is made, upon presentation to the city or town treasurer of a certificate from the city or town clerk, stating that said births have been properly reported to

him. A physician or midwife who neglects to report such list on or before the fifteenth day of the month shall for each offence forfeit not more than twenty-five dollars.

1865, 96. 1880, 33, §§ 1, 3. P. S. 32, §§ 7, 9. 1883, 158, § 1. 1889, 288. 1897, 444, § 3.

Information as to Births required.

SECTION 4. A member or servant of a family in which a child is born, who has knowledge of the facts required for record relative to such birth, shall furnish the same upon request of the clerk of the city or town in which such child was born or its parents reside, or of any person authorized by him. Such member or servant of a family who refuses to furnish such facts shall for each offence forfeit not more than ten dollars.

1897, 444, § 4.

Clerks to obtain Facts as to Births.

SECTION 5. The clerk of each city and town shall annually in January ascertain the facts required for record by section one relative to all children born therein in the preceding year.

1897, 444, § 5.

Notice of Births and Deaths.

SECTION 6. Parents, within forty days after the birth of a child, and every householder, within forty days after a birth in his house, shall cause notice thereof to be given to the clerk of the city or town in which such child is born. Every householder in whose house a death occurs and the oldest next of kin of a deceased person in the city or town in which the death occurs shall, within five days thereafter, cause notice thereof to be given to the board of health, or, if the selectmen constitute such board, to the town clerk. The keeper, superintendent or person in charge of a workhouse, house of correction, prison, reformatory, hospital, almshouse or other institution, public or private, which receives inmates from within or without the limits of the city or town in which it is located shall, when a person is received, obtain a record of all the facts which would be required for record in the event of the death of such person, and shall, on or before the fifth day of each month, give notice to the city or town clerk of every birth and death among the persons under his charge during the preceding month. The facts required for record by section one shall, so far as known or obtainable, be included in every notice given under the provisions of this section.

C. L. 130, § 2. 1692-3, 48. 1795, 69, § 2. R. S. 15, § 47. G. S. 21, § 2. P. S. 32, § 2. 1897, 444, § 6.

Master to report Births and Deaths on Vessel.

SECTION 7. The master or other commanding officer of a vessel shall give notice, with the facts required for record, of every birth or death happening among the persons under his charge. The notice of a birth

shall be given to the clerk, and a notice of a death shall be given to the board of health or, if the selectmen constitute such board, to the clerk of the city or town at which his vessel first arrives after such birth or death.

1692-3, 48. R. S. 15, § 47. P. S. 32, § 2.
1795, 69, § 2. G. S. 21, § 2. 1897, 444, § 7.

Penalty for Neglect to report.

SECTION 8. A parent, keeper, superintendent or other person who is required by section six to give or cause to be given notice of a birth or death, who neglects so to do for ten days after the time limited therefor, and the master or commanding officer of a vessel who neglects so to do for ten days after the arrival of his vessel at the place where notice is to be given, shall forfeit not more than five dollars for each offence.

1795, 69, § 2. G. S. 21, § 2. 1897, 444, § 8.
R. S. 15, § 47. P. S. 32, § 2.

Deficiencies in Record may be supplied; Clerical Errors corrected.

SECTION 9. The clerk of a city or town may enter upon the record relating to a person born therein any information obtained in writing by the canvass required by section five, or by his own efforts, which is needed to supply deficiencies in said records, but he shall make no changes in facts already recorded except as provided in section fourteen or except to correct errors in copying from certificates or returns on file in his office. If an error in copying is corrected a statement that the correction is made to correct an error in copying shall be entered upon the record over the signature of the clerk.

1897, 444, § 9.

Physician to give Death Certificate.

SECTION 10. A physician shall forthwith, after the death of a person whom he has attended during his last illness, at the request of an undertaker or other authorized person or of any member of the family of the deceased, furnish for registration a certificate, stating to the best of his knowledge and belief the name of the deceased, his supposed age, the disease of which he died, the duration of his last illness, and the date of his death. A physician who has attended at the birth of a child dying immediately thereafter, or a physician or midwife who has attended at the birth of a child born dead, shall forthwith furnish for registration a certificate, stating that to the best of his or her knowledge and belief such child either died immediately after birth or was born dead. Both the birth and death of such child shall be recorded and, if it was born dead, the word "stillborn", shall be entered in both the record of birth and death. A physician or midwife who neglects or refuses to make such certificate or who makes a false statement therein shall forfeit not more than fifty dollars.

G. S. 21, § 3. P. S. 32, § 3. 1888, 63, 306, § 1. 1893, 263, § 1. 1897, 444, § 10.

Physician to state Causes of Death of Soldier or Sailor.

SECTION 11. A physician who furnishes a certificate as required by the preceding section shall, if the deceased was a soldier or a sailor who served in the war of the rebellion, give both the primary and the secondary or immediate cause of death as nearly as he can state the same, and for neglect thereof shall forfeit ten dollars.

1889, 224. 1897, 444, § 11.

Undertakers to make Returns, etc.

SECTION 12. Every undertaker or other person who has charge of a funeral shall forthwith obtain the physician's certificate required by section ten, enter thereon the facts relative to the deceased which are required by section one to be recorded, and return it to the board of health or its agent, unless it is composed of the selectmen, and in such case, to the clerk of the city or town in which the death occurred. The person making such return shall receive from the city or town a fee of twenty-five cents. The board of health shall transmit such certificate to the city or town clerk.

1844, 159, § 4. G. S. 21, § 4. 1873, 202. 1897, 444, § 12.
1849, 202, § 3. 1872, 275, § 1. P. S. 32, § 4.

Copies of Records of Births and Deaths of Non-resident Parents or Decedents.

SECTION 13. The clerk of each city and town shall forthwith make certified copies of the records of all births and deaths recorded during the previous month, if the parents of the child born or the deceased were residents of any other city or town in this Commonwealth or in any other state at the time of said birth or death, and transmit them to the clerk of the city or town of which such parents or deceased person were resident at the time of said birth or death, stating, if practicable, the name of the street and the number of the house, if any, where such parents or deceased person so resided; and the clerk of a city or town in this Commonwealth so receiving such certified copies, or certified copies of births, marriages or deaths, from the clerk of a city or town without the Commonwealth, shall record the same.

1889, 208. 1897, 444, § 13.

Correction of Errors in Record.

SECTION 14. If the record relating to a birth, marriage or death does not contain all the required facts, or if it is alleged that the facts are not correctly stated therein, the city or town clerk shall receive an affidavit containing the facts required for record, if made by a person who was required by law to furnish the information for the original record, or, at the discretion of the city or town clerk, by one or more credible persons having knowledge of the case. He shall file such affidavit and record it in a separate book to be kept for that purpose, with the name and residence of the deponent and the date of such record, and shall

thereupon draw a line through the incorrect statements without erasing them, shall enter upon the original record the facts required to amend the record and forthwith, if a copy of the record has been sent to the secretary of the Commonwealth, shall forward to the secretary a certified copy of the corrected record upon blanks to be provided by him and he shall thereupon amend the record in his office and state in the margin thereof his authority therefor. Reference to the record of the affidavit shall be made by the clerk on the margin of the original record. If the clerk furnishes a copy of such record, he shall certify to the facts contained therein as amended, and shall state in addition that the certificate is issued under the provisions of this section, a copy of which shall be printed on every such certificate. Such affidavit, or a certified copy of the record of any other city or town or of a written statement made at the time by any person since deceased who was required by law to furnish evidence thereof, may, at the discretion of the clerk, be made the basis for the record of a birth, marriage or death not previously recorded, and such copy of record may also be made the basis for completing the record of a birth, marriage or death which does not contain all the required facts.

1892, 305, § 1. 1894, 402. 1897, 444, § 14.

Penalty for False Return.

SECTION 15. Whoever wilfully makes a false return relative to a birth, marriage or death shall forfeit not more than fifty dollars.

1897, 444, § 15.

Clerks to provide Blanks for Returns of Births.

SECTION 16. Each city and town clerk shall annually give public notice that he will furnish blanks for returns of births to parents, householders, physicians and midwives who apply therefor.

1880, 33, § 2. P. S. 32, § 8. 1897, 444, § 17.

Secretary to provide Blanks and Forms.

SECTION 17. The secretary of the Commonwealth shall, at the expense of the Commonwealth, prepare and furnish to the clerks and boards of health of cities and towns, and to the superintendent of the state hospital, record books, books for indexes thereto, forms for returns, on paper of uniform size, and any necessary instructions and explanations. City and town clerks shall distribute the blank forms as the secretary shall direct. A city or town may provide such books and forms if they conform to those prepared by the secretary.

1842, 95, § 2. 1849, 202, § 5. P. S. 32, § 14. 1900, 333.
1844, 159, §§ 6, 7. G. S. 21, § 9. 1897, 444, § 18.

Copies of Records to be sent to Secretary. Death Returns monthly.

SECTION 18. The clerk of each town and of each city containing less than thirty thousand inhabitants shall annually, on or before the first day of March, the clerks of cities containing more than thirty thousand

and less than one hundred thousand inhabitants, on or before the first day of April, and the clerks of cities containing one hundred thousand inhabitants or more, on or before the first day of May, transmit to the secretary of the Commonwealth certified copies of the records of births and marriages recorded therein during the preceding calendar year, with certified copies, upon blanks provided by the secretary, of all such records and corrections in records of births and marriages as may not have been previously returned. The clerk of each city and town shall, on or before the tenth day of every month, transmit to the secretary of the Commonwealth, upon blanks to be furnished by him, certified copies of the returns of deaths which have occurred in such city or town during the preceding month. In case no deaths have occurred during such preceding month, the fact shall be certified by the city or town clerk within ten days after the close of such month.

1842, 95, § 1. 1844, 159, § 1. 1849, 202, § 5. G. S. 21, § 5. 1875, 21. P. S. 32, § 10. 1894, 206. 1897, 444, § 19. 1901, 167. 1903, 305. 1906, 415.

Copies to be legibly written.

SECTION 19. The secretary of the Commonwealth shall require all copies which are transmitted under the provisions of the preceding section to be written in a fair and legible hand, and a city or town clerk who neglects or refuses to make or cause to be made fair and legible copies as required shall forfeit not less than twenty nor more than one hundred dollars, to the use of the Commonwealth.

1897, 444, § 20.

Clerk's Record to be Prima Facie Evidence.

SECTION 20. The record of the city or town clerk relative to a birth, marriage or death shall be prima facie evidence of the facts recorded. A certificate thereof, signed by the city or town clerk or assistant clerk, shall be admissible as evidence of such record.

R. S. 75, § 25. G. S. 21, § 6. P. S. 32, § 11. 1897, 444, § 21. 10 Allen, 164. 122 Mass. 58. 133 Mass. 247. 141 Mass. 479. 142 Mass. 466. 163 Mass. 453.

Superintendent of State Hospital to make Records and Returns.

SECTION 21. The superintendent of the state hospital shall obtain, record and make return of the facts relative to the births and deaths in said hospital in the same manner as town clerks. The clerk of the town in which such hospital is located shall, relative to the births and deaths therein, be exempt from the duties otherwise required of him by this chapter.

1855, 366. G. S. 21, § 8. P. S. 32, § 13. 1897, 444, § 22.

Secretary to bind Copies. Report.

SECTION 22. The secretary shall cause the copies received by him for each year to be bound, with indexes thereto. He shall tabulate the subject matter and make report thereof annually to the general court.

1842, 95, § 2. 1844, 159, § 7. 1849, 202, § 5. G. S. 21, § 10. P. S. 32, § 15. 1897, 444, § 23.

Registrar in Certain Cities and Towns.

SECTION 23. Any city, except Boston, and any town containing more than ten thousand inhabitants, may choose or provide for the appointment of a person other than the clerk to be registrar. In Boston, the mayor with the approval of the board of aldermen shall appoint a registrar under the provisions of chapter three hundred and fourteen of the acts of the year eighteen hundred and ninety-two. The returns and notices required to be made by, and given to, clerks shall be made and given to such registrars, who shall be sworn and to whom all the provisions of this chapter relative to clerks shall apply.

1849, 202, § 1. G. S. 21, § 11. P. S. 32, § 16. 1892, 314. 1897, 444, § 24.

Proceedings on Refusal to report.

SECTION 24. The city or town clerk shall give written notice of the requirements of this chapter to any person who neglects to comply therewith, and upon the continuance of such neglect for one month shall notify the agent or attorney duly appointed by the city or town to sue in its corporate capacity, or, if there is no such agent or attorney, the district attorney of his district, who shall cause a prosecution for the penalty or forfeiture therefor to be instituted.

1897, 444, §§ 25, 26.

Omission of Name of Illegitimate, etc., Child.

SECTION 25. In any statement of births and deaths printed by a city or town the name of an illegitimate child or of its parents or of the parents of a stillborn child shall not be printed, but the word "illegitimate" or "stillborn" shall be used in place thereof. A city or town which violates the provisions of this section shall forfeit to the mother of such child not more than one hundred dollars.

1897, 444, § 27.

Disposition of Forfeitures.

SECTION 26. All forfeitures recovered under the provisions of this chapter shall, except as provided in sections nineteen and twenty-five, accrue to the benefit of the city or town in which the required return should have been made.

1897, 444, § 28.

Fees of City and Town Clerks.

SECTION 27. The city or town clerk shall receive the following fees from the city or town upon presenting to the city or town treasurer a certificate of the receipt of the prescribed copies by the secretary of the Commonwealth: for each marriage, twenty cents; for each birth, fifty cents; for each death returned to him by an undertaker or the board of health, twenty cents; for each death not so returned but obtained and recorded by him, fifty cents. He shall also receive from the city or town the following fees: for each certificate transmitted under the provisions

of section thirteen, twenty-five cents; for receiving and recording an affidavit and forwarding a copy thereof under the provisions of section fourteen, fifty cents; for sending the notice required by section twenty-four, twenty-five cents; for each oath administered in his capacity as clerk, twenty-five cents. A city, or a town containing more than ten thousand inhabitants, may limit the aggregate compensation allowed to its clerk. A city or town clerk shall forfeit not less than twenty dollars nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by this chapter.

1842, 95, § 1. G. S. 21, § 7. P. S. 32, § 12.
1844, 159, §§ 5, 8. 1866, 138, § 1. 1897, 444, § 29.
1849, 202, §§ 2, 3. 1875, 145, 341. 141 Mass. 479.

Oath, Administration of.

SECTION 28. An oath which is required by the provisions of this chapter may be administered by the clerk or assistant clerk of a city or town.

1897, 444, § 30.

Attestation of Copies under Seal.

SECTION 29. City and town clerks or registrars shall attest their copies of the record of births, marriages or deaths with the official seal of the city or town.

1898, 389, § 3.

INQUESTS AND MEDICAL EXAMINERS.

REVISED LAWS, 24.

Appointment of Medical Examiners.

SECTION 1. The governor, with the advice and consent of the council, shall appoint for a term of seven years, able and discreet men, learned in the science of medicine, to be medical examiners and associate medical examiners in each county.

1877, 200, §§ 2, 4, 6. 1880, 59, § 2. 1881, 295. P. S. 26, §§ 1, 3, 4. 1898, 318, § 1.

[Section 2 defines the limits of the districts served by the medical examiners. Its length forbids its insertion here. The names of the existing medical examiners, and of the cities and towns which comprise their districts, may be found in the Legislative Manual and in the Massachusetts Year Book.]

Duties of Associate Examiner.

SECTION 3. The associate medical examiner for the county of Suffolk shall, at the request of either of the medical examiners for the county, perform the duties and have the powers of a medical examiner. In any year, each medical examiner may require him to serve one month. The associate medical examiners in the other counties shall in the absence of the medical examiners or in case of their inability to perform their duties, perform, in their respective districts, all the duties of medical examiners.

1880, 59, § 1. 1881, 295. P. S. 26, § 3. 1898, 318, § 2.

Official Bonds.

SECTION 4. Each medical examiner and associate medical examiner shall, before entering upon the duties of his office, be sworn and give bond for the faithful performance thereof, in the sum of five thousand dollars, to the treasurer of the county, with sureties to be approved by him. If he fails for thirty days after appointment to give such bond, his appointment shall be void.

1877, 200, § 5. 1880, 59, § 2. P. S. 26, § 5.

Discharge of Surety on Bond.

SECTION 5. A surety on such bond, his heirs, executor or administrator may apply to the superior court to be discharged from further liability thereon, whereupon the proceedings shall be the same as are prescribed in section six of chapter twenty-three.

R. S. 14, § 95. G. S. 17, § 76. 1877, 200, § 24. P. S. 26, § 7.

Breach of Condition of Bond.

SECTION 6. Upon a breach of the condition of such bond to the injury of any person, the obligor may be removed from office, and actions may be brought upon such bonds in like manner as upon the bond of a sheriff.

R. S. 14, § 96. G. S. 17, § 77. 1877, 200, § 24. P. S. 26, § 8.

Salaries, Fees, etc.

SECTION 7. In the county of Suffolk, each medical examiner shall receive from the county an annual salary of four thousand dollars, and the associate medical examiner, a salary of six hundred and sixty-six dollars; but if the associate medical examiner serves in any year more than two months, he shall, for such additional service, be paid at the same rate to be deducted from the salary of the medical examiner at whose request he serves. Medical examiners and associate medical examiners in other counties shall receive fees as follows: for a view without an autopsy, five dollars; for a view and autopsy, thirty dollars; and for travel, ten cents a mile to and from the place of view.

1877, 200, § 3. P. S. 26, § 9. 1890, 213.
1881, 295. 1885, 379, § 1. 1892, 286.

Duties of Examiners.

SECTION 8. Medical examiners shall, in all cases, certify to the city or town clerk or to the city registrar in the place where the deceased died, his name and residence, if known, otherwise a description of such person as full as may be, with the cause and manner of his death, and shall make examination upon the view of the dead bodies of only such persons as are supposed to have come to their death by violence.

1877, 200, §§ 7, 9. P. S. 26, §§ 10, 12.

When Autopsy shall be made.

SECTION 9. If a medical examiner has notice that there is within his county the body of a person supposed to have come to his death by violence, he shall forthwith go to the place where such body lies, and take charge of the same; and if, on view thereof and personal inquiry into the cause and manner of death, he considers a further examination necessary, he shall, upon being thereto authorized in writing by the district attorney, mayor or selectmen of the district, city or town in which such body lies, make an autopsy in the presence of two or more discreet persons, whose attendance he may compel by subpœna. Before making such autopsy, he shall call the attention of the witnesses to the position and appearance of the body. He shall then and there carefully record every fact and circumstance tending to show the condition of the body and the cause and manner of death, with the names and addresses of said witnesses, which record he shall subscribe. If a medical examiner or associate medical examiner considers it necessary to have a physician present as a witness at an autopsy, he shall be paid five dollars for his services. Other witnesses, except officers named in section forty-two of chapter two hundred and four, shall be allowed two dollars each.

1877, 200, § 8. P. S. 26, § 11. 1885, 379, § 2. 1890, 440, § 9. 128 Mass. 422. 132 Mass. 261.

Report of Autopsy to District Attorney.

SECTION 10. He shall forthwith file with the district attorney of his district a report of each autopsy and view and of his personal inquiries, with a certificate that, in his judgment, the manner and cause of death could not be ascertained by view and inquiry and that an autopsy was necessary. The district attorney, if satisfied that an autopsy was necessary, shall so certify to the county commissioners having jurisdiction over the place in which the autopsy was held or, in the county of Suffolk, to the auditor of Boston. If upon such view, personal inquiry or autopsy, the medical examiner is of opinion that the death was caused by violence, he shall at once notify the district attorney and a justice of the police, district or municipal court or trial justice having jurisdiction over the place in which the body was found, and shall file an attested copy of the record of his autopsy in such court or with such justice and with the district attorney.

1877, 200, § 9. P. S. 26, § 12. 1885, 379, § 7. 1887, 310, § 2.

When Inquest shall be held.

SECTION 11. The court or trial justice shall thereupon hold an inquest, from which all persons not required by law to be present may be excluded, and the witnesses may be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and examine the witnesses. An inquest shall be held in all cases of death

by accident upon a railroad or street railway, and the court or justice holding such inquest shall give seasonable notice of the time and place thereof to the board of railroad commissioners. The attorney-general or the district attorney may direct an inquest to be held in the case of death by any casualty.

1877, 200, § 10. P. S. 26, § 13. 1894, 535, § 5. 1897, 376, § 2. 1904, 119, § 1.

Jurisdiction extended.

SECTION 12. If it appears that the place in which the body was found is without the limits of the judicial district of the court or the territorial jurisdiction of the trial justice to which or to whom the notice required by the provisions of section ten has been given by the medical examiner, such court or trial justice shall nevertheless proceed with the inquest and have continuous and exclusive jurisdiction thereof if said place is within the Commonwealth and within fifty rods of the nearest point in the boundary line of such district or territory, unless a similar but prior notice relative to the same body shall have been issued by a medical examiner for a county adjoining such district or territory at the point aforesaid.

1899, 207.

Appointment of Officer to investigate.

SECTION 13. If an inquest is to be held by a police, district or municipal court, the court may appoint an officer qualified to serve criminal process to investigate the case and to summon the witnesses, and may allow him additional compensation therefor, which shall be paid in like manner as the fees of officers in criminal cases.

1898, 204, § 2.

Report of Evidence at Certain Inquests.

SECTION 14. If a magistrate has reason to believe that an inquest to be held by him relates to the death by accident of a passenger or employee upon a railroad or of a traveller upon a public or private way at a railroad crossing, or to a death by accident connected with the operation of a street railway, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it, and the report and the bill for services, after examination and approval in writing by such magistrate, shall be forwarded forthwith to the board of railroad commissioners. Such bill when approved by said board shall be forwarded to the auditor of accounts and be paid by the Commonwealth, assessed on the several corporations owning or operating the railroad or street railway on which the accident occurred and shall be collected in the manner provided in section ten of chapter one hundred and eleven. The magistrate may, in his discretion, refuse fees to witnesses in the employ of the company upon whose railroad the accident occurred.

1888, 365. 1889, 154. 1890, 440, § 9. 1896, 302.

Report of Magistrate.

SECTION 15. The magistrate shall report in writing when, where and by what means the person came to his death, his name, if known, and all material circumstances attending his death; and if it appears that the unlawful act of any other person contributed to the death, he shall further state the name of such person, if known to him; and he shall file such report in the superior court in the county in which the inquest is held.

1877, 200, § 12. P. S. 26, § 15. 134 Mass. 223, 225.

Witnesses may be bound over.

SECTION 16. If the magistrate finds that murder, manslaughter or an assault has been committed, he may bind over, as in criminal prosecutions, such witnesses as he considers necessary, or as the district attorney may designate, to appear and testify at the court having jurisdiction over such crime.

1877, 200, § 13. P. S. 26, § 16.

Arrest of Person charged with Commission of Crime.

SECTION 17. If a person charged by the report with the commission of a crime is not in custody, the magistrate shall forthwith issue process for his apprehension, returnable before any court or magistrate having jurisdiction of the case.

1877, 200, § 14. P. S. 26, § 17.

Inquest may be ordered.

SECTION 18. The attorney general or the district attorney may, notwithstanding the medical examiner's report that a death was not caused by violence, direct an inquest to be held.

1877, 200, § 15. P. S. 26, § 18.

Chemist may aid in Examination of Body.

SECTION 19. The medical examiner may, if he considers it necessary, employ a chemist to aid in the examination of the body or of substances supposed to have caused or contributed to the death, who shall be entitled to such compensation as the medical examiner certifies to be just and reasonable. A clerk may be employed to reduce to writing the results of a medical examination or autopsy, and shall be allowed for his services two dollars a day.

1877, 200, § 16. P. S. 26, § 19.

Use of Embalming Fluid restricted.

SECTION 20. No embalming fluid, or any substitute therefor, shall be injected into the body of any person supposed to have come to his death by violence, until a permit in writing, signed by the medical examiner, has first been obtained.

1892, 152.

Burial of Body.

SECTION 21. After an autopsy or a view or examination without an autopsy, the medical examiner shall deliver the body, upon application, to the husband or wife, the next of kin, or to any friend of the deceased, who shall be entitled to priority in the order named. If the body is unidentified or unclaimed for forty-eight hours after the view thereof, the medical examiner shall deliver it to the overseers of the poor of the city or town in which it is found, who shall decently bury it in accordance with the provisions of section twenty of chapter eighty-one.

1877, 200, § 17. P. S. 26, § 20. 1887, 310, § 1.

View of Body intended for Cremation.

SECTION 22. Medical examiners within their respective districts shall, upon application and payment or tender of a fee of five dollars, view and make personal inquiry concerning a body intended for cremation.

1885, 265, § 4.

Compensation for bringing to Land Body found in Water.

SECTION 23. If services are rendered in bringing to land the body of a person found in any of the harbors, rivers, or waters of the Commonwealth, the medical examiner may allow reasonable compensation therefor, but this provision shall not entitle any person to compensation for services rendered in searching for a dead body.

1877, 200, § 18. P. S. 26, § 21.

Money, etc., found upon or near Body.

SECTION 24. The medical examiner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver it to the person entitled to its custody or possession or, if not claimed by him within sixty days, then to a public administrator.

1877, 200, § 19. P. S. 26, § 22. 13 Allen, 465.

Penalty on Examiner for neglecting to give up Property.

SECTION 25. A medical examiner who fraudulently neglects or refuses to deliver such property to such person within three days after demand upon him therefor shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years.

1877, 200, § 20. P. S. 26, § 23.

Account of Expenses and Fees to be rendered, audited, etc.

SECTION 26. Every medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the county commissioners having jurisdiction over the place in which the examination or view is held, or in the county of Suffolk to the auditor of Boston, and shall annex to his return the written authority under which the autopsy was made. Such commissioners or auditor shall audit such accounts,

and certify to the treasurer of the county what items therein are just and reasonable, which shall be paid by him to the person entitled to receive the same. The commissioners shall not certify for payment any fee for an autopsy until the certificate of the district attorney required by the provisions of section ten has been filed with them.

1877, 200, § 21. P. S. 26, § 24. 1885, 379, § 7. 1887, 310, § 2.

Returns to Secretary of Commonwealth. Penalty.

SECTION 27. Every medical examiner shall annually, on or before the first day of March, transmit to the secretary of the Commonwealth certified copies of the records of all deaths, the cause of which he has investigated during the preceding calendar year and, within sixty days after the expiration of his term of office, he shall make like returns for so much of the year as he was in office. For a refusal or neglect to make such returns he shall forfeit not less than ten nor more than fifty dollars.

1885, 379, §§ 3, 4.

Fees of Trial Justices for Inquests.

SECTION 28. The fees of trial justices shall be as follows: for filing an attested copy of the record of an autopsy, fifty cents; for each subpœna issued, ten cents; for each day's attendance in holding the inquest, five dollars; for the recognizance of witnesses, twenty cents; and for drawing up and filing a report in the superior court, five dollars. Special justices of police, district or municipal courts, except those entitled to compensation other than that provided by section sixty-nine of chapter one hundred and sixty, shall receive the same fees as trial justices. Said fees, having been audited by the district attorney, shall be paid by the county.

1878, 235. P. S. 26, § 25. 1885, 40.

Fees for Records and Returns.

SECTION 29. Each medical examiner, including the medical examiners in the county of Suffolk, shall receive from the Commonwealth twenty cents for each of the first twenty deaths recorded and returned by him in any year as above provided, and ten cents for each additional death so recorded and returned, as certified by the secretary of the Commonwealth.

1885, 379, § 4.

Record Books to be provided and Report made to General Court.

SECTION 30. The secretary shall, at the expense of the Commonwealth, prepare and furnish to the medical examiners blank record books, and blank forms for returns and shall cause the returns for each year to be bound together in one volume with indexes; and prepare therefrom such tables as will render them of utility, and shall make report thereof annually to the general court in connection with the report required by section twenty-two of chapter twenty-nine.

1885, 379, §§ 5, 6.

REVISED LAWS, 121.

Report of Accidents.

SECTION 39. Companies, persons and municipalities engaged in the manufacture and sale of gas or electricity for light or fuel shall, within twenty-four hours, report, in writing, to the board [1] every accident caused by the gas or electricity manufactured or supplied by them, whereby an employee or other person is injured, killed or rendered insensible, stating the time, place and circumstances of the accident and such other facts relative thereto as the board may require. The chief of police of the city or town, and the medical examiner of the district, in which such accident occurs shall, in writing, report the same to said board. The chief of police shall so report within twenty-four hours, and the medical examiner within seven days, after he has notice thereof. The members of the board shall personally investigate all cases which require investigation.

1888, 350, § 2. 1896, 338.

[1] Board of Gas and Electric Light Commissioners.

APPENDIX.

DECISIONS OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

AND OF

THE SUPREME COURT OF THE UNITED STATES,

CONCERNING

THE APPLICATION OF CERTAIN OF THE FOREGOING LAWS.

APPENDIX.

[The page numbers following chapter and section affected refer to pages of this Manual.]

LOCAL BOARDS OF HEALTH.

R. L. 75, § 9 (p. 3).

In the absence of statutory authority, the city council of a city cannot delegate to the mayor its power to appoint a board of health.

A person elected, under St. 1873, c. 246, § 13, city physician of Gloucester, which city is not shown to have accepted St. 1877, c. 133, relating to the board of health in cities, appears to have been duly elected; but he is not *ex officio* a member of the board of health under the provisions of an ordinance which purports to delegate to the mayor the power of the city council to appoint a board of health.

An alien is eligible to the office of city physician of a city, if he is not *ex officio* a member of the board of health.

Attorney-General v. McCabe, 172 Mass. 417.

R. L. 11, § 338 (p. 4).

In the cities and towns of this Commonwealth there is no power to remove public officers except that which is given by the statutes.

Public officers, even when elected by the voters of a town to perform statutory duties which involve the expenditure of money properly raised by local taxation, are not the agents of the town.

The members of the board of health of a town cannot be removed by a vote of the inhabitants of the town.

Attorney-General *v.* Stratton *et al.,* 194 Mass. 51.

R. L. 75, § 13 (p. 5).

It is not necessary that a complaint to recover the forfeiture provided by Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under Pub. Sts., c. 80, § 16 (R. L., c. 75, § 13).

An omission in a complaint, under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

A notice issued, under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

R. L. 75, § 14 (p. 5).

For Nelson *v.* State Board of Health, 186 Mass., see p. 148.

HOSPITALS FOR DANGEROUS DISEASES.

R. L. 75, § 36 (p. 9).

Under Pub. Sts., c. 80, §§ 40, 41, 75 (R. L., c. 75, § 36), the board of health of a town has no authority to take possession of a dwelling-house and the furniture therein, without the consent of the owner and occupant and to his exclusion, and use the house as a hospital for a person found therein who is infected with a contagious disease, and is too sick to be removed without danger to his health; and the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health.

Spring *v.* Hyde Park, 137 Mass. 554.

It by no means follows that, because a place may be subjected to the regulations of the board of health, it may be seized and taken possession of. Under the sections relating to the quarantine of vessels, while the board of health may make regulations relating thereto, extending to all persons, goods or effects thereon, or all persons visiting or going on board the same, they are not therefore authorized to take possession of, control or appropriate the same, or any part thereof, to the use of a hospital.

Spring *v.* Hyde Park, 137 Mass. 558.

A member of the board of health of a town has no authority, against the consent of the owner or occupant, to take possession of a dwelling-house in which a contagious disease exists, and of the furniture therein, to the exclusion of such owner or occupant, and to carry away and destroy portions of the furniture, or to station a person on the premises with instructions to prevent ingress to and egress from the same, except in the manner pointed out in Pub. Sts., c. 80 (R. L., c. 75).

Brown *v.* Murdock, 140 Mass. 314.

If a person cannot be removed without danger to health, "the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided."

By reference to the preceding section (§ 38, p. 12), it is seen that, when a hospital is established, "the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture or other articles used or brought there," are subjected to such regulations as the board of health may prescribe. These sections do not authorize the taking possession by the board of health, acting without a warrant, of premises to the exclusion of the owner thereof, or of the person entitled to lawful possession, even where one is too sick to be removed; but authorize such premises, and the use thereof, to be subjected to regulations of a very stringent character. Section 41 (§ 36) contemplates that, when a person cannot be removed, a contract may be made for his comfort where he is; and, in such case, persons in the neighborhood may be removed, and other precautions taken.

Brown *v.* Murdock, 140 Mass. 322.

The board of health of a city cannot, without the consent of the owner, lawfully establish and use premises as a hospital for patients sick with the

smallpox, except under a warrant issued in accordance with the provisions of Pub. Sts., c. 80, § 43 (Acts of 1902, c. 206, § 2).

An owner of land, who is not in possession and has no right of possession thereof, cannot maintain an action of trespass *quare clausum fregit,* but may maintain an action for an injury to the reversion.

The owner of a house in a city, which, while in the possession of a tenant at will, is taken and used, without the owner's consent, by the board of health of the city as a hospital for parties sick with the smallpox, may maintain an action against the members of the board for the injury to his reversion, if it appears that such use of the house diminished its rentable value.

A tenant at will in possession of a house in a city cannot, as against the rights of the owner, authorize the board of health of the city to establish in the house a hospital for patients afflicted with an infectious disease, and to maintain such a hospital there to the damage of the reversion.

Hersey *v.* Chapin, 162 Mass. 176.

The provision of R. L., c. 75, § 40 (§ 37), that "each city shall establish and be constantly provided, within its limits, with one or more isolation hospitals for the reception of persons having smallpox or any other disease dangerous to the public health," does not require that all persons ill with smallpox shall be treated in such hospitals and not elsewhere; and under the provisions of § 42 (§ 36) of the same chapter it is within the power of the proper officers of a city either to remove to a hospital the persons who have fallen ill of smallpox or to care for them in the houses where they reside; [and no person can be removed to a hospital against his will unless in the opinion of the city's board of health and of the attending physician the case cannot be isolated properly in the house where the patient resides.][1] For these reasons the failure of a city to provide itself with a smallpox hospital does not prevent it from recovering in an action against another city under R. L., c. 75, § 57, for expenses incurred by its board of health for persons infected with smallpox having a settlement in the defendant city.

Haverhill *v.* Marlborough, 187 Mass. 150.

The board of health of a city which had no hospital for contagious diseases, finding a case of smallpox in the family of one of the tenants of a certain house belonging to a woman, quarantined the building and occupied it for a smallpox hospital, treating forty or more cases there. The board of health caused no warrant to issue under Pub. Sts., c. 80, § 43, which then was in force, to take the building as a hospital; but the owner of the house executed a lease to them for a certain period for a monthly rent named therein, which it was stipulated should continue for such further time as the lessees should hold the premises. After the expiration of the term of the lease the monthly rent was increased in amount, the occupation as a hospital continued, and the owner of the house continued to receive the rent. Later she brought an action of tort against the members of the board of health for damages for alleged unlawful occupation of her premises. In this action she offered to show that in executing the lease she did not believe or realize that she was signing away any rights to recover damages, and that since the occupation by the defendants her house had been commonly known as "the pest house."

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[1] This is no longer true, the law having been amended.

The evidence was excluded, and a verdict was ordered for the defendants. *Held,* that the lease and the continued receipt of rent by the plaintiff after its expiration operated as a consent to the occupancy of the house by the defendants for a smallpox hospital, and rendered any action by them under the statute unnecessary; that the evidence offered by the plaintiff properly was excluded as incompetent and immaterial; and that the verdict for the defendants was ordered rightly.

Sallinger *v.* Smith *et al.,* 192 Mass. 317.

R. L. 75, § 43 (p. 9).

While, when such a disease exists in a town, the board of health are to use all possible care in preventing the spread of infection, and to give public notice "by displaying red flags," and "by all other means which in their judgment shall be most effectual for the common safety," this care is to be exercised in the mode prescribed by law, and with that regard to the rights of others in their persons and property which is shown by other sections of the statute to be required. By the general authority to take such measures as are deemed necessary for the safety of the inhabitants, it is not intended to confer unlimited authority on the board to control persons and property at its discretion.

Brown *v.* Murdock, 140 Mass. 323.

R. L. 75, § 46 (p. 10).

For Spring *v.* Hyde Park, 137 Mass. 554, see p. 122.
For Brown *v.* Murdock, 140 Mass. 322, see p. 122 and above.
For Hersey *v.* Chapin, 162 Mass. 176, see p. 122.

R. L. 75, § 56 (p. 10).

For Brown *v.* Murdock, 140 Mass. 322, see p. 122 and above.
For Haverhill *v.* Marlborough, 187 Mass. 150, see pp. 123, 125.

R. L. 75, § 58 (p. 11).

For Sallinger *v.* Smith, 192 Mass. 317, see p. 123.

R. L. 75, § 37 (p. 11).

The taking by the city of Everett, under St. 1902, c. 465, of certain land in that city for a hospital for the treatment of contagious diseases, is valid.

When land is taken under statutory authority, if the owner chooses to waive irregularities in the taking and accepts payment in damages, the taking becomes good as to him; and *semble* that no one else can take advantage of the irregularities.

St. 1902, c. 465, authorizing the city of Everett to take land for a hospital for the treatment of contagious diseases, is constitutional.

A statute authorizing a city to take land for a hospital for the treatment of contagious diseases, although an exercise of the right of eminent domain so far as it affects the owner of the land taken, is in its general purpose an exercise of the police power for the protection of the public health.

In this Commonwealth a city has authority without special legislation to erect a hospital for the treatment of contagious diseases on land purchased for the purpose.

A hospital erected by a city for the treatment of contagious diseases is, by R. L., c. 75, § 40 (now § 37), under the supervision of the board of health, and in the absence of proof will not be presumed to be a nuisance public or private.

Manning *v.* Bruce *et al.*, 186 Mass. 282.

For Haverhill *v.* Marlborough, 187 Mass. 150, see p. 123 and below.
For Sallinger *v.* Smith, 192 Mass. 317, see p. 123.

R. L. 75, §§ 12–16 (p. 12).

For Manning *v.* Bruce, 186 Mass. 282, see p. 124.

DISEASES DANGEROUS TO THE PUBLIC HEALTH.

Acts of 1902, 213 (p. 16).

In an action by one city against another, under R. L., c. 75, § 57 (superseded by Acts of 1902, c. 213), for expenses incurred by the plaintiff's board of health for persons infected with smallpox having a legal settlement in the defendant, if it appears that the persons in question were the only ones who fell ill in the house in which they were cared for, the plaintiff can recover the amount of a physician's reasonable bill, charging not only for his services required at the house, but also for two weeks' quarantine thereafter, for which the plaintiff in its contract with the physician had agreed to pay.

In an action by one city against another, under R. L., c. 75, § 57, for expenses incurred by the plaintiff's board of health for persons infected with smallpox having a legal settlement in the defendant, the plaintiff cannot recover expenses incurred for the services of policemen stationed to enforce the quarantine of the house in which the patients were isolated, or for supplies for other persons not ill who were quarantined in the same house, these expenses having been incurred not for the persons infected with smallpox, but for the preservation of the public health.

Whether, under St. 1902, c. 213, § 1, a city or town whose board of health has incurred expenses for persons infected with smallpox having settlements in another city or town can maintain an action for such expenses without first obtaining the approval of its own bill by the board of health of the defendant city or town, *quære.*

Haverhill *v.* Marlborough, 187 Mass. 150.

INFANT BOARDING HOUSES.

R. L. 83, § 16 (p. 19).

The language of St. 1892, c. 318, § 7, which requires any person receiving under his care or control, or placing under the care or control of another, for compensation, an infant under two years of age, to give notice within two days to the State Board of Lunacy and Charity, includes any person receiving an infant and any person placing an infant under the care of another, and relates to the reception of one infant, and has no reference to other provisions of the statute which require a license; and if a mother places her child under the care and control of a person who receives the child and agrees to board, care for and take control of him, and then re-

ceives compensation for his board for the period of ten days, that person violates the statute if he does not give notice to said board within the two days.

Commonwealth *v.* Johnson, 162 Mass. 596.

VACCINATION.

R. L. 75, § 137 (p. 20), and R. L. 44, § 6 (p. 21).

R. L., c. 75, § 137, authorizing the board of health of a city or town to require the vaccination of all its inhabitants, and imposing a fine of five dollars for a violation of such requirement, is constitutional.

A defendant charged with violation of a requirement of the board of health of a city or town, under R. L., c. 75, § 137, that all its inhabitants shall be vaccinated, cannot introduce evidence to show what vaccination consists of, this being a matter of common knowledge, or of the grounds of his refusal to comply with the requirement, this involving a matter of opinion, and also being immaterial, or of the alleged injuries or dangerous effects of vaccination, the Legislature being the judges of what the welfare of the people demands.

Commonwealth *v.* Pear, 183 Mass. 242.
Commonwealth *v.* Jacobson, 183 Mass. 242.

Under the police power there is general legislative authority to make laws for the common good. Article 4 of chapter 1, section 1, of the Constitution of Massachusetts, states more fully than most constitutions the nature of this power, when it gives authority to the "general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same may be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth," etc. That this power extends to the protection and preservation of the public health is not questioned.

Commonwealth *v.* Pear, 183 Mass. 244.
Commonwealth *v.* Jacobson, 183 Mass. 244.

Two complaints, received and sworn to on Jan. 26, 1902, in the East Boston district court, both against the same defendant, under R. L., c. 75, § 137, for refusing to comply with an order of the board of health of the city of Boston, requiring the vaccination and revaccination of all the inhabitants of that city, in the first case as to the defendant himself, and in the second case as to Eva Mugford, a child of the defendant over two years of age.

On appeal to the Superior Court the cases were tried before Sheldon, J., who refused to make the rulings requested by the defendant, and excluded evidence offered by him of the same character as that offered by the defendant in Commonwealth *v.* Jacobson, above. In each case the jury returned a verdict of guilty, and the defendant alleged exceptions.

These cases are governed by Commonwealth *v.* Jacobson.

Commonwealth *v.* Mugford, 183 Mass. 249.

Two actions of tort, brought to recover damages on account of the exclusion of Mary D. and J. Forest Hammond from the public schools of Hyde Park. In the Superior Court, Hitchcock, J., directed verdicts for the plaintiffs, and reported the case to the Supreme Judicial Court.

Each of the plaintiffs was suspended from one of the public schools of the defendant town because of a refusal to be vaccinated at a time when smallpox was prevalent in the town. A short time before the suspension the school committee made a regulation, as follows: "Voted, to exclude from attendance all unvaccinated children, and also children who do not present a certificate of revaccination as required by the board of health, until such time as this committee may become satisfied that the imminent danger from smallpox in our town has ceased."

Our statutes give the school committee of a town "general charge and superintendence of all public schools," etc. (R. L., c. 42, § 27.) This power is broad and ample. For the promotion of the best interests of pupils and of all the people, it necessarily has been construed broadly by the court. (Roberts *v.* Boston, 5 Cush. 198; Sherman *v.* Charlestown, 8 Cush. 160; Spiller *v.* Woburn, 12 Allen, 127; Morse *v.* Ashley, 192 Mass. [79 N. E. Rep. 481].

By R. L., c. 44, § 3, children are given the right to attend the public schools, "subject to such reasonable regulations as to the numbers and qualifications of pupils to be admitted to the respective schools, and as to other school matters, as the school committee shall from time to time prescribe." We have no doubt that the condition of pupils, in reference to the risk of exposing other pupils in the school to a contagious disease, is to be considered in making regulations as to their qualifications for admission to the school. In Sherman *v.* Charlestown, 8 Cush. 160, it was held that the school committee may exclude from the public schools a child whom they deem to be of a licentious and immoral character, although such character is not manifested by any acts of licentiousness or immorality within the school. In giving the opinion Chief Justice Shaw used these words: "Take the case of a contagious disease. Can it be doubted that the presence of a pupil infected could be lawfully prohibited, not for any fault, or crime, or wrong conduct, but simply because his attempt to insist on his right to attend under such circumstances would be dangerous and noxious, and was an interruption of the equal common right?" So, if one who never had been vaccinated should refuse to be vaccinated in accordance with a lawful order of the board of health, when an epidemic of that disease was prevalent in the neighborhood, the same reasoning would apply. (See Com. *v.* Jacobson, 183 Mass. 242; S. C. 197 U. S. 11.)

In R. L., c. 44, § 6, we find this language: "A child who has not been vaccinated shall not be admitted to a public school, except upon presentation of a certificate signed by a regular practicing physician that he is not a fit subject for vaccination." Each of these plaintiffs presented such a certificate. It appeared that it was given without an examination of either of them; and the daughter of the physician testified, he having deceased, that her father was a member of what is called the Anti-Vaccination Society, and it was his opinion that nobody was a fit subject for vaccination, and he would give a certificate to anybody who applied for it that that person was not a fit subject for vaccination.

The judge instructed the jury as follows: "The statutes seem to provide that the school committee may exclude from the public schools children who have not been vaccinated, except such as present certificates from a practicing physician that they are unfit subjects for vaccination. The plaintiffs in these cases have presented certificates, which the court rules were sufficient in point of form, that they are or were unfit subjects for vaccination. That having

been done, the school committee have no authority under the laws of this Commonwealth to exclude such children from the public schools." He then ordered verdicts for the plaintiffs, and reported the cases for the determination of this court.

The question on this instruction is, whether the statute which absolutely forbids the admission of an unvaccinated child to a public school at any time, without a certificate from a physician, is an implied enactment that, with a certificate, such a child shall be permitted to attend at all times, even when smallpox is raging in the neighborhood. We see nothing to indicate such an intention on the part of the Legislature. This is a prohibition of attendance at any time except upon a condition. There is an implication that, with the certificate, such a child properly may be permitted to attend when there is no particular reason to apprehend danger; but it was not intended to take away from the school committee the power to make proper regulations for the protection of all the pupils, if the prevalence of smallpox seems to require special precautions. The ruling of the court was wrong.

By the terms of the report made at the request of the parties, such entry is " to be made in each case as law and justice may require." It is expressly admitted that the school committee acted in good faith. The uncontradicted evidence shows that smallpox had been prevailing in the neighborhood for several weeks, that a temporary hospital had been established in the town, that the people of the town generally were being vaccinated, that the board of health had given notice that free vaccination would be given, and two thousand or three thousand vaccinations had been performed under the direction of the board.

It has been held repeatedly that the " decision of a school committee of a city or town, acting in good faith in the management of the schools upon matters of fact directly affecting the good order and discipline of the schools, is final, so far as it relates to the rights of pupils to enjoy the privileges of the school." (Watson *v.* Cambridge, 157 Mass. 561; Hodgkins *v.* Rockport, 105 Mass. 127; Spiller *v.* Woburn, 12 Allen, 127; Alvord *v.* Chester, 180 Mass. 20.) Whether this rule should be applied to such a regulation as appears in the present case it is not necessary to decide, for, upon the undisputed facts, the regulation was reasonable.

As soon as the crisis had passed the committee relieved the plaintiffs from suspension and allowed them to return to the schools. There is no evidence that there was anything objectionable in the manner of enforcement of the regulation. There is no contention that the plaintiffs were not given a proper hearing as to their claim of right to attend the schools. (See Bishop *v.* Rowley, 165 Mass. 460; Morrison *v.* Lawrence, 186 Mass. 456.)

We see no ground on which a verdict properly could be found against the defendant. Law and justice require, under the terms of the report, that there should be an entry in each case of judgment for the defendant.

Hammond, p.p.a., *v.* Hyde Park, 194 Mass.

It is within the police power of a State to enact a compulsory vaccination law, and it is for the Legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health.

There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law

does not deny the equal protection of the laws to adults if the statute is applicable equally to all adults in like condition.

The highest court of Massachusetts not having held that the compulsory vaccination law of that State established the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time, or that vaccination would seriously injure his health or cause his death, this court holds that as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such persons under the Fourteenth Amendment.

Jacobson *v.* Massachusetts, 197 United States, 11, 12.

QUARANTINE.

R. L. 75, § 132 (p. 21).

Under the sections relating to the quarantine of vessels, while the board of health may make regulations relating thereto, extending to all persons, goods or effects thereon, or all persons visiting or going on board the same, they are not authorized to take possession of, control or appropriate the same, or any part thereof, to the use of a hospital.

Spring *v.* Hyde Park, 137 Mass. 554.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to object that the answer, which is demurred to, does not show that the disinfection was accomplished to the satisfaction of the board of health of the city in accordance with a regulation of the board, but only shows that the defendant's process of disinfection was one satisfactory to the board, if such objection is not specifically assigned as a cause of demurrer.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to contend that the provisions of Pub. Sts., c. 80, §§ 64, 67 (R. L., c. 75, §§ 132, 133), contemplate a special exercise of the judgment of the board of health as to each cargo arriving, and not the passage of a general regulation, if the answer, which is demurred to, shows that there was a distinct order for the disinfection of the rags in question.

A regulation of the board of health of a city, passed under the authority conferred by St. 1816, c. 44, and Pub. Sts., c. 80 (R. L., c. 75), and ordering "that on and after this date all rags arriving at this port from any foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," even if the order was formal only, and was passed without any inquiry into the character of the rags or their special history, is not unreasonable.

A regulation of the board of health of a city, passed under authority conferred by St. 1816, c. 44, and Pub. Sts., c. 80 (R. L., c. 75), and ordering "that on and after this date all rags arriving at this port from a foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," is not void as infringing the power of Congress "to regulate commerce with foreign nations."

Under St. 1816, c. 44, and Pub. Sts., c. 80, §§ 18, 64, 65, 67, 69 (R. L., c. 75, §§ 65, 132, 133, 135), the board of health of a city may pass a regulation without a hearing, ordering rags imported into the city to be disinfected, and the expense of such disinfection to be borne by the owner of the rags; and it is not competent for the owner of the rags, as a defence to the claim for charges for disinfection, to show that the rags did not require disinfection, and could not have transmitted disease, if they were of the class concerning which the regulation was made.

Under a regulation of the board of health of a city, made in pursuance of the authority conferred by St. 1816, c. 44, and Pub. Sts., c. 80, §§ 18, 64, 65, 67, 69 (R. L., c. 75, §§ 65, 132, 133, 135), ordering rags imported into the city to be disinfected at the expense of the owner, the work of disinfection may be delegated by the board to a third person, who is entitled to claim a lien upon the rags for his charges.

Train *v.* Boston Disinfecting Company, 144 Mass. 523.

R. L. 75, § 135 (p. 22).

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

Provincetown *v.* Smith, 120 Mass. 96.

For Train *v.* Boston Disinfecting Company, 144 Mass. 523, see above.

CEMETERIES.

R. L. 78, § 1 (p. 26).

The language of Gen. Sts., c. 18, § 10, authorizing towns to provide burial grounds,[1] is very broad, and leaves them to judge what sum shall be raised, what quantity of land shall be appropriated for the purpose, and how it shall be fenced, laid out, arranged and managed, without any specified restriction. There is no more jurisdiction conferred upon this court to regulate their proceedings than there is in regard to the cost, number, size and style of schoolhouses to be built by a town. And towns are not prohibited in respect to burial grounds, any more than in respect to schoolhouses, from making them beautiful and attractive, instead of unsightly and repulsive. The exercise of their judgment extends to matters of taste in respect to both.

Jenkins *et al. v.* Andover *et al.*, 103 Mass. 104.

R. L. 78, § 26 (p. 26).

The erection of a granite monument in a corner of a burial lot, not governed by R. L., c. 78, § 26, by one of four tenants in common of the lot is an exclusive appropriation of a part of the lot which the cotenants can treat as an ouster, and they may remove the structure from the common land. If the lot is one governed by R. L., c. 78, § 26, such an exclusive appropriation by one tenant in common equally is unjustified, the course to be followed in case of disagreement being provided by the statute.

Where a bill in equity by a tenant in common of a burial lot to restrain his cotenants from interfering with a monument erected by him in the lot is

[1] "They may, at legal meetings, grant and vote such sums as they judge necessary for the following purposes: For the support of town schools; . . . for burial grounds; . . ."

dismissed on the ground that such an exclusive appropriation of a part of the lot by the plaintiff was unlawful, and that the defendants were justified in removing the monument, the bill will not be retained to investigate the question whether unnecessary damage was done in the removal.

Capen *v.* Leach *et al.,* 182 Mass. 175.

R. L. 78, § 30 (p. 27).

Owners of tombs in the church building of a religious society have no title in the land, but only an interest in the structures and in their proper use, and cannot prevent a sale of the land and building by the society, nor the removal of the remains from the tombs, when such removal is in other respects conducted according to law; as, for instance, when the Legislature has directed it in the exercise of its powers in relation to the public health; and the tomb of one who devised real estate to the society in trust "for keeping said tomb in good and decent repair" is held by the same usufructuary right, and subject to the same liability to removal.

A recital in a special act of the Legislature, that the continuance of a cemetery in the church building of a religious society is injurious to the public health, cannot be contradicted by any statement of the officers of the society, previously made, asserting a contrary opinion.

Sohier *et al. v.* Trinity Church *et al.,* 109 Mass. 1.

R. L. 78, § 31 (p. 27).

The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying grounds.

Withington *v.* Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars for the faithful performance of his duties.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth *v.* Goodrich, 13 Allen, 546.

R. L. 212, § 64 (p. 28).

An indictment under the second section of St. 1814, c. 175, for receiving and concealing a dead body, was sustained, where the evidence, though it had a tendency to prove an offence under the first section, of digging up the body, did not conclusively prove such offence.

Penal statutes, though they are to be construed strictly, are yet to receive such a construction as will conform to the manifest intention of the Legislature, and avoid an absurdity.

Thus, in an indictment upon St. 1814, c. 175, forbidding any person to dig up a human body, "not being authorized by the selectmen of *any* town in this Commonwealth," it was *held* sufficient to aver that the defendant was not authorized by the selectmen of the town where the body had been buried; this being according to the intention of the Legislature.

Commonwealth *v.* Loring, 8 Pick. 370.

R. L. 212, § 66 (p. 28).

A land owner may lawfully build on his land, without regard to the effect of the structure in excluding surface water which otherwise would flow from lands adjoining, and it is immaterial that the adjoining land is a burial ground.

The erection of a structure on land of the builder to exclude surface water which otherwise would flow from an adjoining burial ground is not a violation of the provisions of Gen. Sts., c. 28, § 12, and c. 165, § 39 (R. L., c. 212, § 66), for the protection of places of burial from injury or desecration.

Bates *v.* Smith, 100 Mass. 181.

R. L. 212, § 67 (p. 29).

An ancient burial ground, which for sixty years has been separated by a fence from the adjoining land, and used occasionally for burials until the present time, may be described as a public burial ground in an indictment for destroying trees in a place of burial, under Gen. Sts., c. 28, § 12 (R. L., c. 212, § 67), although it can only be reached by a way, which has always been used for the purpose, over an adjoining private estate, of which it was originally a part, and the owners of which built and have maintained the fence for their own convenience, and have depastured the burial ground, cut the trees upon it and cultivated parts of it at their pleasure, under a claim of right, and no one else has exercised or claimed any control over the same until the town in which it lies assumed the charge thereof within three years.

Cutting trees upon a public burial ground for purposes of private profit, without consent of the public authorities having charge of it, is a violation of Gen. Sts., c. 28, § 12 (R. L., c. 212, § 67), which provides a penalty for destroying trees within the limits of a place of burial, although the person who cuts them is the owner of the fee of the land, and honestly believes that his acts are lawful.

Commonwealth *v.* Viall, 2 Allen, 512.

If an indictment for wrongfully desecrating and disfiguring a public burying ground contains an accurate description of it by metes and bounds, the proof must correspond with the averment; and it is not sufficient to prove that a part of the lot described was a public burying ground, although the acts complained of were committed upon that part.

A place may be shown to be a public burying ground, in the trial of an indictment for wrongfully desecrating and disfiguring it, by evidence of use and occupation for the purposes of burial by others than the owners of the soil, and as of right; and if it has once acquired that character, it will not cease to have it by mere disuse.

It is no defence to an indictment for wrongfully desecrating and disfiguring a public burying ground to show that the defendant was the owner of the fee of small lots within it, under titles derived from various grantees to whom they had been conveyed, "to be used for burial ground;" and evidence to show such ownership is inadmissible.

Commonwealth *v.* Wellington, 7 Allen, 299.

For Bates *v.* Smith, 100 Mass. 181, see p. 132.

NUISANCES, SOURCES OF FILTH AND CAUSES OF SICKNESS.

R. L. 75, § 65 (p. 35).

A regulation that no person shall remove, cart, or carry through any of the streets, lanes or alleys of a city, any house dirt, refuse, offal, filth or animal or vegetable substance from any of the dwelling houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand cart or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Vandine, petitioner, 6 Pick. 187.

In order to amount to a nuisance, it is not necessary that the corruption of the atmosphere should be such as to be dangerous to health; it is sufficient that the effluvia are offensive to the senses, and render habitations uncomfortable.

Eames *v.* Worsted Co., 11 Met. 570.

In default of the appointment of a board of health, the city council of Springfield have power, under Gen. Sts., c. 26, §§ 2, 5, to pass by-laws prohibiting the keeping of swine within particular districts of the city; and in the absence of evidence to the contrary this court will presume that by-laws so passed are reasonable.

Commonwealth *v.* Patch, 97 Mass. 221.

A private passageway about four feet wide, in the city of Boston, was laid out and maintained by the abutters thereon for the benefit of all their lots, which extended to the center of the passageway. The land formerly belonged to the city of Boston, which reserved the right to lay a sewer through the whole of such passageway, and which for many years had kept the same clear, though it always claimed that it was not its duty to do so, and ceased to do so in the spring of 1891. *Held,* that an ordinance forbidding an abutter to allow filth to remain on that part of the passageway adjoining his land was not unreasonable and indefinite, and that it was no defence to a complaint for the violation thereof, that the defendant was required to remove matter which he had no agency in depositing in the passageway, or to do what he would not be obliged to do if he did not own land abutting on such passageway; or that the ordinance omitted to provide a time beyond which the filth should be allowed to remain; or that it required the defendant to do in part the work which the city had formerly done; or that another ordinance forbade the defendant from removing filth or refuse matter through the streets without a permit from the board of health, it

appearing that such removal was intrusted by still another ordinance to the sanitary police; or that the complaint did not set out any of the defendant's right to use the passageway.

Cities and towns may adopt ordinances and by-laws for the preservation and promotion of the health of their inhabitants as an exercise of the police power.

The reasonableness or sufficiency of an ordinance or by-law is not to be tested always by its application to extreme cases.

Commonwealth *v.* Cutter, 156 Mass. 52.

Where a nuisance is artificially created by emptying the sewage of dwelling houses through a private drain in a private way upon the surface of such way and of abutting private land, the board of health has no authority, when acting under Pub. Sts., c. 80, § 28 *et seq.* (R. L., c. 75, § 75 *et seq.*), to abate such nuisance by extending such private drain through such abutting private land to a brook thereon, and by cleaning out the brook so that it would carry off the sewage.

Huse *v.* Amesbury, 163 Mass. 240.

In the opinion in this case it is suggested that the nuisance might have been dealt with under Pub. Sts., c. 80, §§ 18–25 (R. L., c. 75, §§ 65, 67–69, 71, 72).

St. 1897, c. 510, does not give the State Board of Health exclusive jurisdiction of nuisances affecting the purity of the sources of water supply. There is nothing in that statute which takes away or limits the power of local boards of health to deal with nuisances in their respective jurisdictions.

Under Pub. Sts., c. 80, § 20 (R. L., c. 75, § 65), giving town boards of health the power to examine into, destroy, remove or prevent "all nuisances, sources of filth, and causes of sickness" within the town, those boards have jurisdiction over nuisances affecting the purity of the water supply as well as other causes of sickness.

The jurisdiction over nuisances given to town boards of health by Pub. Sts., c. 80, §§ 20–27 (R. L., c. 75, §§ 65, 67–69, 71–74), is summary in its nature, and the orders made thereunder are not subject to judicial examination and revision at the instance of parties affected by them before they are carried out. After they are carried out, however, the questions whether there was a nuisance, and, if so, whether it was caused or maintained by the parties charged therewith, may be litigated.

Where a town board of health adjudged certain deposits on land of the plaintiff to be a nuisance, and the plaintiff's land and deposits thereon of the character complained of lay partly in the town to which the board belonged and partly in an adjoining town, it was *held,* that the order of the board must be taken as limited in its scope to the town to which the board belonged, and an objection that it was in excess of their jurisdiction was not well founded.

When a town board of health has adjudged that a nuisance exists, the question what influences or motives may have set the board in motion is immaterial.

It furnishes no ground for interference with a town board of health, who have adjudged certain deposits on land of the plaintiff to be a nuisance as creating danger of pollution to the water supply of the town, that the action of the board was taken with a view to affecting proceedings in a suit pend-

ing in the Superior Court between the plaintiff and the company supplying the town with water.

Stone *v.* Heath, 179 Mass. 385.

"A town board of health transcends its powers in attempting to award a contract under R. L., c. 25, § 14, for the removal of ashes and garbage in violation of a direction contained in the vote of the town making the appropriation that the work should be let out to the lowest responsible bidder."

Oliver *et al. v.* Gale *et al.*, 182 Mass. 39.

For Nelson *v.* State Board of Health, 186 Mass. 330, see p. 148.

Under R. L., c. 75, §§ 65, 67, an order from the board of health of a city or town to the owner or occupier of private premises to remove a source of filth or cause of sickness cannot direct that the nuisance shall be abated in a specific way, and the owner may abate the nuisance in any proper manner.

Under R. L., c. 75, §§ 91–98, if a trade or employment is designated by a general order of the board of health of a city or town as offensive, before such an order can be enforced it must be served upon the occupant or person having charge of the premises where such trade or employment is exercised; and a notice by publication in a newspaper, which also is sent by mail to the persons against whom the proceedings are taken, is insufficient.

An order of the board of health of a town prohibiting the exercise of the trade or employment of excavating clay for the purpose of manufacturing bricks within the limits of the town, except upon the premises "now owned and operated" by a certain brick company, without a written permit from the board of health, not to be granted unless the applicant shall furnish a bond with good and sufficient sureties conditioned upon the observance of the terms of the permit and upon the filling within a reasonable time to be fixed by the board with materials and in a manner satisfactory to the board of any excavations made by the obligor, is unreasonable and void, and cannot be enforced against the brick company the continued operation of whose business on its old premises is excepted.

Belmont *v.* New England Brick Company, 190 Mass. 442.

R. L. 75, § 67 (p. 35).

For Eames *v.* Worsted Co., 11 Metcalf, 570, see p. 133.

An action to recover money expended from the treasury of a city or town by its board of health to remove a nuisance may be maintained in the name of the city or town.

A statute which "ratifies and confirms" the location of a railroad, and "the railroad . . . as actually laid out and constructed," does not exempt the railroad company from liability for injuries caused to public or private rights by the manner in which they have constructed or are maintaining part of the road at the time of the enactment.

An order of a board of health, under Gen. Sts., c. 26, § 8, for the removal of a nuisance, is valid without previous notice to the parties interested and opportunity for them to appear and be heard.

If an order of a board of health, under Gen. Sts., c. 26, § 8, to a railroad company for the removal of a nuisance, recites that the company, by filling up parts of a certain pond without supplying suitable culverts or other means of drainage, have created and are maintaining a nuisance at said pond,

it sufficiently informs the company of the nature and locality of the nuisance to be removed.

An order of a board of health, under Gen. Sts., c. 26, § 8, for removing a nuisance, need not prescribe a mode for the removal; and, if it does prescribe a mode, the owner or occupant of the property on which the nuisance is found is not restricted thereto.

If an order of a board of health, under Gen. Sts., c. 26, § 8, for removing a nuisance, prescribes a mode for the removal, and the owner or occupant of the property on which the nuisance is found neglects to remove it, the board, in proceeding to remove it under § 10, is not restricted to that mode, but may adopt any which is suitable, even if, in so doing, it is necessary to subvert soil adjoining that on which the nuisance exists.

In an action by a city, on Gen. Sts., c. 26, § 10, against the party alleged to have caused a nuisance, to recover money expended by the board of health for removing it, if such party had no opportunity to be heard before the board, none of the findings or adjudications of the board preliminary to the incurring of such expenses are conclusive upon him, and all the facts on which the recovery is sought are open to be controverted and must be established by the proofs.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 447.

An order of the board of health of a city, under Gen. Sts., c. 26, § 8 (R. L., c. 75, § 67), directing the owner (or occupant) of land to remove a nuisance in a specific manner, is void.

Watuppa Reservoir *v.* Mackenzie, 132 Mass. 71.

In the absence of statutory authority, neither the board of health nor the city council of a city has any power to erect a dam on a person's land, without his consent, for the purpose of abating a nuisance existing on adjacent land.

Cavanagh *v.* Boston, 139 Mass. 426.
cf. Huse *v.* Amesbury, 163 Mass. 240.

A piggery in which swine are kept in such numbers that their natural odors fill the air thereabout, and make the occupation of the neighboring houses and passage over the adjacent highways disagreeable, is a nuisance; and on the trial of an indictment for maintaining such nuisance evidence that it is the custom in this Commonwealth to locate such establishments in populous localities and to tolerate them there is inadmissible.

Commonwealth *v.* Perry, 139 Mass. 198.
cf. Commonwealth *v.* Young, 135 Mass. 526.
See also Fay *v.* Whitman, 100 Mass. 76.
Commonwealth *v.* Sweeney, 131 Mass. 579.

A notice issued under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), by the board of health of a town to the occupant of certain premises, reciting that a nuisance, "consisting of a filthy hog pen and stable," exists thereon, and

ordering him "to abate the said nuisance on your estate, and also to remove your hogs outside the limits of the village, within forty-eight hours after the service hereof," is valid as an order to abate the nuisance, and is not rendered void by the direction to remove the hogs.

Commonwealth *v.* Alden, 143 Mass. 113.

It is not necessary that a complaint to recover the forfeiture provided by Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under Pub. Sts., c. 80, § 16 (R. L., c. 75, § 13).

An omission in a complaint under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

A notice issued under Pub Sts., c. 80, § 21 (R. L., c. 75, § 67), by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

For Huse *v.* Amesbury, 163 Mass. 240, see p. 134.
For Nelson *v.* State Board of Health, 186 Mass. 330, see p. 148.
For Belmont *v.* New England Brick Co., 190 Mass. 442, see p. 135.

R. L. 75, § 68 (p. 35).

For Commonwealth *v.* Alden, 143 Mass. 113, see above.
For Nelson *v.* State Board of Health, 186 Mass. 330, see p. 148.
For Belmont *v.* New England Brick Co., 190 Mass. 442, see p. 135.

R. L. 75, § 69 (p. 36).

Salem *v.* Eastern Railroad Company, 98 Mass. 445.

R. L. 75, § 75 (p. 37).

Under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), a board of health may act by a committee in abating a nuisance.

Grace *v.* Newton Board of Health, 135 Mass. 490.

"It [St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*)] contemplates that lands may be entered upon which are not themselves wet, rotten, spongy or covered with stagnant water, and excavations, embankments and drains made thereupon, in order to abate the nuisance, and that proceedings under the statute are in the nature of taking private property for public use."

Grace *v.* Newton Board of Health, 135 Mass. 490, 492.

On a petition for a writ of *certiorari* to quash the proceedings of the board of health of a city, assessing the expense of abating a nuisance under St. 1868, c. 160 (R. L., c. 75, § 75), the record showed a petition, addressed to the board of health, which complained of large quantities of water standing in an open drain between two streets, from which arose such unhealthy odors

as to cause great sickness in the neighborhood, and prayed for a hearing; a reference of the same to the next city government; a vote of the board of health, the next year, to view the premises; a view taken; an order that the city engineer, under direction of a committee, be directed to widen, straighten and deepen a water course between the two streets, and that the clerk be instructed to notify abutters on the water course of a hearing on a certain day, under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*); a warrant issued by the clerk to a constable to notify abutters of the intention of the board of health to enter upon the premises for the purpose of widening, deepening and straightening the brook, and that a hearing would be given at a time and place named, to all parties interested in the matter, as to the necessity and mode of abating the nuisance caused by the brook and the question of damages, and of the assessment and apportionment of the expenses thereof, and a notice setting forth these things and stating that it was in accordance with St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*). *Held,* that it sufficiently appeared that the board was attempting to act under this statute. *Held, also,* that the petition was sufficient to give the board jurisdiction.

Grace *v.* Newton Board of Health, 135 Mass. 490.

A petition to the board of health of a city described a nuisance as owing "to large quantities of stagnant water standing in an open drain between two streets of the city." The board of health issued a notice that it was acting under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), and abated the nuisance. On a petition for a writ of *certiorari* to quash the proceedings of the board of health, it did not appear whether the drain was a public or a private one, nor for what purpose it was made, and it appeared to be a water course. *Held,* that it could not be said that the nuisance was not such as could be abated under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), and that it was too late to take this objection.

Grace *v.* Newton Board of Health, 135 Mass. 490.

An assessment cannot be levied for expenses incurred by a board of health under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), upon a person to whom notice of the hearing provided for in § 3 (R. L., c. 75, § 77) is not given, although he has knowledge of the doing of the work whereby the expenses are incurred.

Grace *v.* Newton Board of Health, 135 Mass. 490.

It is no ground for a writ of *certiorari* to quash an assessment levied for expenses incurred under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), that the expenses were not assessed proportionately upon all persons benefited, or that items were included in the expenses which ought to have been excluded.

Grace *v.* Newton Board of Health, 135 Mass. 490.

If a board of health has given notice of a hearing under St. 1868, c. 160, § 3 (R. L., c. 75, § 77), it need not give a new notice of its intention to make an assessment under § 5 (R. L., c. 75, § 79).

Grace *v.* Newton Board of Health, 135 Mass. 490.

A report of a committee of the board of health of a city, upon the assessment of damages and benefits sustained by the abatement of a nuisance, under St. 1868, c. 160 (R. L., c. 75, § 75 *et seq.*), was accompanied by orders drawn in accordance with the report, and by warrants upon the city treasurer for the collection of assessments. The record showed that the report was

accepted and the orders and warrants adopted. *Held,* that the adoption of the report sufficiently appeared.

Grace *v.* Newton Board of Health, 135 Mass. 490.

Upon proceedings by the board of health pursuant to Pub. Sts., c. 80, §§ 28–33 (R. L., c. 75, §§ 75–82), for the abatement of a nuisance consisting of wet and spongy lands injurious to health, the measure of damages for land upon which it has been necessary to enter to abate the nuisance is the difference between its fair market value before the act of the board and such value afterwards.

Driscoll *v.* Taunton, 160 Mass. 486.

Upon a petition for the assessment of damages to land in consequence of proceedings pursuant to Pub. Sts., c. 80, §§ 28–33 (R. L., c. 75, §§ 75–82), for the abatement of a nuisance consisting of wet and spongy lands injurious to health, any nuisance on the land upon which it was necessary to enter, in order to be chargeable to the city or town, must be the result of the act of the board of health; and, unless such act results in a nuisance, evidence of a subsequent nuisance is immaterial.

Driscoll *v.* Taunton, 160 Mass. 486.

For ruling as to cases in which a landowner may be estopped from claiming damages by reason of acts of board of health, see

Driscoll *v.* Taunton, 160 Mass. 486.

For Huse *v.* Amesbury, 163 Mass. 240, see p. 134.

R. L. 75, §§ 77, 79 (p. 38).

For Grace *v.* Newton Board of Health, 135 Mass. 490, see pp. 137, 138.

R. L. 75, § 90 (p. 41).

In an action against a member of the board of health of a town, who unlawfully took possession of the furniture in a house in which a contagious disease existed, and destroyed it, the defendant asked the judge to rule that the measure of damages was the market value of the property in its infected condition. The judge refused so to rule, and instructed the jury that the plaintiff was entitled to recover what the property was worth at the time it was taken, taking into consideration how much the value had been affected by its exposure to infection. *Held,* that the defendant had no ground of exception.

Brown *v.* Murdock, 140 Mass. 314.

R. L. 75, § 54 (p. 41).

Salem *v.* Eastern Railroad Company, 98 Mass. 445.

GARBAGE AND GARBAGE DISPOSAL.

R. L. 25, § 14 (p. 43).

A town board of health transcends its powers in attempting to award a contract under R. L., c. 25, § 14, for the removal of ashes and garbage in violation of a direction contained in the vote of the town making the appropriation that the work should be let out to the lowest responsible bidder.

Oliver *et al. v.* Gale *et al.,* 182 Mass. 39.

OFFENSIVE TRADES.

R. L. 75, §§ 91–111 (pp. 43–49).

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in that place, and he would then be liable to no process, suit or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth *v.* Rumford Chemical Works, 16 Gray, 231.

The statutes of the Commonwealth have not superseded the remedy by indictment at common law for a nuisance in carrying on an unlawful and offensive trade and manufacture.

An indictment for a nuisance at common law sufficiently describes the nuisance, and is not bad for duplicity, which alleges that the defendants at a certain day and place set up and maintained certain buildings, and on that day and on divers others between that day and the day of the finding of the indictment used and employed therein large quantities of acid, guano, tar, oil, bone and dead bodies and other noxious and offensive substances in the manufacture of acids, colors, chemicals and chemical products, by means whereof divers noxious and offensive smokes, gases, smells and stenches were emitted, so that the air was filled and impregnated therewith, and rendered corrupt and unwholesome, to the great damage and common nuisance of all persons then and there being.

Commonwealth *v.* Rumford Chemical Works, 16 Gray, 233.

Under Gen. Sts., c. 26, § 52, the selectmen of a town, acting as a board of health, may by a general order forbid the exercise of an offensive trade or employment therein, without first giving notice to those who at the time are engaged in carrying on the same.

Belcher *et al. v.* Farrar, 8 Allen, 325.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher *et al. v.* Farrar, 8 Allen, 327.

If the selectmen of a town, acting as a board of health, have brought a bill in equity to restrain the exercise of an offensive trade or employment which they have prohibited, under Gen. Sts., c. 26, § 52, this court have power to allow an amendment thereof, by substituting the inhabitants of the town as plaintiffs, after the term of office of the selectmen has ceased.

An order by the selectmen of a town, acting as a board of health, forbidding the exercise of an offensive trade or employment therein, need not be served by an officer.

If the selectmen of a town, acting as a board of health, after passing a general order, under Gen. Sts., c. 26, § 52, forbidding the exercise of an offensive trade or employment therein, without first giving notice to those who at the time were engaged in carrying on the same, and after giving notice of the passage of such order to a person so employed, subsequently, and before the expiration of the three days allowed by § 56 for an appeal therefrom, give notice to such person of the presentation of a petition to them, praying for the passage of a similar order upon him, and appointing a time and place for a hearing, and if they do this with the intention of preventing him from availing himself of his right of appeal from the order which they have already passed, and he is thereby so prevented, and thereby loses his right of appeal, this court will not enforce the order of the board of health by a process in equity. And if they have done this without an intention to mislead him or to deprive him of his right of appeal, but he and his counsel have been actually mistaken in regard to his right to appeal from the order, and he has lost his appeal by reason of this mistake, and the consequences to him will be serious, this court in its discretion may and will refuse to enforce the order.

Winthrop *v.* Farrar, 11 Allen, 398.

In the above case (Belcher *v.* Farrar, 8 Allen, 327) Bigelow, C.J., says: "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required to give notice to all persons exercising offensive trades or employments within the limits of the town of their intention to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the mean time, the alleged offensive and noisome trades might be carried on, great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth *v.* Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth *v.* Patch, 97 Mass. 223.

But see 135 Mass. 526, which holds that keeping of swine is, in certain cases, an "employment," and that in prohibiting its exercise the board must proceed under R. L., c. 75, §§ 91, 94, 95 and not under § 65.

The Legislature in the exercise of its police power may prohibit the use of any building in cities or towns of a certain population for carrying on, without permission of the mayor and aldermen or selectmen, a trade necessary

and lawful in itself, but which in its ordinary exercise may become a public nuisance.

Watertown *v.* Mayo, 109 Mass. 318.

Where a person before the passage of St. 1871, c. 167, used and occupied a building on his own land as a slaughter-house, and therein slaughtered cattle, sheep and other animals as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same site, and continued his business of slaughtering cattle, sheep and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more extensive in size or capacity, the court held that the right to continue, without license, the same business in the building was not forfeited, and the building was within the exception stated in the section.

Watertown *v.* Sawyer, 109 Mass. 320.

The manifest purpose of the Legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown *v.* Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business he made use of two open kettles, but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or proposed to increase the business, and refused to issue an injunction restraining him from so enlarging and extending them.

Somerville *v.* O'Neil, 114 Mass. 353.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health: "Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads,

refuse and partially decayed animal matter, and, as a part of such trade or employment, the storing about the premises where such business is carried on of putrid meats, bones, heads, legs and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton."

Taunton *v.* Taylor, 116 Mass. 261.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein. It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton *v.* Taylor, 116 Mass. 261.

A person aggrieved by an order of the State Board of Health, under St. 1871, c. 167, § 2, prohibiting his carrying on a certain trade, and adjudging it to be a nuisance, has a right of appeal to a jury, although such right is not expressly given by this statute.

A petition for a jury to "either alter or annul in full" an order of the State Board of Health, alleged that the petitioner carried on the business of slaughtering, and set forth the order, which directed the discontinuance of the business of "slaughtering and rendering." The jury returned a verdict that they did not affirm the order in full, and made certain "special findings" that the "jury alter the order" by permitting the continuance of the business of "slaughtering" under certain restrictions enumerated, both the verdict and findings being signed by the foreman and affirmed in court. *Held,* that the verdict and findings were sufficiently clear and formal.

Under Gen. Sts., c. 26, § 5, providing that a board of health "shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth and causes of sickness," a jury, on appeal from an order of the State Board of Health prohibiting the business of slaughtering and rendering on certain premises, may alter the order by permitting the business of "slaughtering" under restrictions that the cellar under the slaughter-house be concreted in concave form, that no swine be kept in or under the slaughter-house, that all offal and offensive matter be removed from the premises before a certain hour of the day of killing, in covered, water-tight boxes or tanks, and that the premises be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health.

Sawyer *v.* State Board of Health, 125 Mass. 182.

The same power by this section is given to the boards of health of towns and cities as is given by Pub. Sts., c. 80, § 93 (R. L., c. 75, § 109), to the State Board of Health. The only difference is this, that by § 93 (§ 109) the State Board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but under this section the local boards may pass an order of prohibition without any previous notice. (Belcher *v.* Farrar, 8 Allen, 325.)

Sawyer *v.* State Board of Health, 125 Mass. 191.

The statutes of the Commonwealth do not in terms authorize either the local or State Board of Health to prescribe regulations for the mode of carrying on noxious or harmful trades or business. Their power is that of prohibition. (Gen. Sts., c. 26, § 52.) Although no authority is given to regulate "offensive trades," yet by § 5 of the same chapter it is provided that "the board shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town," etc. By § 56 any person aggrieved by the order of prohibition may appeal therefrom, and provision is made for a speedy hearing before a jury. Section 58 provides that "the verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in the case of highways; and said verdict, when accepted, shall have the authority and effect of an original order from which no appeal had been taken."

Sawyer *v.* State Board of Health, 125 Mass. 194.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer *v.* State Board of Health, 125 Mass. 195.

Notice must be given to the State Board of Health of an appeal from an order of that board, under St. 1878, c. 183, § 6.

Pebbles *v.* City of Boston, 131 Mass. 197.

A board of health of a town in 1881 made a regulation which provided that no swine should be kept in any place in a town without a permit being first obtained from the board. On a complaint against a person for violation of this regulation, it appeared that the defendant kept about a hundred and fifty swine, and had been engaged for years in the business of feeding offal to swine. *Held,* that such a keeping of swine was an "employment," and that the authority of the board to regulate the same was under Pub. Sts., c. 80, § 84 (R. L., c. 75, § 91), and not under § 18 (R. L., c. 75, § 65); that the defendant was entitled to notice under § 87 (R. L., c. 75, § 94); and that a publication under § 19 (R. L., c. 75, § 14) was not sufficient.

Commonwealth *v.* Young, 135 Mass. 526.

A notice issued under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health, and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

It is not necessary that a complaint to recover the forfeiture provided by Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of a town for its removal should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under Pub. Sts., c. 80, § 16 (R. L., c. 75, § 13).

An omission in a complaint under Pub. Sts., c. 80, § 21 (R. L., c. 75, § 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

The board of health of a town may, under Pub. Sts., c. 80, § 84 (R. L., c. 75, § 91), pass a qualified order forbidding the exercise of the employment of keeping swine within the town "without a permit in writing first obtained from the board of health."

Quincy *v.* Kennard, 151 Mass. 563.

St. 1894, c. 491, § 18 (R. L., c. 75, § 100), providing for the granting of licenses to slaughter-houses by the mayor and aldermen of cities and the selectmen of towns, or such other board of officers as they shall designate, does not take away the power of the board of health of a city under Pub. Sts., c. 80, § 84 (R. L., c. 75, § 91), to forbid the carrying on of a slaughter-house as dangerous to the public health, and the maintenance of a slaughter-house so licensed may be prohibited by that board. This power is in no way affected by St. 1897, c. 428, § 2 (R. L., c. 75, § 99), providing that in towns having a population of more than five thousand the board of health instead of the selectmen shall have charge of licensing slaughter-houses.

Cambridge *v.* Trelegan, 181 Mass. 565.

A prosecution for the violation of a by-law of a town adopted under R. L., c. 25, § 23, can be begun only by a complaint before a police, district or municipal court or a trial justice, instituted by the town treasurer, and cannot be begun by indictment in the Superior Court.

A by-law of a town, adopted when the town had a board of health having jurisdiction of offensive trades and employments under R. L., c. 75, § 91, providing that no person should keep within the limits of the town more than five swine, exclusive of the offspring of the five less than four months old, is invalid as against a person engaged in the business of keeping swine in that town.

Commonwealth *v.* Rawson, 183 Mass. 491.

The Supreme Judicial Court has no jurisdiction to entertain a bill in equity to restrain a corporation from carrying on without a license the business of melting and rendering grease and tallow and making food for fowls from oysters and other sea shells, in a building where the business was established before May 8, 1871, the defendant never having killed horses or done any rendering of horses or other dead animals, and never having used or required in its business trucks or wagons for the removal of dead animals. Such a case is exempted from the provisions of R. L., c. 75, § 108; and, *semble*, that § 111 of the same chapter does not apply to it, but, if it does, it provides only for fine or imprisonment, and gives no remedy in equity.

Cambridge *v.* John C. Dow Company, 185 Mass. 448.

DECISIONS CONCERNING THE KEEPING OF SWINE.

Commonwealth *v.* Patch, 97 Mass. 221. (See p. 133.)
Fay *v.* Whitman, 100 Mass. 76.
Commonwealth *v.* Sweeney, 131 Mass. 579.
Commonwealth *v.* Young, 135 Mass. 526. (See p. 144.)
Commonwealth *v.* Perry, 139 Mass. 198. (See p. 136.)
Commonwealth *v.* Alden, 143 Mass. 113. (See pp. 136, 137.)
Quincy *v.* Kennard, 151 Mass. 563. (See above.)
Commonwealth *v.* Rawson, 183 Mass. 491. (See above.)

STABLES.

R. L. 102, §§ 66–72 (pp. 50, 51).

On a bill in equity praying that the defendants be enjoined from erecting or causing to be erected a stable, it appeared that they had received from the board of health of the city a license to erect it, granted under St. 1891, c. 220, at a public hearing, at which the petitioners were represented. The petitioners wished to introduce evidence of what would be the natural and probable effect of the erection and use of the proposed building according to the terms of the license. *Held,* that the statute gave the determination of this question to the board of health, and that the bill should be dismissed with costs.

White *v.* Kenney, 157 Mass. 12.
See also Langmaid *v.* Reed, 159 Mass. 409.

The provisions of St. 1891, c. 220, prohibiting the erection, occupation or use of any building in any city for a stable for more than four horses, unless first licensed so to do by the board of health of the city, are an exercise of the police power of the Commonwealth, and are constitutional, although no provision is made for compensation, and no right of appeal is given.

Newton *v.* Joyce, 166 Mass. 83.

The occupant of a lot of about seven thousand square feet, on which were two buildings, one of a permanent and the other of a temporary character, divided the temporary building into two portions, in one of which were four stalls and in the other three, and kept upon the premises eleven horses, four of them being kept in the main building, four in one of the temporary buildings and three in the other. *Held,* that his act was an evasion of R. L., c. 102, § 72, which forbids the occupancy or use of "any building or place for a stable for more than four horses," unless a license has been first obtained therefor.

Brookline *v.* Hatch, 167 Mass. 380.

The provision of R. L., c. 102, § 70, that "No person shall, in a city, occupy or use a building for a livery stable or a stable for taking or keeping horses and carriages for hire or to let within two hundred feet of a church or meeting house erected and used for the public worship of God without the consent in writing of the religious society or parish worshipping therein," does not apply to a stable which is let out in specified parts to tenants who take care of their own horses. *Semble,* that the prohibition of the statute extends to a case where the back of a stable of the kind described in the statute is within two hundred feet of the back of the church, although the buildings face on different streets.

Congregation Beth Israel *v.* O'Connell *et al.,* 187 Mass. 236.

A license to erect and use a stable, granted by the board of health of a city under St. 1895, c. 213 (R. L., c. 102, § 69), without limit of time, where there has been no violation of its terms, is not revocable by that board.

Lowell *v.* Archambault, 189 Mass. 70.

R. L., c. 102, § 69, providing that "no person shall erect, occupy or use for a stable any building in a city whose population exceeds twenty-five

thousand, unless such use is licensed by the board of health of said city," does not apply to a stable placed temporarily on land taken for a reservation by the Metropolitan Park Commissioners for the use of a contractor employed by the commissioners in the preparation of the land for a park, which is reasonably necessary for the prosecution of that work, and was erected under a vote of the commissioners and by their sanction.

The general statute, R. L., c. 102, § 69, requiring in cities of a certain population a license from the board of health before a stable can be erected, must be held to be subordinate to the special statute, St. 1893, c. 407, § 4, which authorizes the Metropolitan Park Commissioners to "do all acts needful for the proper execution of the powers and duties granted to and imposed upon" them as agents of the Commonwealth.

Teasdale *et al. v.* Newell and Snowling Construction Company, 192 Mass. 440.

WATER SUPPLY AND SEWERAGE.

R. L. 75, §§ 112, 113 (p. 68), 118, 119 (p. 70), 124–126 (p. 72).

Notice must be given to the State Board of Health of an appeal from an order of that board, under St. 1878, c. 183, § 6.

Pebbles *v.* City of Boston, 131 Mass. 197.

Since the passage of St. 1878, c. 183, forbidding the discharge into any river or stream, used as a source of water supply by any city or town, within twenty miles above the point where such supply is taken, of any sewage, drainage, refuse or polluting matter of such quality or amount as to be deleterious to health, a person cannot acquire by prescription the right so to foul a stream within such distance, as against a city or town using the stream as its source of water supply.

Brookline *v.* Mackintosh, 133 Mass. 215.

See also Harris *v.* Mackintosh, 133 Mass. 228.

A landlord is liable for the acts of his tenant in polluting the waters of a brook which is a natural water course running through the premises, by discharging sink water therein, if the building leased is adapted and intended to be used in the manner complained of, whether he retains control over the house or not.

In an action for polluting the waters of a brook which is a natural water course, if the injury to the plaintiff resulting from the defendant's acts can be specifically ascertained, it is no defence that the plaintiff has also polluted the brook.

A land owner may collect the surface water of his land, and the water drawn from wells therein, into an artificial stream, and discharge this stream into a natural water course running through his land, provided that this is done in the reasonable use of his land, and that the volume of water is not increased beyond the natural capacity of the water course to discharge it, and the land of an adjoining owner is not thereby overflowed and materially injured.

Jackman *v.* Arlington Mills, 137 Mass. 277.

If a pond and the waters of a stream running into the pond are taken for the purpose of supplying a city with pure water, it is no defence to a petition in equity, under St. 1884, c. 154, for an injunction to restrain a person from polluting the stream, that the city has, by means of a dike, prevented

the waters of the stream from running into and polluting the waters of the pond.

Martin *v.* Gleason, 139 Mass. 183.

St. 1897, c. 510, (R. L., c. 75, §§ 112, 113, 116, 118–123), does not give the State Board of Health exclusive jurisdiction of nuisances affecting the purity of the sources of water supply. There is nothing in that statute which takes away or limits the power of local boards of health to deal with nuisances in their respective jurisdictions.

Stone *v.* Heath, 179 Mass. 385.

Special and general statutes, preventing the discharge into streams of polluting matter of such kind and amount as will corrupt or impair the quality of the water, are reasonable regulations of the exercise of private rights of property, and need not provide for compensation to persons having the ordinary rights of riparian owners.

The owner of land through which runs a stream whose waters are taken under St. 1895, c. 488, to be used as a part of the metropolitan water supply, is subject in his use of the stream to regulations made by the State Board of Health under § 24 of that statute, and such regulations may be enforced against him by the Metropolitan Water Board under §§ 27, 28 of the same statute.

If the owner of land through which runs a stream whose waters are taken under St. 1895, c. 488, to be used as a part of the metropolitan water supply, has acquired by prescription a right to pollute the stream, such right is included in the taking; and the owner is entitled to compensation for it under § 12 of the statute, as a damage sustained "by the interference with the use of any water, or by any other act or thing done by said board under this act."

Whether, in the exercise of the police power, the Legislature, without providing compensation, can forbid the pollution of water by one who has acquired a prescriptive right to pollute it as against other proprietors, *quære.*

Sprague *et al. v.* Dorr, 185 Mass. 10.

The provision of St. 1897, c. 510, § 4, giving to any person aggrieved by an order passed by the State Board of Health under that act the right to appeal and file a petition for a jury within ten days from the service of such order upon him, or, in case of failure to do so, by mistake, within thirty days from the service of the order upon him, applies only to orders made under § 3 of that act which are quasi judicial, and does not apply to rules, regulations and orders made by the Board under § 1 of the act which are quasi legislative in character. (See now R. L., c. 75, § 119.)

Nelson *v.* State Board of Health, 186 Mass. 330.

A riparian owner cannot, by maintaining a sawmill on the bank of a stream for thirty years, acquire a prescriptive right against the Commonwealth to discharge sawdust into the stream and thereby kill or injure fish therein, but holds his property subject to the right of the Legislature to prohibit or regulate the discharge of sawdust into the stream for the protection of edible fish.

The Legislature lawfully may delegate to the Board of Fish and Game Commissioners the power to select the brooks and rivers in which the fish

are of sufficient value to warrant the prohibition or regulation of the discharge of sawdust into the stream.

The Board of Fish and Game Commissioners, in exercising the power delegated to them by R. L., c. 91, § 8, of determining whether the fish of a brook or stream are of sufficient value to warrant the prohibition or regulation of the discharge of sawdust therein, and of prohibiting or regulating its discharge if so warranted, are acting in a legislative and not in a judicial capacity, and need not base their action on sworn evidence, or give a hearing to a person requesting it, whose sawmill is injuriously affected by their action.

Commonwealth *v.* Sisson, 189 Mass. 247.

Whether, under R. L., c. 75, § 113, authorizing the State Board of Health to "make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply," that Board have power to make a regulation forbidding the cutting of ice on a great pond so used, without a permit in writing from that Board, *quære.*

Under St. 1897, c. 510, § 1 (R. L., c. 75, § 113), authorizing the State Board of Health to "make rules, regulations and orders for the purpose of preventing the pollution and securing the sanitary protection" of such waters as are used as sources of water supply, that Board have no power to make a regulation forbidding the cutting of ice, in a great pond so used, without a permit in writing from the board of water commissioners of the city in which the pond is situated, thus attempting to delegate to another board the right to grant or withhold such a permit.

Commonwealth *v.* Staples, 191 Mass. 384.

[Note. — The power to delegate such authority was granted later by Acts of 1907, c. 467.]

R. L. 213, § 10 (p. 75).

A water company incorporated for the purpose of supplying the inhabitants of a town with water, which is authorized "to distribute water through said town and establish and collect rates therefor," has no right to refuse to supply water to the lessee of a house connected with its system on the ground that the owner of the house has not paid the rates for the previous year; and a regulation of the company that "in all cases of non-payment of rates fifteen days after same are due, the water may be shut off without further notice, and not be again turned on until rates are paid," so far as it may be construed as giving such a right, is unreasonable and void.

Turner *v.* Revere Water Company, 171 Mass. 329.

SEWERS AND DRAINS.

R. L. 49, § 1 (p. 77).

The exclusive control of the construction of common sewers in the city of Boston is vested in the board of aldermen; and the city is not liable for any injury or inconvenience occasioned to private persons by their location or construction, according to the order of that board.

When constructed, they become the property of the city, and the duty of keeping them in order devolves upon the city; and the city is responsible for negligently suffering them to occasion a nuisance to the estates of the citizens whose private drains enter into them, if the nuisance does not

result from their original plan of construction, and could be avoided by keeping them in proper condition.

When a sewer was ordered to be constructed with a waste weir discharging into the empty basin of the Back Bay, and was built according to the order, it was the duty of the city, when the flats between the upland and the channel of the basin were filled up and made solid land, to extend the drain through the land thus made, so as to keep an open place of discharge into the basin, the city having the right thus to extend it; and if, by their negligently omitting to do so, after notice, injury is occasioned to the estates of private persons by the overflow of the sewer, the city is answerable in damages.

An indenture conveying to the city of Boston the right forever "to dig, lay and maintain all convenient and necessary sewers or drains from the upland to the channel or deep water within the basin [in the Back Bay] according to law and the common and usual practice for the time being within the city," must be construed to apply not only to the wants of the city as a private owner of lands in the neighborhood, but also to the sewers for general use, which it might be their duty, in their municipal capacity, to construct and maintain.

Child *v.* Boston, 4 Allen, 41.

No action lies against a city for a failure to keep a public sewer and cesspool in repair, whereby waste water accumulates and flows into the cellar of a neighboring house, which is not connected by a drain with the public sewer.

Barry *v.* Lowell, 8 Allen, 127.

A land owner in a city, who drains his premises by a private drain leading from them under the adjoining street, has no right of action against the city for merely opening a passage from the street down into the drain to conduct off surface water. But if the city constructs and maintains the passage in such a manner as in effect to adopt it, in connection with the drain, as a common sewer, and by negligence in its construction or repair obstructs his drainage, it is liable to him in an action at common law for the obstruction.

Emery *v.* Lowell, 104 Mass. 13.

Under St. 1869, c. 111, § 1, providing that the "mayor and aldermen of any city" "may lay, make and maintain all such main drains, or common sewers, as they shall adjudge to be necessary for the public convenience or the public health, through the lands of any persons or corporations," the mayor and aldermen of a city may construct a sewer in a public street, and may also determine, without a recorded vote, the materials of which it shall be constructed.

Gen. Sts., c. 48, § 9, providing that all drains and common sewers shall be made with brick or stone, or such other material as the selectmen of the town shall permit or direct, applies only to towns.

Carr *v.* Dooley, 122 Mass. 255.

Under the charter and ordinances of the city of Lowell, although the exclusive control of the construction of common sewers is delegated to the board of aldermen, the sewers, when constructed, become the property of the city, the board of aldermen act as agents of the city, and the city is

liable for any negligence in the course of construction by which an injury is caused to person or property.

Murphy *v.* Lowell, 124 Mass. 564.

An ordinance of a city forbidding any person from entering a private drain into a public sewer, without a written permit of the board of aldermen, is valid; and no action can be maintained, either by a person who, after paying the sum assessed upon him for constructing the sewer, builds a private drain connecting with it, without a permit, or by a tenant of his heirs, for an injury caused by an overflow of the sewer through the drain, even though the overflow is caused by the negligence of the city.

Randlett *et al. v.* Lowell, 126 Mass. 431.

A city, having the legal right to construct sewers in its streets, is not liable in tort for all damages that may be caused by the blasting of rocks, necessary in such construction, but only for such damages as are occasioned by the carelessness or unskilfulness of its agents in doing the work.

Murphy *v.* Lowell, 128 Mass. 396.

A town is not responsible for damages resulting from work done under the supposed authority of illegal and void votes.

Lemon *v.* Newton, 134 Mass. 476.

Under Pub. Sts., c. 50, § 1 (R. L., c. 49, § 1), as to the laying and making of common sewers, the mayor and aldermen of a city may order a sewer to be "built" by a joint committee of the city council.

Notice need not be given by the mayor and aldermen of a city of their intention to lay out and construct a sewer, and to levy assessments therefor, to a person to be benefited thereby.

Collins *v.* Holyoke, 146 Mass. 298.

A sewer assessment cannot be laid, under Pub. Sts., c. 50, §§ 4, 7, upon a cemetery corporation's land, which, by its charter, is perpetually set apart as a burial place for the dead, and can neither be sold, used for profit, nor appropriated to any other purpose.

Proprietors of Mount Auburn *v.* Cambridge, 150 Mass. 12.

A town is liable to a land owner for damages resulting from neglect to keep its sewers free from obstructions.

In an action of tort against a town for flooding the plaintiff's land with back water from a drain, the declaration alleged that the drain was choked up by reason of various acts of the defendant. At the trial the presiding judge, after stating in detail to the jury the conditions of liability, instructed them that, if they should find that not all the acts alleged operated to produce the injury, but that some of them did, they still could find for the plaintiff. *Held,* that the instruction meant only that less than all such acts would be enough, if the facts found by them satisfied the conditions just before stated, and that the defendant had no ground of exception.

A town discharged a system of sewers into a drain built by it on private land under a lease for a definite term. After the expiration of the term the drain was permitted to remain, and received the drainage, as before, of which it was the necessary outlet, and through the neglect of the town became choked up, thereby flooding other land. The owner of this land

thereupon brought an action for such flowage against the town, which thereafter under agreement with the lessor built and maintained a new and sufficient drain in the same place. *Held,* that the action could be maintained.

Bates *v.* Westborough, 151 Mass. 174.

The general easement in the public acquired by the location of a highway extends to the limits of a highway as located, and includes various underground uses, of which the construction of sewers is one.

The owner of land over which a highway is laid retains his right in the soil for all purposes which are consistent with the full enjoyment of the easement acquired by the public, subject, however, to municipal or police regulations.

The owner of land over which a highway is laid has a right to excavate under the sidewalk, if he thereby violates no ordinances or regulations of the city or interferes with no existing public use of the street.

The owner of land over which a highway was laid extended his cellar under the sidewalk so that its outer wall came just within the outside line of the sidewalk, and to within one or two feet of a sewer in the highway, which on that side was constructed of common field stones, and deepened the cellar so that its floor was two feet below the level of the bottom of the sewer. The owner of the land brought an action against the city for damages for injuries occasioned by the leaking of the sewage into his cellar. *Held,* that, in the absence of knowledge that the sewer was improperly constructed, the owner of the land might well assume that it was tight, and due care on his part did not require him to guard against a defective construction of the sewer, the existence of which he had no reason to suspect.

The duty of keeping a sewer in repair rests upon the city, and if it is necessary, in order to prevent the leaking of sewage from the sewer into the cellar of abutting premises, to change the location of the sewer to another part of the street, it may be done by the city through its superintendent of sewers without the order of the board of mayor and aldermen; and the city will not be excused for a negligent omission to make the sewer safe, merely on the ground that the power to fix its location and to prescribe a plan for its construction rests with the board of aldermen, when that board has not exercised that power.

The liability of a city for damages caused by the leaking of sewage from a sewer constructed by it in the highway into the cellar of an abutting owner does not depend upon the assessment of the abutting owner for the cost of the sewer, but upon the injury done to him by the nuisance; and the fact that his premises are not connected with the sewer does not prevent him from recovering for the damages sustained by its negligent construction or maintenance.

In an action for injuries caused by the leaking of sewage into the plaintiff's cellar, damages for the injury to his health and business, where they are specially alleged, as well as the injury to his property, may be recovered.

Allen *v.* Boston, 159 Mass. 324.

A town has power to widen a common drain, or to clear it from obstructions, although it is upon private land and outside the limits of any highway.

The town of Melrose is bound to maintain and keep in repair, within its

own limits, the drain made by the county commissioners under the authority of St. 1869, c. 378.

If county commissioners lay out a common drain twelve feet wide in a town, but actually build it at a certain place therein only eight feet wide, the town has power to enlarge the drain to the width of twelve feet, if such enlargement is reasonable and necessary for the purpose of proper drainage.

It is lawful for a town to take from the owner of land therein, through which a common drain is laid, an agreement for reimbursement of the cost to the town of enlarging the drain on his premises.

The bringing of an action by a town upon an agreement, taken by its selectmen from the owner of land therein through which a common drain is laid, for reimbursement of the cost to the town of enlarging the drain on his premises, is sufficient evidence of acceptance of the agreement, and of a ratification of the act of the selectmen in taking it.

Melrose *v.* Hiland, 163 Mass. 303.

Under the revised charter of the city of Fall River, St. 1902, c. 393, the mayor of that city has no authority to order the construction of a sewer without a previous adjudication by the board of aldermen. The fact that an appropriation has been made in general terms for sewer construction, and that the superintendent of streets has been authorized to expend it under the general control and supervision of the mayor, does not give the mayor authority to construct a sewer without an adjudication by the board of aldermen that it is necessary for the public health or convenience.

A petition of not less than ten taxable inhabitants, under R. L., c. 25, § 100, is the proper remedy to restrain the mayor of a city from expending money or incurring obligations in behalf of the city for the construction of certain sewers and sidewalks and the paving of certain highways, ordered by the mayor in excess of his authority.

Draper *et al. v.* Mayor of Fall River *et al.,* 185 Mass. 142.

R. L. 49, § 30 (p. 78).

On a complaint under St. 1890, c. 132, against the defendant, for maintaining a building not connected with a public sewer, although required to connect it by the board of health, it appeared that the city council, under its charter, ordered the committee on drainage "to extend section 3 of the eastern intercepting sewer from its present terminus through C and New C Streets to W Avenue;" that the sewer was laid through private land below the point where it passed the defendant's house, without other authority than the statute and the land owner's unrecorded waiver under seal of damages, and that it was laid through the defendant's land at a place above his own house, and that the defendant neither had licensed it nor had been paid for it. *Held,* that the order was sufficiently definite, and implied an adjudication of necessity; that the sewer was lawful below the defendant's house, and that it was immaterial that the waiver was not recorded; that if the sewer was unlawful where it crossed the land above, it was not made unlawful throughout; that the failure to keep the plan of the sewer in the city clerk's office had no bearing on the proceedings; and that a short answer to most of the defendant's objections was that they could be taken only by *certiorari.*

Commonwealth *v.* Abbott, 160 Mass. 282.

For Melrose *v.* Hiland, 163 Mass. 303, see p. 512 and above.

FOOD AND DRUGS.

R. L. 75, §§ 16–27 (pp. 80–84).

An indictment under Gen. Sts., c. 166, § 3 (R. L., c. 75, § 25), which charges the defendant with unlawfully and fraudulently adulterating "a certain substance intended for food, to wit, one pound of confectionery," does not sufficiently describe the substance alleged to have been adulterated, and, if seasonably objected to for that cause, must be quashed.

The word "confectionery" is a generic word which includes a great variety of kinds of articles usually sold in a confectioner's shop, and does not describe the substances, which the defendant is charged with adulterating, with the precision and certainty that the Constitution of the Commonwealth and the rules of criminal pleading require.

Commonwealth *v.* Chase, 125 Mass. 202.

MILK.

R. L. 56, §§ 52–57 (pp. 87–89).

The Legislature have power to make it a criminal offence to sell pure milk mixed with pure water.

A certificate of the result of an analysis of milk, by a sworn inspector appointed under St. 1864, c. 122, is admissible in evidence in a criminal prosecution under that statute, provided he also testifies at the trial to the same facts which are stated therein; and in such case the admission of the certificate in evidence before he testifies furnishes no ground for a new trial after a verdict of guilty.

Commonwealth *v.* Waite, 11 Allen, 264.

Pub. Sts., c. 57, § 2 (R. L., c. 56, § 52), so far as it authorizes inspectors of milk to enter all carriages used in the conveyance of milk, and, whenever they have reason to believe any milk found therein is adulterated, to take specimens thereof for the purpose of analyzing or otherwise satisfactorily testing the same, is constitutional.

Commonwealth *v.* Carter, 132 Mass. 12.

At the trial of an indictment on Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), charging the defendant with having adulterated milk in his possession with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk may testify to the result of his analysis of the milk taken from the defendant from memory, using a memorandum made by him at the time of analysis to refresh his memory, without further proof that the requirements of Pub. Sts., c. 57, § 2, as amended by St. 1884, c. 310, § 3, have been complied with.

Commonwealth *v.* Spear, 143 Mass. 172.

At the trial of an indictment on Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), charging the defendant with having adulterated milk in his possession with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk, who analyzed the milk taken from the defendant, testified that he reserved a portion of the milk so taken by putting it into a bottle, which he corked and sealed. A chemist to whom the analyst delivered a portion of the milk so reserved, testified, for the defendant, that the bottle was not

sealed. The defendant asked the judge to rule that, if the bottle was corked only, it was not a compliance with St. 1884, c. 310, § 4 (R. L., c. 56, § 52), as to the sealing of such reserved portion. The judge declined so to rule, and instructed the jury that they might consider the evidence as bearing upon the credibility of the government witness. *Held,* that the defendant had no ground for exception.

Commonwealth *v.* Spear, 143 Mass. 172.

If at a trial of an indictment on Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), charging the defendant with having adulterated milk in his possession with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk of a city testifies that he added, for the preserving it, a few drops of carbolic acid to the sample reserved from milk delivered to him for analysis, it is a question of fact for the jury whether the reservation of the sample was in accordance with the requirement of St. 1884, c. 310, § 4 (R. L., c. 56, § 52).

Commonwealth *v.* Spear, 143 Mass. 172.

A complaint on St. 1886, c. 318, § 2 (R. L., c. 56, § 57), alleging that on the first day of July, 1886, the defendant had in his possession "one pint of milk not of good standard quality, that is to say, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same within this Commonwealth," is sufficient, without negativing the exception of the months of May and June.[1]

St. 1885, c. 352, § 6, provides that Pub. Sts., c. 57, § 9 (which relates to the sale of adulterated milk), is hereby amended so as to read as follows." St. 1886, c. 318, § 2, provides that Pub. Sts., c. 57, § 9, "is hereby amended so as to read as follows." In each section, after the words quoted, there follows a sentence which covers the whole subject of the original section.

Held, that St. 1886, c. 318, § 2, was a valid enactment.

St. 1884, c. 310, § 4, providing for the reservation and sealing, before commencing the analysis, of a portion of the sample of milk taken for analysis, is impliedly repealed by St. 1886, c. 318, §§ 1 and 3 (R. L., c. 56, § 52).

Commonwealth *v.* Kenneson, 143 Mass. 418.

Placing wax upon the top of the cork in a bottle containing a portion reserved from a sample of milk taken for analysis, and not extending the wax over the mouth of the bottle, and thus rendering the bottle air tight, is not a sufficient compliance with the requirement of St. 1884, c. 310, § 4 (R. L., c. 56, § 52), that such reserved portion shall be "sealed."

Commonwealth *v.* Lockhardt, 144 Mass. 132.

The fact that a collector of samples of milk, who was not acting under the authority of St. 1886, c. 318 (R. L., c. 56, § 52), made a purchase of milk in a restaurant and retained a portion thereof for analysis without disclosing that he was such a collector, and without giving to the person from whom it was purchased an opportunity to ask for a sealed sample, will not render evidence incompetent to show that milk so purchased was below the legal standard.

Commonwealth *v.* Coleman, 157 Mass. 460.

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[1] Note that the amended statute (R. L., c. 56, § 56) adds the months of April, July, August and September to the list of months in which the lower standard prevails.

A person may be convicted of selling adulterated milk, under St. 1864, c. 122, § 4, although he did not know it to be adulterated; and an averment in the indictment that he had such knowledge may be rejected as surplusage.

It is not necessary, in such indictment, to aver that the milk was cow's milk.

An indictment alleging a sale of adulterated milk to a woman is not defeated by proof that she was married, and was acting as agent for her husband, if the seller had no notice, express or implied, of these facts.

An indictment under St. 1864, c. 122, § 4, which charges that the defendant sold a certain quantity of "adulterated milk, to which a large quantity, that is to say, four quarts, of water had been added," is not bad for duplicity.

Commonwealth *v.* Farren, 9 Allen, 489.

An indictment which alleges that the defendant "did unlawfully keep, offer for sale and sell" adulterated milk, charges but one offence.

In support of such indictment, one, who in a great many instances has used a lactometer for the purpose of testing the quality and the purity of milk, may testify to the result of an experiment made by him with the same lactometer upon the milk in question, although no evidence is offered as to the character of the instrument.

Commonwealth *v.* Nichols, 10 Allen, 199.

For Commonwealth *v.* Waite, 11 Allen, 264, see p. 154.

At the trial of an indictment on Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), for selling adulterated milk, there was evidence that the defendant (who was a son of the owner of a milk route), with a companion who was in the same employment with himself, knowingly adulterated milk on its way for distribution to his father's customers, and then, having charge, with his companion, of its distribution from the wagon on which it was conveyed upon the route, caused a can of it to be delivered to one of the customers by the hand of his companion. *Held*, that he had no ground of exception to instructions to the jury that, in the absence of proof of any previous contract to supply milk to the customer, the delivery might be deemed an act of sale; nor to an instruction framed on a supposition that the jury might find that he was in the employment of his father, although there was no averment in the indictment to that effect.

Commonwealth *v.* Haynes, 107 Mass. 194.

A person may be convicted of selling adulterated milk upon a complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), without allegation or proof that he knew it to be adulterated.

Commonwealth *v.* Evans, 132 Mass. 11.

A complaint under Pub. Sts., c. 57, §§ 5, 9 (R. L., c. 56, §§ 55, 56), alleging that the defendant, at a time and place named, had in his custody and possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk then and there containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient.

Commonwealth *v.* Keenan, 139 Mass. 193.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging that the defendant, at a time and place named, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found on analysis to contain less than thirteen per cent. of milk solids. At the trial of a complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging that the defendant had in his possession adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent to sell the same, it is immaterial in what manner the quantity of milk solids has been reduced below thirteen per cent., if the intent is to sell the milk as pure milk, and not as skimmed milk.

Commonwealth *v.* Bowers, 140 Mass. 483.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging, in one count, that the defendant, at a time and place named, sold a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, and in another count alleging that the defendant, at the same time and place, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found, on analysis, to contain less than thirteen per cent. of milk solids.

Commonwealth *v.* Tobias, 141 Mass. 129.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging that the defendant sold one pint of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is not supported by the proof that he sold the milk as skimmed milk out of a tank marked as required by § 7 (R. L., c. 56, § 58), although the milk was watered.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging a sale of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is supported by proof of a sale of milk which, by the removal of a part of the cream, has been reduced to solids below thirteen per cent., unless the milk was sold as skimmed milk, and out of a vessel, can or package marked as required by § 7 (R. L., c. 56, § 58); and it is not necessary that a complaint charging such offence should be drawn under § 6 (R. L., c. 56, § 55).

Commonwealth *v.* Tobias, 141 Mass. 129.

At the trial of a complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging, in the first count, a sale by the defendant, at a time and place named, of adulterated milk, and, in the second count, the having in his possession, at the same time and place, such milk, with intent unlawfully to sell the same, the defendant asked the judge to rule that, "If the jury find, on the evidence, that there was a consummated sale, they cannot convict under the second count." The judge declined so to rule, and, after instructing the jury as to what would authorize a conviction on the first count, instructed them that, "if they should further find that the defendant kept the same milk with intent to sell it, they would be authorized to return

a verdict of guilty on the second count." *Held,* that the defendant had no ground for exception.

Commonwealth *v.* Tobias, 141 Mass. 129.

At the trial of a complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), alleging that the defendant had in his possession adulterated milk with intent unlawfully to sell the same, the evidence showed that a wagon with the defendant's name and a number on it was standing upon a public street in a city at an early hour of the morning; that the defendant's servant was on the wagon, and there were several eight-quart cans in the wagon; that a collector of samples in the employ of the inspector of milk for the city took a sample of milk from one of the cans, which was not marked "skimmed milk;" and that an analysis of the milk taken showed that it was below the legal standard. *Held,* that there was evidence of an intent on the part of the defendant to sell the milk, which was properly submitted to the jury.

Commonwealth *v.* Smith, 143 Mass. 169.

St. 1885, c. 352, § 8, provides that no person shall sell, or have in his possession with intent to sell, skimmed milk below a certain standard; and enacts that whoever violates the provisions of this section shall be punished by the penalties provided in Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55). *Held,* on a complaint made under St. 1885, c. 352, § 8, for an offence committed after St. 1886, c. 318, § 2 (R. L., c. 56, § 55), took effect, that, even if the last-named statute repealed by implication Pub. Sts., c. 57, § 5, the complaint could be maintained.

Commonwealth *v.* Kendall, 144 Mass. 357.

On a complaint for the sale of milk not of good standard quality, evidence that the milk was delivered under a special contract is immaterial.

If a buyer of milk takes a portion to a milk inspector, the latter may testify on the trial of such a complaint as to the results of his analysis.

Commonwealth *v.* Holt, 146 Mass. 38.

An averment in a complaint under the milk acts that the defendants were "partners" is mere surplusage, and need not be proved.

On such a complaint, evidence that the defendant was on a wagon with a license number on it, and containing milk cans, from one of which was taken adulterated milk, is competent on the issue that he was in possession of the milk to sell it.

Commonwealth *v.* Rowell, 146 Mass. 128.

A motion to quash an indictment because it "sets forth no crime or offence known to the law," made after the impanelling of the jury, is filed too late; nor does it assign "specifically the objection relied on," within Pub. Sts., c. 214, § 25 (R. L., c. 219, § 21).

An indictment on St. 1886, c. 318, § 2 (R. L., c. 56, § 55), alleging that the defendant had in his "possession milk to which a certain foreign substance had been added, to wit, annatto coloring matter," with intent unlawfully to sell the same, is sufficient without naming the quantity.

Evidence offered at the trial of such an indictment as to two samples of milk, taken from the defendant's possession at substantially the same time, is competent, and the government cannot be required at the time of the offer, if ever, to elect which sample it will rely on.

The addition of annatto coloring matter, whether injurious to health or not, is punishable under the statute.

Evidence that the milk was of low grade is competent, although it may tend to prove another offence.

Commonwealth *v.* Schaffner, 146 Mass. 512.

At the trial of a complaint on St. 1886, c. 318, § 2, for selling milk not of a standard quality, there being evidence that the milk was skimmed milk, and sold from a measure duly marked, the jury were instructed that the defendant would be liable unless he sold the milk not as pure milk but as skimmed milk; and, further, that he would be liable unless the buyer had notice or knowledge that the milk was skimmed milk. *Held*, that the latter instruction was erroneous.

Commonwealth *v.* Smith, 149 Mass. 9.

Complaint under Pub. Sts., c. 57, § 5, as amended by St. 1886, c. 318, § 2 (R. L., c. 56, § 55), to the municipal court of the Charlestown district in the city of Boston, alleging that the defendant, on March 27, 1890, "did have in his possession milk to which a foreign substance had been added, to wit, annatto coloring matter," with intent unlawfully to sell the same.

Under Pub. Sts., c. 57, § 5, as amended by St. 1886, c. 318, § 2 (R. L., c. 56, § 55), relating to the adulteration of "milk," it is an offence to have in one's possession skimmed milk containing a foreign substance with intent unlawfully to sell the same.

Commonwealth *v.* Wetherbee, 153 Mass. 159.

A hotel keeper who sells milk to his guests to be drunk by them on his premises may be convicted of an offence under St. 1886, c. 318, § 2 (R. L., c. 56, § 55), if the milk so sold is not of the required standard of quality.

If a sale of milk which is not of the required standard of quality is made by a hotel keeper's servant, in the ordinary course of his employment, to a guest to be drunk on the premises, the hotel keeper will be responsible therefor under St. 1886, c. 318, § 2 (R. L., c. 56, § 55), though he was not present and did not consent to or know of the particular sale.

Commonwealth *v.* Vieth, 155 Mass. 442.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, is sustained by proof of possession, with that intent, of cream to which boracic acid had been added.

A complaint under Pub. Sts., c. 57, § 5 (R. L., c. 56, § 55), charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, was heard on an "agreed statement of facts," which was not a case stated in writing and filed, but an admission of facts from which the jury were at liberty to draw inferences. *Held*, that the jury might infer the offence charged from a sale by the defendant from his restaurant.

Commonwealth *v.* Gordon, 159 Mass. 8.

A person may be convicted of violating St. 1886, c. 318, § 2 (R. L., c. 56, § 55), whose servant in the course of his employment makes an inadvertent sale of milk "not of good standard quality."

If milk is ordered by and delivered to a customer in a hotel as a part of his breakfast, for which he pays a round sum, it is a sale of the milk which,

if the milk is "not of good standard quality," will support a complaint on St. 1886, c. 318, § 2 (R. L., c. 56, § 55).

Commonwealth *v.* Warren, 160 Mass. 533.

A master may be convicted under St. 1886, c. 318, § 2 (R. L., c. 56, § 55), of having in his custody and possession milk not of the required standard of quality, if in the custody and possession of a servant, in the ordinary course of his employment; and the general law governing the responsibility of a master for the acts of his servant in such cases was not intended to be affected by St. 1894, c. 425 (R. L., c. 56, § 62).

Commonwealth *v.* Proctor, 165 Mass. 38.

Pub. Sts., c. 57, § 9 (R. L., c. 56, § 56), providing that "in all prosecutions under this act," for selling adulterated milk, "if the milk shall be shown upon analysis to contain more than eighty-seven per centum of watery fluid or to contain less than thirteen per centum of milk solids, it shall be deemed for the purposes of this act to be adulterated," is constitutional.

Commonwealth *v.* Evans, 132 Mass. 11.

[NOTE. — At the time this decision was handed down, milk containing less than thirteen per cent. of milk solids was "adulterated," instead of "not of good standard quality."]

A contract to sell milk means a contract to sell milk of the standard quality required by R. L., c. 56, § 56.

In an action for the price of milk the burden is on the plaintiff to prove that the milk furnished by him was of the standard quality required by R. L., c. 56, § 56.

In an action by a farmer against a milk dealer for milk sold and delivered, it appeared that the milk was put into cans furnished by the defendant, and was collected from the plaintiff and other farmers by a teamster, who was paid by the defendant a fixed price for the transportation of each can, which was deducted from the sum agreed to be paid by the farmers. The teamster made his own arrangement with the farmers for the sum per can to be paid for the transportation. Each month a pass book was furnished by the defendant to the teamster, in which he recorded daily the number of cans of milk furnished by each farmer, and at the end of each month forwarded the book to the defendant. Certain of these pass books were admitted in evidence, against the objection of the defendant. *Held,* that if, as seemed, the teamster was paid both by the plaintiff and the defendant, he was their common agent, and the pass books were admissible against each other.

Copeland *v.* Boston Dairy Company, 184 Mass. 207.

In an action by a farmer against a milk dealer for the price of milk sold and delivered, it appeared that one M., who was paid by the defendant and not by the plaintiff, collected the milk in cans from the plaintiff and other farmers, and kept an account of the milk taken by him from each farmer in a book appropriately ruled to cover a month, and at the end of each month sent it to the defendant and received it back in a sealed envelope containing the defendant's checks for the amount due to each farmer for the milk delivered. The judge ruled that M. was not an agent of the defendant, whose entries would bind the defendant, but admitted in evidence the covers of the books and the pages in each which were headed by the

plaintiff's name, to assist the jury in determining the amount of milk received by the defendant, instructing them that, if the books came to the attention of the defendant, it was a question for the jury whether or not the defendant acquiesced in the correctness of the entries. *Held,* that the judge well might have submitted to the jury the question whether M. was the agent of the defendant, and that the defendant was not aggrieved by the rulings, which were sufficiently favorable to him.

In an action for the price of milk sold and delivered, where the burden is on the plaintiff to show that the milk furnished by him was of the quality required by R. L., c. 56, § 56, the plaintiff need not show that an analysis of the milk has been made, but may be found to have sustained the burden of proof if he shows the nature of the herd of cattle owned by him, the manner in which they were fed, that no water or foreign substance was added to the milk, and that it was of good quality and not skimmed.

Copeland *v.* Boston Dairy Company, 189 Mass. 342.

R. L. 56, § 63 (p. 90).

At the trial of a complaint under St. 1899, c. 223 (R. L., c. 56, § 56), relative to the standard quality of milk, it appeared that the information furnished to the defendant as to the result of the analysis of the milk was in substance that the milk inspector told the defendant that he would give him the result of the analysis of the samples if he would like it, and did so, telling him the percentages of total solids and of fat in the case of each sample; that afterwards the defendant came back to the inspector's office, and the inspector then told him that he " would give him the figures in writing if he wanted them, and he said he would like the figures of the analysis of the samples that were below standard," and that the inspector wrote them down and caused the paper on which they were to be given to him. *Held,* that there was a sufficient compliance with St. 1899, c. 169 (R. L., c. 56, § 63); and that, the jury having been so instructed in substance, the defendant had no ground of exception.

Commonwealth *v.* McCance, 176 Mass. 292.

R. L. 56, § 64 (p. 91).

Pub. Sts., c. 57, § 10 (R. L., c. 56, § 64), do not prohibit any person not an inspector of milk from making a complaint for a violation of the provisions of the chapter.

Commonwealth *v.* Tobias, 141 Mass. 129.

OLEOMARGARINE, IMITATION CHEESE, ETC.

R. L. 56, § 36 (p. 92).

A complaint on St. 1886, c. 317, § 1, charging the defendant with selling imitation butter at retail without a descriptive wrapper, need not allege that the sale was actually made by the defendant's agent.

At the trial of such a complaint there was evidence that the sale was made by the defendant's agent, acting within the scope of his employment, and that he was supplied with wrappers properly marked for covering the article sold; and the presiding judge refused to instruct the jury, as requested by the defendant, that if the agent's failure to use the wrappers

was the result of inadvertence on his part, and not intentional, the jury would not be justified in convicting the defendant. *Held,* that the defendant had no ground of exception.

Commonwealth *v.* Gray, 150 Mass. 327.

On a complaint under St. 1886, c. 317, § 1, charging the defendant with having in his possession, with intent to sell, oleomargarine in a tub not marked as required by that section, the exceptions recited that the tub "was not, on the date of the offence alleged in the complaint, exposed for sale, nor was it so situated that it could be seen by customers of the defendant;" and that it also appeared "that the defendant had bought said package for the purpose and with the intention of selling the said oleomargarine contained therein at retail in said store, but that he did not intend to sell the oleomargarine contained in this tub, or expose the same for sale until the marks had been examined, and, if not marked in accordance with law, to mark the tub before opening the same." *Held,* that these facts showed that the defendant had no intention of selling the oleomargarine in the form in which it was, but was storing it with the intention of properly marking the package, if it was not already properly marked, before he offered the oleomargarine for sale or intended to sell it, and that the jury were not warranted in finding the defendant guilty.

Because of the absolute prohibition against selling intoxicating liquor without a license, the intent to sell may be often inferred from facts which would not warrant the inference of an intent to sell other merchandise in the form in which it was found, when the person having it in his possession had a right to sell it if it was properly marked, and had the right to so mark it after receiving it, and before he exposed it for sale or intended to sell it.

Commonwealth *v.* Mills, 157 Mass. 405.

If a complaint charges a person with having in his possession, with intent to sell, oleomargarine in a tub not marked as required by law, he cannot be convicted if the exceptions show that he had no intent to sell it without having it so marked.

It is not to be inferred that the Legislature, merely by making it the duty of certain officers to enforce penal laws of general application, intended that the enforcement should be dependent upon these officers; and a complaint charging a person with having in his possession, with intent to sell, oleomargarine contrary to the requirements of St. 1886, c. 317, § 1 (R. L., c. 56, § 36), is not defective because made by an inspector of the State Board of Health, instead of by an inspector of milk or by the treasurer of the town in which the offence was committed.

Commonwealth *v.* McDonnell, 157 Mass. 407.

R. L. 56, § 41 (p. 94).

St. 1891, c. 58 (R. L., c. 56, § 41), which makes a distinction between oleomargarine which is an imitation of yellow butter and that which is not, and which statute is directed only towards oleomargarine of the former class, is not repealed by St. 1891, c. 412, § 1 (R. L., c. 56, § 43), which is directed to the distinct fraud of selling or offering to persons calling for butter something besides butter.

The fact that two statutes, similar in their nature and purpose, were both

passed at the same session of the Legislature, and took effect on the same day, is strong evidence that they were intended to stand together.

The enactment of a statute which forbids the manufacture and sale of oleomargarine which is made in imitation of yellow butter is a valid exercise of the police power which remains in the several States, though such oleomargarine has been imported from another State; and it is not in violation of the constitutional provisions giving to Congress the power to regulate commerce among the several States.

Commonwealth *v.* Huntley, 156 Mass. 236.

See also Plumley *v.* Massachusetts, 155 U. S. 461, on p. 164.

If a person has for sale in his shop oleomargarine colored in imitation of yellow butter, which is kept in a closed and covered refrigerator and cannot be seen by customers, although he has a sign in the shop to the effect that oleomargarine is sold there, he does not "expose for sale" such oleomargarine within the meaning of St. 1891, c. 58, § 1 (R. L., c. 56, § 41).

Commonwealth *v.* Byrnes, 158 Mass. 172.

St. 1891, c. 58, § 1 (R. L., c. 56, § 41), entitled "An Act to prevent deception in the manufacture and sale of imitation butter," forbids the exposing for sale of oleomargarine colored to look like butter, and it is immaterial whether the particular purchaser was advised of its real character or not.

Commonwealth *v.* Russell, 162 Mass. 520.

Oleomargarine artificially colored by annatto so as to cause it to look like yellow butter produced from pure unadulterated milk, or cream from the same, is within the prohibition of St. 1891, c. 58, § 1 (R. L., c. 56, § 41), which statute has not been repealed, and is constitutional and valid as applied to oleomargarine so colored.

Commonwealth *v.* Kelly, 163 Mass. 169.

A complaint under St. 1891, c. 58, as amended by St. 1896, c. 377, § 1 (R. L., c. 56, § 41), for having in possession with intent to sell oleomargarine in imitation of yellow butter, produced from unadulterated milk or cream, may be made by an assistant of the Board of Agriculture.

A complaint under St. 1891, c. 58, as amended by St. 1896, c. 377, § 1 (R. L., c. 56, § 41), which alleges that the oleomargarine was in imitation of yellow butter produced from unadulterated milk or cream, sufficiently shows that the proviso "that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter," does not apply.

A motion to quash a complaint under St. 1891, c. 58, as amended by St. 1896, c. 377, § 1 (R. L., c. 56, § 41), on the ground that it does not allege that the substance "was not renovated butter," is rightly overruled, having renovated butter in possession with intent to sell being made an offence by another statute.

A motion to quash a complaint under St. 1891, c. 58, as amended by St. 1896, c. 377, § 1 (R. L., c. 56, § 41), on the ground that "the complaint is in the alternative when it alleges that the substance was made from adulterated cream or milk," is rightly overruled, the complaint making no

such averment, but alleging that the oleomargarine was made partly out of oleaginous substance not produced from unadulterated milk or cream.

Commonwealth *v.* Mullen, 176 Mass. 132.

The act of Aug. 2, 1886, c. 840, 24 Stat. 209, does not give authority to those who pay the taxes prescribed by it to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a State may lawfully prescribe in reference to that article; and that act was not intended to be, and is not, a regulation of commerce among the States.

The statute of Massachusetts of March 10, 1891, c. 58, "to prevent deception in the manufacture and sale of imitation butter," in its application to the sales of oleomargarine artificially colored so as to cause it to look like yellow butter and brought into Massachusetts, is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the several States.

Leisy *v.* Hardin, 135 U. S. 100, 124, is restrained in its application to the case there actually presented for determination, and held not to justify the broad contention that a State is powerless to prevent the sale of articles of food manufactured in or brought from another State, and subjects of traffic or commerce, if their sale may cheat the people into purchasing something they do not intend to buy, and which is wholly different from what its condition and appearance import.

The judiciary of the United States should not strike down a legislative enactment of a State, especially if it has direct connection with the social order, the health and the morals of its people, unless such legislation plainly and palpably violates some right granted or secured by the national Constitution, or encroaches upon the authority delegated to the United States for the attainment of objects of national concern.

Plumley *v.* Massachusetts, 155 U. S. 461.

R. L. 56, § 42 (p. 95).

For Commonwealth *v.* Carter, 132 Mass. 12, see p. 154.

R. L. 56, § 43 (p. 95).

For Commonwealth *v.* Huntley, 156 Mass. 236, see pp. 162, 163.
For Plumley *v.* Massachusetts, 155 U. S. 461, see above.

R. L. 56, § 44 (p. 95).

For Commonwealth *v.* Gray, 150 Mass. 237, see pp. 161, 162.

R. L. 56, § 45 (p. 96).

For Commonwealth *v.* Huntley, 156 Mass. 236, see pp. 162, 163.

R. L. 56, § 46 (p. 96).

A complaint under St. 1891, c. 412, § 4 (R. L., c. 56, § 46), for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" is supported by proof that the defendant's wagon was a covered

one, with the front and rear ends open; that on the inside of the cover on each side was a placard, in form and size such as the statute requires; that these placards could be seen from the front and rear of the wagon, but could not be seen from the sides thereof; and that there were no placards on the outer sides of the wagon.

At the trial of a complaint under St. 1891, c. 412, § 4 (R. L., c. 56, § 46), for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" the defendant has no ground of exception to the refusal of the judge to rule that this section of the statute "is in conflict with the act of Congress of Aug. 2, 1886, and the rules and regulations of the commissioner of internal revenue thereunder, and is therefore unconstitutional and void."

Commonwealth *v.* Crane, 158 Mass. 218.

St. 1891, c. 412, § 4 (R. L., c. 56, § 46), was not intended to draw fine distinctions between different kinds of oleomargarine, all of which would resemble butter; but it requires that every one who delivers oleomargarine, of whatever sort, from a vehicle upon the public streets, shall carry along with him upon his vehicle a public notice that he is licensed to sell oleomargarine.

Commonwealth *v.* Crane, 162 Mass. 506.

R. L. 56, § 47 (p. 96).

The proprietor of a restaurant furnished oleomargarine to a guest in the place of butter. There were signs in conspicuous places in the restaurant bearing the words, "Butterine used only here," and on the tables were bills of fare on which were printed the words, "Only fine butterine used here." The guest saw neither of the signs, and did not examine the bill of fare, and no oral notice was given to him that the substance furnished to him was not butter. *Held,* that the proprietor of the restaurant could be convicted of an offence under St. 1891, c. 412, § 5 (R. L., c. 56, § 47).

Commonwealth *v.* Stewart, 159 Mass. 113.

MEAT AND PROVISIONS.

R. L. 56, § 73 (p. 98).

In an action for falsely and maliciously giving information that the plaintiff was about to offer for sale unwholesome meat, the plaintiff cannot prove an injury to his reputation without an averment that the defendant stated that the plaintiff knew the meat to be unwholesome.

Hemmenway *et al. v.* Woods, 1 Pick. 524.

The declaration in an action on the case against the defendant for knowingly selling to the plaintiff a quantity of unwholesome meat as and for good and wholesome meat, was held to be sufficient, although it did not allege that the plaintiff had paid for the meat, and did not allege any special damage.

Peckham *v.* Holman, 11 Pick. 484.

The gist of the offence under this section (§ 73) consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for

food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth *v.* Boynton, 12 Cush. 499.

R. L. 56, § 74 (p. 99).

Where a party is charged with an offence of "killing, or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment or prove that he knew the calf to be less than four weeks old. The defendant is bound to know the facts, and obey the law, at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but, "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The Legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal, only in case he knows it to have been killed when under four weeks old.

Commonwealth *v.* Raymond, 97 Mass. 567.

RETURN AND REGISTRY OF BIRTHS, MARRIAGES AND DEATHS.

R. L. 29, § 1 (p. 103).

St. 1795, c. 69, requires each town clerk to record all births and deaths in his town. So St. 1786, c. 3, § 6, makes it the duty of each magistrate and clergyman to keep a record of all marriages solemnized by him, and to make return thereof annually to the town clerk, and he is required to record them. The certificates of the clerk, of the births or deaths of persons, or of marriages, are received as evidence, but never holden to be conclusive. Whether such evidence be produced or not, and without inquiring whether any records exist or not, parol evidence of these facts is constantly admitted.

Pease *v.* Smith *et al.*, 24 Pick. 127.

R. L. 29, § 20 (p. 109).

The record of a marriage by the justice of the peace or minister, or the town clerk's or registrar's record of births, marriages and deaths, kept as required by these statutes, or a duly certified copy of either, is held competent evidence.

Kennedy *v.* Doyle, 10 Allen, 161, 164.

The statutes provide that the record of a marriage kept by the person before whom the marriage is solemnized, or by the clerk or registrar of any city or town, shall be received in all courts as presumptive evidence of such marriage.

Commonwealth *v.* Waterman, 122 Mass. 43, 58.

It seems "that Gen. Sts., c. 21, § 6 (Pub. Sts., c. 32, § 11), being but declaratory of the common law of this Commonwealth, was intended to be retrospective, and to apply to all records, whether past or future, of all

facts required at the time of the record by law to be recorded relative to any birth, marriage or death."

Shutesbury *v.* Hadley, 133 Mass. 242, 247.

At the trial of a complaint for unlawfully selling intoxicating liquors to a minor, the person to whom the sale was made may testify that he was twenty years and eight months old at the time of the sale.

Commonwealth *v.* Stevenson, 142 Mass. 466.

A marriage may be proved by the testimony of either of the contracting parties.

An attested copy of the record of a marriage from the records of the city registrar of Boston, certified to by the assistant registrar, is admissible in evidence.

Commonwealth *v.* Hayden, 163 Mass. 453.

INQUESTS AND MEDICAL EXAMINERS.

R. L. 24, § 9 (p. 113).

The provision made by St. 1877, c. 200, for an autopsy by a medical examiner in cases of death by violence, does not, at the trial of an indictment for manslaughter, render inadmissible other competent evidence as to the condition of the deceased.

Commonwealth *v.* Dunan, 128 Mass. 422.

The testimony of a medical examiner, who is conceded to be qualified as a medical expert, as to what he found upon making an autopsy, is not rendered incompetent by the fact that, in making the autopsy, he proceeded without authority, and did not in other respects follow the course prescribed by St. 1877, c. 200, for medical examiners in such cases.

Commonwealth *v.* Taylor, 132 Mass. 261.

R. L. 24, § 15 (p. 115).

The magistrate presiding at an inquest under Pub. Sts., c. 26, is only required, by § 15, to file his report with the records of the Superior Court; and if he files, with the report, his minutes of the testimony taken at the inquest, one indicted for killing the person on whose body the inquest is held is not entitled to put in evidence the fact that the testimony was so filed, and that it was afterwards suppressed by the government.

Commonwealth *v.* Ryan, 134 Mass. 223.

R. L. 24, § 24 (p. 116).

It is the duty of a coroner, who finds personal property upon the dead body of a person killed by an accident, and rightfully takes possession thereof, to deliver the same to the true owner on reasonable demand and proof of ownership; and if he refuses to do so upon the sole ground that it is his duty as coroner to deliver the same to the administrator of the estate of the deceased person, an action of replevin may be maintained against him therefor.

Smiley *v.* Allen, 13 Allen, 465.

INDEX.