



KM 2430 19.2 1.2 v.2 c.2

Massachusetts.

Tercentenary Edition of the
General Laws of the

TERCENTENARY EDITION
OF
THE GENERAL LAWS
OF
The Commonwealth of Massachusetts

COMPRISING THE GENERAL LAWS ENACTED DECEMBER 22, 1920
TO TAKE EFFECT JANUARY 1, 1921, AS AMENDED
PRIOR TO JANUARY 1, 1932

WITH THE
CONSTITUTIONS OF THE UNITED STATES
AND OF THE COMMONWEALTH

EDITED UNDER THE DIRECTION OF THE GENERAL COURT BY

WILLIAM E. DORMAN
Counsel to the Senate

HENRY D. WIGGIN
Counsel to the House of Representatives

VOL. II
CHAPTERS 133-282



BOSTON
WRIGHT & POTTER PRINTING COMPANY
1932

KTM
2430
192
A
V.2
2

ANALYSIS
OF THE
TITLES AND CHAPTERS
CONTAINED IN
THE GENERAL LAWS.

VOL. I.

PART I.

ADMINISTRATION OF THE GOVERNMENT.

TITLE I.

JURISDICTION AND EMBLEMS OF THE COMMONWEALTH, THE GENERAL
COURT, STATUTES AND PUBLIC DOCUMENTS.

- CHAPTER 1. Jurisdiction of the Commonwealth and of the United States.
CHAPTER 2. Arms, Great Seal and Other Emblems of the Commonwealth.
CHAPTER 3. The General Court.
CHAPTER 4. Statutes.
CHAPTER 5. Printing and Distribution of Laws and Public Documents.

TITLE II.

EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH.

- CHAPTER 6. The Governor, Lieutenant Governor and Council, Certain Officers under the
Governor and Council, and State Library.
CHAPTER 7. Commission on Administration and Finance.
CHAPTER 8. Superintendent of Buildings, and State House.
CHAPTER 9. Department of the State Secretary.
CHAPTER 10. Department of the State Treasurer.
CHAPTER 11. Department of the State Auditor.
CHAPTER 12. Department of the Attorney General, and the District Attorneys.

- CHAPTER 13. Department of Civil Service and Registration.
- CHAPTER 14. Department of Corporations and Taxation.
- CHAPTER 15. Department of Education.
- CHAPTER 16. Department of Public Works.
- CHAPTER 17. Department of Public Health.
- CHAPTER 18. Department of Public Welfare.
- CHAPTER 19. Department of Mental Diseases.
- CHAPTER 20. Department of Agriculture.
- CHAPTER 21. Department of Conservation.
- CHAPTER 22. Department of Public Safety.
- CHAPTER 23. Department of Labor and Industries.
- CHAPTER 24. Department of Industrial Accidents.
- CHAPTER 25. Department of Public Utilities.
- CHAPTER 26. Department of Banking and Insurance.
- CHAPTER 27. Department of Correction.
- CHAPTER 28. Metropolitan District Commission.

TITLE III.

LAWS RELATING TO STATE OFFICERS.

- CHAPTER 29. State Finance.
- CHAPTER 30. General Provisions relative to State Departments, Commissions, Officers and Employees.

TITLE IV.

CIVIL SERVICE, RETIREMENTS AND PENSIONS.

- CHAPTER 31. Civil Service.
- CHAPTER 32. Retirement Systems and Pensions.

TITLE V.

MILITIA.

- CHAPTER 33. Militia.

TITLE VI.

COUNTIES AND COUNTY OFFICERS.

- CHAPTER 34. Counties and County Commissioners.
- CHAPTER 35. County Treasurers, State Supervision of County Accounts and County Finances.
- CHAPTER 36. Registers of Deeds.
- CHAPTER 37. Sheriffs.
- CHAPTER 38. Medical Examiners.

TITLE VII.

CITIES, TOWNS AND DISTRICTS.

- CHAPTER 39. Municipal Government.
- CHAPTER 40. Powers and Duties of Cities and Towns.
- CHAPTER 41. Officers and Employees of Cities, Towns and Districts.
- CHAPTER 42. Boundaries of Cities and Towns.
- CHAPTER 43. City Charters.
- CHAPTER 43A. Standard Form of Representative Town Meeting Government.
- CHAPTER 44. Municipal Finance.
- CHAPTER 45. Public Parks, Playgrounds and the Public Domain.
- CHAPTER 46. Return and Registry of Births, Marriages and Deaths.
- CHAPTER 47. Infirmaries.
- CHAPTER 48. Fires, Fire Departments and Fire Districts.
- CHAPTER 49. Fences, Fence Viewers, Pounds and Field Drivers.

TITLE VIII.

ELECTIONS.

- CHAPTER 50. General Provisions relative to Primaries, Caucuses and Elections.
- CHAPTER 51. Voters.
- CHAPTER 52. Political Committees.
- CHAPTER 53. Nominations, Questions to be submitted to the Voters, Primaries and Caucuses.
- CHAPTER 54. Elections.
- CHAPTER 55. Corrupt Practices and Election Inquests.
- CHAPTER 56. Violations of Election Laws.
- CHAPTER 57. Congressional, Councillor and Senatorial Districts, and Apportionment of Representatives.

TITLE IX.

TAXATION.

- CHAPTER 58. General Provisions relative to Taxation.
- CHAPTER 58A. Board of Tax Appeals.
- CHAPTER 59. Assessment of Local Taxes.
- CHAPTER 60. Collection of Local Taxes.
- CHAPTER 60A. Excise Tax on Registered Motor Vehicles in Lieu of Local Tax.
- CHAPTER 61. Taxation of Forest Products and Classification and Taxation of Forest Lands.
- CHAPTER 62. Taxation of Incomes.
- CHAPTER 63. Taxation of Corporations.
- CHAPTER 64. Taxation of Stock Transfers.
- CHAPTER 64A. Taxation of Sales of Gasoline and Certain Other Motor Vehicle Fuel.
- CHAPTER 65. Taxation of Legacies and Successions.
- CHAPTER 65A. Taxation of Transfers of Certain Estates.

TITLE X.

PUBLIC RECORDS.

CHAPTER 66. Public Records.

TITLE XI.

CERTAIN RELIGIOUS AND CHARITABLE MATTERS.

CHAPTER 67. Parishes and Religious Societies.

CHAPTER 68. Donations and Conveyances for Pious and Charitable Uses.

TITLE XII.

EDUCATION.

CHAPTER 69. Powers and Duties of the Department of Education.

CHAPTER 70. School Funds and Other State Aid for Public Schools.

CHAPTER 71. Public Schools.

CHAPTER 72. School Registers and Returns.

CHAPTER 73. State Normal Schools.

CHAPTER 74. Vocational Education.

CHAPTER 75. Massachusetts State College.

CHAPTER 76. School Attendance.

CHAPTER 77. School Offenders and County Training Schools.

CHAPTER 78. Libraries.

TITLE XIII.

EMINENT DOMAIN AND BETTERMENTS.

CHAPTER 79. Eminent Domain.

CHAPTER 80. Betterments.

CHAPTER 80A. Eminent Domain Takings and Betterment Assessments by Judicial Proceedings.

TITLE XIV.

PUBLIC WAYS AND WORKS.

CHAPTER 81. State Highways.

CHAPTER 82. The Laying Out, Alteration, Relocation and Discontinuance of Public Ways, and Specific Repairs thereon.

CHAPTER 83. Sewers, Drains and Sidewalks.

CHAPTER 84. Repair of Ways and Bridges.

CHAPTER 85. Regulations and By-laws relative to Ways and Bridges.

CHAPTER 86. Boundaries of Highways and Other Public Places, and Encroachments thereon.

CHAPTER 87. Shade Trees.

CHAPTER 88. Ferries, Canals and Public Landings.

- CHAPTER 89. Law of the Road.
- CHAPTER 90. Motor Vehicles and Aircraft.
- CHAPTER 91. Waterways.
- CHAPTER 92. Metropolitan Sewers, Water and Parks.

TITLE XV.

REGULATION OF TRADE.

- CHAPTER 93. Regulation of Trade and Certain Enterprises.
- CHAPTER 94. Inspection and Sale of Food, Drugs and Various Articles.
- CHAPTER 95. Measuring of Leather.
- CHAPTER 96. Measurement of Lumber.
- CHAPTER 97. Surveying of Land.
- CHAPTER 98. Weights and Measures.
- CHAPTER 99. The Metric System of Weights and Measures.
- CHAPTER 100. Auctioneers.
- CHAPTER 101. Transient Vendors, Hawkers and Peddlers.
- CHAPTER 102. Shipping and Seamen, Harbors and Harbor Masters.
- CHAPTER 103. Pilots.
- CHAPTER 104. Agents, Consignees and Factors.
- CHAPTER 105. Public Warehouses.
- CHAPTER 106. Sales of Personal Property.
- CHAPTER 107. Money and Negotiable Instruments.
- CHAPTER 108. Bills of Lading.
- CHAPTER 108A. Partnerships.
- CHAPTER 109. Limited Partnerships.
- CHAPTER 109A. Fraudulent Transfers of Real and Personal Property.
- CHAPTER 110. Labels, Trade Marks, Names and Registration thereof.
- CHAPTER 110A. Promotion and Sale of Securities.

TITLE XVI.

PUBLIC HEALTH.

- CHAPTER 111. Public Health.
- CHAPTER 112. Registration of Certain Professions and Occupations.
- CHAPTER 113. Promotion of Anatomical Science.
- CHAPTER 114. Cemeteries and Burials.

TITLE XVII.

PUBLIC WELFARE.

- CHAPTER 115. State and Military Aid, Soldiers' Relief, etc.
- CHAPTER 116. Settlement.
- CHAPTER 117. Support by Cities and Towns.
- CHAPTER 118. Aid to Mothers with Dependent Children.
- CHAPTER 118A. Adequate Assistance to Certain Aged Citizens.

- CHAPTER 119. Protection and Care of Children, and Proceedings against Them.
 CHAPTER 120. Massachusetts Training Schools.
 CHAPTER 121. Powers and Duties of the Department of Public Welfare, and the Massachusetts Hospital School.
 CHAPTER 122. State Infirmary.
 CHAPTER 123. Commitment and Care of the Insane and Other Mental Defectives.

TITLE XVIII.

PRISONS, IMPRISONMENT, PAROLES AND PARDONS.

- CHAPTER 124. Powers and Duties of the Department of Correction.
 CHAPTER 125. Penal and Reformatory Institutions of the Commonwealth.
 CHAPTER 126. Jails, Houses of Correction and Reformation, and County Industrial Farms.
 CHAPTER 127. Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons.

TITLE XIX.

AGRICULTURE AND CONSERVATION.

- CHAPTER 128. Agriculture.
 CHAPTER 129. Animal Industry.
 CHAPTER 130. Powers and Duties of the Division of Fisheries and Game. Fisheries.
 CHAPTER 131. Powers and Duties of the Division of Fisheries and Game. Game and Inland Fisheries.
 CHAPTER 132. Forestry.
 CHAPTER 132A. State Parks and Reservations Outside of the Metropolitan Parks District.

VOL. II.

TITLE XX.

PUBLIC SAFETY AND GOOD ORDER.

- CHAPTER 133. Disposition of Old and Infirm Animals.
 CHAPTER 134. Lost Goods and Stray Beasts.
 CHAPTER 135. Unclaimed and Abandoned Property.
 CHAPTER 136. Observance of the Lord's Day.
 CHAPTER 137. Gaming.
 CHAPTER 138. Intoxicating Liquors and Certain Non-Intoxicating Beverages.
 CHAPTER 139. Common Nuisances.
 CHAPTER 140. Licenses.
 CHAPTER 141. Supervision of Electricians.
 CHAPTER 142. Supervision of Plumbing.
 CHAPTER 143. Inspection and Regulation of, and Licenses for, Buildings, Elevators and Cinematographs.
 CHAPTER 144. Tenement Houses in Cities.
 CHAPTER 145. Tenement Houses in Towns.
 CHAPTER 146. Inspection of Boilers, Air Tanks, etc. Licenses of Engineers, Firemen, and Operators of Hoisting Machinery.
 CHAPTER 147. State and Other Police, and Certain Powers and Duties of the Department of Public Safety.
 CHAPTER 148. Fire Prevention.

TITLE XXI.

LABOR AND INDUSTRIES.

- CHAPTER 149. Labor and Industries.
 CHAPTER 150. Conciliation and Arbitration of Industrial Disputes.
 CHAPTER 151. The Minimum Wage.
 CHAPTER 152. Workmen's Compensation.
 CHAPTER 153. Liability of Employers to Employees for Injuries not resulting in Death.
 CHAPTER 154. Assignment of Wages.

TITLE XXII.

CORPORATIONS.

- CHAPTER 155. General Provisions relative to Corporations.
 CHAPTER 156. Business Corporations.
 CHAPTER 157. Co-operative Corporations.

- CHAPTER 158. Certain Miscellaneous Corporations.
 CHAPTER 159. Common Carriers.
 CHAPTER 159A. Common Carriers of Passengers by Motor Vehicle.
 CHAPTER 160. Railroads.
 CHAPTER 161. Street Railways.
 CHAPTER 162. Electric Railroads.
 CHAPTER 163. Trackless Trolley Companies.
 CHAPTER 164. Manufacture and Sale of Gas and Electricity.
 CHAPTER 165. Water and Aqueduct Companies.
 CHAPTER 166. Telephone and Telegraph Companies, and Lines for the Transmission of
 Electricity.
 CHAPTER 167. Banks and Banking.
 CHAPTER 168. Savings Banks.
 CHAPTER 169. Deposits with Others than Banks.
 CHAPTER 170. Co-operative Banks.
 CHAPTER 171. Credit Unions.
 CHAPTER 172. Trust Companies.
 CHAPTER 173. Mortgage Loan Investment Companies.
 CHAPTER 174. Bond and Investment Companies.
 CHAPTER 175. Insurance.
 CHAPTER 176. Fraternal Benefit Societies.
 CHAPTER 177. Assessment Insurance. [REPEALED.]
 CHAPTER 178. Savings Bank Life Insurance.
 CHAPTER 179. Proprietors of Wharves, Real Estate lying in Common, and General Fields.
 CHAPTER 180. Corporations for Charitable and Certain Other Purposes.
 CHAPTER 181. Foreign Corporations.
 CHAPTER 182. Voluntary Associations and Certain Trusts.

PART II.

REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS.

TITLE I.

TITLE TO REAL PROPERTY.

- CHAPTER 183. Alienation of Land.
 CHAPTER 184. General Provisions relative to Real Property.
 CHAPTER 185. The Land Court and Registration of Title to Land.
 CHAPTER 186. Estates for Years and at Will.
 CHAPTER 187. Easements.
 CHAPTER 188. Homesteads.
 CHAPTER 189. Dower and Curtesy.

TITLE II.

DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS
AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS.

- CHAPTER 190. Descent and Distribution of Real and Personal Property.
 CHAPTER 191. Wills.
 CHAPTER 192. Probate of Wills and Appointment of Executors.
 CHAPTER 193. Appointment of Administrators.
 CHAPTER 194. Public Administrators.
 CHAPTER 195. General Provisions relative to Executors and Administrators.
 CHAPTER 196. Allowances to Widows and Children, and Advancements.
 CHAPTER 197. Payment of Debts, Legacies and Distributive Shares.
 CHAPTER 198. Insolvent Estates of Deceased Persons.
 CHAPTER 199. Settlement of Estates of Deceased Non-Residents.
 CHAPTER 200. Settlement of Estates of Absentees.
 CHAPTER 201. Guardians and Conservators.
 CHAPTER 202. Sales, Mortgages and Leases of Real Estate by Executors, Administrators,
 Guardians and Conservators.
 CHAPTER 203. Trusts.
 CHAPTER 204. General Provisions relative to Sales, Mortgages, Releases, Compromises, etc., by
 Executors, etc.
 CHAPTER 205. Bonds of Executors, Administrators, Guardians, Conservators, Trustees and
 Receivers.
 CHAPTER 206. Accounts and Settlements of Executors, Administrators, Guardians, Conserva-
 tors, Trustees and Receivers.

TITLE III.

DOMESTIC RELATIONS.

- CHAPTER 207. Marriage.
 CHAPTER 208. Divorce.
 CHAPTER 209. Husband and Wife.
 CHAPTER 210. Adoption of Children and Change of Names.

PART III.

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES.

TITLE I.

COURTS AND JUDICIAL OFFICERS.

(For the Land Court see Chapter 185.)

- CHAPTER 211. The Supreme Judicial Court.
- CHAPTER 212. The Superior Court.
- CHAPTER 213. Provisions Common to the Supreme Judicial and Superior Courts.
- CHAPTER 214. Equity Jurisdiction and Procedure in the Supreme Judicial and Superior Courts.
- CHAPTER 215. Probate Courts.
- CHAPTER 216. Courts of Insolvency.
- CHAPTER 217. Judges and Registers of Probate and Insolvency.
- CHAPTER 218. District Courts.
- CHAPTER 219. Trial Justices.
- CHAPTER 220. Courts and Naturalization.
- CHAPTER 221. Clerks, Attorneys and Other Officers of Judicial Courts.
- CHAPTER 222. Justices of the Peace, Notaries Public and Commissioners.

TITLE II.

ACTIONS AND PROCEEDINGS THEREIN.

- CHAPTER 223. Commencement of Actions, Service of Process.
- CHAPTER 224. Arrest on Mesne Process and Supplementary Proceedings in Civil Actions.
- CHAPTER 225. Process after Judgment for Necessaries or Labor. [REPEALED.]
- CHAPTER 226. Bail.
- CHAPTER 227. Proceedings against Absent Defendants and upon Insufficient Service.
- CHAPTER 228. Survival of Actions and Death and Disabilities of Parties.
- CHAPTER 229. Actions for Death and Injuries resulting in Death.
- CHAPTER 230. Actions by and against Executors and Administrators.
- CHAPTER 231. Pleading and Practice.
- CHAPTER 232. Set-off and Tender.
- CHAPTER 233. Witnesses and Evidence.
- CHAPTER 234. Juries.
- CHAPTER 235. Judgment and Execution.
- CHAPTER 236. Levy of Executions on Land.

TITLE III.

REMEDIES RELATING TO REAL PROPERTY.

- CHAPTER 237. Writs of Entry.
- CHAPTER 238. Writs of Dower.
- CHAPTER 239. Summary Process for Possession of Land.
- CHAPTER 240. Proceedings for Settlement of Title to Land.
- CHAPTER 241. Partition of Land.
- CHAPTER 242. Waste and Trespass.
- CHAPTER 243. Actions for Private Nuisances.
- CHAPTER 244. Foreclosure and Redemption of Mortgages.
- CHAPTER 245. Informations by the Commonwealth.

TITLE IV.

CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

- CHAPTER 246. Trustee Process.
- CHAPTER 247. Replevin.
- CHAPTER 248. Habeas Corpus and Personal Liberty.
- CHAPTER 249. Audita Querela, Certiorari, Mandamus and Quo Warranto.
- CHAPTER 250. Writs of Error, Vacating Judgment, Writs of Review.
- CHAPTER 251. Arbitration.
- CHAPTER 252. Improvement of Low Land and Swamps.
- CHAPTER 253. Mills, Dams and Reservoirs.
- CHAPTER 254. Liens on Buildings and Land.
- CHAPTER 255. Mortgages, Conditional Sales and Pledges of Personal Property, and Liens thereon.
- CHAPTER 256. Recognizances for Debts.
- CHAPTER 257. Seizure and Libelling of Forfeited Property.
- CHAPTER 258. Claims against the Commonwealth.

TITLE V.

STATUTES OF FRAUDS AND LIMITATIONS.

- CHAPTER 259. Prevention of Frauds and Perjuries.
- CHAPTER 260. Limitation of Actions.

TITLE VI.

COSTS AND FEES.

- CHAPTER 261. Costs in Civil Actions.
- CHAPTER 262. Fees of Certain Officers.

PART IV.

CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

TITLE I.

CRIMES AND PUNISHMENTS.

- CHAPTER 263. Rights of Persons accused of Crime.
- CHAPTER 264. Crimes against Governments.
- CHAPTER 265. Crimes against the Person.
- CHAPTER 266. Crimes against Property.
- CHAPTER 267. Forgery and Crimes against the Currency.
- CHAPTER 268. Crimes against Public Justice.
- CHAPTER 269. Crimes against Public Peace.
- CHAPTER 270. Crimes against Public Health.
- CHAPTER 271. Crimes against Public Policy.
- CHAPTER 272. Crimes against Chastity, Morality, Decency and Good Order.
- CHAPTER 273. Desertion, Non-Support and Illegitimacy.
- CHAPTER 274. Felonies, Accessories and Attempts to commit Crimes.

TITLE II.

PROCEEDINGS IN CRIMINAL CASES.

- CHAPTER 275. Proceedings to prevent Crimes.
 - CHAPTER 276. Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail. Probation Officers and Board of Probation.
 - CHAPTER 277. Indictments and Proceedings before Trial.
 - CHAPTER 278. Trials and Proceedings before Judgment.
 - CHAPTER 279. Judgment and Execution.
 - CHAPTER 280. Fines and Forfeitures.
-

PART V.

THE GENERAL LAWS, AND EXPRESS REPEAL OF CERTAIN ACTS AND RESOLVES.

- CHAPTER 281. The General Laws and their Effect.
- CHAPTER 282. Express Repeal of Certain Acts and Resolves. [OMITTED.]

GENERAL LAWS

OF

MASSACHUSETTS

TITLE XX.

PUBLIC SAFETY AND GOOD ORDER.

- CHAPTER 133. Disposition of Old and Infirm Animals.
 CHAPTER 134. Lost Goods and Stray Beasts.
 CHAPTER 135. Unclaimed and Abandoned Property.
 CHAPTER 136. Observance of the Lord's Day.
 CHAPTER 137. Gaming.
 CHAPTER 138. Intoxicating Liquors and Certain Non-Intoxicating Beverages.
 CHAPTER 139. Common Nuisances.
 CHAPTER 140. Licenses.
 CHAPTER 141. Supervision of Electricians.
 CHAPTER 142. Supervision of Plumbing.
 CHAPTER 143. Inspection and Regulation of, and Licenses for, Buildings, Elevators and Cinematographs.
 CHAPTER 144. Tenement Houses in Cities.
 CHAPTER 145. Tenement Houses in Towns.
 CHAPTER 146. Inspection of Boilers, Air Tanks, etc. Licenses of Engineers, Firemen, and Operators of Hoisting Machinery.
 CHAPTER 147. State and Other Police, and Certain Powers and Duties of the Department of Public Safety.
 CHAPTER 148. Fire Prevention.

CHAPTER 133.

DISPOSITION OF OLD AND INFIRM ANIMALS.

SECT.

1. Powers and duties of certain officers relative to disabled animals, etc.
2. Payment of value of animals taken. Costs, etc.

SECT.

3. Value of infected animal.
4. Disposition of certain horses owned by cities or towns.

Powers and duties of certain officers relative to disabled animals, etc.
 1881, 283
 P. S. 96, § 15
 R. L. 95, § 13
 1907, 363, § 1
 1915, 125.

SECTION 1. Any officer or agent of any society incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals, provided he is also a special police officer appointed under section ten of chapter one hundred and forty-seven, or a constable, sheriff or deputy sheriff, or a police officer of any town, may take possession of any old, maimed, disabled, diseased or injured animal and apply to a district court, within whose district the animal is taken, for process to cause it to be killed humanely. If the owner is known, and can after reasonable search be found, a copy of such application shall be served upon him in hand with an order of court to appear at a time and place named to show cause 1
2
3
4
5
6
7
8
9
10
11

12 why such animal should not be killed and its value determined. If he
 13 is unknown, or cannot after reasonable search be found, the court
 14 shall order notices to be posted in two public places in the town where
 15 the animal was taken, stating the facts of the case, and giving twenty-
 16 four hours' notice of a hearing on said application. At such hearing, if
 17 it appears that such animal is so old, maimed, disabled, diseased or in-
 18 jured as to be unfit for humane use, the court shall issue process directing
 19 any officer designated herein to kill the same humanely, and shall deter-
 20 mine its value. If the owner is aggrieved by such determination he may
 21 petition the superior court for the assessment of his damages under chapter
 22 seventy-nine.

1 SECTION 2. The value or damages, if any, determined under the pre-
 2 ceding section, and the reasonable costs and expenses incurred by said
 3 officer and approved by the court, shall be paid by the society whose
 4 officer or agent made the application for process.

Payment of
value of ani-
mals taken.
Costs, etc.
1881, 283.

P. S. 96, § 15 R. L. 95, § 13. 1907, 363, § 2.

1 SECTION 3. If the animal taken possession of as aforesaid has any
 2 infectious or contagious disease, or, for any reason, might lawfully be
 3 destroyed as an abatement of a public nuisance, that fact shall be prima
 4 facie evidence that the animal has no value.

Value of in-
fected animal.
1907, 363, § 3.

1 SECTION 4. Whenever any horses used in any department of any
 2 town shall, by reason of disability or disease, become unfit for use therein,
 3 the officer in charge of such department, in cities with the approval of
 4 the mayor, and in towns with the approval of the selectmen, instead of
 5 causing such horses to be sold, may transfer them to the custody of the
 6 Red Acre Farm, Incorporated, or any charitable society incorporated
 7 in the commonwealth for the prevention of cruelty to animals, or for the
 8 care and protection of dumb animals, if the society is willing to accept
 9 the custody thereof, to be disposed of as the society may deem best;
 10 provided, that the society upon receiving any such horse shall give a
 11 written agreement not to sell the horse or let the same for hire. If any
 12 horse so received shall thereafter be sold or let for hire, the proceeds of
 13 such sale or letting shall be the property of the town, and custody of the
 14 horse shall revert thereto.

Disposition of
certain horses
owned by
cities or towns.
1908, 133.

CHAPTER 134.

LOST GOODS AND STRAY BEASTS.

SECT.	SECT.
1. Finder of lost money or goods to give notice, etc.	4. Rights of finder if no owner appears.
2. When stray beasts are taken up, notice to be given.	5. Sale of strays.
3. Restitution of property.	6. Rights of owner and finder of strays.
	7. Penalty for taking away strays.

1 SECTION 1. Any person who finds lost money or goods of the value
 2 of three dollars or more, the owner of which is unknown, shall within
 3 two days report the finding thereof to the officer in charge at a police

Finder of lost
money or goods
to give notice,
etc.
C. L. 142, § 1.

1698, 9, § 1.
 1727-8, 6, § 1.
 1788, 55, § 1.
 R. S. 56, § 1.
 G. S. 79, § 1.
 P. S. 95, § 1.
 R. L. 94, § 1.

station in the town where said property was found, or, if there is no 4
 police station, post notice thereof in two public places therein, or, in- 5
 stead of such report or posting, cause notice thereof to be advertised 6
 in a newspaper published therein. 7

1918, 257, § 324. 105 Mass. 163. 116 Mass. 42.
 1919, 5. 106 Mass. 286. 130 Mass. 176.
 1920, 2.

When stray
 beasts are
 taken up,
 notice to be
 given.
 C. L. 142, § 1.
 1698, 9, §§ 1, 2.
 1788, 55, § 1.
 R. S. 56, § 2.
 G. S. 79, § 2.
 P. S. 95, § 2.

SECTION 2. Except as otherwise provided in chapter one hundred 1
 and thirty-three, any person who takes up a stray beast shall report, 2
 post or advertise the finding thereof, in the manner provided in the 3
 preceding section, giving a description of the color and the natural and 4
 artificial marks of such beast; otherwise he shall not be entitled to com- 5
 pensation for any expenses which he may incur relative thereto. 6

R. L. 94, § 2. 1918, 257, § 325. 1919, 5. 1920, 2.

Restitution
 of property.
 C. L. 142, § 3.
 1698, 9, § 3.
 1788, 55, § 3.
 1827, 74, § 2.
 R. S. 56, §§ 5, 7.
 G. S. 79, §§ 5, 7.
 P. S. 95, §§ 5, 7.
 R. L. 94, § 4.
 1918, 257, § 327.

SECTION 3. If, within three months after the finding of stray beasts, 1
 or within one year after the finding of lost money or goods, the owner 2
 appears and, except as otherwise provided in section two, pays all reason- 3
 able expenses incurred by the finder in keeping such goods or beasts and 4
 in complying with this chapter, he shall have restitution of the money, 5
 goods or beasts. 6

1919, 5. 1920, 2.

Rights of
 finder if no
 owner appears.
 1788, 55, § 3.
 R. S. 56, § 6.

SECTION 4. If the owner of lost money or goods does not appear 1
 within one year after the finding thereof, they shall enure to the finder, 2
 provided he has complied with section one. 3

G. S. 79, § 6. R. L. 94, § 5. 1919, 5.
 P. S. 95, § 6. 1918, 257, § 328. 1920, 2.

Sale of strays.
 1815, 1, § 1.
 1827, 74, § 2.
 R. S. 56, § 8.
 G. S. 79, § 8.
 P. S. 95, § 8.
 R. L. 94, § 6.
 1918, 257, § 329.
 1919, 5.

SECTION 5. If the owner of stray beasts does not appear within 1
 three months after the finding thereof and prove title thereto, the 2
 finder may sell them by public auction, first giving notice of such sale, 3
 at least four days before the time of sale, in two public places in the 4
 town where the beasts were found. 5

1920, 2.

Rights of
 owner and
 finder of strays.
 C. L. 142, § 3.
 1698, 9, § 3.
 1788, 55, § 3.
 1815, 1, § 2.
 1827, 74, § 2.
 R. S. 56, § 9.
 G. S. 79, § 9.
 P. S. 95, § 9.
 R. L. 94, § 7.
 1918, 257, § 330.
 1919, 5.
 1920, 2.

SECTION 6. If the owner of stray beasts appears within one year 1
 after the finding thereof, and proves title thereto, he shall, if they have 2
 not been sold under the preceding section, have restitution thereof upon 3
 payment, except as provided in section two, of all reasonable expenses 4
 incurred by the finder in keeping such beasts and in complying with 5
 this chapter; but if they have been sold he shall be entitled to receive 6
 the proceeds of the sale after deducting the expenses aforesaid. If no 7
 such owner appears within said year the beasts, or the proceeds, shall 8
 enure to the finder, provided he has complied with this chapter. 9

Penalty for
 taking away
 strays
 C. L. 142, § 4.
 1698, 9, § 4.
 1788, 55, § 5.
 R. S. 56, § 11.

SECTION 7. Any person who takes away a beast taken up as a stray, 1
 without paying all lawful charges in relation thereto, shall forfeit to the 2
 finder double the amount of such charges, but not more than the value 3
 of the beast at the time of such taking away. 4

G. S. 79, § 11. R. L. 94, § 9. 1919, 5.
 P. S. 95, § 11. 1918, 257, § 332. 1920, 2.

CHAPTER 135.

UNCLAIMED AND ABANDONED PROPERTY.

SECT.

- 1. Publication of unclaimed effects of passengers.
- 2. Sale of unclaimed articles.
- 3. Proceeds to be paid to commonwealth.
- 4. Penalty for failure to comply with certain provisions.
- 5. Perishable articles may be sold.
- 6. Sale of unclaimed goods carried by a railroad or vessel or by express.

SECT.

- 7. Disposition of stolen, etc., property by police officers.
- 8. Sale of such property, etc.
- 9. If perishable, etc., how sold.
- 10. Proceeds, disposal of.
- 11. When owner to be paid if he applies.
- 12. Timber carried away by flood may be taken by owners, etc.

SECTION 1. Railroad corporations and proprietors of steamboats engaged in the transportation of passengers shall semi-annually, on the first Mondays of January and July, publish, in one newspaper at least in every county where such corporation or proprietors have a passenger station or office, a descriptive list of all trunks, bags, valises, parcels and passengers' effects which have been left and then remain unclaimed at any passenger station or office, or in the possession of any such corporation, proprietors or their agents, and the list shall indicate all such specific marks as may serve to identify the same.

Publication of unclaimed effects of passengers
1851, 147, § 1.
G. S. 80, § 1.
P. S. 96, § 1.
R. L. 95, § 1.
6 Allen, 246.

SECTION 2. If at the expiration of six months after such advertisement any of the articles so advertised remain unclaimed, said corporation or proprietors having possession thereof shall give notice to the aldermen of the city or selectmen of the town where the articles may be, who shall cause them to be examined, and may order them to be sold by public auction upon publication, in the manner set forth in the preceding section, of notice of the time and place of sale, or may order them to be again advertised and to remain another six months before being sold.

Sale of unclaimed articles.
1851, 147, § 2.
G. S. 80, § 2.
P. S. 96, § 2.
R. L. 95, § 2.

SECTION 3. The proceeds of all articles so sold, after deducting costs of storage and all expenses incurred in complying with sections one and two, shall be paid to the commonwealth.

Proceeds to be paid to commonwealth.

1851, 147, § 3. G. S. 80, § 3. P. S. 96, § 3. R. L. 95, § 3.

SECTION 4. Any such corporation or proprietor neglecting or omitting so to advertise and cause any such effects to be examined shall be liable for all damages caused thereby, and shall also forfeit one hundred dollars.

Penalty for failure to comply with certain provisions.

1851, 147, § 4. G. S. 80, § 4. P. S. 96, § 4. R. L. 95, § 4.

SECTION 5. When a common carrier has transported fresh meats, fresh fish, shellfish, fruit or vegetables to their destination, such carrier may, in the exercise of a reasonable discretion, after notice to the owner or consignee thereof of the arrival of such goods and his refusal or omission to pay the freight and proper charges thereon and to receive and take them away, or without such notice and refusal or omission if such

Perishable articles may be sold
1857, 237.
G. S. 80, § 5.
P. S. 96, § 5.
R. L. 95, § 5.

owner or consignee thereof cannot, on reasonable inquiry, be found, sell 7
 the same at public or private sale without advertising. The proceeds 8
 thereof, after deducting the amount of the freight thereon and the 9
 charges and expenses of sale, shall be paid to the owner or consignee. 10

Sale of un-
 claimed goods
 carried by a
 railroad or
 vessel or by
 express.
 1864, 139.
 1866, 152.
 P. S. 96, §§ 6-9.
 R. L. 95,
 §§ 6, 7,
 1918, 257,
 § 333.
 1919, 5.
 1920, 2.
 201 Mass. 564.
 203 Mass. 529.

SECTION 6. If goods carried by a railroad company, by express or 1
 in a vessel are not called for by the owner or consignee within one year 2
 after the date of their receipt at the place of consignment, they may be 3
 sold by public auction, notice of the time and place of sale, containing a 4
 descriptive list of all such goods with all such specific marks as may 5
 serve to identify the same, first being published once a week for three 6
 successive weeks in a newspaper, if any, published in the town where 7
 such sale is to take place, and also in the town to which they were con- 8
 signed, otherwise in the newspaper published nearest thereto. The 9
 proceeds, after deducting costs of transportation, storage, advertising 10
 and sale, shall be paid to the owner, upon demand and satisfactory 11
 proof of ownership, within three years after the sale; otherwise to the 12
 commonwealth. 13

Disposition of
 stolen, etc.,
 property by
 police officers.
 1880, 155, § 1.
 P. S. 96, § 10.
 R. L. 95, § 8.
 1927, 30.

SECTION 7. If property which has been stolen, lost, abandoned or 1
 taken from a person under arrest comes into the possession of a member 2
 of the police department of a city by virtue of his office, he shall deliver 3
 the same to the officer or member of the department designated by the 4
 rules thereof, and shall thereupon be relieved from further responsi- 5
 bility therefor. The officer or member to whom such property is so 6
 delivered shall give notice as provided in section one of chapter one 7
 hundred and thirty-four. The word "city" as used in this and the four 8
 following sections shall include town. 9

Sale of such
 property, etc.
 1880, 155.
 §§ 2, 3.
 P. S. 96, § 11
 R. L. 95, § 9.
 1927, 30; 163.

SECTION 8. If such property remains unclaimed in the possession of 1
 such police department or member thereof for six months and the owner 2
 thereof or his place of abode or business is unknown, or if the owner and 3
 his place of abode or business are known and the owner, after receipt by 4
 registered mail of a written notice from such department or member to 5
 take possession of said property, refuses or fails for a period of ten days 6
 following said receipt so to do, such department may sell the same, 7
 excepting money unclaimed, by public auction, notice of the time and 8
 place of sale, with a description of the property to be sold, first being 9
 given by publishing the same once in each of three successive weeks in 10
 a newspaper published in such city. 11

If perishable,
 etc., how sold.
 1880, 155, § 4
 P. S. 96, § 12.
 R. L. 95, § 10
 1927, 30.

SECTION 9. Such property, if perishable or liable to deteriorate 1
 greatly in value by keeping or the value of which will probably be less 2
 than the expense of keeping the same, may be sold by public auction 3
 within said six months in accordance with the rules of the department, 4
 reasonable notice of the time and place of sale first being given by pub- 5
 lishing the same in a newspaper published in such city. 6

Proceeds, dis-
 posal of
 1880, 155, § 5.
 P. S. 96, § 13.
 R. L. 95, § 11

SECTION 10. The proceeds of such sale, or the balance of such un- 1
 claimed money, after deducting all reasonable charges and expenses 2
 incurred on such property, shall be paid into the city treasury. 3

1 SECTION 11. If, within two years and six months after such money
 2 has come into the possession of a member of the police department of
 3 a city or within two years after such sale of other property, the owner
 4 claims and proves ownership thereof, the unclaimed balance of such
 5 money or the proceeds of such sale, after deducting all reasonable
 6 charges and expenses, shall be paid to him, upon the order of the head
 7 of such department.

When owner
to be paid if
he applies
1880, 155, § 6
P. S. 96, § 14
R. L. 95, § 12.
1927, 30.

1 SECTION 12. The owner of a log, mast, spar or other timber carried
 2 by flood into land adjoining any river, stream or pond may, within six
 3 months, remove the same from said land upon paying or tendering to
 4 the owner or occupant thereof such reasonable damages as may be
 5 caused by such removal; and if he does not so remove it within said six
 6 months, or otherwise agree with the owner or occupant of such land,
 7 it shall be the property of such owner or occupant.

Timber carried
away by flood
may be taken
by owners, etc.
1780, 31.
1793, 42,
§§ 3, 6
1804, 5
R. S. 52, § 1.
1841, 26
G. S. 78, § 1.

P. S. 94, § 1.

R. L. 93, § 1.

106 Mass. 286.

CHAPTER 136.

OBSERVANCE OF THE LORD'S DAY.

SECT.

1. "Lord's day" defined.
2. Being present at or taking part in certain entertainments on Lord's day prohibited.
3. Maintaining certain public exhibitions prohibited.
4. Certain public entertainments may be licensed. Revocation.
5. Keeping open shop, etc., and doing certain work, etc., prohibited.
6. Limit of operation of preceding section.
7. Sale of certain articles on Lord's day licensed.
8. Provisions of licenses. Fee. Revocation.
9. Certain work may be performed on Lord's day.
10. Certain parades with music allowed on Lord's day.
11. Policemen or firemen may parade with music on certain Sundays.
12. Persons keeping places of entertainment, etc., to entertain only travelers, etc.
13. Civil process not to be served on Lord's day.
14. Penalty for rude behavior.
15. Limitation of the commencement of prosecutions.
16. Sheriffs, etc., to inform of offences.

SECT.

17. Penalty for discharging firearms, fishing, etc., on Lord's day.
18. Innholders who permit implements of gaming to be used, etc.
19. Department of public utilities may authorize running trains and steamboats on Lord's day.
20. This chapter not a defence.

CERTAIN SPORTS AND GAMES PERMITTED ON THE LORD'S DAY.

21. Certain sports and games permitted.
22. To be held only on licensed places.
23. To be conducted under regulations, etc. Admission fees, etc.
24. Revocation of permit.
25. Limit of operation of §§ 21-25.
26. Amateur sports, etc., permitted in certain cities or towns.
27. Licensing such sports, etc., on designated playgrounds, etc.
28. Regulations and restrictions.
29. Fees, etc., forbidden.
30. Revocation of permits for violations.
31. Resubmission of §§ 26-32 in certain cities and towns.
32. Limit of operation of six preceding sections.

1 SECTION 1. The Lord's day shall include the time from midnight to
 2 midnight.

"Lord's day"
defined
1782, 23, § 6.

1791, 58, § 4
R. S. 50, § 4

1844, 160, § 2
G. S. 84, § 12

P. S. 98, § 16
R. L. 98, § 16

Being present at or taking part in certain entertainments on Lord's day prohibited.
 1760-1, 20, § 9.
 1782, 23, §§ 1, 7.
 1791, 58, §§ 1, 5.
 1796, 89, § 1.
 R. S. 50, § 5.
 1858, 151.
 G. S. 84, § 4.
 P. S. 98, § 1.
 1887, 391, § 1.
 1895, 434, §§ 1, 4.
 R. L. 98, §§ 1, 2, 5.
 1904, 460, §§ 1-3.
 1908, 385, § 1.
 1918, 257, §§ 336, 338.
 1919, 5.

SECTION 2. Whoever on the Lord's day is present at a game, sport, play or public diversion, except a concert of sacred music, a public entertainment duly licensed as provided in section four or a free open air concert given by a town, or by license of the mayor or the selectmen, upon a common or public park, street or square, or except a game of golf conducted on an open air golf course other than a miniature golf course, so called, shall be punished by a fine of not more than five dollars. Whoever on the Lord's day takes part in any game, sport, play or public diversion, except as aforesaid, shall be punished by a fine of not more than fifty dollars. This and the following section shall not apply to sports or games conducted in accordance with sections twenty-one to twenty-five, inclusive, in any city or town which accepts said sections or in accordance with sections twenty-six to thirty-two, inclusive, in any city or town in which said sections twenty-six to thirty-two are then in force.

1920, 2; 240. 1928, 406, § 1. 1931, 275; 426, § 243.

Maintaining certain public exhibitions prohibited.
 C. L. 133, §§ 1, 2.
 1692-3, 22, § 1.
 1716-7, 13, § 1.
 1727-8, 5, § 1.
 1760-1, 20, §§ 2, 9.
 1782, 23, §§ 1, 7.
 1791, 58, §§ 1, 5.
 1796, 89, § 1.
 R. S. 50, §§ 1, 5.
 G. S. 84, §§ 1, 4, 9.
 1862, 152.
 1863, 143.
 P. S. 98, §§ 1, 2.

SECTION 3. Whoever offers to view, sets up, establishes, maintains, or attempts to set up, establish or maintain, or promotes or assists in such attempt, or promotes, or aids, abets or participates in offering to view, setting up, establishing or maintaining any public entertainment on the Lord's day, except a concert of sacred music, or a free open air concert given as provided in the preceding section, unless such public entertainment shall be in keeping with the character of the day and not inconsistent with its due observance and duly licensed as provided in the following section, or whoever on the Lord's day acts as proprietor, manager or person in charge of a game, sport, play or public diversion, except a public entertainment licensed under the following section, a concert of sacred music, or a free open air concert given as aforesaid, shall be punished by a fine of not more than five hundred dollars.

1887, 391. 1904, 460, §§ 1-3. 1919, 5.
 1895, 434, §§ 1, 2, 4. 1908, 385, § 1. 1920, 2.
 R. L. 98, §§ 1, 2, 5. 1918, 257, §§ 336, 338. 185 Mass. 551.

Certain public entertainments may be licensed.
 Revocation
 1908, 385, § 1.
 1909, 189.
 1926, 326.

SECTION 4. Except as provided in section one hundred and five of chapter one hundred and forty-nine, the mayor of a city or the selectmen of a town may, upon written application describing the proposed entertainment, grant, upon such terms or conditions as they may prescribe, a license to hold on the Lord's day a public entertainment, in keeping with the character of the day and not inconsistent with its due observance, to which admission is to be obtained upon payment of money or other valuable consideration; provided, that no such license shall be granted to have effect before one o'clock in the afternoon, nor shall it have effect unless the proposed entertainment shall, upon application accompanied by a fee of two dollars, have been approved in writing by the commissioner of public safety as being in keeping with the character of the day and not inconsistent with its due observance. Any such license may, after notice and a hearing given by the mayor or selectmen issuing the same, or by said commissioner, be suspended, revoked or annulled by the officer or board giving the hearing.

Keeping open shop, etc., and doing certain

SECTION 5. Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work,

3 except works of necessity and charity, shall be punished by a fine of not
4 more than fifty dollars.

work, etc.,
prohibited.
C. L. 133,
§§ 1, 2.

1692-3, 22, § 1.	7 Gray, 161.	128 Mass. 148, 504
1746-7, 13, § 1.	8 Gray, 384, 553.	131 Mass. 156, 516.
1727-8, 5, §§ 1, 4.	11 Gray, 308.	135 Mass. 113.
1760-1, 20, §§ 2, 9.	15 Gray, 433	136 Mass. 384.
1782, 23, § 1.	9 Allen, 148, 452.	139 Mass. 74.
1791, 58, § 1.	10 Allen, 18.	140 Mass. 190
1796, 89, § 1.	11 Allen, 209.	143 Mass. 28, 167
R. S. 50, § 1.	12 Allen, 187.	144 Mass. 359, 362, 363.
G. S. 84, § 1.	13 Allen, 559	145 Mass. 353
1862, 152	14 Allen, 20, 165, 475, 485.	155 Mass. 543.
P. S. 98, § 2.	97 Mass. 45, 166, 407, 411.	159 Mass. 101
1895, 434, §§ 2, 4.	101 Mass. 30, 366.	168 Mass. 519
R. L. 98, §§ 2, 5.	103 Mass. 188.	170 Mass. 560
1904, 460, § 2.	105 Mass. 399.	176 Mass. 5, 104.
1909, 423, § 4	107 Mass. 251, 439.	185 Mass. 551.
1918, 257, §§ 336, 338.	108 Mass. 517.	190 Mass. 578.
1919, 5.	109 Mass. 398.	194 Mass. 151.
1920, 2.	112 Mass. 368, 467.	199 Mass. 534.
6 Mass. 76.	115 Mass. 326.	200 Mass. 514.
13 Mass. 324.	117 Mass. 65, 142.	208 Mass. 528.
12 Met. 24	118 Mass. 195.	213 Mass. 207.
13 Met. 284.	120 Mass. 490.	221 Mass. 70.
2 Cush. 556.	121 Mass. 301.	225 Mass. 445.
4 Cush. 243.	122 Mass. 40	244 Mass. 484.
10 Cush. 257.	127 Mass. 123.	125 U. S. 555.

1 SECTION 6. The preceding section shall not prohibit the manufac-
2 ture and distribution of steam, gas or electricity for illuminating pur-
3 poses, heat or motive power; the distribution of water for fire or
4 domestic purposes; the use of the telegraph or the telephone; the
5 manufacture and distribution of oxygen, hydrogen, nitrogen, acetylene
6 and carbon dioxide; the retail sale of drugs and medicines, or articles
7 ordered by the prescription of a physician, or mechanical appliances
8 used by physicians or surgeons.

Limit of
operation of
preceding
section
R. S. 50, § 10.
G. S. 84, § 9
P. S. 98, § 13.
1886, 82
1887, 391, § 2.
1893, 41
1895, 434, § 2.
1900, 140.
1901, 80
R. L. 98,
§§ 3, 4
1902, 414, § 1.
1908, 126, § 1;
273, § 1; 333;
343.
1909, 420, § 2;
423, § 5
1910, 327.
1911, 328, § 1.
1914, 757, § 1.
1916, 146, § 1.
1917, 207
1927, 175.
1928, 234.
1929, 118
1930, 143; 179.
1931, 240
13 Allen, 559.
122 Mass. 40
144 Mass. 359.
145 Mass. 99,
430.
149 Mass. 68.
176 Mass. 104.
194 Mass. 151.
221 Mass. 70
244 Mass. 484.

9 Nor shall it prohibit the retail sale of tobacco in any of its forms by
10 licensed innholders, common victuallers, druggists and newsdealers
11 whose stores are open for the sale of newspapers every day in the week;
12 the retail sale of bread, before ten o'clock in the forenoon and between
13 the hours of four o'clock and half past six o'clock in the afternoon by
14 licensed innholders and by licensed common victuallers authorized to
15 keep open their places of business on the Lord's day and by persons
16 licensed under the following section to keep open their places of business
17 as aforesaid; the retail sale of ice cream, soda water and confectionery
18 by licensed innholders and druggists, and by such licensed common
19 victuallers as are not also licensed to sell certain non-intoxicating bever-
20 ages, as defined in section one of chapter one hundred and thirty-eight,
21 and who are authorized to keep open their places of business on the
22 Lord's day; the sale of ice cream, soda water, confectionery or fruit by
23 persons licensed under the following section or the keeping open of their
24 places of business for the sale thereof.

25 Nor shall it prohibit work lawfully done by persons working under
26 permits granted under section nine; the sale by licensed innholders and
27 common victuallers of meals such as are usually served by them, con-
28 sisting in no part of intoxicating liquors, which meals are cooked on the
29 premises but are not to be consumed thereon; the operation of motor
30 vehicles; the sale of gasoline and oil for use, and the retail sale of ac-
31 cessories for immediate necessary use, in connection with the operation of
32 motor vehicles, motor boats and aircraft; the letting of horses and
33 carriages or of boats; unpaid work on pleasure boats; the running of
34 steam ferry boats on established routes; the running of street railway
35 cars; the running of steamboat lines and trains or of steamboats, if
36 authorized under section nineteen.

Nor shall it prohibit the preparation, printing and publication of 37 newspapers, or the sale and delivery thereof; the wholesale or retail 38 sale and delivery of milk, or the transportation thereof, or the delivery 39 of ice cream; the making of butter and cheese; the keeping open of 40 public bath houses; the making or selling by bakers or their employees, 41 before ten o'clock in the forenoon and between the hours of four o'clock 42 and half past six o'clock in the afternoon, of bread or other food usually 43 dealt in by them; whenever Rosh Hashonah, or the Day of Atonement, 44 begins on the Lord's day, the retail sale and delivery of fish, fruit and 45 vegetables before twelve o'clock noon of that day; the selling of kosher 46 meat by any person who, according to his religious belief, observes 47 Saturday as the Lord's day by closing his place of business during the 48 day until six o'clock in the afternoon or the keeping open of his shop on 49 the Lord's day for the sale of kosher meat between the hours of six 50 o'clock and ten o'clock in the forenoon. 51

Nor shall it prohibit the performing of secular business and labor on 52 the Lord's day by any person who conscientiously believes that the 53 seventh day of the week ought to be observed as the Sabbath and actually 54 refrains from secular business and labor on that day, if he disturbs no 55 other person thereby; the carrying on of the business of bootblack before 56 eleven o'clock in the forenoon, unless prohibited in a city or town by 57 ordinance or by-law; the digging of clams; the icing and dressing of 58 fish; the cultivation of land, and the raising, harvesting, conserving and 59 transporting of agricultural products during the existence of war between 60 the United States and any other nation and until the first day of January 61 following the termination thereof; such unpaid work in or about private 62 gardens or private grounds, adjacent to a dwelling house, as shall not 63 cause unreasonable noise, having regard to the locality where such work 64 is performed. 65

Nor shall it prohibit the sale of catalogues of pictures and other works 66 of art in exhibitions held by societies organized for the purpose of pro- 67 moting education in the fine arts or the exposure of photographic plates 68 and films for pleasure, if the pictures to be made therefrom are not 69 intended to be sold and are not sold. 70

Sale of certain articles on Lord's day licensed. 1909, 423, §§ 1, 3, 6. 1918, 257, § 337. 1919, 5. 1920, 2. 225 Mass. 104.

SECTION 7. In Boston, and in any other city or town which accepts 1 this and the following section or has accepted corresponding provisions 2 of earlier laws, in a city by its city council or in a town by the voters 3 of the town at an annual town meeting, the licensing board or officer 4 in such city or town, or if there is no such board or officer the aldermen 5 of a city, or if there are no aldermen the city council, with the approval 6 of the mayor, or the selectmen of a town, may grant, to any reputable 7 person who on secular days is a retail dealer in ice cream, confectionery, 8 soda water or fruit and who does not hold a license for the sale of certain 9 non-intoxicating beverages, as defined in section one of chapter one 10 hundred and thirty-eight, a license to keep open his place of business 11 on the Lord's day for the sale of ice cream, confectionery, soda water or 12 fruit. 13

Provisions of licenses. Fee. Revocation. 1909, 423, § 2. 1913, 451.

SECTION 8. Every license granted under the preceding section shall 1 specify the street or place and the number, if any, or if there is no num- 2 ber, the location of the place of business in which the license is to be 3 exercised, and the license shall not be valid in any other place. A license 4 if granted prior to May first in any year shall take effect on that day, 5

6 but if granted thereafter it shall take effect on the date thereof, and all
 7 licenses shall expire on April thirtieth of each year. The fee for such
 8 license shall not be more than five dollars a year, and it may be sus-
 9 pended or revoked by the officer or board granting the same.

1 SECTION 9. The police commissioner of Boston, or any member of
 2 the police department having a rank not lower than that of captain
 3 and designated by said commissioner, or the chief of police or other
 4 officer in charge of the police department of any other city or of any
 5 town, upon such terms and conditions as he deems reasonable, may
 6 issue a permit for the performance on the Lord's day of necessary work
 7 or labor which in his judgment could not be performed on any other
 8 day without serious suffering, loss, damage or public inconvenience.
 9 Such permit shall cover not more than one day and shall not be issued
 10 more than six days prior to the day for which it is issued.

Certain work
 may be per-
 formed on
 Lord's day.
 1909, 420, § 1.

1 SECTION 10. Any post or camp of an incorporated organization of
 2 veterans of any war in which the United States has engaged, or any
 3 incorporated civic or fraternal organization, may parade with music on
 4 the Lord's day for the purpose of attending divine service, holding com-
 5 memorative exercises or dedicating memorials; provided, that the music
 6 shall be suspended while passing within two hundred feet of any place
 7 of public worship where services are being held.

Certain
 parades
 with music
 allowed on
 Lord's day.
 1908, 354, 537
 1920, 141
 1922, 119.
 1930, 90
 1931, 176.

1 SECTION 11. Any company or association of policemen or firemen,
 2 whether in active service or former members of a police or fire depart-
 3 ment, may parade with music, in the case of policemen, on policemen's
 4 memorial day, the first Sunday of June in each year, and, in the case of
 5 firemen, on firemen's memorial day, the second Sunday of June in each
 6 year, for the special purpose of decorating the graves of deceased police-
 7 men or firemen, as the case may be; provided, that the music shall be
 8 suspended while passing within two hundred feet of any place of public
 9 worship where services are being held.

Policemen or
 firemen may
 parade with
 music on cer-
 tain Sundays.
 1906, 139
 1931, 41, § 1.

1 SECTION 12. Whoever, keeping a house, shop, cellar or place of
 2 public entertainment or refreshment, entertains therein on the Lord's
 3 day any persons other than travelers, strangers or lodgers, or suffers
 4 such persons on said day to remain therein or in the yards, orchards or
 5 fields appertaining thereto, drinking or spending their time idly or at
 6 play, or in doing any secular business, shall for a first offence be pun-
 7 ished by a fine of not more than fifty dollars for each person so enter-
 8 tained or suffered so to remain; and for a subsequent offence by a fine
 9 of not more than one hundred dollars; and if convicted three times, he
 10 shall thereafter be disqualified to hold a license.

Persons
 keeping places
 of entertain-
 ment, etc., to
 entertain only
 travelers, etc.
 1692-3, 22, § 3
 1698, 10, § 4
 1727-8, 5, § 3
 1760-1, 20, § 4
 1782, 23,
 §§ 3, 7
 1791, 58, § 3.
 1796, 89, § 1
 1832, 166, § 5
 R. S. 47, § 13.
 50, § 3.

1837, 242, § 1.
 1844, 169.
 G. S. 84, § 3.

1864, 79.
 P. S. 98, § 4.
 R. L. 98, § 6.

2 Pick. 139.
 117 Mass. 116.

1 SECTION 13. A civil process shall not be served or executed on the
 2 Lord's day, and such service if made shall be void, and the person who
 3 serves or executes it shall be liable in damages to the person aggrieved
 4 in like manner as if he had no such process.

Civil process
 not to be
 served on
 Lord's day.
 1782, 23, § 11.

1791, 58, § 9.
 R. S. 50, § 7.

G. S. 84, § 6.
 P. S. 98, § 6

R. L. 98, § 8,
 140 Mass. 147.

Penalty for rude behavior. 1782, 23, § 9. 1791, 58, § 7. R. S. 50, § 8.

SECTION 14. Whoever on the Lord's day behaves rudely or indecently in any house of public worship shall be punished by a fine of not more than ten dollars.

G. S. 84, § 7. P. S. 98, § 7. R. L. 98, § 9.

Limitation of the commencement of prosecutions. 1815, 135.

SECTION 15. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be commenced within six months after the offence was committed.

R. S. 50, § 11. G. S. 84, § 10. P. S. 98, § 8. R. L. 98, § 10.

Sheriffs, etc., to inform of offences.

SECTION 16. Sheriffs, constables and grand jurors shall inquire into and inform of all violations of this chapter, and cause it to be enforced.

1727-8, 5, § 5. 1791, 58, §§ 10, 12. R. S. 50, § 9. G. S. 84, § 8. P. S. 98, § 9. R. L. 98, § 11.

Penalty for discharging firearms, fishing, etc., on Lord's day. 1865, 253. P. S. 98, §§ 10-12. R. L. 98, § 12. 1908, 123. 1931, 71.

SECTION 17. Whoever on the Lord's day discharges any firearm for sport or in the pursuit of game, or attempts to take or catch any fish by using any net or spear, or attempts to take or catch any fish for commercial purposes by using a hook and line, shall be punished by a fine of not more than ten dollars. Prosecutions hereunder shall be commenced within thirty days after the offence was committed.

Inholders who permit implements of gaming to be used, etc. 1854, 450, § 1. G. S. 84, § 11. P. S. 98, § 14. R. L. 98, § 13.

SECTION 18. Any inholder, common victualler or person keeping or suffering to be kept in any place occupied by him implements such as are used in gaming, in order that the same may for hire, gain or reward be used for purposes of amusement, who, on the Lord's day, uses or suffers to be used any such implements upon any part of his premises, shall for a first offence be punished by a fine of not more than one hundred dollars or by imprisonment for not more than three months; and for a subsequent offence by imprisonment for not more than one year; and in either case shall further recognize, with sufficient sureties, in a reasonable sum for his good behavior, and especially that he will not be guilty of any violation of this section for three months after the date of his recognizance.

Department of public utilities may authorize running trains and steamboats on Lord's day. 1881, 119. P. S. 98, § 15. 1887, 391, § 3. 1897, 389. R. L. 98, §§ 14, 15. 1913, 784.

SECTION 19. The department of public utilities may authorize the running, on the Lord's day, of such steamboat lines and of such trains on any railroad, as in its opinion public necessity and convenience require, having regard to the due observance of the day; and may, if public necessity, convenience, health or welfare so requires, authorize the running of steamboats on said day upon such conditions as it deems judicious to prevent disorderly conduct or the disturbance of public worship, and it may at any time revoke such authority.

1919, 350, § 117.

This chapter not a defence. 1877, 232. P. S. 98, § 3. 1884, 37. R. L. 98, § 17.

SECTION 20. The provisions of this chapter shall not constitute a defence to an action for a tort or injury suffered by a person on the Lord's day.

128 Mass. 594. 140 Mass. 199. 209 Mass. 155. 131 Mass. 156. 165 Mass. 346. 125 U. S. 555.

CERTAIN SPORTS AND GAMES PERMITTED ON THE LORD'S DAY.

1 SECTION 21. In any city which accepts sections twenty-one to twenty-
 2 five, inclusive, by vote of its city council and in any town which accepts
 3 said sections by vote of its inhabitants, it shall be lawful to take part in
 4 or witness any athletic outdoor sport or game on the Lord's day between
 5 the hours of one thirty and six thirty in the afternoon as hereinafter
 6 provided.

1931, 174.

Op. A. G. (1920) 129.

Certain sports
and games
permitted.
1920, 240,
§§ 1, 7.
G. L. (ed. of
1920) 136,
§ 26.
1928, 406, § 2.

1 SECTION 22. Such sports or games shall take place on such play-
 2 grounds, parks or other places as may be designated for that purpose in
 3 a license or permit issued by the city council, with the approval of the
 4 mayor, or by the selectmen; provided, that if, under any statute or
 5 ordinance, a public playground or park is placed under the exclusive
 6 charge and authority of any other officials, such officials shall, for that
 7 playground or park, be the licensing authority; and provided, that no
 8 sport or game shall be permitted in a place, other than a public play-
 9 ground or park, within one thousand feet of any regular place of worship.

To be held
only on
licensed
places.
1920, 240, § 2.
1928, 406, § 2.

1 SECTION 23. Such sports or games shall be conducted subject to
 2 such regulations and restrictions as shall be prescribed from time to
 3 time by the city council or the selectmen; provided, that they shall not
 4 prohibit the charging of admission fees or the taking of collections at
 5 any such sport or game, nor shall they prohibit the receiving of remunera-
 6 tion by any proprietor, manager or person in charge of any such sport
 7 or game or by any participant therein. Said regulations and restrictions
 8 shall be stated in the license or permit.

To be con-
ducted under
regulations,
etc. Admis-
sion fees, etc.
1920, 240,
§§ 3, 5.
G. L. (ed. of
1920) 136, § 24.
1928, 406, § 2.

1 SECTION 24. The licensing authorities described in section twenty-
 2 two may at any time and without previous notice revoke permits to
 3 conduct the said sports or games if they have reason to believe that any
 4 provision of sections twenty-one to twenty-five, inclusive, or of any
 5 regulation or restriction prescribed under section twenty-three, is being
 6 or will be violated.

Revocation
of permit.
1920, 240, § 6.
G. L. (ed. of
1920) 136,
§ 25.
1928, 406, § 2.

1 SECTION 25. Sections twenty-one to twenty-five, inclusive, shall not
 2 prohibit participation at other hours on the Lord's day in other outdoor
 3 exercise not involving the element of contest, nor shall they permit horse
 4 racing, automobile racing, boxing, or hunting with firearms.

1928, 406, § 2.

Limit of
operation of
§§ 21-25.
1920, 240, § 8.
G. L. (ed. of
1920) 136,
§ 28.

1 SECTION 26. In any city or town wherein the corresponding pro-
 2 visions of this and the six following sections were in effect on the sixth
 3 day of December, nineteen hundred and twenty-eight, and which has
 4 not voted against said sections on resubmission as provided in section
 5 thirty-one, and has not accepted the provisions of sections twenty-one
 6 to twenty-five, inclusive, as provided in section twenty-one, it shall be
 7 lawful to take part in or witness any athletic outdoor sport or game, in
 8 which the contestants do not receive and have not been promised any
 9 pecuniary reward, remuneration or consideration whatsoever directly
 10 or indirectly in connection therewith, on the Lord's day between the
 11 hours of two and six in the afternoon as hereinafter provided.

Amateur
sports, etc.,
permitted in
certain cities
or towns.
1928, 406, § 2.
1931, 426,
§ 244.

Licensing such sports, etc., on designated playgrounds, etc. 1928, 406, § 2. 1931, 426, § 244.	SECTION 27. Such sports or games shall take place on such play- grounds, parks or other places as may be designated for that purpose in a license or permit issued by the city council, with the approval of the mayor, or by the selectmen; provided, that if, under any statute or ordinance, a public playground or park is placed under the exclusive charge and authority of any other officials, such officials shall, for that playground or park, be the licensing authority; and provided, that no sport or game shall be permitted in a place, other than a public play- ground or park, within one thousand feet of any regular place of worship.	1 2 3 4 5 6 7 8 9
Regulations and re- strictions. 1928, 406, § 2. 1931, 426, § 244.	SECTION 28. Such sports or games shall be conducted subject to such regulations and restrictions as shall be prescribed by the city council or selectmen, and the same shall be stated in the license or permit.	1 2 3
Fees, etc., forbidden. 1931, 426, § 244.	SECTION 29. No admission fee shall be charged directly or indirectly, and no business or other enterprise shall be conducted, and no collec- tion shall be made at any such sport or game.	1 2 3
Revocation of permits for violations 1931, 426, § 244.	SECTION 30. The licensing authorities described in section twenty- seven may at any time and without previous notice revoke permits to conduct the said sports or games if they have reason to believe that any provision of sections twenty-six to twenty-nine, inclusive, or of any regulation or restriction prescribed under section twenty-eight, is being or will be violated.	1 2 3 4 5 6
Resubmission of §§ 26-32 in certain cities and towns. 1931, 426, § 244.	SECTION 31. In any city or town in which the provisions of sections twenty-six to thirty-two, inclusive, are in force, said sections shall be resubmitted to the voters at a municipal election, if a petition to that effect, signed by not less than ten per cent of the voters, is filed with the city or town clerk not less than thirty days before the election. If, upon such resubmission, a majority of the voters voting thereon vote against said sections, they shall cease to have effect in that city or town.	1 2 3 4 5 6 7
Limit of operation of six preceding sections 1931, 426, § 244.	SECTION 32. Sections twenty-six to thirty-one, inclusive, shall not prohibit participation at other hours on the Lord's day in other outdoor exercise not involving the element of contest, nor shall they permit horse racing, automobile racing, boxing, or hunting with firearms.	1 2 3 4

CHAPTER 137.

GAMING.

SECT.

- 1. Recovery of money, etc., lost at gaming.
- 2. Liability of owner, etc., of gaming house.
- 3. Notes, conveyances, etc., for gaming, when void.
- 4. Dealing in securities without actual sale.

SECT.

- 5. Stolen, etc., property, recovered by whom.
- 6. Prima facie evidence of intent not to receive and deliver.
- 7. "Securities" and "commodities" defined.

1 SECTION 1. Whoever, by playing at cards, dice or other game, or by
 2 betting on the sides or hands of those gaming, loses to a person so play-
 3 ing or betting money or goods, and pays or delivers the same or any part
 4 thereof to the winner, or whoever pays or delivers money or other thing
 5 of value to another person for or in consideration of a lottery, policy or
 6 pool ticket, certificate, check or slip, or for or in consideration of a chance
 7 of drawing or obtaining any money, prize or other thing of value in a
 8 lottery or policy game, pool or combination, or other bet, may recover
 9 such money or the value of such goods in contract; and if he does not
 10 within three months after such loss, payment or delivery, without covin
 11 or collusion, prosecute such action with effect, any other person may sue
 12 for and recover in tort treble the value thereof.

Recovery of
 money, etc.,
 lost at gaming
 1736 7, 17, § 2
 1742-3, 27, § 2
 1785, 58, § 2
 R. S. 50, § 12
 G. S. 85, § 1
 P. S. 99, § 1.
 1895, 419, § 11.
 R. L. 99, § 1
 17 Mass. 560.
 3 Pick. 446.
 S. Gray, 243
 1 Allen, 563
 116 Mass. 272
 129 Mass. 407
 133 Mass. 466
 134 Mass. 150.
 471

136 Mass. 525, 564. 149 Mass. 124. 226 Mass. 409.
 143 Mass. 280. 170 Mass. 146.

1 SECTION 2. The owner, tenant or occupant of a house or building
 2 where money or goods are lost, paid or delivered in any form of gaming
 3 referred to in the preceding section, or by betting on the sides or hands
 4 of those gaming, with the knowledge or consent of said owner, occupant
 5 or tenant, shall be liable in the same manner and to the same extent as
 6 the winner or receiver thereof is liable under the preceding section.

Liability of
 owner, etc., of
 gaming house.
 1837, 179
 G. S. 85, § 2
 P. S. 99, § 2.
 1895, 419, § 12.
 R. L. 99, § 2.
 116 Mass. 272.
 129 Mass. 407.

134 Mass. 150. 143 Mass. 280. 154 Mass. 346. 226 Mass. 409.

1 SECTION 3. Notes, bills, bonds, mortgages or other securities or con-
 2 veyances the whole or part of the consideration of which is money or
 3 goods won by gaming or playing at cards, dice or any other game, or by
 4 betting on the sides or hands of persons gaming, or for repaying or re-
 5 imbursing money knowingly lent or advanced for gaming or betting, or
 6 lent and advanced at the time and place of such gaming or betting to a
 7 person so gaming or betting, shall be void as between the parties thereto,
 8 and as to all persons except such as hold or claim under them in good
 9 faith and without notice of the illegality of the consideration.

Notes, con-
 veyances, etc.,
 for gaming,
 when void.
 1736-7, 17, § 1.
 1742-3, 27, § 1
 1785, 58, § 1
 1800, 57, § 5.
 R. S. 50, § 15.
 G. S. 85, § 4.
 P. S. 99, § 5.
 R. L. 99, § 3.
 1918, 257,
 § 340.

1919, 5, 3 Cush. 418. 151 Mass. 118.
 1920, 2. 120 Mass. 271. 226 Mass. 409.

1 SECTION 4. Whoever upon credit or upon margin contracts to buy
 2 or sell, or employs another to buy or sell for his account, any securities
 3 or commodities, intending at the time that there shall be no actual pur-
 4 chase or sale, may recover in contract from the other party to the con-
 5 tract, or from the person so employed, any payment made, or the value
 6 of anything delivered, on account thereof, if such other party to the

Dealing in
 securities
 without actual
 sale.
 1890, 437, § 2
 1901, 459, § 1
 R. L. 99, § 4
 1919, 247, § 1.
 1926, 353
 164 Mass. 54

168 Mass. 282, contract or person so employed had reasonable cause to believe that 7
 284 said intention existed; but no person shall have a right of action under 8
 174 Mass. 238, this section if, for his account, such other party to the contract or the 9
 177 Mass. 208, 382, person so employed makes, in accordance with the terms of the contract 10
 180 Mass. 259, 458, 500, 562, or employment, personally or by agent, an actual purchase or sale of 11
 181 Mass. 229, 251, said securities or commodities, or a valid contract therefor. A purchase 12
 182 Mass. 273, 321, or sale of securities, or a contract therefor, whether calling for present 13
 184 Mass. 515, 601, or future deliveries, made on any stock exchange or board of trade estab- 14
 188 Mass. 135, 189 Mass. 34, lished for a period of at least ten years prior thereto, and recognized as 15
 191 Mass. 117, 196 Mass. 294, valid and enforceable by the law of the jurisdiction where made, shall 16
 198 Mass. 236, 524, be deemed an actual purchase or sale within the meaning of this section. 17
 199 Mass. 242, 200 Mass. 367, If a purchase or sale of the securities or commodities ordered to be 18
 201 Mass. 165, 206 Mass. 275, bought or sold is made by the person so employed on a stock exchange 19
 208 Mass. 586, 214 Mass. 180, or board of trade, and other purchases or sales of such securities or com- 20
 217 Mass. 451, 221 Mass. 495, modities are made on the same day on such exchange or board by such 21
 224 Mass. 248, 226 Mass. 46, person for others in due course of business, and the balance of such 22
 230 Mass. 49, purchases or sales of securities or commodities is received or delivered 23
 232 Mass. 117, 234 Mass. 236, by such person by direction of the clearing house of such exchange or 24
 236 Mass. 157, 239 Mass. 190, board on the day when such purchase or sale or contract therefor is made, 25
 242 Mass. 415, 252 Mass. 16, or on the regular clearing day of such exchange or board next thereafter, 26
 306, 256 Mass. 147, which shall not be more than four days after the making of such pur- 27
 257 Mass. 218, 309, chase or sale, or contract therefor, such purchases and sales shall be 28
 266 Mass. 407, 268 Mass. 555, deemed actual purchases and sales within the meaning of this section. 29

Stolen, etc., SECTION 5. If, in a case under the preceding section, the money or 1
 property, recovered property paid or delivered has been stolen, embezzled or fraudulently 2
 by whom, or wrongfully used by the party entitled to recover under said section, 3
 1890, 437, § 3, the person to whom it rightfully belongs may in his own name recover 4
 R. L. 99, § 5, it in contract. 5
 200 Mass. 367,
 252 Mass. 306,
 256 Mass. 147.

Prima facie SECTION 6. In a proceeding under either of the two preceding sections, 1
 evidence of intent not to receive and deliver him from liability under section four, the fact that the seller or the per- 2
 1890, 437, § 4, son employing another to sell for his account did not own the securities 3
 1901, 459, § 2, or commodities at the time of the contract of sale or of the giving of the 4
 R. L. 99, § 6, order to sell, and the fact that settlements were made without completion 5
 1919, 247, § 2, of the purchase or sale of the securities and commodities bought or sold 6
 181 Mass. 251, 182 Mass. 321, or ordered to be bought or sold, shall each be prima facie evidence that 8
 195 Mass. 419, 200 Mass. 367, within the meaning of section four there was an intention that there 9
 206 Mass. 275, 217 Mass. 451, should be no actual purchase or sale, and that there was reasonable 10
 221 Mass. 495, 226 Mass. 46, cause to believe that said intention existed; and the parties liable to an 11
 230 Mass. 49, 234 Mass. 236, action under said section shall be jointly and severally liable. 12
 236 Mass. 454,
 252 Mass. 306,
 256 Mass. 147.

257 Mass. 218, 309.

266 Mass. 407.

"Securities" SECTION 7. In the three preceding sections, the word "securities" 1
 and "com- shall include all evidences of debt or property and options for the pur- 2
 modities" purchase and sale thereof, shares in any corporation, joint stock company 3
 defined or association, bonds, coupons, scrip, rights, choses in action and other 4
 1890, 437, § 1, evidences of debt or property and options for the purchase or sale thereof; 5
 R. L. 99, § 7, and the word "commodities" shall include everything movable that is 6
 252 Mass. 306, bought and sold. 7

CHAPTER 138.

INTOXICATING LIQUORS AND CERTAIN NON-INTOXICATING BEVERAGES.

SECT.

DEFINITIONS AND SALE.

- 1. Definitions.
- 2. Regulation of sales.
- 2A. [Repealed.]
- 3. Definition of intoxicating liquor.

LICENSING BOARDS.

- 4. Appointment, etc.
- 5. Terms of office. Removal.
- 6. Chairman. Quorum. Vacancies.
- 7. Office, salaries, etc.
- 8. Powers to vest in aldermen in non-license cities. Revesting of powers.
- 9. Record and report. Additional powers.
- 10. Certain cities exempt.

GRANTING OF LICENSES.

- 11. Granting of licenses.
- 11A. Certain laws relative to sale of certain non-intoxicating beverages temporarily suspended.
- 12. Information relative to applications and licenses.
- 13. Applications, when to be received and granted.
- 14. Licenses. Number, limitations on granting, etc. Enumeration of temporary residents. Penalty.
- 15. Notice of certain applications to be published. Proceedings upon failure to publish.
- 16. Licenses may be refused to unfit persons.

CONDITIONS OF LICENSES.

- 17. Conditions.

CLASSES OF LICENSES.

- 18. Five classes of licenses.

FEEES FOR LICENSES.

- 19. Fees.
- 20. Death of licensee, new license, etc.

REGULATION OF LICENSED PREMISES.

- 21. Entrances and screens.
- 22. License of premises near school forbidden.
- 23. License in dwelling house or store connected with it forbidden.
- 24. Hours of closing for common victuallers.

SECT.

DRUGGISTS.

- 25. Sale by druggists.
- 26. Licenses to druggists.
- 27. Certificate of fitness for license.
- 28. Sale of alcohol by pharmacists regulated.
- 29. Druggist's license to become void in certain cases.
- 30. [Repealed.]
- 31. [Repealed.]
- 32. Books, etc., open to inspection.
- 33. Penalty for sale of liquor in name of pharmacist.

SALE OF WOOD ALCOHOL.

- 34. Manufacture, sale, etc., of wood alcohol, etc., without license by other than registered druggist forbidden.
- 35. Licenses to manufacture, sell, etc., wood alcohol, etc.
- 36. Form of label on containers of wood alcohol, etc. Penalty.
- 37. Offence of unlawful sale of wood alcohol, etc.
- 38. Penalty.

LICENSES TO DEALERS IN PAINTS AND CHEMICALS.

- 39. Licenses to dealers in paints, etc.
- 40. License to become void in certain cases.
- 41. Record book for sales.
- 42. Refilling of bottles.

BONDS AND TRANSFERS OF LICENSES.

- 43. Payment of fee, and bond.
- 44. Sureties on bond.
- 45. Transfer of licenses.
- 46. One quarter of fees to be paid to commonwealth. Penalty.

PENALTIES FOR ILLEGAL SALE. SEIZURE. CIVIL DAMAGES.

- 47. Entry on licensed premises for examination and taking samples.
- 48. Forfeiture of license. Effect.
- 49. Civil liability for damages caused by an intoxicated person.
- 50. Action by owner paying money for tenant.
- 51. Penalty for employing minor under eighteen to handle liquor.

<p>SECT.</p> <p>52. Penalty for furnishing liquor to minors.</p> <p>53. Penalty for false statement of age in order to procure liquor.</p> <p>54. Analysis of liquor.</p> <p>55. Certificate to accompany sample.</p> <p>56. State secretary to provide forms. Certificate to be evidence.</p> <p>57. Tampering with samples forbidden.</p> <p>58. Court may order analysis.</p> <p>59. Delivery of liquor prima facie evidence of sale in certain cases.</p> <p>60. Signs prima facie evidence of keeping for sale in certain cases.</p> <p>61. Search warrant.</p> <p>62. Search of dwelling house.</p> <p>63. Designation of place to be searched.</p> <p>64. Search of premises and seizure of liquor.</p> <p>64A. Search and seizure in dwelling without search warrant penalized.</p> <p>65. Notice to keeper of liquors seized.</p> <p>66. Form and service of notice.</p> <p>67. Postponement of trial.</p> <p>68. Claimant of liquors may be admitted as party. Judgment. Disposition of motor vehicles seized.</p> <p>69. Disposition of forfeited liquor, etc.</p> <p>70. Liquors not forfeited to be returned.</p> <p>71. Forfeiture of furniture, etc. Motor vehicles.</p>	<p>SECT.</p> <p>72. Costs.</p> <p>73. Appeal.</p> <p>74. Superior court to have jurisdiction when liquors worth more than one thousand dollars.</p> <p>75. Arrest without warrant in certain cases.</p> <p>76. [Repealed.]</p> <p>77. Disposition of prosecution regulated.</p> <p>78. Licensing authorities to be notified of conviction.</p> <p>79. Owner of building to be notified of conviction.</p> <p>80. Forms for prosecution.</p> <p>81. Liquors illegally kept, etc., common nuisances.</p> <p>82. Clubs used for selling liquor common nuisances. Penalty.</p> <p>83. Penalty for illegal sale, etc., of certain non-intoxicating beverages.</p> <p>84. Conviction of licensee of violation of law or of conditions of license renders license void.</p> <p>85. Section 52 not to apply to sales on a physician's prescription.</p> <p>86. General penalty.</p> <p>87. Penalty for violation of certain sections.</p> <p>88. Penalty for false prescriptions.</p> <p>89. Penalty for violation of § 42.</p>
---	---

DEFINITIONS AND SALE.

Definitions.
1920, 630, § 1.

SECTION 1. The following words as used in this chapter, unless a
contrary meaning is required by the context, shall have the following
meanings:

“Certain non-intoxicating beverages”, all beverages containing not
less than one half of one per cent and not more than two and three
fourths per cent of alcohol by weight at sixty degrees Fahrenheit. Such
beverages shall be deemed not to be intoxicating liquor.

“Licensing board”, the board appointed under section four or the
board described in section ten.

“Licensing authorities”, all boards or officers having power to grant
licenses for the sale of intoxicating liquor or of certain non-intoxicating
beverages.

Regulation of
sales.
U. S. Const.
Amend. 18.
1920, 630.

SECTION 2. No person shall sell, or expose or keep for sale, spirituous
or intoxicating liquor or certain non-intoxicating beverages, except as
authorized by this chapter.

236 Mass. 281.
239 Mass. 103.

240 Mass. 465
246 Mass. 464, 507.

251 Mass. 550.
258 Mass. 85.

[Penalties, §§ 83, 86.]

SECTION 2A. [INSERTED, 1923, 370; REPEALED, 1930, 427, by vote
of the people, acting under the Initiative, at the state election held on
November 4, 1930.]

1 SECTION 3. Any beverage containing more than two and three
 2 quarters per cent of alcohol by weight at sixty degrees Fahrenheit, and
 3 distilled spirits, shall be deemed to be intoxicating liquor within the
 4 meaning of this chapter.

Definition of
 intoxicating
 liquor.
 236 Mass. 448.
 239 Mass. 103.

252 Mass. 126.

262 Mass. 180.

269 Mass. 97.

LICENSING BOARDS

1 SECTION 4. In each city which is not exempt by the provisions of
 2 section ten there shall be a licensing board appointed by the mayor, con-
 3 sisting of three persons, who shall not be engaged, directly or indirectly,
 4 in the manufacture or sale of intoxicating liquors or of certain non-
 5 intoxicating beverages, who have been residents of the city in which
 6 they are appointed for at least two years immediately preceding their
 7 appointment, and who shall not hold any other public office except that
 8 of notary public and justice of the peace. One member shall be ap-
 9 pointed from each of the two leading political parties and the third
 10 member may also be appointed from one of said parties. If any member
 11 of said board engages directly or indirectly in such manufacture or
 12 sale, his office shall immediately become vacant.

Appointment,
 etc.
 1875, 99, § 20
 1878, 244, § 2
 P. S. 100, § 28
 1894, 428,
 § 1, 2,
 1895, 379,
 1896, 396,
 R. L. 100, § 3,
 1920, 630, § 2
 181 Mass. 238

1 SECTION 5. The terms of office of the members first appointed shall
 2 commence at the date of their appointment, and shall be so arranged as
 3 to expire at the end of two, four and six years from the first Monday in
 4 June in the year of their appointment, the date of expiration to be speci-
 5 fied in their respective commissions; and thereafter a member shall be
 6 appointed for a term of six years from the first Monday in June of the
 7 year in which the previous term expires. All members shall hold office
 8 until their respective successors are qualified. They may be removed by
 9 the mayor for cause, after charges preferred, reasonable notice thereof,
 10 and a hearing thereon; and the mayor shall, in the order of removal, state
 11 his reasons therefor. Any member of said board may, within seven days
 12 after notice of his removal, apply to the superior court for a review of
 13 the charges, of the evidence submitted thereunder, and of the findings
 14 thereon by the mayor. Notice of the entry of such application shall be
 15 given to the mayor by serving upon him an attested copy thereof. The
 16 entry fee, costs, and all proceedings upon such application shall be ac-
 17 cording to the rules regulating the trial of civil causes. The court, after
 18 a hearing, shall affirm or revoke the order of the mayor removing such
 19 member, and there shall be no appeal from the decision.

Terms of
 office. Re-
 moval.
 1894, 428, § 2
 1896, 396
 R. L. 100, § 4
 1912, 389
 1920, 630, § 2
 222 Mass. 542
 223 Mass. 196

20 If any member of said board who has been removed from office shall
 21 apply to the superior court for the review provided for in this section,
 22 the removal shall not take effect until the court shall have affirmed
 23 the order removing the member; and until such order is affirmed the
 24 member shall continue to exercise the powers and perform the duties of
 25 his office.

1 SECTION 6. The mayor shall designate one member as chairman,
 2 who shall also act as secretary. Two members shall be a quorum for the
 3 transaction of business. If a member ceases to be a resident of the city
 4 for which he is appointed or becomes unable to perform his official duties,
 5 there shall be a vacancy in the board. All vacancies shall be filled by the
 6 mayor for the residue of the unexpired term in the manner provided for
 7 an original appointment.

Chairman.
 Quorum
 Vacancies.
 1894, 428, § 3
 R. L. 100, § 5
 1920, 630, § 2.

Office, salaries, etc. 1894, 428, § 6. R. L. 100, § 6. 1920, 630, § 2.

SECTION 7. Each city which has such a board shall provide it with suitable rooms, properly furnished, heated and lighted, shall pay such salaries as the city council, subject to the approval of the mayor, may from time to time establish, and shall also pay all expenses incurred by said board for blank books, printing and other necessary expenses approved by said board, not exceeding one thousand dollars in any one year

1
2
3
4
5
6
7

Powers to vest in aldermen in non-license cities. Revesting of powers. 1894, 428, § 7. R. L. 100, § 7. 1920, 630, § 2. 1921, 356; 450. 180 Mass. 151.

SECTION 8. If, at any annual city election, a city in which such board has been appointed shall not vote to authorize the granting of licenses for the sale of certain non-intoxicating beverages, all obligations imposed upon said city by the preceding section shall cease from and after the first Monday in June next following such vote and, from and after said date, the powers and duties granted to and imposed upon said board in respect to third and fourth class licenses and licenses of inn-holders and common victuallers shall vest in the aldermen of said city. If said city shall, at a subsequent annual city election, again vote to authorize the granting of licenses for the sale of such beverages, the obligations imposed by the preceding section shall be revived and shall attach to said city from and after March first next following such vote and, from and after said date, the powers and duties of the aldermen relative to licenses of the third and fourth classes and licenses of inn-holders and common victuallers shall revest in the licensing board appointed in said city.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Record and report. Additional powers. 1894, 428, §§ 8, 9. R. L. 100, § 8. 1920, 630, § 2.

SECTION 9. Each board shall keep a record of its doings and hearings and shall make a quarterly report of its doings to the mayor. It may prescribe the forms of applications for licenses, may require any statement which may be made before it and papers which may be filed with it relative to applications for licenses to be sworn to, and for such purpose, any member may administer oaths.

1
2
3
4
5
6

Certain cities exempt. 1894, 428, § 10. R. L. 100, § 9. 1920, 630, § 2.

SECTION 10. The following cities shall be exempt from the operation of the six preceding sections: First, Cities having a licensing board created by special statute or under the provisions of a charter. Second, Cities which have not at any annual city election before this chapter takes effect voted to authorize the granting of licenses for the sale of certain non-intoxicating beverages; but if any such city hereafter, at an annual city election, votes to authorize the granting of such licenses, a board shall, thereupon, in the February following, be appointed for such city as above provided, and the provisions of the six preceding sections shall thereafter apply to said city.

1
2
3
4
5
6
7
8
9
10

GRANTING OF LICENSES.

Granting of licenses. 1875, 99, §§ 4, 20. 1878, 244, § 2. 1881, 54, § 1, 2. P. S. 100, §§ 5, 28. 1885, 83; 323, § 2. 1894, 428, § 4. 1896, 397, § 10. 1897, 398, § 1. R. L. 100, § 10.

SECTION 11. In a city or town which at its annual election votes to authorize the granting of licenses for the sale of certain non-intoxicating beverages, as hereinafter provided, licenses of the first two classes mentioned in section eighteen may be granted annually to applicants therefor by the licensing boards in cities and by selectmen in towns, and in any city or town, licenses of the third, fourth or fifth class mentioned in said section may be granted annually to applicants therefor by the licensing board in cities having such boards, by the aldermen in other

1
2
3
4
5
6
7
8

9 cities, and by the selectmen in towns. Every license shall be signed by
 10 the licensing board in cities having such boards, in other cities by the
 11 mayor and city clerk, and in towns by the chairman of the selectmen
 12 and town clerk, and it shall be recorded in the office of the licensing
 13 board in cities having such boards, and in other cities and towns in the
 14 office of the city or town clerk, and the licensee shall pay the recording
 15 officer one dollar for recording the license. It shall name the person
 16 licensed, shall set forth the nature of the license and the building in
 17 which the business is to be carried on, and shall continue in force until
 18 the first day of the May next ensuing, unless sooner forfeited or rendered
 19 void. The aldermen and selectmen, respectively, shall insert in the war-
 20 rant for the annual city election or town meeting an article providing for
 21 a vote upon the question, "Shall licenses be granted for the sale of cer-
 22 tain non-intoxicating beverages in this city (or town)?" The clerk of
 23 each city or town shall, within thirty days after such vote is taken, trans-
 24 mit a true statement thereof to the state secretary; and shall annually,
 25 in November, make a return to said secretary, showing the number of
 26 licenses of each class issued, the amount received for the same by classes
 27 and the number revoked if any.

1920, 630, § 3
 132 Mass. 436
 136 Mass. 50
 150 Mass. 381
 221 Mass. 395
 238 Mass. 218

1 SECTION 11A. So much of the preceding section or of any other pro-
 2 vision of law as requires the aldermen of a city or the selectmen of a
 3 town to insert in the warrant for a city election or town meeting an
 4 article providing for a vote upon the question of granting licenses for
 5 the sale of certain non-intoxicating beverages, or as requires a vote upon
 6 said question and returns thereof to the state secretary, and section
 7 nineteen of chapter thirty-nine and so much of any other provision of
 8 law as imposes any duty upon any public officer by reason of said vote
 9 shall cease to be in effect during such period as the sale of certain non-
 10 intoxicating beverages shall be in violation of federal law.

Certain laws
 relative to
 sale of certain
 non-intoxicat-
 ing beverages
 temporarily
 suspended.
 1925, 33.

1 SECTION 12. The licensing board shall certify to the city clerk, the
 2 city treasurer and the chief of police or city marshal the name of each
 3 applicant for a license, the name of each person to whom a license is
 4 issued, the date when each license goes into effect, the premises on which
 5 it is to be exercised, the class of the license, each change of location by
 6 a licensee and each transfer of a license ordered by it.

Information
 relative to
 applications
 and licenses.
 1894, 428, § 5.
 R. L. 100, § 11.
 1920, 630, § 2

1 SECTION 13. The licensing authorities of a city or town which has
 2 voted to authorize the granting of licenses for the sale of certain non-
 3 intoxicating beverages may, during March and April, receive applica-
 4 tions for such licenses, publish, investigate and act thereon, and may,
 5 in April, grant such licenses, to take effect on the first day of May
 6 following.

Applications,
 when to be
 received and
 granted.
 1883, 93.
 R. L. 100, § 12.
 1920, 630, § 4
 201 Mass. 204

1 SECTION 14. In cities and towns which vote to authorize the granting
 2 of licenses for the sale of certain non-intoxicating beverages the number
 3 of places licensed for the sale of such beverages shall not exceed one
 4 for each one thousand of the population as ascertained by the last preced-
 5 ing national or state census, but one such place may be licensed in any
 6 town having a population of less than one thousand. In Boston, one
 7 such place may be licensed for each five hundred of the population, but
 8 in no event shall the total number of licensed places therein exceed one

Licenses.
 Number,
 limitations
 on grant-
 ing, etc
 Enumeration
 of temporary
 residents
 Penalty.
 1888, 349.
 1892, 280.
 1896, 440
 1899, 248,
 341; 462

R. L. 100, § 13.
 1909, 371, § 8.
 1910, 476.
 1915, 67;
 265, § 1.
 1919, 350,
 §§ 25, 26.
 1920, 157;
 630, § 5.
 167 Mass. 290.

thousand. Nowhere in the commonwealth shall a first class license be granted to be exercised upon the same premises with a license of the second class, except that a licensed innholder, who has a license of the first class may likewise be granted a license of the second class for the purpose of supplying said non-intoxicating beverages to guests who have resorted to his inn for food or lodging. No more than one license shall be granted by any one vote of the licensing board. Such licenses shall be numbered in regular order as granted, and any license granted contrary to, or in excess of, the provisions of this section shall be void; but in a town voting as aforesaid at its last annual town meeting which has less than five thousand permanent residents according to the last preceding state or national census but has an increased resident population during the summer months, the selectmen may, on or before May fifteenth in any year, apply to the state secretary to have an enumeration made of the temporary or summer residents of such town. Said secretary shall thereupon make such enumeration, between June twenty-third and twenty-eighth next following, under such rules as he shall establish. A person who has not been a resident of such town for at least three days preceding the enumeration shall not be regarded as a temporary or summer resident thereof. The secretary may employ, for such enumeration, such persons as may be necessary, who shall in all cases be residents of the town if suitable and competent persons can be found; otherwise, non-residents may be employed. The secretary shall report the total number of such temporary or summer residents to the selectmen of the town on or before said June twenty-eighth. The expenses incurred in making such special enumeration shall be paid by the commonwealth. The state treasurer shall thereupon issue his warrant, as provided in section twenty of chapter fifty-nine, requiring the assessors of such towns to assess a tax to the amount of the expense incurred in making this special enumeration, and such amount shall be collected and paid over to the state treasurer in the same manner as other state taxes. The selectmen may, in April, receive applications for such licenses and investigate and publish the same; and may grant one such license for each five hundred of such temporary resident population, not including the permanent inhabitants of such town, as ascertained by said special enumeration, to take effect on July first and to expire on October first next following. And in the towns of Hull and Nahant it is further provided that when either of said towns has voted to authorize the granting of licenses for the sale of certain non-intoxicating beverages at its last annual town meeting, and such special enumeration has been made in the calendar year last preceding said last annual town meeting, the selectmen may, in April, receive applications for such licenses and investigate and publish the same, and may grant one such license for each five hundred of such temporary resident population, not including the permanent inhabitants of the town, as ascertained by said special enumeration taken in said last preceding calendar year, to take effect on May fifteenth and to expire on October first next following. A selectman, member of a licensing board or census enumerator who violates any provision of this section shall be punished by a fine of five hundred dollars.

Notice of certain applications to be published. Proceedings

SECTION 15. Notice of all applications for licenses, except licenses of the third and fifth classes, shall, at the expense of the applicant, to be paid in advance, be published in the following manner: in Boston by the

4 licensing board in two or more daily newspapers published therein; and
 5 in the Charlestown, East Boston, South Boston, Dorchester, Roxbury
 6 and Brighton districts of said city, respectively, in at least one weekly
 7 newspaper published in the district in which the premises for which the
 8 license is asked are situated, if any is there published; in other cities and
 9 towns by the licensing authorities thereof, in such newspapers, printed
 10 therein and published at least once a week, as they may designate; or
 11 if no such newspaper is printed therein, then by posting such notice in
 12 a conspicuous place on the premises described in the application for the
 13 license and in two or more places in which public notices are usually
 14 posted in the neighborhood. Such notice shall set forth the name of
 15 the applicant in full, the class of the license applied for, a particular
 16 description of the premises on which the license is to be exercised, desig-
 17 nating the building or part of a building to be used, and, if practicable,
 18 the street and number, and shall be published at least ten days before
 19 the licensing authorities act thereon. If a license is granted without
 20 such previous publication, any citizen of the city or town within which
 21 such license is issued may make complaint to the district court having
 22 jurisdiction therein; and if, after due hearing, it appears that such
 23 notice was not given, the court shall revoke the license and give notice
 24 thereof to the authorities which issued it.

upon failure
 to publish.
 1881, 255, § 1.
 P. S. 100, § 6.
 1882, 222.
 1885, 323, § 2.
 1894, 428, § 4.
 R. L. 100, § 14.
 1920, 630, § 6.
 1922, 285.
 136 Mass. 50.
 150 Mass. 389.
 176 Mass. 67.
 201 Mass. 204.

1 SECTION 16. The licensing authorities may at any time refuse to
 2 issue a license to a person whom they consider unfit to receive the same;
 3 but this chapter shall not be so construed as to compel said licensing
 4 authorities to grant licenses.

Licenses may
 be refused to
 unfit persons.
 1875, 99, § 5.
 P. S. 100, § 8.

R. L. 100, § 16.

1920, 630, § 7.

CONDITIONS OF LICENSES.

1 SECTION 17. Each license of the first two classes shall be expressed
 2 to be subject to the following conditions:

Conditions.
 1875, 99, § 6.
 P. S. 100, § 9.

R. L. 100, §§ 17, 41.
 1906, 395.

1913, 835, § 6.
 1920, 630, § 8.

126 Mass. 542.
 150 Mass. 272.

3 First, That the provisions in regard to the nature of the license, and
 4 the building in which the business may be carried on under it, shall be
 5 strictly adhered to.

145 Mass. 464.

6 Second, That spirituous or intoxicating liquor shall not be sold, ex-
 7 changed or delivered, or exposed, offered or kept for sale, exchange or
 8 delivery, upon the licensed premises.

9 Third, Certain non-intoxicating beverages shall not be sold between
 10 the hours of eleven at night and six in the morning, or on the Lord's
 11 day or on a legal holiday or any day on which a national, state, city or
 12 annual town election is held in the city or town in which the licensed
 13 premises are situated; but if the licensee is also licensed as an inn-
 14 holder, he may, between the hours of six in the morning and eleven at
 15 night, on the Lord's day, a legal holiday or such election day, supply
 16 such beverages to persons who have resorted to his inn for food or
 17 lodging.

1885, 90; 216.
 1889, 186; 361.
 1893, 417, § 9.
 1898, 548, § 6.
 R. L. 11, § 6.
 1907, 468; 560.
 §§ 6, 456.
 1913, 835,
 § 503.
 140 Mass. 289.
 145 Mass. 244.
 152 Mass. 508.
 177 Mass. 221.
 182 Mass. 22.

18 Fourth, That there shall be no disorder, indecency, prostitution,
 19 lewdness or illegal gaming on the licensed premises, or any premises
 20 connected therewith by an interior communication.

1891, 369.
 217 Mass. 507.

21 Fifth, That the license, or a copy thereof, certified by the recording
 22 officer of the licensing board or by the clerk of the city or town by which

it is issued, shall be displayed on the premises in a conspicuous position, 23
where it can easily be read. 24

Sixth, That the license shall be subject to forfeiture, as herein pro- 25
vided, for breach of its conditions, and that, if the licensee is convicted 26
of a violation of any of such conditions, his license shall thereupon be- 27
come void. 28

Each license of the first class shall be subject to the further con- 29
dition that the licensee shall hold a license as an innholder or common 30
victualler. 31

1891, 369.
147 Mass. 374.
150 Mass. 188,
272.

Each license to a common victualler shall specify the room or rooms 32
in which certain non-intoxicating beverages shall be kept or sold, and 33
the holder of such license shall not keep, sell or deliver any such bever- 34
ages in any room or part of a building not so specified. 35

Licenses of the third, fourth or fifth classes shall be expressed to be 36
subject to the first, fourth, fifth and sixth paragraphs of this section. 37

1896, 272.

Each license of the third or fourth class shall be subject to the fur- 38
ther condition that all spirituous or intoxicating liquors which are sold, 39
exchanged or delivered, or which are exposed or kept for sale, exchange 40
or delivery, shall be of the quality required for their sale as drugs under 41
the laws relative to food and drugs. 42

CLASSES OF LICENSES.

Five classes
of licenses.
1868, 141, § 4;
311, § 4.
1875, 99, § 7.
P. S. 100, § 10.
R. L. 100, § 18.
1920, 630, § 9.
1923, 233, § 1.

SECTION 18. Licenses shall be of the following classes: 1

First class. To sell malt beverages, cider and light wines containing 2
not more than two and seventy-five one-hundredths per cent of alcohol 3
by weight at sixty degrees Fahrenheit, to be drunk on the premises. 4

Second class. To sell, or manufacture and sell, malt beverages, cider 5
and light wines containing not more than two and seventy-five one- 6
hundredths per cent of alcohol by weight at sixty degrees Fahrenheit, 7
not to be drunk on the premises. 8

1878, 203, § 1.
1896, 397, § 13.
1923, 233, § 1.

Third class. Licenses to retail druggists to sell liquors of any kind 9
for medicinal purposes only. 10

Fourth class. To sell, to any person holding a third or fifth class 11
license, or a certificate of fitness under section twenty-seven, or to any 12
person lawfully authorized by the laws of the United States and the 13
regulations made thereunder to purchase intoxicating liquors, intoxi- 14
cating liquors of any kind for other than beverage purposes, not to be 15
used on the premises. 16

1897, 398, § 1.

Fifth class. Licenses to dealers in paints or in chemicals to sell alcohol 17
for mechanical, manufacturing or chemical purposes only. 18

FEEES FOR LICENSES.

Fees.
1875, 99, § 8.
P. S. 100, § 11.
1888, 341.
R. L. 100, § 19.

SECTION 19. The fees for licenses shall be as follows: 1

For a license of the first, second or fourth class, not less than two 2
hundred and fifty dollars. 3

1920, 630, § 10.

For a license of the third or fifth class, one dollar. 4

Death of
licensee, new
license, etc.
1897, 227, § 1.
R. L. 100,
§ 20
1902, 171.

SECTION 20. If a licensee of the first, second or fourth class dies be- 1
fore the expiration of the term of his license, or if a license has been 2
surrendered and cancelled, the authorities issuing the license may issue 3
another license of either of such classes, and the two licenses shall count 4

5 as one license; and said authorities shall require as a license fee for such
 6 second license a part of the license fee required therefor for the whole year
 7 proportionate to the unexpired term of the license. Said authorities may
 8 in their discretion, in cases where two licenses of the first, second or fourth
 9 class have been issued in the same year, give a certificate to the party
 10 to whom the first license was issued, or, in case of his death, to his ad-
 11 ministrator or executor, stating that a part of the fee paid therefor pro-
 12 portionate to the unexpired term of the license is to be refunded to such
 13 party, or to such administrator or executor, by the treasurer of the city
 14 or town from the fees thereafter received by said treasurer for licenses
 15 under this chapter. Said treasurer shall comply with the requirements
 16 of such certificate, and shall retain one quarter of the amount so paid
 17 from any money thereafter due from him or the city to the common-
 18 wealth on account of such licenses. If a licensee dies before the expira-
 19 tion of the term of his license, the city or town by which it was granted
 20 may refund to his executor or administrator a part of the license fee
 21 proportionate to the unexpired term of the license, and the proportionate
 22 part of the percentage which has been paid to the commonwealth shall
 23 be refunded to the city or town.

1905, 206
 1911, 83
 1920, 630, § 11.
 189 Mass. 260.
 217 Mass. 233.

REGULATION OF LICENSED PREMISES.

1 SECTION 21. The authorities which grant a license of the first two
 2 classes may require a licensee to close permanently all entrances to the
 3 licensed premises except those from the public street or streets upon
 4 which said premises are situated, and may so specify in the license. In
 5 such case the construction or opening of any such entrance shall of
 6 itself make the license void. A licensee holding a license of the first class
 7 shall not place or maintain or permit to be placed or maintained, in any
 8 public room used by him for the sale of certain non-intoxicating bever-
 9 ages under the provisions of his license, any screen, blind, shutter, cur-
 10 tain, partition, or painted, ground or stained glass window, or any other
 11 obstruction, in such a way as to interfere with a view of the business
 12 conducted on the premises, and the placing or maintaining of any of
 13 said obstructions shall of itself make the license void, except that the
 14 licensing authorities in their discretion may, upon application of a
 15 licensed innholder who also holds a license to sell such beverages, per-
 16 mit screens, curtains, or such other obstructions as they may designate
 17 to be placed at the windows of the dining rooms of the hotel maintained
 18 by said innholder and said authorities shall have the power to revoke
 19 such privilege.

Entrances and
 screens.
 1880, 239, § 2
 1881, 225.
 P. S. 100, § 12.
 1882, 259, § 1
 R. L. 100, § 34.
 1906, 374, § 1.
 1917, 36.
 1920, 630, § 12.
 133 Mass. 192.
 404.
 134 Mass. 194,
 197.
 138 Mass. 511.
 140 Mass. 441,
 447.
 141 Mass. 28,
 58, 321.
 143 Mass. 92.
 145 Mass. 244.
 150 Mass. 320.
 504.
 158 Mass. 200.

1 SECTION 22. No license of the first class shall be granted for the
 2 sale of certain non-intoxicating beverages in any building or place on
 3 the same street as, and within four hundred feet of, any building occupied
 4 in whole or in part by a public school; but this section shall not prevent
 5 the granting of such license to be exercised on premises fitted up and
 6 occupied as a place for selling such beverages under a license and by a
 7 licensee of a corresponding class of the preceding year although said
 8 premises are within four hundred feet of a building used temporarily
 9 in whole or in part for school purposes, if such use will cease permanently
 10 within one year after the granting of said license; nor shall this section
 11 prevent the granting of such a license to be exercised in any hotel on the
 12 same street as, and having its bar more than four hundred feet from,

License of
 premises near
 school for-
 bidden.
 1882, 220.
 1894, 129.
 R. L. 100, § 35.
 1906, 101
 1920, 630, § 13.
 160 Mass. 528.

a building occupied in whole or in part by a public school; provided, that there is no public bar in such hotel.

License in dwelling house or store connected with it forbidden. 1888, 139, §§ 1, 2. R. L. 100, §§ 36, 37.

SECTION 23. No license of the first two classes shall be granted to be exercised in a dwelling house or in any room or shop having any interior connection or means of communication with a dwelling or tenement of any family, and the opening or maintaining of any such connection or means of communication shall render the license void.

1920, 630, §§ 14, 15. 150 Mass. 270.

Hours of closing for common victuallers. 1882, 242, § 1.

SECTION 24. A common victualler who holds a license under this chapter shall keep the licensed premises closed between the hours of twelve at night and five in the morning.

R. L. 100, § 40. 1920, 630, § 16.

DRUGGISTS.

Sale by druggists. 1875, 99, § 2. P. S. 100, § 2. 1887, 431, § 2. 1896, 397, § 10. R. L. 100, § 21. 1907, 190. 1913, 410, § 1. 1923, 233, § 2.

SECTION 25. Druggists having a third class license may sell pure alcohol and intoxicating liquors or certain non-intoxicating beverages upon the prescription of a registered physician; provided, that the prescription is dated, contains the name of the person prescribed for and is signed by the physician. All such prescriptions shall be retained and kept on file in the manner provided by section twenty-eight.

Op. A. G. (1918) 6. [Penalty, § 88.]

Licenses to druggists. 1887, 431, § 1. 1896, 397, § 10. 1900, 106, § 22. R. L. 100, § 1. 1902, 327, § 3. 1908, 525, § 3. 1910, 172, § 1. 1913, 410, § 2. 1915, 200, § 1. 1918, 257, § 291. 1919, 5. 1920, 2. 155 Mass. 273. 225 Mass. 104.

SECTION 26. No license for the sale of spirituous or intoxicating liquor, except of the third class, shall be granted to retail druggists. One or more licenses of the third class may be granted annually by the licensing authorities of a city or town to retail druggists who are registered pharmacists actively engaged in business on their own account, or on the account of the widow, executor or administrator of a deceased registered pharmacist, or of the wife of one who has become incapacitated, upon presentation to said authorities of the certificate prescribed by the following section, if it appears that the applicant is a proper person to receive such license, and is not disqualified to receive it under the provisions of section eighty-four. A registered pharmacist who owns stock of the actual value of at least five hundred dollars in a corporation which has been incorporated for the purpose of carrying on the drug business, and who conducts in person the business of a store of such corporation, shall be considered as actively engaged in business on his own account and as qualified to receive a license for such store. The licensing authorities may refuse to grant any and all such licenses.

Certificate of fitness for license. 1889, 270. 1894, 435. 1896, 397, § 11. R. L. 100, § 23. 1906, 281, § 2. 1907, 308. 1909, 261, § 1. 1913, 413, § 2.

SECTION 27. The board of registration in pharmacy may, upon the payment of a fee of not more than five dollars by an applicant for a license of the third class, issue to him a certificate of fitness, which shall not be valid after one year from its date, stating that in the judgment of said board he is a proper person to be intrusted with such license and that the public good will be promoted by the granting thereof. The board and the licensing authorities of the cities and towns mentioned in the following section may, after giving a hearing to the parties interested, revoke or suspend such certificate for any cause which they may deem proper, and such revocation or suspension shall revoke or suspend the third class license granted thereon.

1 SECTION 28. In any city or town where licenses of the first two classes
 2 are not granted, registered pharmacists to whom a certificate of fitness
 3 has been issued as provided by the preceding section may sell pure
 4 alcohol and intoxicating liquors or certain non-intoxicating beverages
 5 upon the prescription of a registered physician practicing in such city
 6 or town, provided that the prescription is dated, contains the name of
 7 the person prescribed for, and is signed by the physician. All such pre-
 8 scriptions shall be retained and kept on file in a separate book by the
 9 pharmacist filling the same, and shall not be filled a second time. Such
 10 prescription book shall be open at all times to the inspection provided
 11 by section thirty-two.

Sale of alcohol
 by pharmacists
 regulated.
 1906, 281, § 1.
 1913, 413,
 §§ 1, 4.
 1923, 233, § 3.
 Op. A. G.
 (1919) 72
 [Penalties,
 §§ 87, 88.]

1 SECTION 29. A license of the third class shall become null and void
 2 without any process or decree, if the registered pharmacist to whom it
 3 has been granted ceases to conduct his business in person and on his
 4 own account, or upon the revocation of his certificate of registration as
 5 a pharmacist, unless the registered pharmacist has been unable to so
 6 conduct his business or has died, and his business is continued by his wife,
 7 widow, executor or administrator under another registered pharmacist.

Druggist's
 license to be-
 come void in
 certain cases.
 1893, 472, § 5
 1896, 397, § 12
 R. L. 100, § 24

1 SECTION 30. [REPEALED, 1923, 233, § 4.]

1 SECTION 31. [REPEALED, 1923, 233, § 4.]

1 SECTION 32. All prescriptions referred to in sections twenty-five
 2 and twenty-eight and the book provided for in section forty-one shall
 3 at all times be open to the inspection of the board of registration in
 4 pharmacy, the licensing board in cities having such boards and in all
 5 other cities and towns, to the inspection of the aldermen, selectmen,
 6 boards of public welfare, sheriffs, constables, police officers and justices
 7 of the peace.

Books, etc.,
 open to
 inspection.
 1855, 215, § 2
 G. S. 86, § 26
 1869, 415, § 28
 1872, 271.
 1878, 203, § 2
 P. S. 100, § 3
 1887, 431, § 4
 1896, 397, § 15

1897, 398, § 4
 R. L. 100, § 27.
 1918, 257, § 341.

1919, 5
 1920, 2

1923, 233, § 5.
 1931, 394, § 133.

[Penalties, §§ 84, 87.]

1 SECTION 33. A person, not a registered pharmacist, who procures
 2 a third class license for the sale of intoxicating liquors in the name of
 3 a registered pharmacist who is dead, or in the name of a registered
 4 pharmacist by borrowing, hiring or purchasing the use of his certificate,
 5 and, being himself the owner or manager of the place, personally or by
 6 his servants sells intoxicating liquor, shall be punished by a fine of not
 7 less than fifty nor more than five hundred dollars and by imprisonment
 8 for not less than one nor more than six months. Section eleven of
 9 chapter two hundred and seventy-nine shall not apply to a conviction
 10 under this section.

Penalty for
 sale of liquor
 in name of
 pharmacist.
 1893, 472, § 4
 1896, 397, § 17
 R. L. 100, § 29

SALE OF WOOD ALCOHOL.

1 SECTION 34. No person other than a registered druggist shall engage
 2 in the business of manufacturing, buying, selling or dealing in methyl
 3 alcohol, or wood alcohol, so called, or denatured alcohol, or any prepa-
 4 ration used for manufacturing or commercial purposes which contains
 5 more than three per cent of any of the said alcohols and is intended for
 6 use other than as a beverage, without being licensed so to do by the
 7 board of health of the town where the business is conducted.

Manufacture,
 sale, etc., of
 wood alcohol,
 etc., without
 license by
 other than
 registered
 druggist
 forbidden.
 1919, 360, § 1

Licenses to manufacture, sell, etc., wood alcohol, etc. 1919, 360, § 2.

SECTION 35. The board of health of each town may issue licenses under the preceding section, upon the payment of a fee of one dollar, to such persons as it shall find to be properly qualified to carry on the said business. The licenses shall expire on April thirtieth of each year, and may at any time be suspended or revoked, for cause, by the board. The board shall keep a record of all such licenses.

Form of label on containers of wood alcohol, etc. Penalty. 1905, 220, § 1. 1910, 341, § 1. 1919, 360, § 3. 1920, 185.

SECTION 36. Every barrel or keg containing methyl alcohol or wood alcohol, so called, or denatured alcohol containing methyl alcohol, or any drug or medicine intended for external use containing methyl alcohol, shall bear in capital letters not less than three fourths nor more than one and one half inches in height, stencilled thereon or printed upon a label affixed thereto, the words "POISON, NOT FOR INTERNAL USE". Every other container of any such alcohol, drug or medicine shall bear a label of white paper on which shall be printed in red capital letters not less than one fourth of an inch in height, the words "DEADLY POISON", the name and place of business of the vendor, and the statement that he is a registered druggist or the number of his license under the two preceding sections, and, in legible type, the words "NOT FOR INTERNAL USE, CAUSES BLINDNESS. KEEP FROM THE EYES". Whoever, himself or by his servant or agent, sells, exchanges or delivers any such alcohol, drug or medicine in any container not conforming to this section shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Offence of unlawful sale of wood alcohol, etc. 1919, 360, § 4. 1927, 169.

SECTION 37. The sale of methyl alcohol, wood alcohol, so called, denatured alcohol, or any preparation containing alcohol as described in section thirty-four, by a person not licensed as required by sections thirty-four and thirty-five, or by a licensee to a person under sixteen years of age or to any person without reasonable investigation and inquiry to determine that the same is not to be used for drinking purposes, shall constitute the offence of unlawful sale of alcohol and may be described as such in any complaint or indictment without more; but a person so charged shall be entitled to a bill of particulars in accordance with section forty of chapter two hundred and seventy-seven.

Penalty. 1919, 360, § 5.

SECTION 38. Except as otherwise provided in section thirty-six, violation of any provision of sections thirty-four to thirty-seven, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the house of correction for a term not exceeding six months, or both.

LICENSES TO DEALERS IN PAINTS AND CHEMICALS.

Licenses to dealers in paints, etc. 1897, 398, § 1. R. L. 100, § 30.

SECTION 39. The licensing authorities of a city or town may annually grant a license of the fifth class, for the sale of pure alcohol for mechanical, manufacturing or chemical purposes only, to a dealer in paints or in chemicals who applies therefor, if it appears that the applicant is a proper person to receive such license and that he is actually carrying on business as a dealer in paints or chemicals.

License to become void in certain cases. 1897, 398, § 2. R. L. 100, § 31.

SECTION 40. A license of the fifth class shall become null and void without any process or decree if the licensee ceases to carry on the business of dealing in paints or chemicals.

1 SECTION 41. Every dealer in paints or chemicals to whom such
 2 license is granted shall keep a book in which he shall enter, at the time
 3 of every sale of alcohol, the date thereof, the name and residence of the
 4 purchaser, his residence by street and number, if any, the quantity and
 5 price of the alcohol sold, and the purpose for which it is to be used.
 6 Said book shall be in form substantially as follows:

Record book
 for sales
 1897, 398, § 3
 R. L. 100, § 32
 [Penalty, § 87
 For provisions
 as to inspection
 see § 32]

Date.	Name of Purchaser.	Residence, giving Street and Number, if Any.	Quantity	Price	Purpose of Use

1 SECTION 42. All persons holding licenses to sell intoxicating liquors
 2 shall, immediately upon the emptying, within the limits of the licensed
 3 premises, of the original contents of a bottle containing liquors other
 4 than malt liquors, and before refilling the same, destroy all labels or
 5 printed marks thereon. There shall not thereafter be placed on such
 6 bottles any label or printed mark so similar to the original as to promote
 7 fraud or deceit, or as to be likely to be mistaken for the original label or
 8 mark. This section shall not be construed to prohibit the lawful refilling
 9 of such bottles with liquors true to label by the persons entitled to use
 10 the original label or mark or their agents.

Refilling of
 bottles
 1917, 150,
 §§ 4, 2.
 [Penalty, § 89.]

BONDS AND TRANSFERS OF LICENSES.

1 SECTION 43. A license shall not be issued until the license fee has
 2 been paid to the treasurer of the city or town by which it is to be issued,
 3 nor until he has received, except as to third class licenses, a satisfactory
 4 bond, payable to him as such treasurer, in the sum of five hundred dollars,
 5 signed by the licensee and sufficient surety or sureties, who shall be
 6 jointly and severally liable, and conditioned for the payment of all costs,
 7 damages and fines which may be incurred by a violation of the provisions
 8 of this chapter. Separate actions may be brought on such bond by any
 9 person at his own expense. Such bond, after approval, shall be filed in
 10 the office of the city or town clerk, and a certified copy thereof shall be
 11 admissible in evidence. No such bond shall be accepted or approved
 12 until each surety has made and subscribed a statement under oath
 13 that he is worth not less than one thousand dollars over and above all
 14 liabilities and indebtedness, and the statement so made shall designate
 15 sufficient property, real or personal, to cover the requirement of the bond
 16 and shall be kept on file with the bond. The bond may be in the follow-
 17 ing form:

Payment of fee,
 and bond.
 1875, 99, § 9
 P. S. 100, § 13.
 1882, 259, § 2.
 1885, 83,
 323, § 2.
 1888, 283.
 1894, 428, § 4
 R. L. 100, § 42
 1920, 630, § 17.
 1923, 291
 127 Mass. 497.
 157 Mass. 333
 177 Mass. 197
 213 Mass. 271
 217 Mass. 507.
 221 Mass. 395.
 259 Mass. 310

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of _____,
 as principal, and C. D. and E. F. of _____, as sureties, are held and firmly
 bound unto the treasurer of the city (or town) of _____, in the sum of
 five hundred dollars, to which payment well and truly to be made we bind
 ourselves and our legal representatives.

Sealed with our seals this _____ day of _____, A.D. 19____.
 The condition of this obligation is such, that whereas the above bounden
 A. B. has this day been licensed by license No. _____, by the alder-
 men (board of police or licensing board) of the city of (or the selectmen of the
 town of) _____, in the county of _____, now if the said A. B.
 shall well and truly comply with all the provisions of law, then this bond shall
 be void; but otherwise in force.

Executed in presence of _____

Sureties on bond. 1894, 388. 1896, 169. R. L. 100, § 43. 1920, 630, § 18.

SECTION 44. No person, except a corporation organized for the purpose of acting as surety on bonds and duly qualified to do business in the commonwealth, shall be accepted as surety upon more than ten bonds which may be given under the preceding section. Each surety, except as aforesaid, shall make a written statement, under oath, that he is not a surety upon more than nine other bonds given under said section, and such statement shall be kept on file with the bond.

Transfer of licenses. 1889, 344. R. L. 100, § 44. 1920, 630, § 19.

SECTION 45. Licensing authorities may transfer licenses from one location to another within the city or town in which such licenses are in force; but such transfer shall be granted only to the original licensee, and like notice shall be given, the same provisions shall apply, and other proceedings shall be the same as are required upon the granting of licenses, except that no new license fee shall be required.

One quarter of fees to be paid to commonwealth. Penalty. 1868, 141, § 12. 1875, 99, § 10. P. S. 100, § 14. 1897, 233. 1898, 361. R. L. 100, § 45. 1920, 630, § 20.

SECTION 46. The treasurer of a city or town shall, within thirty days after the receipt of money for licenses of the first, second and fourth classes, make a return of the amount thereof to the state treasurer and at the same time shall pay to him one fourth of the amount so received, and for neglect thereof he shall pay interest at the rate of six per cent per annum on the amount of such receipts from the time they become due until they are paid.

213 Mass. 271.

221 Mass. 395

Op A G (1919) 118.

PENALTIES FOR ILLEGAL SALE. SEIZURE. CIVIL DAMAGES.

Entry on licensed premises for examination and taking samples. 1868, 141, § 14. 1875, 99, § 11. P. S. 100, § 15. R. L. 100, § 46. 1920, 630, § 21. 126 Mass. 269.

SECTION 47. The licensing board of a city, the selectmen of a town, or any police officer or constable specially authorized by either of them, may at any time enter upon the premises of a person who is licensed under this chapter, to ascertain the manner in which such person conducts his business and to preserve order. Such police officer or constable may at any time take samples for analysis from any liquors kept on such premises, and the vessel or vessels containing such samples shall be sealed on the premises by the seal of the vendor, and shall remain so sealed until presented to the department of public health for analysis and duplicate samples shall be left with the dealer.

Forfeiture of license. Effect. 1868, 141, §§ 9, 19. 1875, 99, §§ 12, 20. 1878, 244, § 2. P. S. 100, § 16. 1885, 323, § 2. 1894, 428, § 4. R. L. 100, § 47. 1908, 108. 1920, 630, § 22. 119 Mass. 109. 128 Mass. 76. 145 Mass. 216. 163 Mass. 470.

SECTION 48. The licensing board, after notice to the licensee and reasonable opportunity for him to be heard by them or by a committee of the aldermen or by the selectmen, if the license was granted by them, may declare his license forfeited, or may suspend his license for such period of time as they may deem proper, upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the commonwealth. If the license is declared to have been forfeited, the licensee shall be disqualified to receive a license for one year after the expiration of the term of the license so forfeited, and if he is the owner of the premises described in such forfeited license, no license shall be issued to be exercised on said premises for the residue of the term thereof.

Civil liability for damages caused by an intoxicated person. 1855, 215, § 22. G. S. 86, § 39.

SECTION 49. A wife, husband, child, parent, guardian, conservator, employer or other person who is injured in person, property or means of support by an intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his

5 own name, jointly or severally, against any person who, by selling or
 6 giving intoxicating liquor, has caused in whole or in part such intoxica-
 7 tion; and any person who owns, rents, leases, or permits the occupation
 8 of any building or premises, and has knowledge that intoxicating liquor
 9 is to be sold therein, or who, having leased the same for other purposes,
 10 knowingly permits therein the sale of intoxicating liquor, shall, if any
 11 such liquor sold or given therein causes in whole or in part the intoxi-
 12 cation of a person, be liable jointly or severally with the person who
 13 sells or gives intoxicating liquor as aforesaid, for all damages sustained;
 14 and the same may be recovered in an action of tort; but a lessor of
 15 real estate shall not be liable for such damages if the occupant holds a
 16 license for the sale of such liquor. A married woman may bring such
 17 action in her own name, and all damages recovered by her shall enure
 18 to her separate use; and all damages recovered by a minor shall be
 19 paid either to such minor, or to such person in trust for him, and on
 20 such terms, as the court may order. Upon the death of either party,
 21 the action and right of action shall survive to or against his executor
 22 or administrator. The party injured or his legal representative may
 23 bring either a joint action against the person intoxicated and the person
 24 who furnished the liquor, or a separate action against either.

1869, 415, § 41
 1875, 99, § 14
 1879, 297, § 1
 1880, 239, § 4.
 256, § 1.
 P. S. 100,
 §§ 21, 23.
 R. L. 100, § 58
 1915, 23.
 130 Mass. 158,
 366.
 132 Mass. 567.
 133 Mass. 86
 147 Mass. 409.
 152 Mass. 405.
 156 Mass. 21.
 157 Mass. 333.
 177 Mass. 473.
 180 Mass. 141
 203 Mass. 37.
 217 Mass. 507.
 251 Mass. 569.

1 SECTION 50. An owner or lessor of real estate who pays money on
 2 account of his liability incurred under the preceding section for an act
 3 of his tenant may, in an action of contract, recover of such tenant the
 4 money so paid.

Action by
 owner paying
 money for
 tenant.
 1879, 297, § 3.

P. S. 100, § 22.

R. L. 100, § 59.

1 SECTION 51. Whoever employs a minor under eighteen in handling
 2 intoxicating liquors or packages containing such liquors in a brewery
 3 or bottling establishment in which such liquors are prepared for sale or
 4 offered for sale shall be punished by a fine of not less than fifty dollars
 5 or by imprisonment for not less than three months, or both.

Penalty for
 employing
 minor under
 eighteen
 to handle
 liquor.
 1899, 413.
 R. L. 100, § 61.

1 SECTION 52. Whoever, personally or by his agent or servant, sells
 2 or gives intoxicating liquors to a minor, either for his own use, the use
 3 of his parent or of any other person, or allows a minor to loiter upon the
 4 premises where such sales are made, shall forfeit one hundred dollars
 5 for each offence, to be recovered by the parent or guardian of such minor
 6 in an action of tort. Actions for penalties under this section shall be
 7 commenced within two years after the offence has been committed.

Penalty for
 furnishing
 liquor to
 minors.
 1786, 68, § 7
 1818, 65, § 2.
 1832, 166, § 12.
 R. S. 47, § 11.
 1868, 141, § 11.
 1875, 99, § 15.
 P. S. 100, § 24.

1889, 390, § 1.
 R. L. 100, § 62.
 124 Mass. 277, 578.

130 Mass. 167.
 145 Mass. 311.
 171 Mass. 250.

207 Mass. 21.
 217 Mass. 507.
 235 Mass. 539.

[Druggists excepted. § 55]

1 SECTION 53. No minor seventeen years of age or over shall make a
 2 false statement as to his age in order to procure a sale or delivery of in-
 3 toxicating liquor, either for his own use or for the use of another. No
 4 person shall knowingly make a false statement as to the age of a minor
 5 in order to procure a sale or delivery of intoxicating liquor to such minor,
 6 either for the use of the minor or for the use of some other person, or
 7 induce a minor to make a false statement as to his age in order to procure
 8 a sale or delivery of intoxicating liquor to such minor. Whoever violates
 9 this section shall be punished by a fine of not less than ten nor more than
 10 one hundred dollars.

Penalty for
 false state-
 ment of age
 in order to
 procure liquor.
 1912, 532, § 1.

Analysis of liquor
 1869, 415, § 25.
 1872, 266, § 2.
 1875, 99, § 21.
 1878, 244, § 2.
 1879, 278, § 1.
 P. S. 100, § 29.
 1882, 221, § 1.
 R. L. 100, § 67.
 1902, 110.
 1914, 792, § 1.
 1919, 350, § 96.
 1920, 29.
 1921, 495.
 1922, 22.
 245 Mass. 405.
 259 Mass. 109.

SECTION 54. The analyst or assistant analyst of the department of public health shall upon request make, free of charge, an analysis of all liquors sent to it by the licensing board of any city, the selectmen of any town, or by police officers or other officers authorized by law to make seizures of liquors, if the department is satisfied that the analysis requested is to be used in connection with the enforcement of the laws of the commonwealth. The said department shall return to such licensing board, selectmen, police or other officers, as soon as may be, a certificate, signed by the analyst or assistant analyst making such analysis, of the percentage of alcohol by weight at sixty degrees Fahrenheit which such samples of liquor contain. Such certificate shall be prima facie evidence of the composition and quality of the liquors to which it relates, and the court may take judicial notice of the signature of the analyst or the assistant analyst, and of the fact that he is such.

Certificate to accompany sample.
 1882, 221, § 2.
 R. L. 100, § 68.
 1902, 110.
 1914, 792, § 1.
 1919, 350, § 96.
 147 Mass. 444.
 259 Mass. 109.

SECTION 55. A certificate shall accompany each sample of liquor sent for analysis by an officer to the department of public health stating by whom the liquor was seized, the date of the seizure and the name and residence of the officer who seized said liquor. Said department shall note upon said certificate the date of the receipt and the analysis of said liquors and the percentage of the alcohol, as required by the preceding section. Said certificate may be in the following form:

ss. CITY OF (OR TOWN OF) 19 .

To the Department of Public Health.

SIRS:—I send you herewith a sample of taken from liquors seized by me (date) 19 .
 Ascertain the percentage of alcohol it contains, by weight, at sixty degrees Fahrenheit, and return to me a certificate herewith upon the annexed form.
 Constable of .
 Police officer of .

COMMONWEALTH OF MASSACHUSETTS.

DEPARTMENT OF PUBLIC HEALTH,
 BOSTON, 19 .

↗ This is to certify that the received by this Department with the above statement and analyzed by me contains per cent of alcohol, by weight, at sixty degrees Fahrenheit.

Received 19 .
 Analysis made 19 .

DEPARTMENT OF PUBLIC HEALTH,
 By.....
 Analyst.

State secretary to provide forms.
 Certificate to be evidence.
 1882, 221, § 3.
 R. L. 100, § 69.

SECTION 56. The state secretary shall provide and cause officers to be supplied with a suitable number of the forms prescribed by the preceding section. The certificate of the department of public health, given substantially in the form hereinbefore set forth, shall be admitted as evidence on trials for the forfeiture of intoxicating liquors as to the composition and quality of the liquors to which it relates.

Tampering with samples forbidden.
 1882, 221, § 4.
 R. L. 100, § 70.

SECTION 57. No person shall tamper with samples of liquor taken as provided in section forty-seven or alter the statements made upon the forms or certificates aforesaid.

1 SECTION 58. Any court or trial justice may cause liquors which have
 2 been seized under this chapter to be analyzed by a competent chemist,
 3 and the reasonable expense thereof, including a fee of not more than
 4 five dollars for each analysis, shall be taxed, allowed and paid like other
 5 expenses in criminal cases.

Court may
 order analysis
 1882, 221, § 5
 R. L. 100, § 71.

1 SECTION 59. The delivery of intoxicating liquor in or from a building,
 2 booth, stand or other place, except a private dwelling house, or in or
 3 from a private dwelling house if any part thereof or its dependencies is
 4 used as an inn, eating house or shop of any kind, or other place of com-
 5 mon resort, such delivery in either case being to a person not a resident
 6 therein, shall be prima facie evidence that such delivery is a sale.

Delivery of
 liquor prima
 facie evidence
 of sale in cer-
 tain cases.
 1855, 215, § 34
 G. S. 86, § 33
 1868, 141, § 20
 1869, 415, § 35

1875, 99, § 17.	11 Gray, 47.	231 Mass. 65.
P. S. 100, § 26.	7 Allen, 528.	246 Mass. 464.
R. L. 100, § 64.	103 Mass. 58.	252 Mass. 44.
12 Gray, 127.	219 Mass. 37.	

1 SECTION 60. If any placard, sign or advertisement is exposed from,
 2 maintained in or permitted to remain upon any vehicle, shop, stand,
 3 tenement, or any place of common resort, purporting or designed to
 4 announce the keeping in or upon said vehicle or any of said premises of
 5 spirituous or intoxicating liquors, except in drug stores, it shall be prima
 6 facie evidence that such liquors are kept in or upon such vehicle or
 7 premises for sale.

Signs prima
 facie evidence
 of keeping for
 sale in certain
 cases.
 1887, 414, § 1
 R. L. 100, § 63.

1 SECTION 61. If two persons of full age make complaint to a district
 2 court or trial justice that they have reason to believe and do believe that
 3 spirituous or intoxicating liquor, described in the complaint, is kept or
 4 deposited by a person named therein in a store, shop, warehouse, build-
 5 ing, vehicle, steamboat, vessel or place, and is intended for sale contrary
 6 to law, such court or justice, if it appears that there is probable cause
 7 to believe said complaint to be true, shall issue a search warrant to a
 8 sheriff, deputy sheriff, city marshal, chief of police, deputy chief of
 9 police, deputy marshal, police officer or constable, commanding him to
 10 search the premises in which it is alleged that such liquor is deposited,
 11 and to seize such liquor, the vessels in which it is contained and all im-
 12 plements of sale and furniture used or kept and provided to be used in
 13 the illegal keeping or sale of such liquor, and securely keep the same
 14 until final action thereon, and return the warrant with his doings
 15 thereon, as soon as may be, to a court or trial justice having jurisdic-
 16 tion in the place in which such liquor is alleged to be kept or deposited.

Search
 warrant.
 1852, 322, § 14
 1855, 215, § 25.
 G. S. 86, § 42
 1869, 415, § 44
 1876, 162, § 1
 1878, 207, § 3
 1879, 305, § 9
 P. S. 100, § 30
 1884, 191, § 286.
 1887, 406, § 1.
 1888, 297
 1897, 487, § 2.
 R. L. 100, § 72.
 12 Cush. 187.
 8 Gray, 539.
 6 Allen, 596.
 103 Mass. 448.
 105 Mass. 595.
 107 Mass. 386.
 110 Mass. 416.
 113 Mass. 13.
 115 Mass. 142.
 145
 116 Mass. 21.
 342.
 117 Mass. 427.
 122 Mass. 8, 36.

130 Mass. 29	145 Mass. 182.	203 Mass. 585
135 Mass. 519	150 Mass. 164.	253 Mass. 581
140 Mass. 287.	162 Mass. 215.	258 Mass. 103.

1 SECTION 62. A warrant shall not be issued for the search of a dwell-
 2 ing house, if no tavern, store, grocery, eating house or place of common
 3 resort is kept therein, unless one of the complainants makes oath that he
 4 has reason to believe and does believe that such liquor has been sold
 5 therein or taken therefrom for the purpose of being sold by the occupant,
 6 or by his consent or permission, contrary to law, within one month next
 7 before making such complaint, and is then kept therein for sale con-
 8 trary to law by the person complained against. Such complainant shall
 9 state the facts and circumstances on which such belief is founded, and
 10 such allegations shall be recited in the complaint and warrant.

Search of
 dwelling house.
 1852, 322, § 14
 1855, 215, § 25.
 G. S. 86, § 43
 1869, 415, § 45.
 1876, 162, § 2.
 P. S. 100, § 31.
 R. L. 100, § 73.
 6 Allen, 599
 13 Allen, 52.
 97 Mass. 332.
 105 Mass. 181,
 381, 595
 108 Mass. 19.
 110 Mass. 182.

116 Mass. 27.	122 Mass. 14.	142 Mass. 470	258 Mass. 103.
---------------	---------------	---------------	----------------

Designation of place to be searched. 1855, 215, § 25. G. S. 86, § 44. 1869, 415, § 46. 1876, 162, § 3. P. S. 100, § 32. R. L. 100, § 74. 97 Mass. 334. 105 Mass. 178. 108 Mass. 290. 109 Mass. 371. 110 Mass. 182, 499. 113 Mass. 13, 208, 455. 116 Mass. 342.

SECTION 63. The complaint shall particularly designate the building, structure and place to be searched, the liquor to be seized, the person by whom it is owned, kept or possessed and intended for sale, and shall allege the intent of such person to sell the same contrary to law. The warrant shall allege that probable cause has been shown for the issuing thereof; and the place to be searched, the liquor to be seized, and the person believed to be the owner, possessor, or keeper of such liquor, intending to sell the same contrary to law, shall be designated therein with the same particularity as in the complaint and the complainants shall be summoned to appear as witnesses.

146 Mass. 509. 163 Mass. 42. 253 Mass. 581. 258 Mass. 103.

Search of premises and seizure of liquor. 1852, 322, § 14. 1855, 215, § 25. G. S. 86, § 45. 1869, 415, § 47. 1876, 162, § 4. P. S. 100, § 33. 1887, 406, § 2. 1888, 297. R. L. 100, § 75.

SECTION 64. The officer to whom the warrant is committed shall search the premises and seize the liquor described in the warrant, the casks or other vessels in which it is contained, and all implements of sale and furniture used or kept and provided to be used in the illegal keeping or sale of such liquor, if they are found in or upon said premises, and shall convey the same to some place of security, where he shall keep the liquor and vessels until final action is had thereon.

188 Mass. 399. 253 Mass. 581. 258 Mass. 103.

Search and seizure in dwelling without search warrant penalized. 1931, 359.

SECTION 64A. A sheriff, deputy sheriff, city marshal, chief of police, deputy chief of police, deputy or assistant marshal, police officer or constable who, without a search warrant duly committed to him, searches for or seizes intoxicating liquor in a dwelling shall be punished by a fine of not less than five nor more than fifty dollars.

Notice to keeper of liquors seized. 1852, 322, § 14. 1855, 215, § 26. G. S. 86, § 46. 1869, 415, § 48. 1876, 162, § 5. P. S. 100, § 34. R. L. 100, § 76. 1909, 154, § 1. 13 Allen, 561. 97 Mass. 601. 258 Mass. 103.

SECTION 65. If, in the opinion of the court or trial justice before whom the warrant is returned, the value of the liquor seized and the vessels containing it does not exceed one thousand dollars, a notice, under seal, and signed by the justice or the clerk of said court, or by the trial justice, shall be issued within twenty-four hours after such seizure, commanding the person complained against as the keeper of the liquor seized and all other persons who claim any interest therein or in the casks or vessels containing the same to appear before said court or trial justice, at a time and place therein named, to answer to said complaint and show cause why such liquor and the vessels containing it should not be forfeited.

Form and service of notice. 1855, 215, § 26. G. S. 86, § 47. 1869, 415, § 49. 1873, 328. 1876, 162, § 6. P. S. 100, § 35. R. L. 100, § 77. 6 Allen, 599. 97 Mass. 334. 135 Mass. 519. 146 Mass. 509. 253 Mass. 581. 258 Mass. 103.

SECTION 66. The notice shall contain a description of the number and kind of vessels, the quantity and kind of liquor seized, as nearly as may be, and shall state when and where they were seized. It shall, not less than fourteen days before the time appointed for the trial, be served by a sheriff, deputy sheriff, constable or police officer upon the person charged with being the keeper thereof by leaving an attested copy thereof with him personally or at his usual place of abode, if he is an inhabitant of the commonwealth, and by posting an attested copy on the building in which the liquor was seized, if it was found in a building; otherwise in a public place in the city or town in which the liquor was seized.

Postponement of trial. 1855, 215, § 26. G. S. 86, § 48.

SECTION 67. If, at the time appointed for trial, said notice has not been duly served, or other sufficient cause appears, the trial may be post-

3 poned to some other day and place, and such further notice issued as
 4 shall supply any defect in the previous notice; and time and opportunity
 5 for trial and defence shall be given to persons interested.

R. L. 100, § 78.

258 Mass. 103.

1 SECTION 68. At the time and place designated in the notice, the per-
 2 son complained against, or any person claiming an interest in the liquor
 3 and vessel seized, or any part thereof, may appear and make his claim
 4 verbally or in writing, and a record of his appearance and claim shall be
 5 made, and he shall be admitted as a party to the trial. Whether a
 6 claim as aforesaid is made or not, the court or trial justice shall proceed
 7 to try, hear and determine the allegations of such complaint, and whether
 8 said liquor and vessels, or any part thereof, are forfeited. If it appears
 9 that the liquor, or any part thereof, was at the time of making the com-
 10 plaint owned or kept by the person alleged therein for the purpose of
 11 being sold in violation of law, the court or trial justice shall render
 12 judgment that such and so much of the liquor so seized as was so un-
 13 lawfully kept, and the vessels in which it is contained, shall, except as
 14 hereinafter provided, be forfeited to the commonwealth. If a motor
 15 vehicle is seized under the provisions of this chapter and is held to be a
 16 container or implement of sale of liquor contrary to law, the court or
 17 trial justice shall, unless good cause to the contrary is shown, order a
 18 sale of such motor vehicle by public auction and the officer making the
 19 sale, after deducting the expense of keeping the motor vehicle, the fee
 20 for the seizure and the cost of the sale, shall pay all liens, according to
 21 their priorities, which are established, by intervention or otherwise, at
 22 said trial or in other proceedings brought for said purpose, as being bona
 23 fide and as having been created without the lienor having any notice
 24 that such motor vehicle was being used or was to be used as a container
 25 or implement of sale of liquor contrary to law. The balance, if any, of
 26 the proceeds of the sale shall be forfeited to the commonwealth and
 27 shall be paid by said officer into its treasury. All liens against any motor
 28 vehicle sold under the provisions of this section shall be transferred from
 29 said motor vehicle to the proceeds of its sale.

Claimant of
 liquors may be
 admitted as
 party
 Judgment
 Disposition of
 motor vehicles
 seized.
 1852, 322, § 14.
 1855, 215, § 27.
 G. S. 86, § 49.
 1869, 415, § 51.
 1876, 162, § 7.
 P. S. 100, § 37.
 R. L. 100, § 79.
 1923, 329, § 1.
 107 Mass. 396.
 113 Mass. 23.
 142 Mass. 470.
 258 Mass. 103.

1 SECTION 69. Any liquor and vessels so forfeited shall, by authority
 2 of the written order of the court or trial justice, be forwarded to the
 3 commissioner of public safety, who upon receipt of the same shall notify
 4 said court or justice thereof. If, in the judgment of the commissioner,
 5 it is for the best interests of the commonwealth that such liquor and
 6 vessels be destroyed, he shall destroy or cause the destruction of such
 7 liquor and vessels, but if, in his judgment it is for the best interests of
 8 the commonwealth to sell the same, he shall cause the same to be sold,
 9 or he may deliver such liquor to any department or agency of the com-
 10 monwealth for medical, mechanical or scientific uses; provided, that such
 11 sale or delivery shall be in accordance with and subject to such federal
 12 laws and regulations as may be applicable. The proceeds of such sales
 13 shall be paid into the treasury of the commonwealth. The officer who
 14 serves said order of the court or justice shall be allowed therefor fifty
 15 cents, but shall not be entitled to receive any traveling fees or mileage on
 16 account of the service thereof.

Disposition of
 forfeited
 liquor, etc.
 1852, 322, § 14.
 1855, 215, § 27.
 G. S. 86, § 50.
 1869, 415, § 52.
 1872, 304.
 1876, 162, § 9.
 1879, 305, § 3.
 P. S. 100, § 38.
 1887, 53.
 R. L. 100, § 80.
 1923, 329.
 258 Mass. 103.

1 SECTION 70. If it is not proved on the trial that all or part of the
 2 liquor seized was kept or deposited for sale contrary to law, the court

Liquors not
 forfeited to be
 returned.

1855, 215, § 28
 G. S. 86, § 51.
 1869, 415, § 53.
 1876, 162, § 10.
 P. S. 100, § 39.
 R. L. 100, § 81.
 103 Mass. 154.
 246 Mass. 1.
 258 Mass. 103.

or trial justice shall issue a written order to the officer having the same 3
 in custody to return so much thereof as was not proved to be so kept or 4
 deposited and the vessels in which it is contained, to the place as nearly 5
 as may be from which it was taken, or to deliver it to the person entitled 6
 to receive it. After executing such order, the officer shall return it to the 7
 court or trial justice with his doings endorsed thereon. 8

Forfeiture of
 furniture,
 etc. Motor
 vehicles.
 1888, 297.
 R. L. 100, § 82.
 1929, 329, § 2.
 258 Mass. 103.

SECTION 71. All implements of sale and furniture seized under sections 1
 sixty-one and sixty-four shall be forfeited and disposed of in the 2
 manner provided for the forfeiture and disposition of intoxicating liquors; 3
 but the court or trial justice may, if it is deemed to be for the interest 4
 of the commonwealth, order the destruction or sale of said property 5
 by any officer qualified to serve criminal process and the proceeds of 6
 a sale thereof shall be paid over to the county; and said officer shall 7
 make return of the order for such destruction or sale and his doings 8
 thereon to the court or justice issuing the same. The provisions of this 9
 section shall not apply to a motor vehicle if seized and held to be an im- 10
 plement of sale as aforesaid, but the disposition of such a motor vehicle 11
 shall be governed by the provisions of section sixty-eight. 12

Costs.
 1855, 215, § 27.
 G. S. 86, § 52.
 1869, 415, § 54.
 1876, 162, § 11.
 P. S. 100, § 40.
 R. L. 100, § 83.
 258 Mass. 103.

SECTION 72. If no person appears and is admitted as a party as 1
 aforesaid, or if judgment is rendered in favor of all the claimants who 2
 appear, the cost of the proceedings shall be paid as in other criminal 3
 cases. If only one party appearing fails to sustain his claim, he shall 4
 pay all the costs except the expense of seizing and keeping the liquor, 5
 and an execution shall be issued against him therefor. If judgment 6
 is rendered against two or more claimants of distinct interests in the 7
 liquor, the costs shall, according to the discretion of the court or trial 8
 justice, be apportioned among such parties, and executions shall be 9
 issued against them severally. If such execution is not forthwith paid, 10
 the defendant therein named shall be committed to jail, and shall not 11
 be discharged therefrom until he has paid the same and the costs of 12
 commitment, or until he has been imprisoned thirty days. 13

Appeal.
 1855, 322, § 16
 1855, 215, § 29.
 G. S. 86, § 53.
 1869, 415, § 55.
 1870, 242.
 1876, 162, § 12.
 P. S. 100, § 41.
 R. L. 100, § 84.
 246 Mass. 1.
 258 Mass. 103.

SECTION 73. A claimant whose claim is not allowed as aforesaid, 1
 and the person complained against, shall each have the same right of 2
 appeal to the superior court as if he had been convicted of crime; but 3
 before his appeal is allowed he shall recognize to the commonwealth in 4
 the sum of two hundred dollars, with sufficient surety or sureties, to 5
 prosecute his appeal to the superior court and to abide the sentence of 6
 the court thereon. Upon such appeal, any question of fact shall be tried 7
 by a jury. On the judgment of the court after verdict, whether a for- 8
 feiture of the whole or any part of the liquor and vessels seized, or 9
 otherwise, similar proceedings shall be had as are directed in the five 10
 preceding sections. 11

Superior
 court to have
 jurisdiction
 when liquors
 worth more
 than one
 thousand
 dollars.
 1855, 215, § 30.
 G. S. 86, § 54.
 1869, 415, § 56.
 1876, 162, § 13.
 P. S. 100, § 42.
 R. L. 100, § 85.
 1909, 154, § 2.

SECTION 74. If, in the opinion of the court or trial justice before 1
 whom a warrant under which liquor has been seized is returnable, the 2
 value of the liquor seized with the vessels containing it exceeds one 3
 thousand dollars, a notice shall be issued and served as directed in 4
 sections sixty-five and sixty-six, except that it shall be made return- 5
 able to the sitting of the superior court for criminal business to be held 6
 in the county next after the expiration of fourteen days from the time 7
 of issuing the notice. The superior court shall have jurisdiction of the 8

9 case, and may proceed therein in the manner directed in sections sixty-
10 seven to seventy, inclusive, and seventy-two, as nearly as may be, and
11 with the jury, upon any issue of facts presented by the claimant or
12 directed by the court.

13 Allen, 561.
107 Mass. 386.
110 Mass. 172.
258 Mass. 103.

1 SECTION 75. A mayor, alderman, selectman, deputy sheriff, chief of
2 police, deputy chief of police, city marshal, deputy or assistant marshal,
3 police officer or constable, in his city or town, or, in the county of Dukes
4 or Nantucket, the sheriff anywhere within his county, may without a
5 warrant arrest any person whom he finds in the act of illegally selling,
6 transporting, distributing or delivering intoxicating liquor, and seize the
7 liquor, vessels and implements of sale in the possession of such person,
8 and detain them until warrants can be procured against such person,
9 and for the seizure of said liquor, vessels and implements, under this
10 chapter. Such officers shall enforce or cause to be enforced the penalties
11 provided by law against every person who is guilty of a violation of any
12 law relative to the sale of intoxicating liquor of which they can obtain
13 reasonable proof.

Arrest without
warrant in
certain cases.
1855, 215, § 13.
G. S. 86, § 55.
1869, 415, § 57.
1876, 162, § 14.
1878, 207, § 3.
1879, 305, § 9.
P. S. 100, § 43.
R. L. 100, § 86.
1904, 122.
1923, 435.
11 Gray, 368.
11 Gray, 200.
193 Mass. 280.
261 Mass. 504.

1 SECTION 76. [REPEALED, 1926, 108, § 2.]

1 SECTION 77. A complaint or indictment for the violation of any
2 provision of law relative to intoxicating liquors shall not, unless the
3 purposes of justice require such disposition, be placed on file or dis-
4 posed of except by trial and judgment according to the regular course
5 of criminal proceedings. It shall be otherwise disposed of only upon
6 motion in writing stating specifically the reasons therefor and verified
7 by affidavit if facts are relied on. If the court or magistrate certifies in
8 writing that he is satisfied that the cause relied on exists and that the
9 interests of public justice require the allowance thereof, such motion
10 shall be allowed and said certificate shall be filed in the case.

Disposition of
prosecution
regulated.
1855, 215, § 35.
G. S. 86, § 58.
1865, 223, § 1.
1869, 415, § 60.
1875, 13, § 1.
1885, 359.
R. L. 100, § 55

1 SECTION 78. Upon the conviction of a holder of a license for the
2 sale of intoxicating liquors of the violation of any law relative to the
3 business he is licensed to pursue, the court in which or the magistrate
4 before whom he has been convicted shall send to the authorities which
5 issued the license a certificate under seal, showing the time and place of
6 such conviction.

Licensing
authorities to
be notified of
conviction.
1880, 249.
P. S. 100, § 19
R. L. 100, § 56.

1 SECTION 79. Upon the conviction of a person of the illegal keeping
2 or sale of intoxicating liquor, the court or magistrate by whom he has
3 been convicted shall issue and cause to be served upon the owner of the
4 building, or agent of such owner in charge of the building, used for such
5 illegal keeping or sale, if he resides within the commonwealth and is not
6 the person so convicted, a written notice that the tenant of said building
7 has been convicted as aforesaid; and a return thereof shall be made to
8 the court or magistrate issuing it. Such notice, so served, shall be
9 deemed to be due and sufficient notice under section twenty of chapter
10 one hundred and thirty-nine.

Owner of
building to be
notified of
conviction.
1876, 162, § 16.
P. S. 100, § 20.
R. L. 100, § 57.
1910, 264.

1 SECTION 80. The forms heretofore in use may continue to be used
2 in prosecutions under this chapter, and if substantially followed shall be
3 deemed sufficient to fully and plainly, substantially and formally describe
4 the several offences in each of them set forth, and to authorize the lawful

Forms for
prosecution.
1855, 397.
G. S. 86, § 63.
1869, 415, § 66.
1876, 162, § 17.
P. S. 100, § 46.

R. L. 100, § 90. doings of the officers acting by virtue of the warrants issued in sub- 5
 105 Mass. 178. stantial conformity therewith; but this section shall not exclude the use 6
 110 Mass. 182. of other suitable forms. 7

Liquors illegally kept, etc., common nuisances. 1855, 215, § 37. SECTION 81. All intoxicating liquors which are kept for sale con- 1
 trary to law and the implements and vessels actually used in selling and 2
 keeping the same are declared to be common nuisances. 3

G. S. 86, § 60. 1876, 162, § 15. R. L. 100, § 87.
 1869, 415, § 62. P. S. 100, § 44. 12 Gray, 89.

Clubs used for selling liquor common nuisances. Penalty. 1881, 226. P. S. 100, § 45. 1887, 206. R. L. 100, § 88 1917, 35. 137 Mass. 564. 152 Mass. 337. 167 Mass. 13. SECTION 82. All buildings or places used by clubs for the purpose 1
 of selling, distributing or dispensing intoxicating liquors to their mem- 2
 bers or others shall be deemed common nuisances. Whoever keeps or 3
 maintains, or assists in keeping or maintaining, such a common nuisance, 4
 shall be punished by a fine of not less than fifty nor more than one 5
 hundred dollars and by imprisonment for not less than three nor more 6
 than twelve months. 7

219 Mass. 37.

Penalty for illegal sale, etc., of certain non-intoxicating beverages. 1920, 630, § 24. 246 Mass. 464. 250 Mass. 211. SECTION 83. Whoever, not being duly licensed as provided in this 1
 chapter, sells, exposes or keeps for sale certain non-intoxicating bever- 2
 ages as defined in section one shall be punished by a fine of not less 3
 than fifty nor more than five hundred dollars and by imprisonment for 4
 not less than one nor more than six months. 5

Conviction of licensee of violation of law or of conditions of license renders license void. 1868, 141, § 18. 1869, 415, §§ 32, 36. 1875, 99, § 13. P. S. 100, § 18. 1882, 242, § 2. 1887, 392. 1888, 254. 1889, 114; 347. 1896, 308. SECTION 84. Conviction of a licensee of the violation of any provi- 1
 sion of a license of the first two classes or the fourth or fifth class or of 2
 any provision of this chapter shall render such license void. 3

Conviction of a holder of a third class license of a violation of any 4
 provision of sections thirty to thirty-two, inclusive, shall render such 5
 license void. 6

Such licensee shall be disqualified to hold a license for one year after 7
 his conviction, and if he is the owner of the licensed premises, no license 8
 shall be exercised on the premises described in the forfeited license dur- 9
 ing the residue of the term thereof. 10

1897, 207, § 2; 271, § 5; 487, § 1. R. L. 100, § 53. 1920, 630, § 24. 126 Mass. 250. 156 Mass. 233.

Section 52 not to apply to sales on a physician's prescription. SECTION 85. The provisions of section fifty-two shall not apply to 1
 sales by the holder of a license of the third class if made upon the writ- 2
 ten prescription of a practicing physician. 3

1875, 99, § 2. P. S. 100, § 2. 1885, 282, § 1. 1887, 431, § 1. 1889, 390, § 2. 1896, 397, § 10. R. L. 100, §§ 25, 62, 63.

General penalty. 1832, 166, § 15. R. S. 47, § 27. 1855, 215, §§ 15, 17. G. S. 86, §§ 30, 31. SECTION 86. A violation by any person of any provision of this 1
 chapter for which a specific penalty is not imposed or a violation by a 2
 licensee of any provision of his license shall be punished by a fine of 3
 not less than fifty nor more than five hundred dollars and by imprison- 4
 ment for not less than one nor more than six months. 5

1868, 141, § 18. 1869, 415, § 32. 1875, 99, § 13. 1878, 207, § 2. 1880, 230, § 6. P. S. 100, § 18. 1882, 242, § 2. 1888, 254. 1889, 114; 347. 1896, 308. 1897, 207, § 2; 271, § 5; 487, § 1. R. L. 100, § 53. 1920, 630, § 24. 240 Mass. 465. 251 Mass. 550. 266 Mass. 195.

1 SECTION 87. Except as provided in the following section, violation
 2 of any provisions of section twenty-eight, thirty-two, forty-one or fifty-
 3 seven shall be punished by a fine of not less than fifty nor more than
 4 five hundred dollars or by imprisonment for not less than one nor more
 5 than six months, or both. A licensee of the fifth class who violates sec-
 6 tion thirty-two shall be punished as above provided.

Penalty for violation of certain sections.
 1882, 221, § 4;
 242, § 2.
 1896, 397, § 16.
 1897, 398, § 6.
 1901, 186, § 2.
 R. L. 100, § 54.

1906, 281, § 3. 1913, 413, § 3. 1923, 233, § 6.

1 SECTION 88. Any person who makes or issues a false or fraudulent
 2 prescription referred to in section twenty-five or twenty-eight shall be
 3 punished by a fine of ten dollars.

Penalty for false prescriptions.

1887, 431, § 5. 1896, 397, § 16. R. L. 100, § 28. 1923, 233, § 7.

1 SECTION 89. Violations of section forty-two shall be punished by a
 2 fine of not less than fifty nor more than two hundred dollars.

Penalty for violation of § 42.

1917, 150, § 3.

CHAPTER 139.

COMMON NUISANCES.

SECT.
 BURNT OR DANGEROUS BUILDINGS.
 1. Burnt or dangerous buildings, how disposed of.
 2. Appeal to superior court.
 3. Nuisances may be abated, etc.
 PLACES OF PROSTITUTION, ETC.
 4. Building, etc., used for prostitution, etc., to be deemed a nuisance.
 5. Penalty.
 6. Abatement of nuisance.
 7. Filing, etc., of bill of complaint.
 8. Temporary injunction.
 9. Decree of court ordering abatement of nuisance, etc.
 10. Fee of officer for removing and selling property. Application of proceeds of sale.
 11. Order of abatement may be modified in certain cases, etc.
 12. Bill of complaint not to be dismissed, except, etc.

SECT.
 13. Persons found in places used for prostitution, etc., may be summoned as witnesses.
 PLACES RESORTED TO FOR ILLEGAL GAMING OR USED FOR THE ILLEGAL KEEPING OR SALE OF INTOXICATING LIQUOR.
 14. Building, etc., resorted to for illegal gaming, etc., to be common nuisance.
 15. Penalty.
 16. Abatement of common nuisance.
 16A. Same subject. Liquor nuisances.
 17. Evidences of sales.
 18. Removal of gambling booths, etc., near public shows.
 GENERAL PROVISIONS.
 19. Keeping a nuisance by tenant to make lease void, etc.
 20. Aiding in the maintenance of a nuisance penalized.

BURNT OR DANGEROUS BUILDINGS.

1 SECTION 1. In a city or town in which the city council or the inhab-
 2 itants of the town accept this and the two following sections or have
 3 accepted corresponding provisions of earlier laws, the aldermen or
 4 selectmen, after written notice to the owner of a burnt, dilapidated or
 5 dangerous building, or his authorized agent, and after a hearing, may
 6 make and record an order adjudging it to be a nuisance to the neighbor-
 7 hood, or dangerous, and prescribing its disposition, alteration or regu-
 8 lation. The city or town clerk shall deliver a copy of the order to an

Burnt or dangerous buildings, how disposed of.
 1855, 469, §§ 1, 6.
 G. S. 87, § 1.
 P. S. 101, § 1.
 R. L. 101, § 1.
 1919, 333, § 7.
 1920, 5.

officer qualified to serve civil process, who shall forthwith serve an attested copy thereof in the manner prescribed in section one hundred and twenty-four of chapter one hundred and eleven, and make return to said clerk of his doings thereon.

Appeal to superior court, 1855, 469, §§ 3-5. G. S. 87, §§ 2-4. 1873, 261. P. S. 101, §§ 2-4. R. L. 101, §§ 2-4. 1919, 333, § 7. 1920, 5.

SECTION 2. A person aggrieved by such order may appeal to the superior court for the county where such building is situated, if, within three days after the service of such attested copy upon him, he presents to such court a petition stating his grievance and the order of the board. After such notice to the board as the court shall order, trial by jury shall be had as in other civil causes. The jury may affirm, annul or alter such order, and the court shall render judgment in conformity with said verdict, which shall take effect as an original order. If the order is affirmed, the petitioner shall pay the costs; if it is annulled, he shall recover from the town his damages, if any, and costs; and if it is altered, the court may render such judgment as to costs as justice shall require.

Nuisances may be abated, etc. 1855, 469, § 2. G. S. 87, § 5. P. S. 101, § 5. R. L. 101, § 5.

SECTION 3. The aldermen or selectmen shall have the same power to abate and remove any such nuisance as is given to the board of health of a town under sections one hundred and twenty-three to one hundred and twenty-five, inclusive, of chapter one hundred and eleven.

PLACES OF PROSTITUTION, ETC.

Building, etc., used for prostitution, etc., to be deemed a nuisance. 1855, 405, § 1. G. S. 87, § 6.

SECTION 4. Every building, part of a building, tenement or place used for prostitution, assignation or lewdness, and every place within or upon which acts of prostitution, assignation or lewdness are held or occur, shall be deemed a nuisance.

- | | | |
|-----------------|----------------|----------------|
| P. S. 101, § 6. | 12 Gray, 326. | 132 Mass. 1. |
| R. L. 101, § 6. | 13 Gray, 26. | 134 Mass. 201. |
| 1914, 624, § 1. | 14 Gray, 406. | 145 Mass. 251. |
| 7 Gray, 328. | 16 Gray, 18. | 213 Mass. 238. |
| 9 Gray, 290. | 12 Allen, 177. | 232 Mass. 88. |
| 10 Gray, 465. | 114 Mass. 281. | 237 Mass. 1. |
| 11 Gray, 48. | 118 Mass. 456. | |

[See cases cited under §§ 14, 15.]

Penalty. 1855, 405, § 2. G. S. 87, § 7. 1865, 269, § 1. 1866, 280, § 3. P. S. 101, § 7. R. L. 101, § 7.

SECTION 5. Whoever keeps or maintains such a nuisance shall be punished by a fine of not less than one hundred nor more than one thousand dollars and by imprisonment for not less than three months nor more than three years.

- | | |
|-----------------|--------------|
| 1914, 624, § 2. | 237 Mass. 1. |
|-----------------|--------------|

[See cases cited under §§ 4, 14, 15.]

Abatement of nuisance. 1887, 380. 1895, 419, § 10. R. L. 101, § 8. 1914, 624, § 3. 149 Mass. 550. 201 Mass. 204.

SECTION 6. Whenever there is reason to believe that such a nuisance is kept or maintained or exists in any town, either the district attorney for the district, or the attorney general, in the name of the commonwealth, or a citizen in his own name, may maintain a bill in equity perpetually to enjoin the person conducting or maintaining the same, and the owner, lessee or agent of the building or place in or upon which such nuisance exists and their assignees from directly or indirectly maintaining or permitting such nuisance.

Filing, etc., of bill of complaint. 1914, 624, § 1.

SECTION 7. The bill of complaint shall join the owner of record of the premises as a party respondent and shall be filed in the superior court for the county where the nuisance is believed to exist, and shall be

4 verified by oath of the complainant unless filed by the attorney general
 5 or a district attorney. The bill shall forthwith after filing be presented
 6 to the court sitting in equity within the county, or to any justice thereof
 7 if the court is not so sitting, and the proceeding shall have precedence
 8 over all other matters upon the docket except criminal proceedings,
 9 election contests and hearings upon petitions for other injunctions.

1 SECTION 8. If upon a hearing, after at least two days' notice to the
 2 respondents of the time and place assigned therefor, the existence of
 3 such a nuisance is shown to the satisfaction of the court or justice, either
 4 through verified complaint or through evidence in the form of affidavits,
 5 depositions, oral testimony or otherwise, a temporary injunction shall
 6 be ordered to issue forthwith restraining the maintenance of the nuisance
 7 and enjoining the occupants, owner and all other persons from removing
 8 fixtures, furniture, musical instruments and all other movable property
 9 from the premises until further order of the court.

Temporary in-
 junction.
 1914, 624, § 5.

1 SECTION 9. If upon subsequent hearing the existence of the nuisance
 2 shall be established, the court shall enter a decree permanently enjoin-
 3 ing the maintenance thereof, including in such decree an order of abate-
 4 ment directing the sheriff of the county or his deputy to enter the
 5 building or place where the nuisance existed and to sell all furniture,
 6 musical instruments and movable property used in maintaining the
 7 nuisance, in the manner provided for the sale of chattels under execu-
 8 tion, and to remove the same. If it shall appear that the bill of com-
 9 plaint was filed five or more days after notice to the record owner of the
 10 premises, and that he did not proceed forthwith to enforce his rights
 11 under section nineteen, such order of abatement shall further direct the
 12 effectual closing of the building or the place and the prohibition of its
 13 use for any purpose for one year, unless sooner released as provided in
 14 section eleven. For the purpose of proving the existence of the nui-
 15 sance the general reputation of the place shall be admissible as evidence.

Decree of court
 ordering abate-
 ment of
 nuisance, etc.
 1914, 624, § 6.
 232 Mass. 88.
 251 Mass. 569.
 265 Mass. 135.

1 SECTION 10. For removing and selling the movable property in
 2 accordance with the decree of the court the officer shall be entitled to
 3 the same fees as for levying upon and selling like property on execution,
 4 and for closing the premises and keeping them closed, a reasonable sum
 5 shall be allowed by the court. The proceeds shall be applied: first, to
 6 the fees and costs of removal and sale; second, to the allowances and
 7 costs of so closing and keeping closed the premises; third, to the pay-
 8 ment of the complainants' costs in such proceeding, including a reason-
 9 able attorney's fee to be fixed by the court; fourth, the remainder, if
 10 any, to the owner of the property sold.

Fee of officer
 for removing
 and selling
 property.
 Application of
 proceeds of sale.
 1914, 624, § 7.

1 SECTION 11. If the owner of any such premises shall pay all costs of
 2 the proceedings, and file with the court a bond with sureties approved
 3 by the clerk in the full value of such premises as ascertained by the
 4 court, or, when the court is not in session, by the clerk, payable to the
 5 court and conditioned that the owner of the premises found to be a
 6 nuisance will immediately abate such nuisance and prevent the same
 7 from being established or kept therein within one year thereafter, the
 8 court or justice may, if satisfied of the owner's good faith, order the
 9 premises so closed to be delivered to such owner and the order of abate-

Order of abate-
 ment may be
 modified in cer-
 tain cases, etc.
 1914, 624, § 8.
 1931, 426, § 33.

ment to be so modified as to dissolve the order that the premises remain closed for one year; provided, that such modification shall not release such premises from any judgment, lien, penalty or liability to which it may be subject.

Bill of complaint not to be dismissed, except, etc. 1914, 624, § 9. 1931, 426, § 34.

SECTION 12. No bill filed under section six shall be dismissed, except upon a sworn statement made and filed by the complainant and by his attorney setting forth the reasons for dismissal thereof and upon approval of such dismissal by the court in open court. If the court is of opinion that the bill ought not to be dismissed he may direct the district attorney to prosecute the case to a final decree. If a bill brought by a citizen is continued more than one court sitting, any citizen of the county, or the district attorney, or, if public interest so requires, the attorney general, may be substituted for the original complainant and prosecute the case to a final decree. If the bill was brought by a citizen and the court finds that there was no reasonable ground therefor, costs may be awarded against the complainant.

Persons found in places used for prostitution, etc., may be summoned as witnesses. 1914, 624, § 15.

SECTION 13. All persons found in or upon premises used for prostitution, assignation or lewdness may be required by a justice of a court of record to recognize, with or without sureties, to appear as witnesses at any hearing in an action to punish a person for keeping or maintaining such a nuisance as is described in section four, or for aiding in the maintenance of such a nuisance in the manner set forth in section twenty, or to enjoin or abate such a nuisance, and a warrant may be issued to bring such persons before the justice to recognize as aforesaid.

PLACES RESORTED TO FOR ILLEGAL GAMING OR USED FOR THE ILLEGAL KEEPING OR SALE OF INTOXICATING LIQUOR.

Building, etc., resorted to for illegal gaming, etc., to be common nuisance.

SECTION 14. Every building, place or tenement which is resorted to for illegal gaming, or which is used for the illegal keeping or sale of intoxicating liquor, shall be deemed a common nuisance.

1855, 405, § 1.	241 Mass. 319.	116 Mass. 32, 35,
G. S. 87, § 6.	270 Mass. 260.	46, 61.
P. S. 101, § 6.		117 Mass. 140.
R. L. 101, § 6.	Used for the	123 Mass. 401.
1914, 624, § 11.	illegal keeping	124 Mass. 26.
	or sale.	126 Mass. 56, 256.
Tenements.	7 Gray, 328.	127 Mass. 452.
10 Gray, 464, 465.	9 Gray, 206, 298.	132 Mass. 267.
11 Gray, 454, 456.	10 Gray, 9.	136 Mass. 148, 436.
14 Gray, 406.	11 Gray, 454.	138 Mass. 496.
107 Mass. 212.	12 Gray, 89, 175, 177, 178.	498, 508, 511.
112 Mass. 277.	13 Gray, 26.	141 Mass. 28, 110.
144 Mass. 297.	14 Gray, 23, 386, 390.	142 Mass. 474.
145 Mass. 104.	16 Gray, 18, 19.	143 Mass. 468.
148 Mass. 8.	1 Allen, 1, 592.	144 Mass. 171.
150 Mass. 71.	2 Allen, 169.	145 Mass. 117.
153 Mass. 5, 483.	4 Allen, 589.	250, 251.
154 Mass. 388.	97 Mass. 122.	147 Mass. 161.
166 Mass. 377.	102 Mass. 144, 148.	148 Mass. 425.
205 Mass. 124.	108 Mass. 24.	150 Mass. 506.
Illegal gaming.	26, 27, 480, 482.	153 Mass. 211.
7 Gray, 328.	109 Mass. 361.	167 Mass. 374.
13 Gray, 26.	110 Mass. 359, 502.	251 Mass. 550.
14 Gray, 26, 390, 406.	111 Mass. 425, 426.	
16 Gray, 18.	113 Mass. 191.	Resorted to.
7 Allen, 304.	114 Mass. 252.	7 Allen, 304.
145 Mass. 251.	255, 257, 259, 261.	12 Allen, 177.
	115 Mass. 102, 141.	

[See cases cited under §§ 4, 15.]

Penalty. 1855, 405, § 2. G. S. 87, § 7. 1865, 269, § 1.

SECTION 15. Whoever keeps or maintains such common nuisance shall be punished by a fine of not less than fifty nor more than one hun-

3 dred dollars and by imprisonment for not less than three months nor 1866, 280, § 3.
 4 more than one year. P. S. 101, § 7.

R. L. 101, § 7.	145 Mass. 406.	160 Mass. 298.
105 Mass. 465.	150 Mass. 506.	241 Mass. 319.
107 Mass. 212.	154 Mass. 115.	251 Mass. 550.
138 Mass. 498.		

[See cases cited under §§ 4, 14.]

1 SECTION 16. Upon an information filed by the district attorney for Abatement of
 2 the district, or upon the petition of the board or officer having control common
 3 of the police of a town or of not less than ten legal voters of a town, nuisance.
 4 stating that a building, place or tenement therein is resorted to for 1887, 380.
 5 illegal gaming, or is used for the illegal keeping or sale of intoxicating 1895, 419, § 10.
 6 liquors, the supreme judicial or superior court may enjoin or abate the R. L. 101, § 8.
 7 same as a common nuisance. 1914, 624, § 12.
 149 Mass. 550.

1 SECTION 16A. Upon a bill in equity brought in the name of the Same subject.
 2 commonwealth by the attorney general, or district attorney for the dis- Liquor
 3 trict, or the chief of police, or the board or officer having control of the nuisances.
 4 police of the state, or of a town or city, or by not less than ten legal 1928, 125.
 5 voters of a town or city, in their own names, stating that a building, place 265 Mass. 135.
 6 or tenement situated therein is being used for the illegal keeping, sale or
 7 manufacture of intoxicating liquors, the superior court may abate the same
 8 as a common nuisance and may enjoin the person conducting or maintain-
 9 ing the same, and the owner, lessee or agent of the building, place or tene-
 10 ment in or upon which said nuisance exists, and their grantees or assignees,
 11 from directly or indirectly maintaining or permitting such nuisance,
 12 and, subject to the provisions hereinafter contained, may order the
 13 effectual closing of such building, place or tenement, and the prohibition
 14 of its use for any purpose for one year thereafter. Proceedings under
 15 this section shall be in the manner provided in sections seven to twelve,
 16 inclusive, except that the provisions of section nine regulating the closing
 17 of a building, place or tenement and the prohibition of its use for any
 18 purpose for one year because of the maintenance of such a nuisance shall
 19 not apply, and in lieu thereof the court may include in its decree an
 20 order for such closing and prohibition, if it appears that prior thereto
 21 and within the preceding three years there shall have been three con-
 22 victions for the illegal sale, or keeping, or manufacture of intoxicating
 23 liquors in or upon the premises on which such building, place or tene-
 24 ment is situated, or three decrees for a permanent injunction enjoining
 25 the maintenance of such a nuisance. A decree for a permanent injunc-
 26 tion or abatement shall include an order that a copy thereof shall be
 27 posted in a conspicuous place on the building, place or tenement affected
 28 thereby, on or near one or more of its principal entrances and that the
 29 removal, defacement, erasure or mutilation of a copy so posted shall be
 30 contempt of court. In addition to such posting, a copy of the decree
 31 shall be delivered in hand to the person in charge of such building, place
 32 or tenement if he may be found upon the premises or to anyone residing
 33 therein, and if the decree includes an order for the effectual closing of
 34 said building, place or tenement and the prohibition of its use for any
 35 purpose for one year, a copy shall be filed forthwith for record in the
 36 registry of deeds for the county and registry district within which such
 37 building, place or tenement is situated. The provisions of section thir-
 38 teen shall apply to all persons found in or upon premises used for the
 39 illegal sale, or keeping, or manufacture of intoxicating liquors.

Evidences of sales 1887, 414, § 3. R. L. 101, § 9.

SECTION 17. Section sixty of chapter one hundred and thirty-eight shall apply to all cases relative to the use of any building, place or tenement for the illegal keeping or sale of intoxicating liquors in violation of this chapter.

Removal of gambling booths, etc., near public shows 1850, 291. 1851, 91. G. S. 87, § 10. P. S. 101, § 10. R. L. 101, § 12.

SECTION 18. The aldermen or the selectmen, upon complaint made to them under oath that the complainant has reason to believe and does believe that a booth, shed or other temporary erection, situated within one mile of a muster field, cattle show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquor, or for the purpose of gaming, may order the owner or occupant thereof to vacate and close the same forthwith. If the owner or occupant fails so to do, the aldermen or selectmen may forthwith abate such booth, shed or erection as a nuisance, and may pull down or otherwise destroy the same through the agency of any force, civil or military.

GENERAL PROVISIONS.

Keeping a nuisance by tenant to make lease void, etc. R. S. 130, § 9. 1855, 405, § 3. G. S. 87, § 8; 165, § 14. P. S. 101, § 8; 207, § 14. R. L. 101, § 10. 1914, 624, § 13. 15 Gray, 312. 6 Allen, 364. 7 Allen, 109. 14 Allen, 289. 103 Mass. 381.

SECTION 19. If a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the purposes of prostitution, assignation, lewdness, illegal gaming, or the illegal keeping or sale of intoxicating liquors, such use shall at the election of the lessor or owner annul and make void the lease or other title under which such tenant or occupant holds and, without any act of the lessor or owner, shall cause the right of possession to revert and vest in him, and he may, without process of law, make immediate entry upon the premises, or may avail himself of the remedy provided in chapter two hundred and thirty-nine.

106 Mass. 537.

219 Mass. 262.

Aiding in the maintenance of a nuisance penalized. 1855, 405, § 4. G. S. 87, § 9. 1866, 280, § 3. P. S. 101, § 9. R. L. 101, § 11. 1914, 624, § 14. 106 Mass. 537. 112 Mass. 277. 135 Mass. 552. 136 Mass. 148. 138 Mass. 181. 146 Mass. 36.

SECTION 20. Whoever knowingly lets premises owned by him, or under his control, for the purposes of prostitution, assignation, lewdness, illegal gaming, or the illegal keeping or sale of intoxicating liquors, or knowingly permits such premises, while under his control, to be used for such purposes, or after due notice of any such use omits to take all reasonable measures to eject therefrom the persons occupying the same as soon as it can lawfully be done, shall be punished by a fine of not less than fifty nor more than one hundred dollars and by imprisonment for not less than three months nor more than one year.

228 Mass. 266.

232 Mass. 88.

CHAPTER 140.

LICENSES.

SECT.	DEFINITION.	SECT.	
* 1.	Definition.	27. Register. Penalty.	
INNHOLDERS AND COMMON VICTUALLERS.		28. Order to keep a register.	
2.	Licenses. Fee. Record. Penalty.	29. Penalty for false entry in register, etc.	
3.	Form of innholders' licenses.	30. Revocation, etc., of licenses.	
4.	Contents of license of an innholder or common victualler. Term.	31. Posting of laws.	
5.	Innholders, etc., to have suitable accommodations for travelers.	32. Record of conviction to be sent to licensing authorities.	
6.	Grounds for refusal of license.	PUBLIC LODGING HOUSES.	
7.	Penalty for refusing to receive traveler.	33. Definition. Cubicles forbidden.	
8.	Penalty for refusing food to traveler.	34. Licenses. Term, revocation, etc.	
9.	Revocation, suspension, etc., of license.	35. Inspection of means of escape from fire as prerequisite.	
10.	Liability of innholder for loss of property.	36. Inspection by board of health as prerequisite.	
11.	Liability for loss by fire, etc.	37. Register.	
12.	Penalty for fraudulently procuring entertainment at or removing baggage from inn or boarding house.	38. Access for purposes of inspection.	
13.	Copy of certain sections to be posted.	39. Penalty for keeping public lodging house without a license.	
14.	Disposition of baggage in possession of innholders.	40. Penalty.	
15.	Disposition of proceeds of sale.	INTELLIGENCE OFFICES.	
16.	Balance of proceeds of sale to be paid to owner.	41. Penalty for keeping unlicensed intelligence office.	
17.	Negligence of guest a defence.	42. Licenses.	
18.	Signs. Penalty.	43. Keeper not to receive money unless employment is furnished.	
19.	Summary of laws to be furnished licensees.	44. Money to be refunded in certain cases.	
20.	Penalty on unlicensed innholder, etc.	45. Statutes to be printed on licenses. Posting.	
21.	Additional penalty on third conviction.	46. Penalty.	
SALE OF CERTAIN NON-INTOXICATING BEVERAGES.		MISCELLANEOUS PROVISIONS.	
21A.	Non-intoxicating beverages, regulation of sale authorized.	47. Licenses for coffee houses, etc. Fee, term, etc. Penalty.	
21B.	Licenses. Term, fees, etc.	48. Penalty for receiving gratuity given to employee.	
21C.	Penalty. Exception.	49. Licenses for lunch carts.	
21D.	Three preceding sections inapplicable to certain persons.	50. Limitation on use of way.	
LODGING HOUSES.		50A. [Repealed.]	
22.	Definition.	51. Manicuring, massage or vapor baths regulated.	
23.	Licenses. Term, fee, etc.	52. Police may enter premises.	
24.	Penalty on unlicensed lodging house keeper.	53. Penalty.	
25.	Inspection.	54. Licenses of junk dealers, etc.	
26.	Penalty for permitting immoral conduct. Evidence, effect.	55. Penalty.	
SALE OF SECOND HAND MOTOR VEHICLES.		56. Junk collector defined.	
		57. License, when required.	
		58. Classes of licenses.	
		59. Licenses. Term, fees, etc.	

<p>SECT.</p> <p>60. Rules relative to purchase, etc., of second hand motor vehicles.</p> <p>61. Vehicles or parts to be kept for four days. Exception.</p> <p>62. Record book. Contents.</p> <p>63. Daily or weekly reports by licensees.</p> <p>64. Police authorities may waive the four days' requirement.</p> <p>65. Notice of proposed sale required by an unlicensed person.</p> <p>66. Certain authorities may enter licensed premises.</p> <p>67. Penalty for refusal to allow entry, etc.</p> <p>68. Penalty for doing business without license.</p> <p>69. Penalties for breach of rules.</p> <p style="text-align: center;">PAWNBROKERS.</p> <p>70. Licenses.</p> <p>71. Pawnbrokers to retain articles four months, etc. Exception.</p> <p>72. Rate of interest may be limited. Penalty.</p> <p>73. Officers may enter pawnbroker's shop, etc.</p> <p>74. Penalty for refusing to admit officer.</p> <p>75. Penalty for acting without license.</p> <p>76. Loans on personal property, when regulated.</p> <p>77. Fee for license. Bond.</p> <p>78. Regulations.</p> <p>79. Pawnbrokers to keep record of pledges, etc.</p> <p>80. Memorandum to pledgor.</p> <p>81. Books to be open to inspection.</p> <p>82. Penalty.</p> <p>83. Record of amount loaned on tools, etc.</p> <p>84. Penalty.</p> <p>85. Sections 86-112 not applicable to licensed pawnbrokers.</p> <p style="text-align: center;">LOANS.</p> <p>86. Loans on collateral security of household goods, etc., regulated.</p> <p>87. Record book to be open to inspection. Property to be exhibited.</p> <p>88. Stolen articles pledged, disposition.</p> <p>89. Penalty for refusing inspection, etc.</p> <p>90. Loans of less than one thousand dollars.</p> <p>91. Loans secured by pledge, etc.</p> <p>92. Certain small mortgages of household furniture regulated.</p> <p>93. Notice to foreclose certain personal property mortgages.</p> <p>94. Liability for failure to return note, etc., or to discharge mortgage.</p> <p>95. Limitation of five preceding sections.</p> <p>96. Business of making small loans defined and regulated.</p>	<p>SECT.</p> <p>97. Regulations. Investigations.</p> <p>98. Returns to commissioner.</p> <p>99. Examination of licensees. Penalty.</p> <p>100. Rate of interest.</p> <p>101. Term and form of license. Posting.</p> <p>102. Fees.</p> <p>103. Penalty for violation of §§ 96-98, 100-109, etc. Certain loans voidable.</p> <p>104. Prerequisites to granting of license. Revocation.</p> <p>105. Bond.</p> <p>106. Recovery of illegal interest.</p> <p>107. Mortgage, etc., as security discharged upon payment of loan.</p> <p>108. Validity, foreclosure, etc., of such mortgage, etc.</p> <p>109. Receipt for part payment.</p> <p>110. Penalty for acting without a license. Evidence, effect.</p> <p>111. Law as to rate of interest in absence of agreement not affected.</p> <p>112. Duties of state police, etc.</p> <p>113. Old returns may be destroyed.</p> <p>114. Certain associations need not procure licenses.</p> <p style="text-align: center;">STEAM ENGINES AND FURNACES.</p> <p>115. Licenses.</p> <p>116. Changes in furnaces, etc., erected before acceptance of law may be ordered, when.</p> <p>117. Appeal. Temporary injunction.</p> <p>118. Stationary engines.</p> <p>119. Furnaces, etc., illegally erected or used deemed nuisances. Removal.</p> <p>120. [Repealed.]</p> <p style="text-align: center;">SALE OF FIREARMS.</p> <p>121. Definitions. Exceptions.</p> <p>122. Licenses.</p> <p>122A. Duties of licensing authorities.</p> <p>123. Conditions of licenses.</p> <p>124. Term of licenses.</p> <p>125. Suspension or revocation of licenses.</p> <p>126. Signs, etc., evidence that firearms are kept for sale.</p> <p>127. Transfer of licenses.</p> <p>128. Penalty for violation of license or selling, etc., without license.</p> <p>129. Penalty for giving false name, etc.</p> <p>129A. Ownership, etc., by aliens regulated. Penalty.</p> <p>130. Penalty for selling, etc., firearms to minor or alien.</p> <p>131. License to carry pistol, etc. Penalty.</p> <p>131A. Permits to purchase, etc., pistol, etc. Penalty.</p> <p>131B. Penalty for loan of money on pistol, etc.</p>
---	---

SECT.

SMOKE NUISANCE.

- 132. Smoke nuisance.
- 133. Permits.
- 134. Objections to permits.
- 135. Enforcement.
- 136. Penalty.

DOGS.

- 137. Licenses. Collars.
- 138. Same subject.
- 139. Fees.
- 140. Breeder's license.
- 141. Penalty for keeping unlicensed dog.
- 142. Keeping of bloodhound, etc.
- 143. Penalty.
- 144. Illegally kept dog to be removed or killed.
- 145. Description of hydrophobia to be printed on each license.
- 146. License valid throughout state, etc.
- 147. Issuing of licenses, disposition of fees, etc.
- 148. Bond of city clerk.
- 149. Accounts of county, etc., clerks.
- 150. Assessors to take list of dogs. Penalty.
- 151. Dog officers. Killing unlicensed dogs.
- 152. Returns by dog officers.
- 153. Warrant to dog officers.
- 154. Mayor, etc., to certify to district attorneys as to warrants.
- 155. Liability of owner for damage by dog.
- 156. Dog attacking person or certain animals may be killed, when.
- 157. Complaint as to dangerous dog.
- 158. Dog proved dangerous may be killed.
- 159. Treble damages if dog, after notice, causes injury, etc.
- 160. Protecting domestic animals from injury by dogs.
- 161. Certain damages by dogs to be paid by the county. Appraisal, etc.
- 162. Reward for killing dog found injuring domestic animals.
- 163. Notice to owner to kill such dog.
- 164. Penalty for not killing or confining such dog.
- 165. Appointment of persons to investigate damages by dogs.
- 166. Person damaged to have choice of remedy.
- 167. Dogs may be required to be muzzled. Killing unmuzzled dogs, when authorized.
- 168. Service of notice. Penalty.
- 169. Penalty on town officer.
- 170. Disposition of fees, etc., in Suffolk county.
- 171. Owner of dog liable to county for damages paid by it.

SECT.

- 172. Disposition of unexpended balance of dog fund.
- 173. Ordinances and by-laws as to dogs.
- 174. Recovery of penalties.
- 175. Liability for killing, etc., a licensed dog.

STALLIONS.

- 176. Registration. Penalty.

BILLIARD TABLES AND BOWLING ALLEYS.

- 177. Licenses.
- 178. Penalty.
- 179. Penalty for admitting minors to billiard rooms, etc.
- 180. Penalty for unlawful use, etc., of bowling alley.

THEATRICAL EXHIBITIONS, PUBLIC AMUSEMENTS, ETC.

- 181. Licenses.
- 182. Penalty for unlicensed exhibition. Exceptions.
- 182A. Tickets to theatres, etc., to have price printed on face. Penalty.
- 183. Darkened hall prohibited during progress of public dances therein. Penalty.
- 183A. Licensing of innholders, etc., conducting certain amusements in connection with their business regulated.
- 183B. Licenses under preceding section issued in certain towns invalid unless approved, etc. Fees, suspension, etc.
- 183C. Penalty for violation of § 183A. Report of conviction.
- 184. Penalty for exhibition when liquor is sold.
- 185. Masked ball penalized.
- 185A. Resale of theatre tickets, etc., regulated. Licenses.
- 185B. Fees for licenses.
- 185C. Revocation or suspension of licenses.
- 185D. Resale price regulated.
- 185E. Rules and regulations. Investigations, etc.
- 185F. Penalty.
- 185G. Certain sections inapplicable to certain tickets, etc.

SKATING RINKS, ETC.

- 186. License.
- 187. Penalty.

PICNIC GROVES.

- 188. License.
- 189. Penalty.
- 190. Peddling near picnic grove penalized.

SECT.		SECT.
	STEAMBOATS.	
191.	License.	198. Admission of young persons to dance halls and skating rinks regulated.
192.	Form of license. Fee. Posting.	199. Posting copy of law.
193.	Penalty.	200. Penalty.
	BOATING AND BATHING.	201. Officers may enter billiard rooms, etc. Penalty.
194.	License.	202. Form, etc., of certain licenses.
195.	Posting notices.	203. Term of such licenses.
196.	Penalty for acting without license.	204. Such licenses valid only in places specified.
	GENERAL PROVISIONS.	205. Revocation of such licenses.
197.	Admission of children to certain entertainments penalized. Exceptions.	

DEFINITION.

Definition, 1926, 92, § 1.
 [Further definitions, §§ 22, 33, 56, 96, 121]

SECTION 1. "Licensing authorities", as used in this chapter, unless a contrary meaning is required by the context, shall mean the boards in Boston and other cities which by special statutes or city charters have the power to issue licenses for innholders or common victuallers, licensing boards appointed under section four of chapter one hundred and thirty-eight in cities which at the municipal election next preceding the first day of January, nineteen hundred and twenty-five, voted to authorize the granting of licenses for the sale of certain non-intoxicating beverages and also in cities wherein by special statutes said boards are vested with all the powers and duties exercised by licensing boards in cities that vote to grant such licenses, the aldermen in all other cities and the selectmen in towns.

INNOLDERS AND COMMON VICTUALLERS.

Licenses Fee. Record Penalty
 C. L. 79, § 2
 1692-3, 9, § 1.
 1703-4, 5, § 1.
 1786, 68, § 1
 1792, 25
 1832, 166, §§ 4, 6, 8
 1833, 122
 R. S. 47, §§ 17, 18
 1837, 242, § 2.
 G. S. 88, § 2, 21.
 1875, 99, § 6, cl. 5
 1878, 241, § 8.
 1879, 38, § 1.
 P. S. 102, §§ 2, 24.
 1885, 83;
 323, § 2
 1894, 235, 351;
 428, § 4.

SECTION 2. Licensing authorities may grant licenses to persons to be innholders or common victuallers. Such license shall not be issued or be valid until it has been signed by a majority of the aldermen in cities where the license is to be granted by the aldermen, by a majority of the licensing board in other cities or by the selectmen in towns. An alderman, any member of the licensing board or a selectman may refuse to sign a license for a person who, in his opinion, has not complied with this chapter. This section shall not require the licensing authorities to grant either of said licenses if, in their opinion, the public good does not require it. A fee of not more than five dollars may be charged for either of said licenses. The licenses shall be recorded in the office of the licensing authorities. An alderman, member of a licensing board or selectman who signs a license granted contrary to this chapter shall be punished by a fine of not more than fifty dollars.

1895, 343.	1910, 383.	221 Mass. 395.
R. L. 102, § 2.	1916, Sp. 310.	225 Mass. 104
1906, 291, § 4.	141 Mass. 23.	3 Op. A. G. 276.

Form of innholders' licenses,
 1915, 180, § 5.
 1918, 259, § 2.

SECTION 3. All innholders' licenses shall be expressed to be subject to sections twenty-two to thirty-two, inclusive, of this chapter and sections twenty-five to twenty-seven, inclusive, of chapter two hundred and seventy-two.

Contents of license of an innholder or

SECTION 4. Every license of an innholder or common victualler shall specify the street and number, if any, of the building where the business

3 is to be carried on or give some other particular description thereof, and
 4 the license shall not protect a licensee who carries on his business in
 5 any other place. Such licenses shall expire on April thirtieth of each
 6 year; but they may be granted during April, to take effect on May first
 7 following.

common
 victualler.
 Term.
 C. L. 82, § 15
 1703-4, 5, § 1
 1786, 68, § 2
 1832, 166,
 § § 6, 7.

R. S. 17, §§ 17, 19.	1879, 38, § 2.	R. L. 102, §§ 3, 1.
G. S. 88, §§ 2, 3.	P. S. 102, §§ 3, 4.	201 Mass. 204.
1878, 241, § 9.	1890, 73.	

1 SECTION 5. Every innholder and every common victualler shall at
 2 all times be provided with suitable food for strangers and travelers.
 3 Every innholder shall also have upon his premises suitable rooms, with
 4 beds and bedding, for the lodging of his guests.

Innholders,
 etc., to have
 suitable ac-
 commodations
 for travelers.

C. L. 82, § 10.	R. S. 47, § 5.	R. L. 102, § 5.
1698, 40, § 1.	G. S. 88, § 8.	1931, 426, § 35.
1786, 68, § 3.	1878, 241, §§ 1, 2.	221 Mass. 70.
1832, 166, § 10.	P. S. 102, §§ 5, 6.	

1 SECTION 6. An innholder's or common victualler's license shall not
 2 be granted unless at the time of making application therefor the applicant
 3 has upon his premises the necessary implements and facilities for cooking,
 4 preparing and serving food for strangers and travelers; and, if he is an
 5 applicant for an innholder's license, also has the rooms, beds and bedding
 6 required by law.

Grounds for
 refusal of
 license.
 1878, 241,
 §§ 3, 4.
 P. S. 102,
 §§ 7, 8.
 R. L. 102, § 6.
 1931, 426, § 36.

201 Mass. 204. 221 Mass. 70.

1 SECTION 7. An innholder who, upon request, refuses to receive and
 2 make suitable provision for a stranger or traveler shall be punished by a
 3 fine of not more than fifty dollars.

Penalty for
 refusing to
 receive
 traveler.

C. L. 82, § 10.	R. S. 47, § 8.	P. S. 102, § 9.
1710-11, 11, § 4.	G. S. 88, § 9.	R. L. 102, § 7.
1786, 68, § 3.	1878, 241, § 5.	1931, 426, § 37.
1832, 166, § 10.		

1 SECTION 8. A common victualler who, upon request, on any day but
 2 Sunday, refuses to supply food to a stranger or traveler shall be punished
 3 by a fine of not more than fifty dollars.

Penalty for
 refusing food
 to traveler.

1878, 241, § 6. P. S. 102, § 10. R. L. 102, § 8. 221 Mass. 70.

1 SECTION 9. If, in the opinion of the licensing authorities, a licensee
 2 as an innholder or a common victualler ceases to be engaged in the business
 3 he is licensed to pursue, or fails to maintain upon his premises the im-
 4 plements and facilities required by this chapter, they shall immediately
 5 revoke his license. If a licensee at any time conducts his licensed busi-
 6 ness in an improper manner, the licensing authorities, after notice to the
 7 licensee and reasonable opportunity for a hearing, may upon satisfactory
 8 proof thereof suspend or revoke his license. An innholder who violates
 9 section seven or a common victualler who violates section eight shall
 10 forfeit his license. A licensee who is convicted a second time of the
 11 violation of any of the provisions of sections six to eighteen, inclusive,
 12 shall forfeit his license.

Revocation,
 suspension,
 etc., of license
 1786, 68, § 8
 1832, 166, § 10
 R. S. 47, § 8
 1837, 242, § 3.
 G. S. 88, § 9.
 1878, 241,
 §§ 5, 7.
 P. S. 102,
 §§ 9, 11.
 R. L. 102,
 §§ 7-9, 20.
 1918, 64.
 1919, 99.
 189 Mass. 70.

1 SECTION 10. An innholder shall not be liable for losses sustained by
 2 a guest except of wearing apparel, articles worn or carried on the person,
 3 personal baggage and money necessary for traveling expenses and per-
 4 sonal use, nor shall such guest recover of an innholder more than five
 5 hundred dollars as damages for any such loss; but an innholder shall be
 6 liable in damages to an amount not exceeding three thousand dollars for

Liability of
 innholder for
 loss of
 property.
 1853, 406, § 1.
 G. S. 88, § 10.
 1870, 338, § 1.
 P. S. 102, § 12.
 1885, 358.
 1897, 305.

R. L. 102, § 10. the loss of money, jewels and ornaments of a guest specially deposited for 7
 1924, 129 safe keeping, or offered to be so deposited, with such innholder, person 8
 9 Pick. 280. in charge at the office of the inn, or other agent of such innholder au- 9
 7 Cush. 417. thorized to receive such deposit. This section shall not affect the inn- 10
 140 Mass. 123. holder's liability under any special contract for other property deposited 11
 244 Mass. 340. with him for safe keeping after being fully informed of its nature and 12
 value, nor increase his liability in case of loss by fire or overwhelming 13
 force beyond that specified in the following section. 14

Liability for SECTION 11. In case of loss by fire or overwhelming force, innholders 1
 loss by fire, shall be answerable to their guests only for ordinary and reasonable care 2
 etc. in the custody of their baggage or other property. 3
 1853, 405, § 2. P. S. 102, § 15. R. L. 102, § 11.
 G. S. 88, § 11.

Penalty for SECTION 12. Whoever puts up at an inn or boarding house and, 1
 fraudulently procuring without having an express agreement for credit, procures food, enter- 2
 entertainment at or removing tainment or accommodation without paying therefor, and with intent 3
 baggage from inn or board- to cheat or defraud the owner or keeper thereof; or, with such intent, 4
 ing house. obtains credit at an inn or boarding house for such food, entertainment 5
 1870, 338, § 2. or accommodation by means of any false show of baggage or effects 6
 P. S. 102, § 13. brought thereto; or, with such intent, removes or causes to be removed 7
 1883, 187, § 1. any baggage or effects from an inn or boarding house while a lien exists 8
 1884, 169. thereon for the proper charges due from him for fare and board furnished 9
 R. L. 102, § 12. therein, shall be punished by a fine of not more than two hundred dollars 10
 1931, 374. or by imprisonment for not more than one year. 11

Copy of certain SECTION 13. Innholders shall post a printed copy of this and the 1
 sections to be three preceding sections in a conspicuous place in each room of their inns. 2
 posted 1870, 338, § 3. Boarding house keepers shall post a copy of the preceding section in a 3
 1883, 187, § 2. conspicuous place in each room of their boarding houses. 4
 R. L. 102, §§ 12, 13

Disposition of SECTION 14. An innholder, after retaining for six months from the 1
 baggage in pos- time of departure of a guest from his inn any trunks, bags, valises, parcels, 2
 session of inn- clothing, goods or other personal property of a guest which has been aban- 3
 holders. doned by such guest, or which such innholder retains by virtue of his 4
 1893, 419, § 1. lien thereon for the unpaid board, lodging and other charges of such 5
 1894, 181. guest, may sell the same by public auction upon the premises of the inn. 6
 R. L. 102, § 14. notice of the time and place of sale first being posted in a conspicuous 7
 place in the office of the inn for four weeks prior to the date of such sale, 8
 and published once in each of three successive weeks in a newspaper, if 9
 any, published in the town where the inn is situated; otherwise, in a 10
 newspaper published in the county where the inn is situated, the first 11
 publication of such notice to be not less than twenty-one days before 12
 the day of sale. A copy of such notice shall be sent by registered mail 13
 addressed to said guest at the residence given by him in the register of 14
 such inn. Such notice shall contain a descriptive list of all such property 15
 and of all such specific marks as may serve to identify such property, 16
 and the name of the guest so far as known to such innholder. 17

Disposition of SECTION 15. The proceeds of such sale, after deducting reasonable 1
 proceeds of sale. charges and expenses incurred in the storage and sale of such property, 2
 1893, 419, § 2. shall be applied to the discharge of the lien of such innholder thereon 3
 R. L. 102, § 15.

4 for the board, lodging and other charges of such guest, and any proceeds
5 remaining thereafter shall be paid to the commonwealth.

1 SECTION 16. If, within three years after such sale, the owner of any
2 such property claims it and proves his ownership thereof, the said pro-
3 ceeds, after deducting all reasonable charges and expenses, shall be paid
4 over to him by the state treasurer.

Balance of
proceeds of sale
to be paid to
owner
1893, 419, § 3
R. L. 102, § 16

1 SECTION 17. An innholder against whom a claim is made for loss
2 sustained by a guest may show that such loss is attributable to the
3 negligence of the guest or to his failure to comply with the regulations of
4 the inn, if they are reasonable and proper and are shown to have been
5 duly brought to the notice of the guest by the innholder.

Negligence
of guest a
defence.
1853, 405, § 3
G. S. 88, § 12
P. S. 102, § 16;
R. L. 102, § 17.

140 Mass. 123.

145 Mass. 186.

262 Mass. 41.

1 SECTION 18. Every innholder and common victualler shall at all times
2 have a board or sign affixed to his house, shop, cellar or store, or in a
3 conspicuous place near the same, with his name legibly inscribed thereon
4 in large letters and the business for which he is licensed inscribed thereon,
5 and upon neglect thereof shall forfeit twenty dollars.

Signs
Penalty.
C. L. 79, § 2
1786, 68, § 3
1832, 166, § 10
R. S. 47, § 7
G. S. 88, § 14.

P. S. 102, § 17.

R. L. 102, § 18.

1 SECTION 19. The state secretary shall cause a condensed summary of
2 all laws relative to innholders and common victuallers to be printed, and
3 shall supply copies thereof to licensing authorities, who shall at the time
4 of granting each license provide the licensee with a copy of such summary.

Summary of
laws to be
furnished
licensees.
1837, 242, § 5.
G. S. 88, § 22
P. S. 102, § 25

R. L. 102, § 22.

1 SECTION 20. Whoever assumes to be an innholder or common vict-
2 ualler without being licensed as such under this chapter shall forfeit one
3 hundred dollars.

Penalty on un-
licensed in-
nholder, etc.

C. L. 79, § 2; 84, § 3.
1786, 68, § 1.
1830, 136, §§ 1, 2.

1832, 166, §§ 1, 3.
R. S. 47, § 1
G. S. 88, § 1.

P. S. 102, § 1.
R. L. 102, § 1.
101 Mass. 214.

1 SECTION 21. Whoever is convicted a third time of a violation of any
2 provision of the preceding sections, except those contained in sections
3 seven and eight, shall, in addition to the penalties before provided, be
4 punished by imprisonment for not more than three months.

Additional
penalty
on third
conviction.
C. L. 82, § 9.
1786, 68, § 8.

1832, 165, § 15.
R. S. 47, § 29.

1837, 242, § 4.
G. S. 88, § 17

P. S. 102, § 20.
R. L. 102, § 21.

SALE OF CERTAIN NON-INTOXICATING BEVERAGES.

1 SECTION 21A. Cities and towns may provide by ordinance or by-law
2 for the licensing of persons to keep open their places of business for the
3 retail sale of beverages derived wholly or in part from cereals or sub-
4 stitutes therefor and containing less than one half of one per cent of
5 alcohol, unfermented grape juice, ginger ale, root beer, sarsaparilla, pop,
6 artificial mineral waters, carbonated waters or beverages, and other
7 so-called soft drinks, and may fix the fee for said licenses within the
8 limit hereinafter provided, except that in cities having licensing boards
9 the authority to provide for the licensing of such persons and the fixing
10 of fees therefor shall be vested in said licensing boards.

Non-intoxi-
cating bever-
ages, regulation
of sale
authorized.
1922, 392.

Licenses
Term, fees, etc.
1922, 392.

SECTION 21B. Licenses granted as aforesaid shall specify the street or place and the number if there be any, and if there is no number, then the location of the place of business in which the license is to be exercised, and the license shall not be valid in any other place. Licenses so issued shall expire on April thirtieth of each year. The fee for a license shall not be more than one dollar, and the license may be suspended or revoked at any time after a hearing by the authorities granting the same.

Penalty.
Exception.
1922, 392.

SECTION 21C. Whoever not being licensed as aforesaid keeps open his place of business for the retail sale of any such beverage shall be punished by a fine of not more than fifty dollars. This section shall not apply to persons who keep open their places of business on Sunday for the sale of soda water, if they are licensed under section seven of chapter one hundred and thirty-six.

Three preceding sections inapplicable to certain persons.
1922, 392.

SECTION 21D. The provisions of the three preceding sections shall not apply to innholders, common victuallers, druggists, nor to dealers whose principal business is the sale of groceries and meats or either of said products, nor to the sale of any or all of such beverages when sold not to be drunk on the premises.

LODGING HOUSES.

Definition.
1918, 259, § 1.

SECTION 22. "Lodging house", as used in sections twenty-two to thirty-one, inclusive, shall mean a house where lodgings are let to five or more persons not within the second degree of kindred to the person conducting it, and shall not include dormitories of charitable, educational or philanthropic institutions.

Licenses.
Term, fee, etc.
1918, 259,
§§ 2, 9.
1921, 59.

SECTION 23. Licensing authorities may grant licenses for lodging houses which shall be for the period provided in section four, and shall charge for each license such fee, not exceeding two dollars, as the city council or selectmen may establish, otherwise the same shall be granted without charge. Said authorities shall enforce sections twenty-four to thirty-one, inclusive, and shall prosecute all violations thereof.

Penalty on unlicensed lodging house keeper.
1918, 259, § 8.

SECTION 24. Whoever conducts a lodging house without a license shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.

Inspection.
1918, 259, § 3.

SECTION 25. Premises occupied, used or controlled by a licensee under sections twenty-two to thirty-one, inclusive, or under an innholder's license shall be subject to inspection by the licensing authorities and their authorized agents, and by the police on request from the licensing authorities.

Penalty for permitting immoral conduct.
Evidence, effect
1918, 259,
§§ 4, 8.

SECTION 26. Whoever, being licensed as a lodging house keeper under sections twenty-two to thirty-one, inclusive, or as an innholder, or being in actual charge, management or control of the premises for which the license is issued, knowingly permits the premises under his control to be used for the purpose of immoral solicitation, immoral bargaining or

6 immoral conduct shall be punished by a fine of not less than five hun-
 7 dred nor more than one thousand dollars or by imprisonment for not
 8 less than six months nor more than one year, or both. Evidence that a
 9 room in a hotel or lodging house was not actually used for immoral con-
 10 duct shall not prevent a conviction under this section of a person in
 11 actual charge, control or management of the premises who permits the
 12 occupation of such a room knowing or having good reason to know that
 13 the parties occupying such a room intended to use it for immoral solici-
 14 tation, immoral bargaining or immoral conduct. If it is required that
 15 registers be kept, as provided in sections twenty-seven and twenty-eight,
 16 evidence that the person in actual charge, control or management of
 17 the premises has knowingly permitted the occupation of a private room
 18 of less than four hundred square feet floor area, containing a bed or
 19 couch, by the same woman on different occasions within a period of
 20 thirty days with different men, or by the same man on different occasions
 21 within a period of thirty days with different women, shall be prima facie
 22 evidence of a violation of this section.

1 SECTION 27. Every innholder, and every lodging house keeper re-
 2 quired so to do under section twenty-eight, shall keep or cause to be
 3 kept, in permanent form, a register in which shall be recorded the true
 4 name or name in ordinary use and the residence of every person engaging
 5 or occupying a private room averaging less than four hundred square
 6 feet floor area, excepting a private dining room not containing a bed or
 7 couch, or opening into a room containing a bed or couch, for any period
 8 of the day or night in any part of the premises controlled by the licensee,
 9 together with a true and accurate record of the room assigned to such
 10 person and of the day and hour when such room is assigned. The entry
 11 of the names of the person engaging a room and of the occupants of said
 12 room shall be made by said person engaging said room or by an occupant
 13 thereof. Until the entry of such name and the record of the room has
 14 been made, such person shall not be allowed to occupy privately any
 15 room upon the licensed premises. Such register shall be retained by the
 16 holder of the license for a period of at least one year after the date of the
 17 last entry therein, and shall be open to the inspection of the licensing
 18 authorities, their agents and the police. Whoever violates any pro-
 19 vision of this section shall be punished by a fine of not less than one
 20 hundred nor more than five hundred dollars or by imprisonment for not
 21 more than three months, or both.

Register.
 Penalty,
 1918, 259,
 §§ 5, 8.
 238 Mass. 499.

1 SECTION 28. Every person conducting a lodging house shall within
 2 twenty-four hours after he is ordered to do so by the licensing authorities
 3 keep a register. The said authorities may issue such order at any time,
 4 and shall do so upon receipt of an affidavit of a commissioned officer of
 5 the United States army or navy or a police officer stating that the affiant
 6 knows or believes such lodging house is being used for immoral solici-
 7 tation, immoral bargaining or immoral conduct.

Order to keep
 a register.
 1918, 259, § 7.

1 SECTION 29. No person shall write or cause to be written, or if in
 2 charge of a register knowingly permit to be written, in any register in
 3 any lodging house or hotel any other or different name or designation
 4 than the true name or name in ordinary use of the person registering or
 5 causing himself to be registered therein. No person occupying such

Penalty for
 false entry in
 register, etc.
 1918, 259, § 6.
 239 Mass. 458.

room shall fail to register or fail to cause himself to be registered. Who- 6
 ever violates any provision of this section shall be punished by a fine of 7
 not less than ten nor more than twenty-five dollars. 8

Revocation,
 etc., of
 licenses.
 1918, 259, § 9.

SECTION 30. A license issued under sections twenty-two to thirty- 1
 one, inclusive, or an innholder's license, shall be revoked if at any time 2
 the licensing authorities are satisfied that the licensee is unfit to hold 3
 the license. They may suspend and make inoperative, for such period 4
 of time as they may deem proper, the licenses mentioned herein for any 5
 cause deemed satisfactory to them. The revocation and suspension shall 6
 not be made until after investigation and a hearing, or after giving the 7
 licensee an opportunity to be heard; notice of the hearing shall be left at 8
 the premises of the licensee not less than three days before the time 9
 therefor. 10

Posting of
 laws.
 1918, 259, § 10.

SECTION 31. All innholders, and all lodging house keepers who have 1
 been ordered to keep a register, shall post in a conspicuous place near the 2
 register a notice, to be furnished by the licensing authorities, containing 3
 the provisions of sections twenty-seven and twenty-nine relating to the 4
 entry of names and residences in the register, together with the penalty 5
 provided for their violation. 6

Record of
 conviction to
 be sent to
 licensing
 authorities.
 1918, 259, § 11.

SECTION 32. The clerk of a court where any person is convicted of a 1
 violation of any provision of sections twenty-two to thirty-one, inclusive, 2
 shall forthwith send a copy of the record of the conviction to the licensing 3
 authorities in the town where the offence occurred. 4

PUBLIC LODGING HOUSES.

Definition.
 Cubicles
 forbidden.
 1894, 414, § 1.
 1904, 242,
 §§ 1, 8.
 1911, 129
 1915, 160, § 1.

SECTION 33. In cities of over fifty thousand inhabitants every build- 1
 ing not licensed as an inn, in which ten or more persons are lodged free 2
 or for a charge of twenty-five cents or less for each person for a day 3
 of twenty-four hours, or for any part thereof, shall be deemed a public 4
 lodging house within the meaning of sections thirty-four to forty, in- 5
 clusive. No building or part thereof erected, altered or converted to 6
 be used as such a public lodging house shall have the sleeping compart- 7
 ments arranged on the cubicle plan. 8

Licenses.
 Term, revo-
 cation, etc.
 1894, 414,
 §§ 2, 7.
 1904, 242,
 §§ 2, 7, 8.

SECTION 34. The officer or board having charge of the police in any 1
 such city may license persons to keep public lodging houses therein, and 2
 shall immediately revoke such license if the licensee violates any pro- 3
 vision of sections thirty-five to thirty-eight, inclusive. No fee shall be 4
 charged for such license, and, subject to section forty-nine of chapter 5
 one hundred and forty-three when applicable, it shall expire on the 6
 thirtieth day of April next after the granting of the same. Every such 7
 license shall specify the street and number, if any, of the building where 8
 the business is to be carried on or give some other particular description 9
 thereof, and the license shall not protect a licensee who carries on his 10
 business in any other place. 11

Inspection of
 means of
 escape from
 fire as pre-
 requisite.

SECTION 35. No such license shall be granted in any such city until 1
 the inspector of buildings thereof, or the other officer or board having 2
 authority to administer the laws and ordinances in regard to the con- 3

4 struction of buildings therein, has certified that the building, if it has
 5 eight or more rooms or ten or more persons are accommodated above
 6 the second story, complies with the requirements of chapter one hundred
 7 and forty-three, and in other cases is provided with sufficient means of
 8 escape in case of fire, and that suitable appliances are provided for ex-
 9 tinguishing fires and for giving alarm to the inmates in case of fire; and
 10 such officer or board may from time to time require such alterations to
 11 be made or such additional appliances to be provided as may in his or
 12 its judgment be necessary for the protection of life and property in case
 13 of fire.

1894, 414, § 3.
 1904, 242,
 §§ 3, 8.
 1913, 655, § 20.
 [Penalty, § 40.]

1 SECTION 36. No such license shall be granted in any such city until
 2 the board of health thereof has certified that the building is provided
 3 with a sufficient number of water closets and urinals and with good and
 4 sufficient means of ventilation; and the said board may from time to
 5 time require the licensee thoroughly to cleanse and disinfect all parts of
 6 said building and the furniture therein to the satisfaction of such board.

Inspection by
 board of
 health as
 prerequisite.
 1894, 414, § 4.
 1904, 242,
 §§ 4, 8.
 [Penalty, § 40.]

1 SECTION 37. In every public lodging house a register shall be kept
 2 in which shall be entered the name and address of each lodger, together
 3 with the time of his arrival and departure, and such register shall at all
 4 times be open to the inspection of the police.

Register.
 1894, 414, § 5.
 1904, 242,
 §§ 5, 8.
 [Penalty, § 40.]

1 SECTION 38. The keeper of every public lodging house shall at all
 2 times, when so required by any officer of the building department, of the
 3 health department, or of the police department, give him free access to
 4 said house or any part thereof.

Access for
 purposes of
 inspection.
 1894, 414, § 6.
 1904, 242,
 §§ 6, 8.

[Penalty, § 40.]

1 SECTION 39. Whoever keeps or holds himself out as keeping a public
 2 lodging house without being duly licensed as hereinbefore provided, and
 3 whoever is concerned or financially interested in any public lodging house,
 4 the keeper of which is not so licensed, shall be punished by a fine of not
 5 more than one hundred dollars.

Penalty for
 keeping public
 lodging house
 without a
 license.
 1894, 414, § 7.
 1904, 242,
 §§ 7, 8.

1 SECTION 40. Any keeper of a public lodging house who violates any
 2 provision of sections thirty-five to thirty-eight, inclusive, shall be punished
 3 by a fine of one hundred dollars.

Penalty.
 1894, 414, § 7.
 1904, 242,
 §§ 7, 8.

INTELLIGENCE OFFICES.

1 SECTION 41. Whoever, without a license therefor, establishes or
 2 keeps an intelligence office for the purpose of obtaining or giving infor-
 3 mation concerning places of employment for domestics, servants or
 4 other laborers, or for procuring or giving information concerning such
 5 persons for or to employers, or for procuring or giving information con-
 6 cerning employment in business, shall be punished by a fine of ten
 7 dollars for each day such office is so kept.

Penalty for
 keeping
 unlicensed
 intelligence
 office.
 1848, 270, § 1.
 G. S. 88, § 23.
 1872, 237.
 P. S. 102, § 26.
 R. L. 102, § 23.
 1930, 117.

1 SECTION 42. The licensing board in Boston, the license commission
 2 in Lowell, the aldermen in other cities and the selectmen in towns, may,
 3 for the purposes mentioned in the preceding section, grant licenses to
 4 suitable persons, subject to sections two hundred and two to two hun-
 5 dred and five, inclusive, and may revoke them at pleasure.

Licenses.
 1848, 270, § 2.
 G. S. 88, § 24.
 1876, 147,
 §§ 1, 2.
 1880, 84, § 1.
 P. S. 102, § 27.
 R. L. 102, § 24.

1902, 187, § 5.

1906, 291, § 4.

1911, 645.

Keeper not to receive money unless employment is furnished.
1894, 180, ^{version} 1.
R. L. 102, 25.

SECTION 43. The keeper of an intelligence office shall not receive or accept any money from a person seeking employment through the agency of such office, unless employment of the kind demanded is furnished.

247 Mass. 589.

Money to be refunded in certain cases.
1894, 180, ^{version} 2.
R. L. 102, 26.
247 Mass. 589.

SECTION 44. If a person who receives employment through the agency of an intelligence office is discharged by his employer within ten days after the time of entering upon such employment, and such discharge is not caused by his inability, incompetence, refusal to perform the work required or other fault, the keeper of such intelligence office shall on demand refund to him five sixths of the amount paid to such keeper by the employer on account of such employment.

Statutes to be printed on licenses.
Posting.
1894, 180, ^{version} 3.
R. L. 102, 27.

SECTION 45. City and town officers who are charged with the duty of granting licenses to keepers of intelligence offices shall cause sections forty-three to forty-six, inclusive, to be printed on every such license. They shall also cause to be prepared and shall furnish to each keeper of a licensed intelligence office copies of said sections, printed upon cardboard in type of a size not smaller than pica, and each licensee shall conspicuously post three of said printed copies in each room occupied by him for the purpose of such intelligence office.

Penalty.
1894, 180, ^{version} 4.
R. L. 102, 28.
1920, 216.
189 Mass. 70.

SECTION 46. If a keeper of an intelligence office violates any provision of the three preceding sections, his license may be suspended or revoked by the licensing authorities mentioned in section forty-two and he shall be punished by a fine of not less than twenty-five nor more than fifty dollars.

MISCELLANEOUS PROVISIONS.

Licenses for coffee houses, etc. Fee, term, etc.
Penalty.
1917, 23,
§§ 1, 2.

SECTION 47. No coffee house, so called, or tea house or place of resort for refreshment where the principal business is or purports to be the sale of coffee or tea as a beverage shall be maintained in any town which accepts this section, or has accepted corresponding provisions of earlier laws, by a vote of a city council or by vote of a town at a town meeting, until a license therefor has been granted by the licensing authorities. The fee for the license shall be five dollars or such other sum as shall be fixed from time to time by the city council or selectmen. Licenses issued hereunder shall expire on May first following the date of issue, and may be revoked at any time by the licensing authorities. Whoever violates this section shall be punished by a fine of not more than one hundred dollars.

Penalty for receiving gratuity given to employee.
1918, 119, § 1.

SECTION 48. Whoever directly or indirectly accepts or receives any gratuity given to his employee for the checking of clothing shall be punished by a fine of not less than fifty dollars.

Licenses for lunch carts.
1908, 360, § 1.
197 Mass. 199.

SECTION 49. The street commissioners and the police commissioner of Boston, the aldermen of any other city, or the selectmen of any town may, if in their opinion public convenience so requires, license any reputable person, upon the payment of an annual license fee of not less than fifty dollars, to maintain a vehicle for the sale of food in such part of any public way and during such hours as they may designate, provided that

7 public travel is not incommoded thereby. Any such license may be
8 revoked by them at any time.

1 SECTION 50. No license as aforesaid shall be granted to use any part
2 of a highway the fee in which is not owned by the town unless the owners
3 of the land abutting on that part of the way consent in writing to the
4 granting of the license. Limitation on
use of way.
1908, 360, § 2.

1 SECTION 50A. [INSERTED, 1929, 187; REPEALED, 1931, 173.]

1 SECTION 51. No person shall practice manicuring or massage, or
2 conduct an establishment for the giving of vapor baths for hire or reward,
3 or advertise or hold himself out as being engaged in the business of
4 manicuring, massage or the giving of said baths without receiving a
5 license therefor from the board of health of the town where the said
6 occupation is to be carried on. The board of health may grant the license
7 upon such terms and conditions, and may make such rules and regula-
8 tions in regard to the carrying on of the occupation so licensed, as it
9 deems proper, and may revoke any license granted by it for such cause
10 as it deems sufficient, and without a hearing; provided, that a person
11 licensed to massage or to conduct an establishment for the giving of
12 vapor baths in any town may, at the request of a physician, attend
13 patients in any other town in the commonwealth without taking out
14 an additional license. Manicuring,
massage or
vapor baths
regulated
1911, 443, § 1.
1912, 155, § 1.

1 SECTION 52. Members of the police department of any town may
2 enter and inspect any premises in that town used for manicuring or
3 massage or the giving of vapor baths. Police may
enter premises.
1911, 443, § 2.

1 SECTION 53. Whoever violates any provision of section fifty-one, or
2 any rule or regulation made under authority thereof, or prevents or
3 hinders any member of a police force from exercising the authority con-
4 ferred upon him by section fifty-two, shall be punished by a fine of not
5 more than one hundred dollars or by imprisonment for not more than six
6 months, or both. Penalty.
1911, 443, § 3.

1 SECTION 54. Cities and towns by ordinance or by-law may provide
2 for the licensing, by the police commissioner in Boston, by the license
3 commission in Lowell, by the aldermen in other cities and by the select-
4 men in towns, of suitable persons to be collectors of, dealers in or keepers
5 of shops for the purchase, sale or barter of junk, old metals or second
6 hand articles, may make rules and regulations relative to their business,
7 and may provide for the supervision thereof. Said licensing board or
8 officer may, except as otherwise provided in such ordinance or by-law,
9 make additional rules, regulations and restrictions which shall be ex-
10 pressed in all licenses. Said licenses may be revoked at pleasure, and
11 shall be subject to sections two hundred and two to two hundred and
12 five, inclusive, except that societies, associations or corporations organ-
13 ized solely for religious or charitable purposes and their agents shall not
14 be required to pay a fee for such licenses. Licenses of
junk dealers,
etc.
1839, 53,
§§ 1, 2, 4,
G. S. 88,
§§ 25, 26,
1862, 205, § 2.
1875, 147,
§§ 1, 2.
1880, 84, § 1.
P. S. 102,
§§ 28, 30,
R. L. 102,
§§ 29, 31,
1902, 187,
§§ 1, 5,
1910, 554, § 1.
1911, 645.
1915, 144, § 1.
1917, 130.
1918, 291, § 18.
183 Mass. 196.

189 Mass. 70.

220 Mass. 552.

256 Mass. 491.

4 Op. A. G. 633.

1 SECTION 55. Whoever acts as a collector of, dealer in or keeper of a
2 shop for the purchase, sale or barter of junk, old metals or second hand Penalty
1839, 53, § 3.
G. S. 88, § 27.

1862, 205, § 3. articles without a license, or in any other place or manner than that 3
 P. S. 102, § 31. designated in his license or after notice to him that his license has been 4
 R. L. 102, § 32. revoked, or violates any such rule, regulation or restriction, shall forfeit 5
 1902, 187, § 3. twenty dollars. 6
 1910, 554, § 2.
 1918, 291, § 20.
 256 Mass. 491.

Junk collector SECTION 56. A junk collector shall be deemed to be any person who 1
 defined by going from place to place collects by purchase or otherwise junk, 2
 1862, 205, § 1. old metals or second hand articles, whether or not by previous contract 3
 P. S. 102, § 29. or arrangement. 4
 1900, 416, § 3.
 R. L. 102, § 30.
 1902, 187, § 2.

1910, 193. 1918, 291, § 19. 183 Mass. 196. 220 Mass. 552.

SALE OF SECOND HAND MOTOR VEHICLES.

License, when SECTION 57. No person, except one whose principal business is the 1
 required manufacture and sale of new motor vehicles but who incidentally ac- 2
 1919, 259, quires and sells second hand vehicles, or a person whose principal business 3
 §§ 1, 14. is financing the purchase of or insuring motor vehicles but who inci- 4
 1929, 238, § 2. dentally acquires and sells second hand vehicles, shall engage in the 5
 business of buying, selling, exchanging or assembling second hand motor 6
 vehicles or parts thereof without securing a license as provided in section 7
 fifty-nine. 8

Classes of LICENSES. SECTION 58. Licenses granted under the following section shall be 1
 licenses. classified as follows: 2
 1919, 259, § 2. 3
 1923, 30. 4

Class 1. Any person who is a recognized agent of a motor vehicle 3
 manufacturer or a seller of motor vehicles made by such manufacturer 4
 whose authority to sell the same is created by a written contract with 5
 such manufacturer or with some person authorized in writing by such 6
 manufacturer to enter into such contract, and whose principal business 7
 is the sale of new motor vehicles, the sale of second hand motor vehicles 8
 being incidental thereto, may be granted an agent's or a seller's license. 9

Class 2. Any person whose principal business is the buying and selling 10
 of second hand motor vehicles may be granted a used car dealer's license. 11

Class 3. Any person whose principal business is the buying of second 12
 hand motor vehicles for the purpose of remodeling, taking apart or re- 13
 building the same, or the buying or selling of parts of second hand motor 14
 vehicles or tires, or the assembling of second hand motor vehicle parts 15
 may be granted a motor vehicle junk license. 16

Licenses. SECTION 59. The police commissioner in Boston and the licensing 1
 Term, authorities in other cities and towns may grant licenses under this 2
 fees, etc. section which shall expire on January first following the date of issue 3
 1919, 259, § 3; unless sooner revoked. The fees for the licenses shall be fixed by the 4
 350, §§ 111, 115. licensing board or officer, but in no case shall exceed fifty dollars. The 5
 license shall specify all the premises to be occupied by the licensee for 6
 the purpose of carrying on the licensed business. Permits for a change 7
 of situation of the licensed premises or for additions thereto may be 8
 granted at any time by the licensing board or officer in writing, a copy 9
 of which shall be attached to the license. All licenses granted under 10
 this section shall be revoked by the licensing board or officer if it appears, 11
 after hearing, that the licensee is not complying with sections fifty-seven 12
 to sixty-nine, inclusive, or the rules and regulations made thereunder; 13
 and no new license shall be granted to such person thereafter, nor to any 14
 person for use on the same premises, without the approval of the registrar 15

16 of motor vehicles, in sections fifty-nine to sixty-six, inclusive, called the
 17 registrar. The hearing may be dispensed with if the registrar notifies
 18 the licensing board or officer that a licensee is not so complying.

1 SECTION 60. The registrar may from time to time make rules and
 2 regulations consistent with sections fifty-seven to sixty-nine, inclusive,
 3 relative to the purchase, sale or exchange of second hand motor vehicles
 4 or parts thereof. Such rules and regulations shall be subject to approval,
 5 and shall take effect, in the manner provided by section six of chapter
 6 sixteen.

Rules relative
 to purchase,
 etc., of second
 hand motor
 vehicles.
 1919, 259,
 § 12, 350,
 §§ 111, 115.

1 SECTION 61. All second hand motor vehicles or parts thereof pur-
 2 chased or taken in exchange by any licensee under class two or three of
 3 section fifty-eight, or left on the premises of any such licensee for the pur-
 4 pose of sale, exchange or assembly, shall be retained on the premises for
 5 four days unless the licensee receives the notice provided for in section
 6 sixty-four.

Vehicles or
 parts to be
 kept for four
 days. Ex-
 ception.
 1919, 259, § 4.

1 SECTION 62. Every licensee shall keep a book, in such form as shall
 2 be approved by the registrar, in which, at the time of the purchase, sale,
 3 exchange, or receipt for the purpose of sale, of any second hand motor
 4 vehicle or parts thereof, shall be legibly written in the English language
 5 an account and description of such motor vehicle or parts, with the
 6 name and address of the seller, of the purchaser, and of the alleged owner
 7 or other person from whom such motor vehicle or parts were purchased
 8 or received or to whom they were delivered, as the case may be. Such
 9 description, in the case of motor vehicles, shall also include the engine
 10 number, if any, the maker's number, if any, chassis number, if any, and
 11 such other numbers or identification marks thereon as shall be required
 12 by the registrar, and shall also include a statement that a number has
 13 been obliterated, defaced or changed if such is the fact.

Record book
 Contents.
 1919, 259, § 8;
 350, §§ 111,
 115.

1 SECTION 63. Every licensee under classes two or three of section
 2 fifty-eight shall send daily by mail to the registrar a list, on blanks pre-
 3 scribed by him, of the second hand motor vehicles or parts thereof pur-
 4 chased or sold by him or stored for the purpose of sale during the preced-
 5 ing twenty-four hours. A copy of such list shall also be sent daily in
 6 Boston to the police commissioner and in other cities and towns to the
 7 local chief of police. Every licensee under class one shall send the said
 8 list weekly, covering a period of seven days.

Daily or
 weekly reports
 by licensees
 1919, 259, § 9;
 350, §§ 111,
 115.

1 SECTION 64. The police commissioner of Boston, the chief of police
 2 of any other city, the selectmen of a town, or any officer authorized
 3 by them, and any agent or inspector of the registrar may, by written
 4 notice, release any person licensed under section fifty-nine, or any per-
 5 son described in the following section, from retaining any second hand
 6 vehicle or part thereof for the period prescribed in section sixty-one or
 7 sixty-five. Upon receipt of such notice such licensee or person shall be
 8 deemed to have complied with said sections.

Police
 authorities
 may waive the
 four days' re-
 quirement.
 1919, 259, § 10,
 350, §§ 111,
 115.

1 SECTION 65. Any person not licensed under section fifty-nine, selling
 2 or offering to sell any motor vehicle, except to a licensee under class
 3 one of section fifty-eight or a person exempted by section fifty-seven, shall,

Notice of pro-
 posed sale re-
 quired by an
 unlicensed
 person.

1919, 259, § 11; at least four days before such sale, notify in writing the registrar and the 4
 350, §§ 111, chief of police or selectmen in the city or town where the sale is to be 5
 115. made, or, if in Boston, the police commissioner, unless he has secured a 6
 release as provided in the preceding section. Such notice shall contain 7
 all the information required by law to be set forth in an application for 8
 the registration of motor vehicles in the commonwealth, with the names 9
 and addresses of the vendor and vendee. 10

Certain
 authorities
 may enter
 licensed
 premises.
 1919, 259, § 5;
 350, §§ 111,
 115.
 1923, 218.

SECTION 66. The commissioner of public safety, the police com- 1
 missioner in Boston, the chief of police of any other city, the selectmen 2
 of a town or any police officer authorized by any of said officials, or an 3
 agent or inspector of the registrar may at any time enter upon any 4
 premises used by any person licensed under section fifty-nine for the 5
 purpose of carrying on his licensed business, ascertain how he conducts 6
 the same, and examine all second hand motor vehicles or parts thereof 7
 kept or stored in or upon the premises, and all books, papers and in- 8
 ventories relating thereto. 9

Penalty for
 refusal to
 allow entry,
 etc.
 1919, 259, § 6.

SECTION 67. A licensee under section fifty-nine, or a clerk, agent or 1
 other person in charge of the licensed premises, who refuses to admit 2
 thereto an officer authorized to enter the same, or who fails to exhibit to 3
 him on demand all such motor vehicles, parts thereof, and books, papers 4
 and inventories relating thereto, and any person who wilfully hinders, 5
 obstructs or prevents such officer from entering the premises or from 6
 making the examination authorized in the preceding section, shall be 7
 punished by a fine of not more than two hundred dollars or by imprison- 8
 ment for not more than one year, or both. 9

Penalty for
 doing business
 without
 license.
 1919, 259, § 7.

SECTION 68. Whoever, not being licensed, carries on the business 1
 for which a license is required by section fifty-seven, or is concerned 2
 therein, or, being licensed, carries on such business or is concerned therein 3
 in any other place or manner than that designated in his license, or after 4
 notice to him that his license has been revoked or suspended, shall be 5
 punished by a fine of not more than one hundred dollars. 6

Penalties for
 breach of
 rules.
 1919, 259, § 13;
 350, §§ 111,
 115.
 1931, 426,
 § 245.

SECTION 69. Whoever violates any provision of sections fifty-seven to 1
 sixty-eight, inclusive, or any rule or regulation made by the registrar 2
 under section sixty, unless a penalty other than the revocation of a 3
 license is prescribed therefor elsewhere in said sections, shall be punished 4
 by a fine of not more than five hundred dollars or by imprisonment for 5
 not more than one year, or both. 6

PAWNBROKERS.

Licenses.
 1855, 121, § 1.
 G. S. 88,
 §§ 28, 29.
 1876, 147,
 §§ 1, 2.
 1880, 84, § 1.
 P. S. 102, § 32.
 1885, 323, § 2.
 R. L. 102, § 33.
 1902, 187, § 5.
 1906, 291, § 10.
 1909, 221

SECTION 70. The police commissioner of Boston, the license com- 1
 mission of Lowell, the aldermen of any other city, or the selectmen of 2
 any town, if ordinances or by-laws therefor have been adopted in such 3
 city or town, may license suitable persons to carry on the business of 4
 pawnbrokers in such city or town, subject to sections two hundred and 5
 two to two hundred and five, inclusive, and may revoke such licenses at 6
 pleasure. 7

1 SECTION 71. Articles deposited in pawn with a licensed pawnbroker
 2 shall, unless redeemed, be retained by him on the premises occupied
 3 by him for his business for at least four months after the date of deposit,
 4 if not of a perishable nature; and, if perishable, for at least one month
 5 after said date. After such date, he may sell the same by public auction,
 6 apply the proceeds thereof in satisfaction of the debt or demand and the
 7 expense of the notice and sale, and pay any surplus to the person enti-
 8 tled thereto on demand. No article taken in pawn by such pawnbroker
 9 exceeding twenty-five dollars in value shall be disposed of otherwise
 10 than as above provided, any agreement or contract between the parties
 11 thereto to the contrary notwithstanding. Articles of personal apparel
 12 shall not be deemed to be of a perishable nature within the meaning of
 13 this section.

Pawnbrokers
to retain
articles four
months, etc.
Exception.
1879, 102, § 1.
P. S. 102, § 33.
1884, 324.
R. L. 102, § 34.
197 Mass. 107.

1 SECTION 72. The authorities which issue such licenses may fix the
 2 rate of interest which such pawnbrokers may receive on loans, and may
 3 fix different rates which may be received for different amounts of money
 4 lent; and no licensed pawnbroker shall charge or receive a greater rate
 5 of interest than that so fixed. Any such pawnbroker who violates any
 6 provision of this or the preceding section shall be punished by a fine of
 7 not more than fifty dollars.

Rate of
interest may
be limited
Penalty
1879, 102, § 2.
P. S. 102, § 34.
R. L. 102, § 35.
247 Mass. 589.
4 Op. A. G. 562.

1 SECTION 73. The chief of police of a city, the selectmen of a town,
 2 any officer authorized by either of them, or a state police officer may
 3 at any time enter upon any premises used by a licensed pawnbroker for
 4 the purposes of his business, ascertain how he conducts his business,
 5 and examine all articles taken in pawn or kept or stored in or upon said
 6 premises and all books and inventories relating thereto. Every such
 7 pawnbroker, his clerk, agent, servant or other person in charge of the
 8 premises shall exhibit to such officer on demand any or all of such articles,
 9 books and inventories.

Officers may
enter pawn-
broker's shop,
etc.
1877, 185, § 1.
P. S. 102, § 35.
1888, 243
R. L. 102, § 36.

1 SECTION 74. A licensed pawnbroker, clerk, agent or other person in
 2 charge of such premises who refuses to admit thereto an officer authorized
 3 to enter the same, or who fails to exhibit to him on demand all such
 4 articles, books and inventories, and any person who wilfully hinders,
 5 obstructs or prevents such officer from entering the premises or from
 6 making the examination authorized in the preceding section, shall be
 7 punished by a fine of not more than two hundred dollars or by imprison-
 8 ment for not more than one year, or both.

Penalty for
refusing to
admit officer.
1877, 185, § 2.
P. S. 102, § 36.
R. L. 102, § 37.

1 SECTION 75. Whoever, not being licensed, carries on such business
 2 or is concerned therein within such town, or, being licensed, carries on
 3 such business or is concerned therein in any other place or manner than
 4 that designated in his license or after notice to him that his license has
 5 been revoked shall be punished by a fine of not more than fifty dollars.

Penalty for
acting without
license.
1855, 421.
§§ 3, 4
G. S. 88, § 39.
P. S. 102, § 37.
R. L. 102, § 38.
197 Mass. 107.

1 SECTION 76. No person shall, in any city or in any town of ten
 2 thousand or more inhabitants, engage in or carry on the business of
 3 loaning money upon mortgages, deposits or pledges of wearing apparel,
 4 jewelry, ornaments, household goods or other personal property, or of
 5 purchasing such property on condition of selling it back again at a stip-
 6 ulated price, unless he is licensed as a pawnbroker; but this and the six

Loans on
personal
property, when
regulated
1895, 497, § 1.
R. L. 102, § 39.
176 Mass. 290.
206 Mass. 430.
[Penalty, § 82]

following sections shall apply only if such property is deposited with the lender, and shall not apply to loans made upon stock, bonds, notes or other written evidences of ownership of property or of indebtedness to the holder or owner of any such securities. 7
8
9
10

Fee for license. SECTION 77. The fee for a license as a pawnbroker or renewal thereof 1
Bond shall be fifty dollars, but if a license is issued on or after November first 2
1895, 497, § 2 R L 102, § 40 in any year the fee shall be twenty-five dollars. The licensee shall, at 3
1905, 415. [Penalty, § 82] the time of receiving such license, file with the authorities who issue the 4
license a bond to such city or town, in the sum of three hundred dollars, 5
with two sureties approved by such authorities, and conditioned for the 6
faithful performance of the duties and obligations pertaining to the 7
business so licensed. 8

Regulations. SECTION 78. The authorities who grant licenses to pawnbrokers 1
1895, 497, § 3. shall establish regulations, to the satisfaction of the commissioner of 2
R L 102, § 41. banks, relative to the business carried on and the rate of interest to be 3
1911, 727, § 21 charged by them, and a pawnbroker shall not charge or receive upon any 4
4 Op. A G. 562. [Penalty, § 82.] loan a greater rate of interest than that fixed by the licensing authorities. 5

Pawnbrokers to keep record of pledges, etc. SECTION 79. Every pawnbroker shall keep a book in which, at the 1
1895, 497, § 4. time of making a loan, shall be legibly written in the English language 2
R L 102, § 42. an account and description, including all distinguishing marks and 3
1907, 211, § 1. numbers, of the articles pawned, the amount of money loaned thereon, 4
197 Mass 218. [Penalty, § 82.] the time of pawning them, the rate of interest to be paid on such loan, 5
and the name and residence of the person pawning such articles, and 6
shall furnish a correct record of such transactions, containing all such 7
information, once a week, or oftener if required, to the licensing authori- 8
ties or to any person designated by them. 9

Memorandum to pledgor SECTION 80. Every such pawnbroker shall, at the time of making 1
1895, 497, § 5. such loan, deliver to the person who pawns any article a memorandum 2
R L 102, § 43. or note signed by him and containing the substance of the entry required 3
197 Mass 218. [Penalty, § 82.] by the preceding section. No charge shall be made or required by any 4
pawnbroker for such entry, memorandum or note. 5

Books to be open to inspection SECTION 81. Said book shall at all reasonable times be open to the 1
1895, 497, § 6. inspection of the mayor, of the members of the board of police, of the 2
1898, 515. superintendent of police and deputy superintendents, of the chief in- 3
R L 102, § 44. spector of police, of any officer of the state police or of any person author- 4
[Penalty, § 82.] ized by them in writing for that purpose who exhibits such written 5
authority to such pawnbroker. 6

Penalty. SECTION 82. Whoever violates any provision of the six preceding 1
1895, 497, § 7. sections shall be punished by a fine of not less than fifty nor more than 2
R L 102, § 45. three hundred dollars or by imprisonment for not more than two months, 3
or both. 4

Record of amount loaned on tools, etc. SECTION 83. When a licensed pawnbroker buys or takes in pawn any 1
1907, 500, § 2. tool such as is used by contractors, builders or mechanics, he shall enter 2
[Penalty, § 84.] in a book kept for that purpose a description of the same and the amount 3
paid for or loaned upon the same, and shall cause the person offering such 4
tool for sale or for pawn to sign his name and address therein. The 5

6 pawnbroker shall also write therein the name and address of the said
7 person.

1 SECTION 84. Any person thus offering any tool for pawn or for sale
2 who signs a wrong name or address shall be punished by a fine of not
3 more than one hundred dollars or by imprisonment for not more than
4 six months. Any pawnbroker who knowingly writes the wrong name
5 or address of a person thus offering a tool for sale or for pawn, or know-
6 ingly permits the signing of such wrong name or address, shall be fined
7 one hundred dollars for the first offence, and upon a second offence his
8 license shall be revoked, and he shall not be permitted to conduct the
9 business of pawnbroker in the commonwealth for one year.

Penalty.
1907, 500, § 3.

1 SECTION 85. The provisions of sections eighty-six to one hundred and
2 twelve, inclusive, shall not apply to licensed pawnbrokers.

1890, 416, §§ 1, 6. 1892, 428, § 6. 1898, 577, § 11. R. L. 102, § 46.

Sections 85-112
not applicable
to licensed
pawnbrokers.

LOANS.

1 SECTION 86. Every person who is engaged in the business of making
2 loans on collateral security represented by household goods, wearing
3 apparel, watches, diamonds, jewelry or other articles of personal use or
4 ornament, or on notes secured by pledge or mortgage of any such prop-
5 erty, and with whom such property is deposited, or who purchases such
6 property on condition of selling it back again at a stipulated price, or
7 who pays or advances money thereon under such circumstances that
8 it may be inferred from the character of the transaction that such prop-
9 erty may afterward be redeemed, shall keep a book in which, for the
10 purpose of identification, shall be recorded at the time of each loan or
11 transaction a full and accurate description of the articles pledged or
12 deposited, with any designating numbers or marks and also the name
13 and residence of the borrower or depositor, and each transaction shall be
14 specifically numbered in said book. He shall also give to each borrower
15 or depositor a receipt, ticket or card, numbered to correspond with the
16 number of the transaction on said book, inscribed with the name of the
17 lender, the article pledged, the description of the property as above
18 required, the name of the borrower or depositor, the amount of the loan,
19 the date when made and the date when payable.

Loans on
collateral
security of
household
goods, etc.,
regulated.
1890, 416,
§§ 1, 2.
R. L. 102, § 47.
211 Mass. 72.

1 SECTION 87. Said book shall at all times be open to the inspection
2 of the police commissioner and of the superintendent and chief inspector
3 of police of Boston, of the commissioner of public safety, and of the
4 chief of police and selectmen of their respective cities or towns, or of an
5 officer specially authorized by any of them in writing for that purpose,
6 who exhibits such written authority; and the property described in said
7 book shall on demand be exhibited to said officers.

Record book
to be open to
inspection.
Property to
be exhibited.
1890, 416, § 3.
R. L. 102, § 48.
1906, 291, § 10.

1 SECTION 88. If it appears to any of the officers mentioned in the
2 preceding section that any articles which have been pledged under sec-
3 tion eighty-six have been stolen, he may give written notice to the
4 pledgee to hold such articles, and they shall thereafter be held by the
5 pledgee for sixty days unless said notice shall be recalled in writing by
6 the officer giving it, and be subject to inspection and examination at all
7 reasonable times; and they shall be produced, upon notice or summons

Stolen articles
pledged,
disposition.
1890, 416, § 5.
R. L. 102, § 49.

by the district attorney or other prosecuting officer, before any court or grand jury if the question of the larceny of the same is under investigation, and said pledgee shall not be liable in damages or otherwise on account of such detention.

Penalty for refusing inspection, etc. 1890, 416, § 4. R. L. 102, § 50.

SECTION 89. Every person engaged in the business mentioned in section eighty-six, his agent or other person in charge thereof, who fails or refuses to allow the inspection of the book, or who wilfully hinders, obstructs or prevents said officers from inspecting the book or examining the property as provided in section eighty-seven, or who wilfully violates any other provision of the three preceding sections, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both.

Loans of less than one thousand dollars. 1888, 388. 1892, 428, § 1. R. L. 102, § 51. 148 Mass. 231. 160 Mass. 237. 163 Mass. 322. 165 Mass. 258. 170 Mass. 517. 208 Mass. 84. 211 Mass. 72. 217 Mass. 144. 247 Mass. 589. 270 Mass. 565.

SECTION 90. A loan of less than one thousand dollars shall be discharged upon payment or tender by the debtor of the principal sum actually borrowed, with interest at the rate of eighteen per cent per annum from the time said money was borrowed, and a sum not exceeding five dollars for the actual expenses of making and securing the loan; but the lender shall be entitled to interest for six months at said rate if the debt is paid before the expiration of that period. All payments in excess of said rate shall be applied to the discharge of the principal, and the borrower shall be obliged to pay or tender only the balance of the principal and interest, at said rate, due after such application. This section shall not affect any loan made at a less rate than eighteen per cent per annum, nor shall it affect so much of section three of chapter one hundred and seven as provides that if there is no agreement for a different rate the interest of money shall be at the rate of six dollars upon each hundred dollars for a year.

Loans secured by pledge, etc. 1892, 428, § 2. R. L. 102, § 52. 170 Mass. 517. 208 Mass. 84. 248 Mass. 225.

SECTION 91. If a loan of less than one thousand dollars is secured by a mortgage or pledge of personal property, the mortgagee or pledgee shall discharge such mortgage and restore such pledge upon payment or tender to him of the amount legally due under the preceding section, and such payment or tender may be made by the debtor or by a person having an interest in the property mortgaged or pledged.

Certain small mortgages of household furniture regulated. 1892, 428, § 3. R. L. 102, § 53. 165 Mass. 304. 186 Mass. 140. 194 Mass. 585. 198 Mass. 315.

SECTION 92. A mortgage of household furniture on which interest is charged at the rate of eighteen per cent or more per annum, made to secure a loan of less than one thousand dollars, shall not be valid unless it states with substantial accuracy the amount of the loan, the time for which the loan is made, the rate of interest to be paid, and the actual expense of making and securing the loan, nor unless it contains a provision that the debtor shall be notified, in the manner provided in section five of chapter two hundred and fifty-five, of the time and place of any sale to be made in foreclosure proceedings at least seven days before such sale.

Notice to foreclose certain personal property mortgages. 1892, 428, § 4. R. L. 102, § 54. 231 Mass. 357.

SECTION 93. A notice of intention to foreclose a mortgage of personal property given to secure loans of less than one thousand dollars, under sections five and eight of chapter two hundred and fifty-five, shall not be valid unless it expressly states where such notice is to be recorded, and that the right of redemption will be foreclosed sixty days after such recording.

1 SECTION 94. Whoever refuses or neglects, after request, to return a
 2 note or other evidence of a loan which is discharged or entitled to be
 3 discharged under section ninety, or to discharge a mortgage or to restore
 4 the property held as a pledge as provided in section ninety-one, shall be
 5 liable in tort to the borrower for all damages resulting to him from any
 6 violation of this section or section ninety-one.

1925, 143.

248 Mass. 225

Liability for
 failure to
 return note,
 etc., or to
 discharge
 mortgage.
 1892, 428, § 5.
 R. L. 102, § 55.

1 SECTION 95. The five preceding sections shall not apply to any loan
 2 of three hundred dollars or less made by a person who holds a license
 3 under sections ninety-six to one hundred and thirteen, inclusive, nor
 4 affect section seventy-two of this chapter or section four of chapter
 5 two hundred and fifty-five.

Limitation of
 five preceding
 sections.
 1890, 416, § 6
 1892, 428, § 6
 1898, 577, § 11.
 R. L. 102, § 56.

1 SECTION 96. No person shall directly or indirectly engage in the
 2 business of making loans of three hundred dollars or less, if the amount
 3 to be paid on any such loan for interest and expenses exceeds in the
 4 aggregate an amount equivalent to twelve per cent per annum upon the
 5 sum loaned, without first obtaining from the commissioner of banks,
 6 in sections ninety-six to one hundred and fourteen, inclusive, called the
 7 commissioner, a license to carry on the said business in the town where
 8 the business is to be transacted. When an application for a loan or for
 9 an endorsement or guarantee or for the purchase of a note is made by
 10 any person within this commonwealth, and the money is advanced or the
 11 endorsement or guarantee is made or furnished by any person without
 12 this commonwealth, the transaction shall be deemed a loan made within
 13 this commonwealth, and such a loan and the parties making it shall be
 14 subject to sections ninety-six to one hundred and thirteen, inclusive. The
 15 buying or endorsing of notes or the furnishing of guarantee or security for
 16 compensation shall be considered to be engaging in the business of making
 17 small loans within said sections. In prosecutions under said sections,
 18 the amount to be paid upon any loan of three hundred dollars or less for
 19 interest or expenses shall include all sums paid or to be paid by or on be-
 20 half of the borrower for interest, brokerage, recording fees, commissions,
 21 services, extension of loan, forbearance to enforce payment, and all other
 22 sums charged against or paid or to be paid by the borrower for making or
 23 securing directly or indirectly the loan, and shall include all such sums
 24 when paid by or on behalf of or charged against the borrower for or on
 25 account of making or securing the loan, directly or indirectly, to or by
 26 any person, other than the lender, if such payment or charge was known
 27 to the lender at the time of making the loan, or might have been ascer-
 28 tained by reasonable inquiry. Any person directly or indirectly engag-
 29 ing in the business of negotiating, arranging, aiding or assisting the bor-
 30 rower or lender in procuring or making loans of three hundred dollars or
 31 less, for which the amount paid or to be paid for interest and expenses,
 32 including all amounts paid or to be paid to any other party therefor,
 33 exceeds in the aggregate an amount equivalent to twelve per cent per
 34 annum, whether such loans are actually made by such person or by an-
 35 other party, shall be deemed to be engaged in the business of making
 36 small loans, and shall be subject to sections ninety-six to one hundred
 37 and twelve, inclusive.

Business of
 making small
 loans defined
 and regulated
 1898, 577, § 1
 R. L. 102, § 57
 1908, 605, § 1
 1911, 727, § 3
 1912, 675, § 2
 1913, 347, § 1
 176 Mass. 19
 223 Mass. 311
 225 Mass. 448
 247 Mass. 589
 269 Mass. 232

[Penalty, §103]

1 SECTION 97. The commissioner shall from time to time establish
 2 regulations respecting the granting of licenses and the business carried

Regulations.
 Investigations.
 1898, 577, § 5.

R. L. 102, § 61. on by the licensees, and by loan companies and associations established 3
 1908, 605, § 2. by special charter. He shall either personally or by such assistants as 4
 1911, 727, § 4. he may designate, at least once a year and oftener if he deems it neces- 5
 1919, 350, § 49. sary, investigate the affairs of such licensees, companies and associations, 6
 [Penalty, § 103.] and for that purpose shall have free access to the vaults, books and 7
 papers thereof, and shall ascertain the condition of the business and 8
 whether it has been transacted in compliance with the law and the regu- 9
 lations made hereunder. The commissioner may cause an examination 10
 of the said books and business to be made by an accountant whom he 11
 may select, and the cost of any such examination shall be paid by the 12
 person whose books are so examined. 13

Returns to SECTION 98. All persons required by sections ninety-six to one hundred 1
 commissioner. and fourteen, inclusive, to be under the supervision of the com- 2
 1911, 727, missioner shall annually on November first make a return to him in 3
 §§ 1, 5. the form of a trial balance of their books at the close of business on 4
 1912, 675, § 1. September thirtieth preceding, and shall specify the different kinds of 5
 [Penalty, § 103.] liabilities and the different kinds of assets, with such other information 6
 as may be called for by the commissioner in accordance with a blank form 7
 to be furnished by him. The commissioner shall make an annual report 8
 and shall forward therewith a copy of such returns or so much thereof 9
 as he may deem necessary. 10

Examination SECTION 99. The commissioner may summon said licensees, com- 1
 of licensees. panies or associations, or any of their agents or employees, and such 2
 Penalty. other witnesses as he deems necessary, and examine them relative to 3
 1911, 727, § 6. their transactions and to the condition of their business, and for that 4
 purpose may administer oaths. Whoever without justifiable cause re- 5
 fuses to appear and testify when so required, or obstructs the commis- 6
 sioner or his representatives in the performance of their duties, shall be 7
 punished by a fine of not more than five hundred dollars or by impris- 8
 onment for not more than six months, or both. 9

Rate of SECTION 100. He shall establish the rate of interest to be collected, 1
 interest. and in fixing said rate shall have due regard to the amount of the loan, 2
 1898, 577, § 5. and the nature of the security, and the time for which the loan is made; 3
 R. L. 102, § 61. and the nature of the security, and the time for which the loan is made; 4
 1908, 605, § 2. but the total amount to be paid on any loan for interest and expenses 5
 1911, 727, § 7. shall not in the aggregate exceed an amount equivalent to three per cent 6
 1916, 224. a month on the amount actually received by the borrower, computed 7
 247 Mass. 589. on unpaid balances; and no licensee or company or association to which 8
 [Penalty, § 103.] sections ninety-six to one hundred and twelve, inclusive, apply shall 9
 charge or receive upon any loan a greater rate of interest than that fixed 10
 by the commissioner. No charge, bonus, fee, expense or demand of any 11
 nature whatsoever, except as above provided, shall be made upon loans 12
 to which said sections relate. 13

Term and SECTION 101. Licenses granted by the commissioner shall be for a 1
 form of license. period of one year from October first. Each license shall plainly state 2
 Posting. the name of the licensee, and the city or town, with the name of the street, 3
 1911, 727, § 8. and the number, if any, of the place where the business is to be carried 4
 on, and shall be posted in a conspicuous place in the office where the 5
 business is transacted. 6

1 SECTION 102. The fee for all licenses granted under section ninety-
 2 six shall be not less than one hundred dollars. If the licensee desires
 3 to carry on business at more than one place he shall procure a license
 4 for each place where the business is to be conducted.

Fees.
 1911, 727, § 9.

1 SECTION 103. Any person violating any provision of sections ninety-
 2 six to ninety-eight, inclusive, and one hundred to one hundred and nine,
 3 inclusive, or any regulation made thereunder, or any rule or order made
 4 by the commissioner, shall be subject to a fine of not more than five
 5 hundred dollars, and the license may be suspended or revoked by the
 6 commissioner. Any loan upon which a greater rate of interest or expense
 7 is charged or received than is allowed by sections ninety-six to one hun-
 8 dred and eleven, inclusive, and the regulations made thereunder, may be
 9 declared void by the supreme judicial or superior court in equity upon
 10 petition by the person to whom the loan was made.

Penalty for
 violation of
 §§ 96-98,
 100-109, etc.
 Certain loans
 voidable
 1898, 577, § 10.
 R. L. 102, § 66.
 1908, 605,
 §§ 4, 5.
 1911, 727, § 10
 1912, 675, § 3
 223 Mass. 311.
 269 Mass. 232

1 SECTION 104. A license under section ninety-six shall not be granted
 2 until the applicant has filed with the commissioner a statement on
 3 oath, which in the case of a corporation or association may be made by
 4 the president or agent thereof in charge of the business, stating the place
 5 in the town where the business is to be carried on, the name and the
 6 private and business address of the applicant, and in the case of a cor-
 7 poration the state under the laws of which it is organized, and the name
 8 and private address of the clerk or secretary and of the agent or other
 9 officer having charge of its proposed business, nor until the applicant,
 10 unless excused by the commissioner, files with him a power of attorney,
 11 appointing a person satisfactory to the commissioner to be his attorney,
 12 upon whom all lawful process may be served in any action or proceeding
 13 arising under sections ninety-six to one hundred and twelve, inclusive,
 14 with the same effect as if served upon the licensee. If any change occurs
 15 in the name or address of a licensee or of the clerk, secretary or agent
 16 aforesaid of any licensed corporation, or in the place where the licensed
 17 business is carried on, or in the membership of any partnership licensed
 18 under said sections, a true and full statement of such change, sworn to
 19 in the manner required by this section in the case of the original state-
 20 ment, shall forthwith be filed with the commissioner, who may after a
 21 hearing revoke the license.

Prerequisites
 to granting
 of license.
 Revocation.
 1898, 577, § 2
 R. L. 102, § 58.
 1911, 727, § 11.
 [Penalty, § 103.]

1 SECTION 105. No license shall be issued under section ninety-six until
 2 the licensee gives to the state treasurer a bond in the sum of five thousand
 3 dollars, executed by the licensee and by a surety company approved by
 4 the commissioner, conditioned upon the faithful performance by the
 5 licensee of the duties and obligations pertaining to the business so licensed
 6 and the prompt payment of any judgment recovered against him or for
 7 which he may be liable under sections ninety-six to one hundred and
 8 eleven, inclusive, but no suit at law or in equity shall be begun against
 9 the sureties on such a bond within thirty days after judgment against
 10 the licensee. If in any case at law or in equity against the licensee
 11 under sections ninety-six to one hundred and eleven, inclusive, it appears
 12 that the plaintiff is entitled to judgment or decree, except for proceed-
 13 ings in bankruptcy or insolvency, or the discharge therein of the licensee,
 14 the court may at any time, on motion, enter a special judgment or decree
 15 for the plaintiff for the amount of his debt, damages and costs, or for

Bond
 1898, 577, § 3.
 R. L. 102, § 59.
 1911, 727, § 12.
 [Penalty, § 103.]

such other relief as he may be entitled to; and the said bond shall be conditioned upon the payment of any such special judgment and upon compliance with any such decree. Whoever is aggrieved by a breach of the condition of such a bond may sue thereon at his own expense and in his own behalf, but in the name of the obligee; and if judgment shall be entered for the defendant for costs, execution therefor shall issue against the person for whose benefit the suit is brought, as if he were the plaintiff of record, but not against the obligee. In such a suit like proceedings shall be had as in a suit by a creditor on an administration bond. The commissioner may at any time require the licensee to file an additional bond of like nature and with like effect, and to give full information as to all judgments recovered or suits pending on his bond. Upon failure to file any bond so required, the license shall be revoked.

Recovery of
illegal interest.
1898, 577, § 6.
R. L. 102, § 62.
1911, 727, § 13.
1912, 675, § 4.
223 Mass. 311.

[Penalty, § 103.]

SECTION 106. If a greater rate of interest or amount for expenses than is allowed under sections ninety-six to one hundred and eleven, inclusive, has been paid on any loan to which said sections apply, the person who paid it may file a complaint with the commissioner, who may, after a hearing, order such excess amounts refunded, or may make such other order as he may deem necessary. The filing of the complaint and the decision of the commissioner shall not affect the right of the complainant under section one hundred and three, who may, in an action of contract or suit in equity, recover back the amount of the unlawful interest or expenses, with twice the legal costs, if such action or suit is brought within two years after the time of payment.

Mortgage, etc.,
as security
discharged
upon payment
of loan.
1898, 577, § 7.
R. L. 102, § 63.
1911, 727, § 14.

[Penalty, § 103.]

SECTION 107. If a loan to which sections ninety-six to one hundred and eleven, inclusive, apply is secured by a mortgage or pledge of personal property or by an assignment of wages, the mortgage shall be discharged, the pledge restored or the assignment released upon payment or tender of the amount legally due under said sections; and such payment or tender may be made by the debtor, by any person duly authorized by him, or by any person having an interest in the property mortgaged or pledged or in the wages assigned. Whoever refuses or neglects, upon request, to discharge a mortgage, release an assignment or restore a pledge to the party entitled to receive the same, after payment of the debt secured thereby or the tender of the amount due thereon as aforesaid, shall be liable in tort to the borrower for all damages thereby sustained by him.

Validity, fore-
closure, etc.,
of such mort-
gage, etc.
1898, 577, § 8.
R. L. 102, § 64.
1911, 727, § 15.

[Penalty, § 103.]

SECTION 108. A mortgage or pledge of personal property, or an assignment of or order for wages or salary to which sections ninety-six to one hundred and eleven, inclusive, apply, shall not be valid unless it states with substantial accuracy the actual amount of the loan, the time for which the loan is made, the rate of interest to be paid, and the expense of making and securing the loan, if any; nor unless it contains a provision that the debtor shall be notified, in the manner provided in section five of chapter two hundred and fifty-five, of the time and place of any sale to be made in foreclosure proceedings at least seven days before such sale. A notice of intention to foreclose under the provisions of section five or section eight of chapter two hundred and fifty-five shall not be valid in such a case unless it expressly states where such notice is to be recorded, and that the right of redemption will be foreclosed sixty

14 days after such recording. At any time after twenty days from the date
 15 of any such mortgage, if the same has not been recorded the holder thereof
 16 shall forthwith, on demand and payment or tender of one dollar, give to
 17 the mortgagor or any person interested in the mortgaged property a
 18 copy of the mortgage and of the note or other obligation secured thereby,
 19 which such holder shall certify to be a true copy thereof.

1 SECTION 109. If a payment is made on account of a loan to which
 2 sections ninety-six to one hundred and eleven, inclusive, apply, the
 3 person who receives the payment, or his principal, shall, when the pay-
 4 ment is taken, give to the person paying a receipt setting forth the
 5 amount then paid and the amount previously paid, and identifying the
 6 loan, note, mortgage or assignment to which it is to be applied.

Receipt for
 part payment
 1898, 577, § 9
 R. L. 102, § 65
 1911, 727, § 16
 [Penalty, § 103]

1 SECTION 110. Whoever, not being duly licensed as provided in sec-
 2 tion ninety-six, on his own account or on account of any other person
 3 not so licensed, engages in or carries on, directly or indirectly, either
 4 separately or in connection with or as a part of any other business, the
 5 business of making loans or buying notes or furnishing endorsements or
 6 guarantees, to which sections ninety-six to one hundred and eleven,
 7 inclusive, apply, shall be punished by a fine of not more than five hun-
 8 dred dollars or by imprisonment for not more than two months, or both.
 9 Any loan made or note purchased or endorsement or guarantee furnished
 10 by an unlicensed person in violation of said sections shall be void. In
 11 prosecutions under said sections the fact that the defendant has made or
 12 assisted in the making of two or more loans of three hundred dollars or
 13 less, upon which there has directly or indirectly been paid or charged,
 14 for interest, brokerage, recording fees, commissions, services, extension
 15 of loan, forbearance to enforce payment or other expenses, a sum which
 16 exceeds in the aggregate an amount equivalent to twelve per cent per
 17 annum upon the amount actually received by the borrower, whether
 18 such sum has been paid to or charged by the defendant or paid to or
 19 charged by any other person, shall be prima facie evidence that the
 20 defendant has engaged in and carried on the business of making loans
 21 to which sections ninety-six to one hundred and twelve, inclusive,
 22 apply.

Penalty for
 acting without
 a license.
 Evidence,
 effect.
 1898, 577, § 10
 R. L. 102, § 66
 1911, 727, § 17
 1912, 675, § 5
 1913, 347, § 2
 176 Mass. 19
 218 Mass. 390
 221 Mass. 218
 223 Mass. 311
 225 Mass. 418
 269 Mass. 232.

1 SECTION 111. Sections ninety-six to one hundred and eleven, inclu-
 2 sive, shall not affect so much of section three of chapter one hundred and
 3 seven as provides that, if there is no agreement for a different rate, the
 4 interest on money shall be at the rate of six dollars upon each one hun-
 5 dred dollars for a year.

Law as to rate
 of interest in
 absence of
 agreement not
 affected.
 1898, 577, § 11.
 R. L. 102, § 67.

1911, 727, § 18.

1 SECTION 112. The state police and the police of the cities or towns
 2 shall carry out the directions of the commissioner in enforcing sections
 3 ninety-six to one hundred and thirteen, inclusive, and any regulations
 4 made by him.

Duties of
 state police,
 etc.
 1911, 727, § 2.

1 SECTION 113. Returns made to the commissioner under section
 2 ninety-eight may be destroyed or disposed of by his order after the lapse
 3 of three years from the date of their receipt, and any proceeds received
 4 in the course of their disposal shall be paid to the commonwealth.

Old returns
 may be des-
 troyed
 1916, 274.

Certain
associations
need not pro-
cure licenses.
1899, 261
R. L. 102, 68.
1909, 278, 1.
1911, 727, 19
251 Mass. 569.

SECTION 114. Loan companies and loan associations established 1
by special charter, and fraternal mutual benefit societies the member- 2
ship of which is limited to the employees of any one person and which 3
make loans to its members only, shall be subject to the supervision of the 4
commissioner, but need not procure a license. 5

STEAM ENGINES AND FURNACES.

Licenses
1845, 197, §§ 1,
5, 10
1846, 96,
§§ 1, 3
G. S. 88, §§ 33,
34
P. S. 102, §§ 40,
41
R. L. 102, § 73.
1 Allen, 137
140 Mass. 106,
109, 594.
166 Mass. 391.
175 Mass. 357.

SECTION 115. A furnace for melting iron or making glass, or a sta- 1
tionary steam engine for use in a mill for planing or sawing boards or 2
turning wood or in which other fuel than coal is used to create steam, 3
shall not be erected or put up to be used in a town which accepts this 4
and the two following sections or has accepted corresponding provisions 5
of earlier laws, unless the aldermen or selectmen thereof have granted a 6
license therefor, prescribing the place where the building shall be erected 7
in which the steam engine or furnace is to be used and the materials and 8
construction thereof, and have made such regulations as to the height 9
of flues and protection against fire as they deem necessary for the safety 10
of the neighborhood. Such license may be granted on a written appli- 11
cation, and shall be recorded in the town records. The aldermen or select- 12
men shall assign a time and place for a hearing upon such application, and 13
cause at least fourteen days' public notice thereof to be given, at the ex- 14
pense of the applicant, in such manner as they may order. 15

Changes in
furnaces, etc.,
erected before
acceptance
of law may
be ordered,
when.
1845, 197, §§ 2,
10
G. S. 88, § 35
P. S. 102, § 42
R. L. 102, § 74.

SECTION 116. In a town which accepts this section or has accepted 1
corresponding provisions of earlier laws, the aldermen or the selectmen, 2
after due notice in writing to the owner of such steam engine or furnace, 3
except for making glass, erected or in use therein before the time of 4
such acceptance and a hearing, may adjudge it to be dangerous or a 5
nuisance to the neighborhood, and make and record an order prescribing 6
such rules, restrictions and alterations as to the building in which it is 7
constructed or used, the construction and height of its smoke flues, and 8
such other regulations as they deem necessary for the safety of the neigh- 9
borhood; and the town clerk shall deliver a copy of such order to a con- 10
stable, who shall serve on the owner an attested copy thereof, and make 11
return of his doings thereon to said clerk within three days after the 12
delivery thereof to him. 13

Appeal.
Temporary
injunction.
1845, 197,
§§ 6-9
G. S. 88, §§ 36-
39
1873, 261.
P. S. 102,
§§ 43-46
R. L. 102, § 75.

SECTION 117. An owner of a steam engine or furnace who is aggrieved 1
by such order may have the remedy prescribed by section two of chap- 2
ter one hundred and thirty-nine. The superior court, on granting the 3
application for a jury, may issue an injunction restraining the further 4
use of such engine or furnace until the final determination of the 5
application. 6

Stationary
engines
1862, 74,
§§ 1, 3
P. S. 102, § 47
R. L. 102, § 76
140 Mass. 106,
109.

SECTION 118. In a town which accepts this section or has accepted 1
corresponding provisions of earlier laws, a stationary engine, propelled 2
by steam or other motive power, shall not be erected or put up for use 3
within five hundred feet of a dwelling house or public building unless a 4
license therefor has been first granted and recorded in the manner pro- 5
vided in section one hundred and fifteen. 6

1 SECTION 119. An engine or furnace erected or used contrary to sec-
 2 tion one hundred and fifteen, one hundred and sixteen or one hundred
 3 and eighteen shall be deemed a common nuisance; and the aldermen
 4 or selectmen may remove the same in the same manner as boards of
 5 health may remove nuisances under sections one hundred and twenty-
 6 three to one hundred and twenty-five, inclusive, of chapter one hundred
 7 and eleven.

Furnaces,
 etc., illegally
 erected or
 used deemed
 nuisances.
 Removal.
 1845, 197, §§ 3,
 4, 10.
 1846, 96,
 §§ 2, 3.
 G. S. 88, § 40.

1862, 71, § 2.

P. S. 102, § 48

R. L. 102, § 77.

1 SECTION 120. [REPEALED, 1930, 399, § 3.]

SALE OF FIREARMS.

1 SECTION 121. In sections one hundred and twenty-two to one hun-
 2 dred and twenty-nine, inclusive, "firearms" includes a pistol, revolver
 3 or other weapon of any description loaded or unloaded, from which a
 4 shot or bullet can be discharged and of which the length of barrel, not
 5 including any revolving, detachable or magazine breech, does not exceed
 6 twelve inches, and a machine gun, irrespective of the length of the barrel.
 7 Any gun of small arm calibre designed for rapid fire and operated by a
 8 mechanism, or any gun which operates automatically after the first shot
 9 has been fired, either by gas action or recoil action, shall be deemed to
 10 be a machine gun for the purposes of said sections, and of sections one
 11 hundred and thirty-one and one hundred and thirty-one B. As used in
 12 this section and in sections one hundred and twenty-two to one hundred
 13 and thirty-one A, the words "purchase" and "sale" shall include ex-
 14 change, the word "purchaser" shall include exchanger, and the verbs
 15 "sell" and "purchase", in their different forms and tenses, shall include
 16 the verb exchange in its appropriate form and tense. Said sections one
 17 hundred and twenty-two to one hundred and twenty-nine, inclusive,
 18 shall not apply to antique firearms incapable of use as firearms nor to
 19 sales of firearms at wholesale.

Definitions.
 Exceptions.
 1911, 495, §§ 1,
 11
 1922, 485, § 1.
 1927, 326, § 1.

1 SECTION 122. The licensing authorities in any town may, in their
 2 discretion, grant licenses to persons to sell, rent or lease firearms and may
 3 fix a fee for such license. Every such license shall specify the street and
 4 number, if any, of the building where the business is to be carried on
 5 and the license shall not protect a licensee who carries on his business in
 6 any other place.

Licenses.
 1911, 495, § 3.
 1922, 485, § 2.

1 SECTION 122A. The licensing authorities shall record all licenses
 2 issued under the preceding section in books kept for the purpose, shall
 3 furnish the licensee with a sales record book to be kept by him as pro-
 4 vided in section one hundred and twenty-three and shall, upon the
 5 granting of any license, send notice thereof to the commissioner of public
 6 safety. The said books shall be supplied by the commissioner, upon
 7 application of the licensing authorities, at a price not in excess of the
 8 cost thereof.

Duties of
 licensing
 authorities.
 1922, 485, § 3.

1 SECTION 123. The license shall be expressed to be and shall be sub-
 2 ject to the following conditions: First, That the provisions in regard to
 3 the nature of the license and the building in which the business may be
 4 carried on under it shall be strictly adhered to. Second, That every

Conditions of
 licenses
 1911, 495, 4.
 1922, 485, 4.
 1925, 284, 1.
 1926, 395, 1.
 1927, 326, 2.

licensee shall before delivery of a firearm make or cause to be made a true entry in a sales record book to be furnished by the licensing authorities and to be kept for that purpose, specifying the description of the firearm, the make, number, whether single barrel, magazine, revolver, pin, rim or central fire, whether sold, rented or leased, the date and hour of such delivery, and shall, before delivery as aforesaid, require the purchaser, renter or lessee personally to write in said sales record book his full name, sex, residence and occupation. The said book shall be open at all times to the inspection of the licensing authorities and of the police. Third, That the license or a copy thereof, certified by the recording officer of the licensing authorities or by the clerk of the town by which it is issued, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearms shall be displayed in any outer window of said premises or in any other place where they can readily be seen from the outside. Fifth, That the licensee shall, once a week, send a copy of the record of sales, rentals and leases made by him for the preceding seven days to the licensing authorities and to the commissioner of public safety. Sixth, That every firearm shall be delivered securely wrapped and fastened and shall be unloaded when delivered. Seventh, That no delivery of a pistol or revolver shall be made on the day of application for the purchase, rental or lease thereof, except to a person having a license to carry the same issued under section one hundred and thirty-one. Eighth, That no pistol or revolver shall be sold, rented or leased to a person who has not a permit, then in force, to purchase, rent or lease the same issued under section one hundred and thirty-one A, and that no machine gun shall be sold, rented or leased to a person who has not a license to possess the same issued under section one hundred and thirty-one. Ninth, That upon a sale, rental or lease of a pistol or revolver, the licensee under section one hundred and twenty-two shall take up such permit and shall endorse upon it the time and place of said sale, rental or lease, and shall forthwith transmit the same to the commissioner of public safety, and that upon the sale, rental or lease of a machine gun shall endorse upon the license to possess the same the time and place of said sale, rental or lease, and shall forthwith transmit a notice thereof to said commissioner. Tenth, That this license shall be subject to forfeiture as provided in section one hundred and twenty-five for breach of any of its conditions, and that, if the licensee hereunder is convicted of a violation of any such condition, this license shall thereupon become void.

Term of
licenses.
1911, 495, § 5.

SECTION 124. Licenses shall expire on April thirtieth of each year; but they may be granted during April to take effect on May first next ensuing.

Suspension or
revocation of
licenses.
1911, 495, § 6.
1922, 485, § 5.

SECTION 125. The licensing authorities, after notice to the licensee and reasonable opportunity for him to be heard, may declare his license forfeited, or may suspend his license for such period of time as they may deem proper, upon satisfactory proof that he has violated or permitted a violation of any condition thereof or has violated any law. The pendency of proceedings before a court shall not suspend or interfere with the power to declare a forfeiture. If the license is declared forfeited, the licensee shall be disqualified to receive a license for one year after the expiration of the term of the license so forfeited.

1 SECTION 126. If any placard, sign or advertisement is exposed from,
 2 maintained in or permitted to remain upon any vehicle, shop, stand,
 3 tenement, or any place of common resort, purporting or designed to
 4 announce the keeping in or upon said vehicle or in or upon any of said
 5 premises of firearms, it shall be prima facie evidence that firearms are
 6 kept in or upon such vehicle or premises for sale.

Signs, etc.,
 evidence that
 firearms are
 kept for sale
 1911, 495, § 7.

1 SECTION 127. Licensing authorities may transfer licenses from one
 2 location to another within the town in which the licenses are in force,
 3 but such transfer shall be granted only to the original licensee and upon
 4 the same terms and conditions upon which the license was originally
 5 granted.

Transfer of
 licenses.
 1911, 495, § 8.
 1922, 485, § 6.

1 SECTION 128. Any licensee under a license described in section one
 2 hundred and twenty-three, and any employee or agent of such a licensee,
 3 who violates any provision of said section required to be expressed in
 4 the second, fourth, sixth, seventh, eighth or ninth condition of said
 5 license, and any person who, without being licensed as hereinbefore pro-
 6 vided, sells, rents or leases, or exposes for sale, rental or lease, or has in
 7 his possession with intent to sell, rent or lease, a firearm, shall be pun-
 8 ished by imprisonment for not less than six months nor more than two
 9 years.

Penalty for
 violation of
 license or
 selling, etc.,
 without
 license.
 1911, 495, § 9.
 1925, 284, § 2.
 1926, 395, § 2.

1 SECTION 129. Any person who in purchasing, renting or hiring a
 2 firearm gives a false or fictitious name or address shall be punished by a
 3 fine of not less than twenty-five nor more than one hundred dollars or
 4 by imprisonment for not more than one year, or both.

Penalty for
 giving false
 name, etc.
 1911, 495, § 10.
 1925, 284, § 3.

1 SECTION 129A. No unnaturalized foreign-born person shall, within
 2 the commonwealth, own or have in his possession or under his control
 3 a firearm as defined in section one hundred and twenty-one, unless such
 4 person has a permit under section one hundred and thirty-one to carry
 5 such firearm. Any violation of this section shall be punished by a fine
 6 of not less than one hundred dollars or by imprisonment for not more
 7 than three months or both.

Ownership,
 etc., by aliens
 regulated.
 Penalty.
 1922, 485, § 7.

1 SECTION 130. Whoever sells or furnishes to a minor under the age of
 2 fifteen or to an unnaturalized foreign-born person any firearm, air gun
 3 or other dangerous weapon or ammunition therefor, or whoever sells
 4 or furnishes to any minor fifteen years of age or over who does not possess
 5 and display a license then in force to carry a pistol or revolver issued to
 6 him under section one hundred and thirty-one ammunition for any fire-
 7 arm as defined in section one hundred and twenty-one, shall, except as
 8 provided by section one hundred and twenty-eight, be punished by a
 9 fine of not less than one hundred nor more than five hundred dollars;
 10 but instructors and teachers may furnish military weapons to pupils for
 11 instruction and drill.

Penalty for
 selling, etc.,
 firearms to
 minor or alien.
 1884, 76.
 R. L. 102, § 92.
 1909, 199.
 1919, 189.
 1922, 485, § 8.
 1927, 172
 263 Mass. 103.
 273 Mass. 172

1 SECTION 131. The justice of a court or a trial justice, the board of
 2 police or mayor of a city, the selectmen of a town, or the commissioner
 3 of public safety, or persons authorized by them, may, upon the applica-
 4 tion of any person residing or having a place of business within the juris-
 5 diction of the person or body issuing the license, except an unnaturalized
 6 person, a person who has been convicted of a felony or of the unlawful

License to
 carry pistol,
 etc. Penalty.
 1906, 172, § 1
 1911, 548, § 1
 1919, 207, § 1
 1922, 485, § 9
 1925, 284, § 4.
 1927, 326, § 3.

use or sale of drugs or a minor other than one fifteen years of age or over 7
 in the employ of a bank, public utility corporation or business of a sim- 8
 ilar nature whose application is endorsed by his employer, issue a license 9
 to such applicant to carry a pistol or revolver in the commonwealth or 10
 to possess therein a machine gun, if it appears that he has good reason 11
 to fear an injury to his person or property or for any other proper pur- 12
 pose, and that he is a suitable person to be so licensed. Such license shall 13
 be issued for a term not to exceed one year, but may be for a less period, 14
 and all such licenses shall be revocable at the will of the person or body 15
 issuing the same, who shall forthwith send written notice of such revo- 16
 cation to the commissioner of public safety. Said licenses shall be issued 17
 on forms furnished by said commissioner and a copy of every license 18
 so issued shall within one week after the granting thereof be sent to the 19
 said commissioner. Whoever issues a license in violation of this section 20
 shall be punished by imprisonment for not less than six months nor 21
 more than two years in a jail or house of correction. 22

Permits to purchase, etc., pistol, etc. Penalty. 1926, 395, § 3.

SECTION 131A. A licensing authority under the preceding section, 1
 upon the application of a person qualified to be granted a license there- 2
 under by such authority, may grant to such a person, other than a minor, 3
 a permit to purchase, rent or lease a pistol or revolver if it appears that 4
 such purchase, rental or lease is for a proper purpose, and may revoke 5
 such permit at will. Such permits shall be issued on forms furnished by 6
 the commissioner of public safety, shall be valid for not more than ten 7
 days after issue, and a copy of every such permit so issued shall within 8
 one week thereafter be sent to the said commissioner. Whoever issues 9
 a permit in violation of this section shall be punished by imprisonment 10
 for not less than six months nor more than two years in a jail or house 11
 of correction. 12

Penalty for loan of money on pistol, etc. 1926, 395, § 3. 1927, 326, § 4.

SECTION 131B. Whoever loans money secured by mortgage, deposit 1
 or pledge of a pistol, revolver or machine gun shall be punished by a 2
 fine of not more than five hundred dollars or by imprisonment for not 3
 more than one year, or by both. 4

SMOKE NUISANCE.

Smoke nuisance. 1901, 427, §§ 1, 5, 9, 10. R. L. 102, §§ 122, 127. 1908, 187.

[Penalty, § 136.]

SECTION 132. In a town, except those mentioned in chapter six hun- 1
 dred and fifty-one of the acts of nineteen hundred and ten, which accepts 2
 sections one hundred and thirty-two to one hundred and thirty-six, 3
 inclusive, or has accepted corresponding provisions of earlier laws by 4
 a vote of the city council or of the voters of a town at an annual town 5
 meeting, the emission, except by locomotive engines or by brick or 6
 pottery kilns, into the open air of dark smoke or dense gray smoke for 7
 more than five minutes continuously, or the emission, except as afore- 8
 said, of such smoke during ninety minutes of any continuous period of 9
 twelve hours, within a quarter of a mile of a dwelling, is hereby declared 10
 a nuisance unless such emission is under a permit which may be granted 11
 annually by the aldermen of cities or the selectmen of towns. 12

Permits. 1901, 427, §§ 5, 6, 8. R. L. 102, § 123.

SECTION 133. Such permit shall be signed by the mayor or by a 1
 majority of the board of selectmen and by the city or town clerk, and 2
 be recorded in the office of said clerk. It shall name the person to 3
 whom it is granted, and definitely and clearly describe the location and 4

5 limits of the premises to which it applies, and shall remain in force until
 6 the first day of May next after its date, unless sooner forfeited or rendered
 7 void. Notice of applications for such permits shall be published at the
 8 expense of the applicant in the manner prescribed by section fifteen of
 9 chapter one hundred and thirty-eight relative to applications for liquor
 10 licenses. The board granting the permits may establish fees for their
 11 issue, not exceeding one dollar each, to be paid to the treasurer of the
 12 municipality.

1 SECTION 134. If, before the expiration of the ten days following the
 2 publication of the notice, the owner of a dwelling within a quarter of a
 3 mile of the premises described therein gives written notice to the board
 4 having authority to grant the permit that he objects to the granting
 5 thereof, it shall not be granted, unless said board, after a public hearing
 6 of the persons interested, decides that no just ground for objection exists,
 7 or that the public good requires that it be granted; but the granting of
 8 a permit shall not prejudice any right of damages which a person may
 9 have against the person receiving the permit. If a permit is granted
 10 after objection is filed, and without a hearing as aforesaid, or without
 11 proper advertisement as herein provided, the owner of such dwelling
 12 may apply to the district court within whose jurisdiction the premises
 13 are situated for a hearing in the case; and said court, if it appears that
 14 said permit was granted without compliance with this and the preceding
 15 section, shall revoke the permit, and notice of such revocation shall be
 16 sent to the board granting the permit and to the person receiving it.

Objections
to permits
1901, 427, § 7.
R. L. 102,
§ 121

1 SECTION 135. The mayor or selectmen may, in January of each year,
 2 designate some proper persons who shall be charged with the enforce-
 3 ment of sections one hundred and thirty-two to one hundred and thirty-
 4 six, inclusive, during the year in which they are appointed; but such
 5 designation shall be subject to change at any time. An officer so desig-
 6 nated may apply to the supreme judicial or superior court for an injunc-
 7 tion to restrain the further operation of any furnace or steam boiler
 8 which is being operated in such a manner as to create a nuisance as above
 9 defined; and said court may, after hearing the parties, enjoin the further
 10 operation of such furnace or boiler.

Enforcement.
1901, 427,
§§ 3, 4.
R. L. 102,
§ 125.

1 SECTION 136. Whoever commits the nuisance defined in section one
 2 hundred and thirty-two, or suffers the same to be committed on any
 3 premises owned or occupied by him, or in any way participates in com-
 4 mitting the same, shall be punished by a fine of not more than one hun-
 5 dred dollars for each week during any part of which such nuisance exists.

Penalty.
1901, 427, § 2.
R. L. 102,
§ 126.

DOGS.

1 SECTION 137. The owner or keeper of a dog which is three months
 2 old or over shall annually, on or before March thirty-first, cause it to be
 3 registered, numbered, described and licensed for one year from April first
 4 following, if the dog is kept in Boston in the office of the police commis-
 5 sioner, or if kept in any other town in the office of the clerk thereof. The
 6 license shall be subject to the condition expressed therein that the dog
 7 which is the subject of the license shall be controlled and restrained from
 8 killing, chasing or harassing sheep, lambs, fowls or other domestic animals.

Licenses.
Collars.
1797, 53,
§§ 1, 2.
1798, 54, § 1.
1810, 109
1812, 146, § 1.
R. S. 58,
§§ 10, 12.
1850, 245.
1858, 139,
§§ 1-3, 8.
1859, 225,
§§ 1, 2.

G. S. 88, § 52. The owner or keeper of a licensed dog shall cause it to wear around its neck a collar distinctly marked with its owner's name and its registered number. 9
 1864, 299, § 1. 10
 1865, 197, § 1. 11
 1867, 130, § 1.
 1872, 330, § 1.

P. S. 102, § 80. 1914, 198, § 4. 123 Mass. 245.
 1885, 292. 1917, 271, § 2. 134 Mass. 537.
 R. L. 102, § 128. 12 Allen, 480. 169 Mass. 354.
 1909, 440, § 4. 100 Mass. 136. 1 Op. A. G. 290.

[Penalty, § 135.]

Same subject. SECTION 138. The owner or keeper of a dog may at any time have it licensed until April first following; and a person who becomes the owner or keeper of a dog after April first, which is not duly licensed, and the owner or keeper of a dog which becomes three months old after March thirty-first in any year shall, when it is three months old, cause it to be registered, numbered, described, licensed and collared as required by the preceding section. 1
 1859, 225, § 10. 2
 G. S. 88, § 55. 3
 1863, 113. 4
 1864, 299, § 2. 5
 1867, 130, § 2. 6
 1872, 330, § 1, 2. 7
 P. S. 102, § 81. 8
 1885, 292. 9
 R. L. 102, § 129. 10
 1909, 440, § 4. 11

1914, 198, § 4. 4 Allen, 584. 174 Mass. 74.
 [Penalty, § 141.]

Fees. SECTION 139. The fee for every license shall, except as provided in section one hundred and seventy-three, be two dollars for a male dog and five dollars for a female dog, unless a certificate of a registered veterinarian who performed the operation that said female dog has been spayed and has thereby been deprived of the power of propagation has been filed with the town clerk, in which case the fee shall be two dollars. A certified copy of such certificate on file in the office of any town clerk within the commonwealth may be accepted as evidence that the said operation has been performed. 1
 1797, 53, § 2. 2
 1824, 139, § 2. 3
 R. S. 58, § 10. 4
 1858, 139, § 3. 5
 1859, 225, § 1. 6
 G. S. 88, § 52. 7
 1867, 130, § 1. 8
 P. S. 102, § 82. 9
 1890, 72. 10
 R. L. 102, § 130. 11
 1908, 169. 12
 1910, 87. 13

Breeder's license. SECTION 140. The owner or keeper of dogs kept for breeding purposes may annually receive a license authorizing him to keep such dogs upon the premises described in the license. If the number of dogs so kept does not exceed five, the fee for such license shall be twenty-five dollars, and if the number of dogs exceeds five, the fee shall be fifty dollars, and no fee shall be required for the dogs of such owner or keeper which are under the age of six months. The three preceding sections shall not apply to licenses under this section. 1
 1887, 307. 2
 R. L. 192, § 131. 3
 4
 5
 6
 7
 8

Penalty for keeping unlicensed dog. SECTION 141. Whoever violates any provision of sections one hundred and thirty-seven, one hundred and thirty-eight or one hundred and forty shall forfeit not more than fifteen dollars, which shall be paid, if the dog was kept in any town in Suffolk county, to the treasurer of the town, or, if kept in any other county, to the treasurer thereof. 1
 1858, 139, § 1. 2
 1859, 225, § 9. 3
 G. S. 88, § 56. 4
 1864, 299, § 5. 5
 1867, 130, § 5. 6
 P. S. 102, § 87. 7

1901, 120. 15 Gray, 193. 107 Mass. 405.
 R. L. 102, § 137. 2 Allen, 507. 1 Op. A. G. 603.

Keeping of bloodhound, etc. SECTION 142. No person shall keep or have in his care or possession any bloodhound, excepting an English bloodhound of pure blood whose pedigree is recorded or would be entitled to record in the English bloodhound herd book, or any dog classed by dog fanciers or breeders as Cuban bloodhound or Siberian bloodhound, whether such dog is in whole or in part of such species, unless such dog is kept solely for exhibition. In such case he shall at all times be kept securely enclosed or chained, and shall not be allowed at large even though in charge of a keeper, unless properly and securely muzzled. 1
 1886, 340, § 1. 2
 R. L. 102, § 138. 3
 1904, 105, §§ 1, 2. 4
 5
 6
 7
 8
 9

1 SECTION 143. Whoever violates the preceding section shall forfeit
 2 fifty dollars, ten dollars of which shall be paid to the complainant, and
 3 forty dollars shall, if the dog was kept in any town in Suffolk county, be
 4 paid to the treasurer of the town, or, if kept in any other county, to the
 5 treasurer thereof.

Penalty
 1886, 340, § 2.
 R. L. 102,
 § 139.

1 SECTION 144. Within forty-eight hours after the conviction of any
 2 person for keeping a dog contrary to the provisions of section one hundred
 3 and forty-two, the mayor of a city or chairman of the selectmen of a town
 4 within which such dog is kept shall order the person so convicted to
 5 remove such dog from the city or town. Written notice of the order for
 6 such removal shall be served by any police officer or constable of the
 7 city or town; and if such dog is not removed within twenty-four hours
 8 after service of such notice, the mayor or chairman of the selectmen
 9 shall in writing order such dog to be killed by any police officer or con-
 10 stable of such city or town, who may, in the execution of such order,
 11 enter any premises within its limits.

Illegally kept
 dog to be re-
 moved or
 killed
 1886, 340, § 3.
 R. L. 102,
 § 140

1 SECTION 145. Every license issued to the owner of a dog shall have
 2 a description of the symptoms of hydrophobia printed thereon. Such
 3 description shall be supplied by the department of public health to the
 4 clerks of the several towns upon application therefor.

Description
 of hydro-
 phobia to be
 printed on
 each license.

1877, 167, § 4. P. S. 102, § 83. 1886, 101, § 4. R. L. 102, § 132.

1 SECTION 146. A license duly recorded shall be valid throughout the
 2 commonwealth, and may be transferred with the dog licensed thereunder;
 3 but after thirty days from such transfer it shall be again recorded, if the
 4 dog is kept in Boston, by the police commissioner, or, if kept in any other
 5 city or town, by the clerk thereof.

License valid
 throughout
 state, etc.
 1859, 225, § 11.
 G. S. 88, § 55.
 1864, 299, § 5.
 1867, 130, § 5.

P. S. 102, § 86.
 1884, 185. R. L. 102, § 136.
 1906, 291, § 10. 134 Mass. 537.

1 SECTION 147. The police commissioner of Boston and the clerks of
 2 other cities and towns shall issue said licenses, receive the money there-
 3 for, and pay it into the treasuries of their respective counties, except in
 4 the county of Suffolk, on or before June first and December first of each
 5 year, retaining, except in Boston, to their own use twenty cents for each
 6 license, and shall return therewith a sworn statement of the amount of
 7 money thus received and paid over by them. They shall also keep a
 8 record of all licenses issued by them, of the names of the keepers or
 9 owners of dogs licensed, and of the names, registered numbers and descrip-
 10 tions of all such dogs. If a city or town clerk neglects to pay over such
 11 money to the county treasurer as required by this section, the city or
 12 town may recover the amount thereof for the benefit of the county, with
 13 all damages sustained through such neglect, and interest, in an action
 14 on the official bond required of city clerks by the following section or of
 15 town clerks by section thirteen of chapter forty-one.

Issuing of
 licenses, dis-
 position of
 fees, etc.
 1797, 53, § 3.
 1824, 139, § 2.
 R. S. 58, § 11.
 1858, 139,
 §§ 1, 4
 1859, 225, § 1.
 G. S. 88, § 53.
 1864, 299, § 3.
 1865, 197, § 2.
 1867, 130, § 3.
 1871, 41.
 P. S. 102, § 84.
 1886, 259, § 2.
 1887, 135.
 1888, 320, § 2.
 R. L. 102,
 § 133
 1904, 353, § 3.
 1906, 291, § 10.
 141 Mass. 479.

1 SECTION 148. City clerks, except in Boston, shall give bond with
 2 sureties to their respective cities, which, within ten days after their
 3 election and qualification, shall be approved by the aldermen, condi-
 4 tioned faithfully to account for all fees received for dog licenses, and for
 5 sporting and trapping licenses and duplicates thereof, and for the pay-

Bond of city
 clerk.
 1888, 320,
 §§ 1, 3
 R. L. 102,
 § 134.
 1910, 319, § 1
 1918, 291, § 21
 1925, 295, § 15.

ment of all fees received for such dog licenses, less their fees, into their
 respective county treasuries, and of all fees received for such sporting
 and trapping licenses and duplicates thereof, less their fees, to the com-
 monwealth.

Accounts of
 county, etc.,
 clerks.
 1859, 225, § 1.
 G. S. 88, § 53.
 1864, 299, § 4.
 1867, 130, § 4.

SECTION 149. Each county, city and town treasurer, except in Suf-
 folk county, shall keep an accurate and separate account of all money
 received and expended by him under the provisions of this chapter
 relating to dogs.

P. S. 102, § 85.

R. L. 102, § 135.

Assessors to
 take list of
 dogs. Penalty.
 1858, 139, § 2.
 1859, 225, § 15.
 1864, 299, § 6.
 1867, 130, § 6.
 1871, 41.
 P. S. 102, § 89.
 R. L. 102,
 § 142.
 1914, 198, § 4.

SECTION 150. The assessors shall annually take a list of all dogs
 owned or kept in their respective cities and towns on April first, with
 the owners' or keepers' names, and return the same to the city or town
 clerk, or, in Boston, to the police commissioner, on or before July first.
 An owner or keeper of a dog who refuses to answer or answers falsely to
 the assessors relative to the ownership thereof shall be punished by a
 fine of not less than ten dollars, which, except in Suffolk county, shall
 be paid into the county treasury.

Dog officers.
 Killing un-
 licensed dogs.
 1797, 53, § 4.
 1798, 54, § 2.
 1812, 146, § 2.
 R. S. 58, § 12.
 1858, 139, § 1.
 1859, 225,
 §§ 4, 12.
 G. S. 88,
 §§ 58, 66.
 1864, 299, § 7.
 1867, 130, § 7.
 P. S. 102, § 90.
 R. L. 102,
 § 143.
 1907, 240, § 1.
 1908, 182.
 1910, 629.
 1911, 391.
 18 Pick. 262.
 1 Met. 555.
 15 Gray, 61.
 11 Allen, 151.
 100 Mass. 136.
 109 Mass. 273,
 275.
 133 Mass. 240.
 191 Mass. 56.
 210 Mass. 374.
 213 Mass. 222.
 226 Mass. 579.
 261 Mass. 138.
 1 Op. A. G. 603.

SECTION 151. The mayor of each city and the chairman of the select-
 men of each town shall annually, within ten days after July first, issue
 a warrant to one or more police officers or constables, who shall hold
 office for one year or until their successors are qualified, directing them
 forthwith to kill or cause to be killed all dogs within such city or town
 which are not licensed and collared as required by this chapter, and to
 enter complaint against the owners or keepers thereof; and any person
 may, and every police officer and constable shall, kill or cause to be killed
 all such dogs whenever or wherever found. Such officers, other than
 those employed under regular pay, shall receive from the treasurers of
 their respective cities and towns one dollar for each dog so destroyed;
 except that in cities of twenty-five thousand inhabitants or more they
 shall be paid the same wages per diem for the time actually employed
 which the regular police officers of such cities receive. Bills for such
 services shall be approved by the mayor of the city or chairman of the
 selectmen of the town in which said dogs are destroyed, and in cities and
 towns in the county of Suffolk shall be paid from money received under
 the provisions of this chapter relating to dogs. Cities and towns in other
 counties shall be reimbursed by the treasurers of their respective counties
 from the money received under such provisions.

Returns by
 dog officers.
 1867, 130, § 8.
 P. S. 102, § 91.
 R. L. 102,
 § 144.
 1907, 240, § 2.

SECTION 152. Each police officer or constable to whom such warrant
 is issued shall make returns, on or before October first following and at
 the expiration of his term of office, to the mayor or chairman of select-
 men issuing the same, and shall state in said returns the number of
 dogs killed, the names of the owners or keepers thereof and whether
 all unlicensed dogs in his town have been killed, and the names of
 persons against whom complaints have been made under the pro-
 visions of this chapter relating to dogs, and whether complaints have
 been entered against all the persons who have failed to comply there-
 with.

1 SECTION 153. Such warrant may be in the following form:

Warrant to dog officers. 1867, 130, § 16. P. S. 102, § 10s. R. L. 102, § 164.

COMMONWEALTH OF MASSACHUSETTS.

(Seal.) , ss.

To , constable of the city (or town) of

In the name of the Commonwealth of Massachusetts, you are hereby required to proceed forthwith to kill or cause to be killed all dogs within the said city (or town) not duly licensed and collared according to the provisions of chapter one hundred and forty of the General Laws, and you are further required to make and enter complaint against the owner or keeper of every such dog.

Hereof fail not, and make due return of this warrant with your doings therein, stating the number of dogs killed and the names of the owners or keepers thereof, and whether all unlicensed dogs in said city (or town) have been killed, and the names of persons against whom complaints have been made under the provisions of said chapter, and whether complaints have been made and entered against all the persons who have failed to comply with the provisions of said chapter, on or before the first day of October next.

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

Mayor of (or Chairman of the Selectmen of)

1 SECTION 154. The mayor of each city and the chairman of the select-
2 men of each town shall annually, within ten days after October first,
3 sign and transmit to the district attorney of his district a certificate,
4 on oath, stating that the warrant named in section one hundred and
5 fifty-one was issued and whether it has been duly executed and returned
6 according to this chapter. The district attorney shall prosecute city,
7 town or county officers who fail to comply therewith.

Mayor, etc., to certify to district attorneys as to warrants. 1864, 299, § 8. 1867, 130, § 9. P. S. 102, § 92. R. L. 102, § 145.

1 SECTION 155. The owner or keeper of a dog shall be liable in tort to a
2 person injured by it in double the amount of damages sustained by him.

Liability of owner for damage by dog.

- | | | |
|-------------------|---------------------|----------------|
| 1791, 38, § 4. | 3 Allen, 101, 191. | 170 Mass. 441. |
| 1797, 53, § 5. | 4 Allen, 431. | 172 Mass. 453. |
| 1798, 54, § 3. | 117 Mass. 109. | 177 Mass. 163. |
| 1812, 146, § 3. | 123 Mass. 580. | 184 Mass. 150. |
| R. S. 58, § 13. | 124 Mass. 57. | 202 Mass. 506. |
| G. S. 88, § 59. | 128 Mass. 218, 598. | 204 Mass. 195. |
| P. S. 102, § 93. | 131 Mass. 236. | 213 Mass. 28. |
| R. L. 102, § 146. | 148 Mass. 85. | 216 Mass. 556. |
| 20 Pick. 477. | 152 Mass. 7. | 221 Mass. 73. |
| 12 Met. 291. | 153 Mass. 347. | 229 Mass. 348. |
| 12 Cush. 278. | 154 Mass. 346. | 251 Mass. 569. |
| 11 Gray, 29. | 159 Mass. 497. | 260 Mass. 283. |
| 1 Allen, 191. | 161 Mass. 182, 184. | 266 Mass. 86. |

1 SECTION 156. Any person may kill a dog which suddenly assaults him
2 while he is peaceably walking or riding outside the enclosure of its owner
3 or keeper; and any person may kill a dog found out of the enclosure of
4 its owner or keeper and not under his immediate care worrying, wound-
5 ing or killing neat cattle, sheep or lambs.

Dog attacking person or certain animals may be killed, when. 1791, 38, § 2. R. S. 58, § 14.

- | | | |
|------------------|-------------------|----------------|
| G. S. 88, § 60. | R. L. 102, § 147. | 177 Mass. 200. |
| P. S. 102, § 94. | 141 Mass. 179. | |

1 SECTION 157. If a person who has been so assaulted, or who finds a
2 dog strolling outside of the enclosure of its owner or keeper and not
3 under his immediate care, within thirty days after such assault or find-
4 ing makes oath thereof before a district court or trial justice or before
5 the clerk of the town where the owner or keeper of the dog dwells, and
6 that he suspects the dog to be dangerous or mischievous, and gives
7 notice thereof to its owner or keeper by delivering to him a certificate of

Complaint as to dangerous dog. 1791, 38, § 2. R. S. 58, § 16. G. S. 88, § 61. P. S. 102, § 95. R. L. 102, § 148. 1924, 113.

such oath signed by such court, justice or clerk, the owner or keeper shall forthwith kill or confine such dog; and if he neglects so to do after twenty-four hours from the receipt of such notice he shall forfeit ten dollars.

Dog proved dangerous may be killed.
 1791, 38, § 3.
 R. S. 58, § 16.
 G. S. 88, § 62.
 1865, 197, § 4.
 1867, 130, § 14.
 P. S. 102, § 96.
 R. L. 102, § 149.

SECTION 158. If such dog is licensed the fine prescribed by the preceding section shall not be imposed unless the dog is proved to be mischievous or dangerous. Any person may kill a licensed dog which has been so proved to be mischievous or dangerous if it is again found strolling outside of the enclosure of its owner or keeper and not under his immediate care.

Treble damages if dog, after notice, causes injury, etc.
 1791, 38, § 4.
 R. S. 58, § 17.
 G. S. 88, § 63.
 P. S. 102, § 97.

SECTION 159. If a dog, after such notice to its owner or keeper, by such assault wounds any person, or worries, wounds or kills any neat cattle, sheep or lambs, or does any other mischief, the owner or keeper shall be liable in tort to the person injured thereby in treble the amount of damages sustained by him.

R. L. 102, § 150.

Protecting domestic animals from injury by dogs.
 1902, 226.
 1904, 127.

SECTION 160. The county commissioners of any county, or their agents thereto authorized in writing, may enter upon the premises of the owner of any dog known to them to have worried or killed sheep, lambs, fowls or other domestic animals, and then and there kill such dog, unless such owner whose premises are thus entered for the said purpose shall give a bond in the sum of two hundred dollars, with sufficient surties, approved by the county commissioners, conditioned that the dog shall refrain from killing or worrying sheep, lambs, fowls or other domestic animals for twelve months next ensuing. And if the owner of the dog declares his intention to give such a bond, the said county commissioners or their agents shall allow him reasonable time in which to procure and prepare the same and to present it to them, or to file it with the clerk of the town where the said owner resides.

Certain damages by dogs to be paid by the county. Appraisal, etc.
 1858, 139, § 4.
 1859, 225, § 6.
 G. S. 88, § 64.
 1864, 299, § 9.
 1867, 130, § 10.
 P. S. 102, §§ 98, 100.
 1886, 259.
 1889, 454, § 1.
 R. L. 102, §§ 151, 157.
 1903, 109, § 1.
 1904, 283, § 1.
 1911, 392.
 1920, 547.
 2 Op. A. G. 250.

SECTION 161. Whoever suffers loss by the worrying, maiming or killing of his live stock or poultry by dogs, outside the premises of the owners or keepers of such dogs, may, if the damage is done in a city, inform the officer of police of the city who shall be designated to receive such information by the authority appointing the police, and, if the damage is done in a town, may inform the chairman of the selectmen of the town, or, if he is absent or ill, any one of the selectmen, who shall proceed to the premises where the damage was done and determine whether the same was inflicted by dogs, and if so, appraise the amount thereof if it does not exceed twenty dollars. If in the opinion of said officer of police, chairman or selectman, the amount of said damage exceeds twenty dollars, the damage shall be appraised, on oath, by three persons, of whom one shall be such officer of police, chairman or selectman, one shall be appointed by the person alleged to be damaged, and the third shall be appointed by the other two. The said appraisers shall consider and include in such damages the labor and time necessarily expended in the finding and collecting of the live stock or poultry injured or separated and the value of those lost or otherwise damaged by dogs. The said officer of police, chairman or selectman shall return a certificate of the damages found, except in Suffolk county, to the treasurer of the county

21 where the damage was done, within ten days after such appraisal is made.
 22 The treasurer shall thereupon submit the same to the county commission-
 23 ers, who within thirty days shall examine all bills for damages, and may
 24 upon their own motion or upon request of an interested party shall sum-
 25 mon the appraisers and all parties interested and make such investiga-
 26 tion as they may think proper, and shall issue an order upon the treasurer
 27 of the county for such amounts, if any, as they decide to be just and shall
 28 notify all interested parties of their decision. The treasurer, except in
 29 Suffolk county, shall pay all orders drawn upon him in full, for the above
 30 purpose, and for the expenses of appraisal out of any money in the county
 31 treasury, and payments made therefor shall be charged to the dog fund.
 32 The appraisers shall receive from the county three dollars each for every
 33 such examination made by them, and also twenty cents a mile one way
 34 for their necessary travel.

1 SECTION 162. The aldermen or selectmen may offer a reward of not
 2 more than twenty-five dollars for the killing of any dog found to have
 3 worried, maimed or killed any sheep, lambs, fowls or other domestic
 4 animals, thereby causing damages for which their owner may become
 5 entitled to compensation under the preceding section, or for evidence
 6 which shall determine to the satisfaction of such aldermen or such select-
 7 men who is the owner or keeper of the dog by which such damage is done.
 8 The county commissioners, except in Suffolk county, shall pay the said
 9 reward from the dog fund, upon a certificate signed by the aldermen or
 10 selectmen.

Reward for
 killing dog
 found injuring
 domestic
 animals.
 1889, 454, § 2.
 R. L. 102,
 § 152.
 1905, 106.

1 SECTION 163. If the aldermen or selectmen determine, after notice
 2 to parties interested and a hearing, who is the owner or keeper of any
 3 dog which is found to have worried, maimed or killed any sheep, lambs,
 4 fowls or other domestic animals, thereby causing damages for which
 5 their owner may become entitled to compensation from the dog fund
 6 under section one hundred and sixty-one, they shall serve upon the owner
 7 or keeper of such dog a notice directing him within twenty-four hours to
 8 kill or confine the dog.

Notice to
 owner to kill
 such dog.
 1889, 454, § 3.
 R. L. 102,
 § 153.

1 SECTION 164. A person who owns or keeps a dog, and who has re-
 2 ceived such notice and does not within twenty-four hours kill such dog
 3 or thereafter keep it on his premises or under the immediate restraint
 4 and control of some person, shall be punished by a fine of not more than
 5 twenty-five dollars; and any person may kill such dog if it is found
 6 strolling outside of the enclosure of its owner or keeper and not under
 7 his immediate care.

Penalty for
 not killing
 or confining
 such dog.
 1889, 454, § 4.
 R. L. 102,
 § 154.

1 SECTION 165. The county commissioners, except in Suffolk county,
 2 shall appoint one and may appoint not more than four suitable persons,
 3 all residents of the county, any one of whom shall, at the request of said
 4 commissioners or of the chairman of the selectmen or officer of the
 5 police designated as provided in section one hundred and sixty-one,
 6 investigate any case of damages done by a dog of which the commis-
 7 sioners, chairman or officer shall have been informed as provided in said
 8 section; and if he believes that the evidence is sufficient to sustain an
 9 action against the owner or keeper of the dog as provided in said section
 10 and believes that such owner or keeper is able to satisfy any judgment
 11 recovered in such action, he shall, unless the owner or keeper before action

Appointment
 of persons to
 investigate
 damages by
 dogs.
 1889, 454, § 5.
 1894, 309, § 1.
 R. L. 102,
 § 155.
 1904, 142, § 1.
 1907, 241.
 1910, 392, § 1.
 1918, 271, § 1.
 160 Mass. 186.
 177 Mass. 34.

brought pays him such amount in settlement of the damage as he deems 12
 reasonable, bring the action. It may be brought in his own name and in 13
 the county where he resides, and he shall prosecute it. The persons so 14
 appointed shall also have throughout their respective counties the same 15
 powers and authority as police officers or constables acting under section 16
 one hundred and fifty-one. All damages received or recovered under this 17
 section shall be paid over to the county treasurer and placed to the credit 18
 of the dog fund. The county treasurer shall pay out of the dog fund such 19
 reasonable compensation as the county commissioners shall allow for 20
 services and necessary expenses under this section and the reasonable 21
 expense of prosecuting the said actions. The persons appointed here- 22
 under may be removed at any time by the county commissioners, and 23
 in counties where they are appointed the county treasurer shall not be 24
 authorized to bring the said actions. 25

Person
 damaged to
 have choice
 of remedy.
 1859, 225, § 8.
 G. S. 88, § 65.
 1864, 299, § 99.
 1867, 130, § 10.
 P. S. 102, § 99.
 R. L. 102,
 § 156.

SECTION 166. The owner of sheep, lambs, fowls or other domestic 1
 animals which have been worried, maimed or killed by dogs shall have 2
 his election to proceed under section one hundred and sixty-one or sections 3
 one hundred and fifty-seven to one hundred and fifty-nine, inclusive; 4
 but, having signified his election by proceeding in either mode, he shall 5
 not have the other remedy. 6

Dogs may be
 required to be
 muzzled.
 Killing un-
 muzzled dogs,
 when
 authorized.
 1877, 167,
 §§ 1, 2.
 P. S. 102,
 §§ 101, 102.
 R. L. 102,
 § 158.

SECTION 167. The aldermen or selectmen may order that all dogs 1
 shall be muzzled or restrained from running at large during such time 2
 as shall be prescribed by such order. After passing such order and posting 3
 a certified copy thereof in two or more public places in the town, or, if 4
 a daily newspaper is published in such town, by publishing such copy 5
 once in such newspaper, the aldermen or selectmen may issue their 6
 warrant to one or more of the police officers or constables of such town, 7
 who shall, after twenty-four hours from the publication of such notice, 8
 kill all dogs found unmuzzled or running at large contrary to such order, 9
 and shall receive such compensation therefor as is provided in section 10
 one hundred and fifty-one. 11

Service of
 notice.
 Penalty.
 1877, 167, § 3.
 P. S. 102, § 103.
 R. L. 102,
 § 159.

SECTION 168. The aldermen or selectmen may cause service of such 1
 order to be made upon the owner or keeper of the dog by causing a 2
 certified copy thereof to be delivered to him; and if he refuses or neglects 3
 for twelve hours thereafter to muzzle or restrain such dog as so required, 4
 he shall be punished by a fine of not more than twenty-five dollars. 5

Penalty on
 town officer.
 1858, 139, § 6.
 1859, 225, § 13.
 G. S. 88, § 66.
 1864, 299, § 10.
 1867, 130, § 11.
 P. S. 102, § 104.
 R. L. 102,
 § 160.

SECTION 169. A county, city or town officer who refuses or wilfully 1
 neglects to perform the duties imposed upon him by the provisions of 2
 this chapter relating to dogs shall be punished by a fine of not more than 3
 one hundred dollars, which shall be paid, except in Suffolk county, 4
 into the county treasury. Whoever is aggrieved by such refusal or neg- 5
 lect may report the same forthwith to the district attorney of his district. 6

Disposition
 of fees, etc.,
 in Suffolk
 county.
 1864, 299, § 12.
 1867, 130, § 13.
 1869, 250, § 1.
 P. S. 102, § 105.
 R. L. 102,
 § 161.

SECTION 170. In Suffolk county, all money received for licenses or 1
 recovered as fines or penalties under the provisions of this chapter re- 2
 lating to dogs shall be paid into the treasury of the town in which said 3
 licenses are issued or said fines or penalties recovered. All claims for 4
 damages done by dogs in Suffolk county shall be determined by appraisers 5
 as specified in section one hundred and sixty-one and, when approved 6

7 by the aldermen or selectmen of the city or town where the damage was
 8 done, shall be paid in full on the first Wednesday of January of each
 9 year by the treasurer of such town, if the gross amount received by him
 10 and not previously paid out under the provisions of this chapter relating
 11 to dogs is sufficient therefor; otherwise such amount shall be divided
 12 pro rata among such claimants in full discharge of their claims.

1 SECTION 171. The owner or keeper of a dog which is doing damage
 2 to sheep, lambs, fowls or other domestic animals shall be liable in tort
 3 to the county for all damages so done which the county commissioners
 4 thereof have ordered to be paid as provided in this chapter. The county
 5 treasurer, except as provided in section one hundred and sixty-five, may,
 6 and if so ordered by the county commissioners shall, bring such action.
 7 In Suffolk county, such owner or keeper shall be liable in like manner to
 8 the town for damages so done therein which the aldermen or selectmen
 9 have so ordered to be paid; and the town treasurer may, and if so ordered
 10 by the aldermen or selectmen shall, bring such action.

Owner of dog
 liable to
 county for
 damages paid
 by it.
 1858, 139, § 5
 1859, 225, § 7
 G. S. 88, § 64
 1864, 299, § 11
 1867, 139,
 §§ 12, 13.
 P. S. 102, § 106
 R. L. 102,
 § 162
 160 Mass. 186.

1 SECTION 172. Money received by a county treasurer under the pre-
 2 ceding sections relating to dogs, and not paid out for damages, shall, in
 3 January, be paid back to the treasurers of the towns in proportion to
 4 the amounts received from such towns, and the money so refunded
 5 shall be expended for the support of public libraries or schools. In
 6 Suffolk county, money so received by the town treasurer and not so
 7 paid out shall be expended by the school committee for the support of
 8 public schools.

Disposition of
 unexpended
 balance of dog
 fund
 1865, 197, § 3
 1867, 139, § 12.
 1869, 250, § 1
 P. S. 102, § 107
 R. L. 102,
 § 163.
 2 Op. A. G. 316

1 SECTION 173. A town may make additional ordinances or by-laws
 2 relative to the licensing and restraining of dogs, and may affix penalties
 3 of not more than ten dollars for a breach thereof; but such ordinances
 4 or by-laws shall relate only to dogs owned or kept in such town, and the
 5 annual fee required for a license under section one hundred and thirty-
 6 nine shall in no case be more than one dollar in addition to the amount
 7 required by said section.

Ordinances
 and by-laws as
 to dogs.
 1824, 139
 R. S. 58, § 10
 1850, 245
 1859, 225, § 14.
 G. S. 88, § 67.
 P. S. 102, § 109.
 R. L. 102,
 § 165.

10 Met. 382.

1 SECTION 174. All fines and penalties provided in the preceding sec-
 2 tions relating to dogs may be recovered before a district court or trial
 3 justice in the county where the offence was committed.

Recovery of
 penalties.
 G. S. 88, § 68
 P. S. 102, § 110

R. L. 102, § 166.

1 SECTION 175. Whoever wrongfully kills, maims, entices or carries
 2 away a dog licensed and collared as provided in section one hundred and
 3 thirty-seven shall be liable in tort to its owner for its value.

Liability for
 killing, etc.,
 a licensed dog
 1858, 139, § 2
 1859, 225, § 5.

G. S. 88, § 57. P. S. 102, § 88. R. L. 208, § 38. 1913, 551.

STALLIONS.

1 SECTION 176. The owner or keeper of a stallion for breeding purposes
 2 shall, before advertising the service thereof, file a certificate of the name,
 3 color, age, size and pedigree, as fully as obtainable, of said stallion, and
 4 of the name of the person by whom he was bred, with the clerk of the
 5 town where said stallion is owned or kept, who shall, upon payment
 6 of a fee of twenty-five cents, record the same in a book to be kept for that

Registration.
 Penalty.
 1890, 334, § 1.
 R. L. 102,
 § 167.

purpose. Whoever neglects to make and file such certificate shall re- 7
 cover no compensation for the services of his stallion, and whoever know- 8
 ingly and wilfully makes a false certificate shall be punished by a fine of 9
 one hundred dollars. 10

BILLIARD TABLES AND BOWLING ALLEYS.

Licenses. SECTION 177. The licensing board of Boston, the license commission 1
 1857, 194, § 2. of Lowell, the aldermen of any other city, and the selectmen of any 2
 G. S. 88, § 69. town may grant and may suspend or revoke at pleasure a license which 3
 1876, 117, shall be subject to sections two hundred and two to two hundred and 4
 §§ 1, 2. five, inclusive, to a person to keep a billiard, pool or sippio table or a 5
 1880, 94. P. S. 102, § 111. shall be subject to sections two hundred and two to two hundred and 4
 1885, 323, § 2. five, inclusive, to a person to keep a billiard, pool or sippio table or a 5
 R. L. 102, § 168. bowling alley for hire, gain or reward, upon such terms and conditions 6
 1902, 187, § 5. as they deem proper, to be used for amusement merely and not for the 7
 1906, 291, § 4. purpose of gaming for money or for property. 8
 1911, 645. 133 Mass. 578. 140 Mass. 38. 191 Mass. 341.

Penalty. SECTION 178. Whoever without such license keeps or suffers to be 1
 1857, 194, § 1. kept in a house, building, yard or dependency thereof, actually occupied 2
 G. S. 88, § 70. or owned by him, a table for the purpose of playing at billiards, pool or 3
 1880, 94. P. S. 102, § 112. sippio, or a bowling alley for hire, gain or reward, or whoever for hire, 4
 R. L. 102, § 169. gain or reward suffers any person to resort thereto for such purpose shall 5
 109 Mass. 344. forfeit not more than one hundred dollars. 6
 141 Mass. 420.

Penalty for SECTION 179. The keeper of a billiard, pool or sippio room or table, 1
 admitting minors to billiard rooms, bowling alley, or place in which pictures are displayed upon the deposit 2
 etc. of money in a coin controlled apparatus, who admits a minor thereto 3
 1855, 429, § 1. without the written consent of his parent or guardian, shall forfeit ten 4
 G. S. 88, § 71. dollars for the first and twenty dollars for each subsequent offence. 5
 1866, 237. P. S. 102, § 113. R. L. 102, § 170. 1908, 368. 98 Mass. 6.
 1880, 94.

Penalty for SECTION 180. Whoever erects, occupies or uses a building for bowling 1
 unlawful use, alleys, except in such part of a town as the aldermen or selectmen order, 2
 etc., of bowling alley. shall forfeit not more than fifty dollars for every month he so occupies 3
 1851, 319. or uses such building, and in like proportion for a shorter time. The 4
 G. S. 88, § 73. superior court may restrain such erection, occupaney or use without 5
 P. S. 102, § 114. § 171. such order. 6

THEATRICAL EXHIBITIONS, PUBLIC AMUSEMENTS, ETC.

Licenses. SECTION 181. The mayor or selectmen may, except as provided in 1
 1805, 98, section one hundred and five of chapter one hundred and forty-nine, 2
 §§ 1, 3. grant, upon such terms and conditions as they deem reasonable, a license 3
 1825, 152, for theatrical exhibitions, public shows, public amusements and exhibi- 4
 §§ 1, 3. tions of every description, to be held upon week days only, to which 5
 R. S. 58, § 1. admission is obtained upon payment of money or upon the delivery 6
 1849, 231, § 1. of any valuable thing, or by a ticket or voucher obtained for money or 7
 G. S. 88, § 71. any valuable thing, or in which, after free admission, amusement is 8
 P. S. 102, § 115. furnished upon a deposit of money in a coin controlled apparatus; and 9
 1894, 353. the mayor or selectmen may revoke or suspend such license at their 10
 1895, 434, § 3. pleasure, but they shall not grant a license for any such theatrical exhi- 11
 R. L. 102, § 172. bitions, public shows or public amusements or exhibitions of any descrip- 12
 1905, 341, § 1. tion whatever to be held upon Sunday, except as provided in chapter 13
 1907, 274, § 1. one hundred and thirty-six. 14
 1908, 385, § 2. 6 Cush. 174.
 7 Gray, 162.
 164 Mass. 11.
 168 Mass. 519.
 177 Mass. 347.
 185 Mass. 551.
 213 Mass. 213.
 240 Mass. 359.
 247 Mass. 589.

1 SECTION 182. Whoever offers to view, sets up, sets on foot, maintains,
 2 carries on, publishes or otherwise assists in or promotes any such exhibi-
 3 tion, show or amusement without such license shall be punished by a
 4 fine of not more than five hundred dollars. This and the preceding
 5 section shall not apply to public entertainments by religious societies in
 6 their usual places of worship for a religious or charitable purpose, or to
 7 entertainments given in school buildings by or for the benefit of the
 8 pupils thereof and under the supervision of the principal or teacher in
 9 charge of the school classes therein, or to entertainments given in a
 10 private dwelling, except in apartments thereof having a seating capacity
 11 of four hundred or more, or to enterprises required to be licensed under
 12 section one hundred and eighty-three A.

Penalty for
 unlicensed
 exhibition
 Exceptions.
 1805, 98,
 §§ 1, 3,
 1825, 152, § 1.
 R. S. 58, § 2.
 1849, 231, § 2.
 G. S. 88, § 75.
 1880, 188,
 P. S. 102, § 116.
 R. L. 102,
 § 173.
 1901, 160, § 5.
 1907, 309, § 1.
 1909, 254,
 1926, 299, § 2.
 4 Cosh 74
 161 Mass. 11

177 Mass. 317.

1 SECTION 182A. Every ticket of admission or other evidence of right
 2 of entry to any theatrical exhibition, public show or public amusement
 3 or exhibition required to be licensed by sections one hundred and eighty-
 4 one and one hundred and eighty-two, for admission to which a price is
 5 charged, shall bear on its face the price charged for such ticket or other
 6 evidence of right of entry by the person issuing the same or causing the
 7 same to be issued. Whoever issues or causes to be issued such a ticket
 8 or other evidence of right of entry in violation of this section shall be
 9 punished by a fine of not more than five hundred dollars.

Tickets to
 theatres, etc.,
 to have price
 printed on
 face. Penalty
 1921, 197, § 1.

1 SECTION 183. No person shall darken in whole or in part the hall,
 2 room, piazza, roof garden or other place in which a public dance required
 3 to be licensed under section one hundred and eighty-one is held, or any
 4 stairway, anteroom or passageway connected therewith, during the
 5 progress of a dance therein or until all persons except the proprietor
 6 and his employees have withdrawn from the premises. The degree of
 7 light required in such places shall be fixed by regulations prescribed by
 8 the commissioner of public safety, copies of which and of this section
 9 shall be conspicuously posted in every such place. Violations of this
 10 section shall be punished by a fine of not less than one hundred nor more
 11 than one thousand dollars.

Darkened hall
 prohibited
 during progress
 of public
 dances thereon.
 Penalty
 1919, 160,
 §§ 1-4.

1 SECTION 183A. No innholder, common victualler or person owning,
 2 managing or controlling a café, restaurant or other eating or drinking
 3 establishment shall, as a part of his usual business, offer to view, set up,
 4 set on foot, maintain or carry on a concert, dance, exhibition, cabaret or
 5 public show of any description at which food or drink or other refresh-
 6 ment is sold for cash, or in connection with which, after free admission,
 7 music or other amusement is provided or furnished upon payment or
 8 deposit of money, either as a cover charge or in payment for food, drink
 9 or other refreshment, unless and until a license therefor, to be exercised
 10 on week days only, has been issued by the licensing authorities, who
 11 may upon written application and upon such terms and conditions as
 12 they may prescribe, grant such a license for any or all of the purposes
 13 hereinbefore described and may, after written notice to the licensee,
 14 suspend or, after hearing revoke the same. Licenses granted under this
 15 section shall specify the street and number where the licensed business
 16 is to be carried on or give some particular description thereof, and shall
 17 not protect a licensee who carries on his business in another place. Such
 18 licenses, unless sooner revoked, shall expire on April thirtieth of each

Licensing of
 innholders,
 etc., conduct-
 ing certain
 amusements in
 connection
 with their
 business
 regulated,
 1926, 299, § 1

year. The fee for any such license or for any renewal thereof shall not exceed five dollars, but no fee shall be chargeable for any such license, or for the approval of the commissioner of public safety under section one hundred and eighty-three B, to a person who, for the period covered by such license, is also licensed under section two.

Licenses under preceding section issued in certain towns invalid unless approved, etc. Fees, suspension, etc. 1926, 299, § 1.

SECTION 183B. In all towns having less than twenty-five hundred registered voters at the state election last preceding the date of application for a license under section one hundred and eighty-three A, no license issued on such application shall be valid unless and until it has been approved in writing by the commissioner of public safety as in the interest of the public good and morals. Except as provided in section one hundred and eighty-three A, every application for such approval shall be accompanied by a fee of one dollar. The commissioner may, after notice to the licensee, suspend and after a hearing, revoke such approval, and thereupon the license shall be deemed suspended or revoked, as the case may be.

Penalty for violation of § 183A Report of conviction. 1926, 299, § 1.

SECTION 183C. Any person described in section one hundred and eighty-three A who engages in a business required to be licensed by said section unless authorized so to do by a license in full force and effect, and any holder of such a license who violates any condition thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both. The clerk of the court in which a corporation engaged in such business is convicted under this section shall forthwith report such conviction to the state secretary, who shall thereupon revoke the charter of such corporation.

Penalty for exhibition when liquor is sold. 1858, 152. G. S. 88, § 76. P. S. 102, § 117. R. L. 102, § 174.

SECTION 184. Whoever offers to view, sets up, sets on foot, maintains or carries on a theatrical exhibition, public show, concert or dance hall exhibition, of any description, at which lager beer or other intoxicating liquor is sold or exposed for sale with the consent of those who get up, set on foot or otherwise promote such exhibition or show, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, unless such exhibition or show has been duly licensed as provided by section one hundred and eighty-one. This section shall not authorize the licensing of the sale of liquor contrary to law.

Masked ball penalized. 1849, 231, § 3. G. S. 88, § 77. P. S. 102, § 118. R. L. 102, § 175.

SECTION 185. Whoever gets up, sets on foot, causes to be published, or otherwise aids in getting up and promoting a masked ball or other public assembly at which the company wear masks or other disguises and to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, shall for the first offence be punished by a fine of not more than five hundred dollars and for any subsequent offence by imprisonment for not more than one year.

Resale of theatre tickets, etc., regulated. Licenses. 1924, 497, § 2. 269 Mass. 460.

SECTION 185A. No person shall engage in the business of reselling any ticket or tickets of admission or other evidence of right of entry to any theatrical exhibition, public show or public amusement or exhibition required to be licensed under sections one hundred and eighty-one and one hundred and eighty-two, whether such business is conducted on or off the premises on which such ticket or other evidence is to be used,

7 without being licensed therefor by the commissioner of public safety,
 8 in this and the six following sections called the commissioner. A license
 9 shall be granted only upon a written application setting forth such
 10 information as the commissioner may require. Each license issued
 11 under this section shall be in force until the first day of January next
 12 after its date, unless sooner revoked. No such license may be trans-
 13 ferred or assigned except upon written permission of the commissioner.

1 SECTION 185B. The fee for each license granted under section one
 2 hundred and eighty-five A and for each annual renewal thereof shall be
 3 one hundred dollars. Fees for licenses 1924, 497, § 2.

1 SECTION 185C. The commissioner, after notice to the licensee and
 2 reasonable opportunity for him to be heard, may revoke his license or
 3 may suspend the same for such period as the commissioner may deem
 4 proper, upon satisfactory proof that the licensee has violated or per-
 5 mitted a violation of any condition of his license or of any rule or
 6 regulation of the commissioner under section one hundred and eighty-
 7 five E. If the license is revoked, the licensee shall be disqualified to
 8 receive a license for one year after the expiration of the term of the
 9 license so revoked. Revocation or suspension of licenses 1924, 497, § 2.

1 SECTION 185D. No licensee under section one hundred and eighty-
 2 five A shall resell any ticket or other evidence of right of entry to any
 3 theatrical exhibition, public show or public amusement or exhibition of
 4 any description at a price in excess of fifty cents in advance of the price
 5 printed on the face of such ticket or other evidence of right of entry as
 6 the purchase price thereof. Resale price regulated. 1924, 497, § 2.

1 SECTION 185E. The commissioner shall establish and may from
 2 time to time alter rules and regulations relative to the granting of li-
 3 censes and the business carried on by persons licensed under section one
 4 hundred and eighty-five A. He shall, either personally or by such
 5 subordinates as he may designate, as often as he deems it necessary,
 6 investigate the affairs of such licensees and for that purpose shall have
 7 free access to the books and papers of such licensees and shall ascertain
 8 the condition of the business and whether it is being transacted in
 9 compliance with law and the rules and regulations made hereunder, and
 10 with the terms and conditions of the license. The commissioner shall
 11 keep a book or books in which shall be entered in alphabetical order
 12 a record of all licenses granted under section one hundred and eighty-
 13 five A, which record shall be open to public inspection. Rules and regulations. Investigations, etc. 1924, 497, § 2.

1 SECTION 185F. Whoever violates any provision of section one hun-
 2 dred and eighty-five A to section one hundred and eighty-five G, inclu-
 3 sive, or any rule or regulation of the commissioner made under section
 4 one hundred and eighty-five E, shall be punished by a fine of not more
 5 than five hundred dollars. Penalty. 1924, 497, § 2.

1 SECTION 185G. The provisions of section one hundred and eighty-
 2 two A and the six preceding sections shall not apply to tickets or other
 3 evidences of entry to theatrical exhibitions, public shows or public
 4 amusements or exhibitions, all the proceeds of the sale or resale of which
Certain sections inapplicable to certain tickets, etc. 1924, 497, § 2.

imre exclusively to the benefit of religious, educational or charitable 5
institutions, societies or organizations or civic leagues or organizations 6
not organized for profit but operated exclusively for the promotion of 7
social welfare or to associations of veterans of any wars of the United 8
States, or to tickets or other evidences of entry to agricultural fairs, 9
none of the profits of the sale or resale of which are distributed to stock- 10
holders or members of the association conducting the same. 11

SKATING RINKS, ETC.

License. SECTION 186. The licensing board of Boston, the license commission 1
1885, 196, § 1. of Lowell, the mayor of any other city, and the selectmen of any town, 2
R. L. 102, § 175. may grant a license to any person to establish, keep open and maintain 3
1902, 187, § 5. skating rinks to be used for roller skating, carousels, inclined railways, 4
1906, 190. Ferris wheels and outdoor exhibitions of fire fighting for the amusement 5
1911, 645. of the public, for hire, gain or reward, upon such terms, conditions and 6
1920, 47. regulations as they deem proper, subject to sections two hundred and 7
two to two hundred and five, inclusive, and to the provisions of law 8
relating to the observance of Sunday. 9

Penalty. SECTION 187. Whoever, without such license, establishes, keeps open 1
1885, 196, § 2. or maintains a skating rink to be used for the amusement of roller skating 2
R. L. 102, § 177. shall be punished by a fine of not more than five hundred dollars. 3

PICNIC GROVES.

License. SECTION 188. In a city or town which accepts the provisions of this 1
1885, 309, §§ 1, and the two following sections or has accepted corresponding provisions 2
4: 323, § 2. of earlier laws, the aldermen, except in Boston and Lowell, or the select- 3
R. L. 102, § 178. men may grant a license to any person to establish, let, keep open and 4
1902, 187, § 5. maintain a grove to be used for picnics or other lawful gatherings and 5
1906, 291, § 4. amusements for hire, gain or reward, upon such conditions and regula- 6
tions as they deem proper, subject to the provisions of sections two 7
hundred and two to two hundred and five, inclusive. In Lowell the 8
license commission and in Boston the licensing board may grant such 9
licenses. 10

Penalty. SECTION 189. Whoever, without such license, establishes, lets, keeps 1
1885, 309, § 2. open or maintains, himself or by another, a grove to be used for picnics 2
R. L. 102, § 179. or other amusements for hire, gain or reward shall be punished by a fine 3
of not more than one hundred dollars. 4

Peddling near SECTION 190. Whoever, not having his residence or regular place of 1
picnic grove business within one half mile of a grove licensed under section one hun- 2
penalized. dred and eighty-eight, during the time of holding a picnic or other lawful 3
1887, 445. gathering in such licensed grove and within one half mile thereof hawks 4
R. L. 102, § 180. or peddles goods, wares or merchandise, or establishes or maintains a 5
tent, booth, vehicle or building for vending provisions or refreshments 6
without the consent of the licensee of such grove, or engages in gaming 7
or horse racing, or exhibits or offers to exhibit any show or play, shall 8
forfeit not more than twenty dollars. 9

STEAMBOATS.

1 SECTION 191. The aldermen or selectmen may license any person to
 2 run a steamboat or other boat propelled by power other than muscular
 3 power for the conveyance for hire of passengers on lakes, ponds or waters
 4 not within the maritime jurisdiction of the United States.

License.
 1876, 100, § 1
 P. S. 102, § 120.
 R. L. 102, § 181.
 1910, 125, § 1
 150 Mass. 221.

1 SECTION 192. Such licenses shall be granted for a term of not more
 2 than one year, and shall be recorded by the clerk of the town where
 3 they are granted, who shall receive a fee of one dollar for recording each
 4 license. Every such license shall set forth the name of the steamboat
 5 or other boat, of the master and owner, and the number of passengers
 6 it is permitted to carry at any one time, with the number of life preservers
 7 that shall be carried. The license shall be posted in a conspicuous place
 8 therein, and the number of passengers specified in such license shall in
 9 no case be exceeded.

Form of
 license. Fee.
 Posting.
 1876, 100, § 3.
 P. S. 102, § 121.
 R. L. 102,
 § 182
 1910, 125, § 2.

1 SECTION 193. Whoever runs a steamboat or other boat propelled by
 2 power other than muscular power for the conveyance of passengers for
 3 hire on such waters without first obtaining such license from the aldermen
 4 of every city and the selectmen of every town within which such steam-
 5 boat or other boat lands or receives passengers for hire shall be punished
 6 by a fine of not more than fifty dollars.

Penalty.
 1876, 100,
 §§ 2, 4
 P. S. 102, § 122.
 R. L. 102,
 § 183
 1910, 125, § 3.

BOATING AND BATHING.

1 SECTION 194. Cities and towns which accept this and the two follow-
 2 ing sections or have accepted corresponding provisions of earlier laws
 3 by a vote of the city council or of the town at a town meeting called for
 4 the purpose may prohibit any person from carrying on the business of
 5 renting boats or bathing suits, for use upon or in so much of the waters
 6 of any great pond as is situated within the town, without first obtaining
 7 a license so to do from the aldermen or selectmen.

License.
 1910, 400, § 1.

1 SECTION 195. The aldermen of such cities and the selectmen of such
 2 towns shall cause to be posted in the immediate vicinity of such ponds
 3 notices stating that sections one hundred and ninety-four to one hun-
 4 dred and ninety-six, inclusive, have been accepted by the city or town.

Posting
 notices
 1910, 400, § 2.

1 SECTION 196. Whoever in such a city or town, without obtaining a
 2 license under section one hundred and ninety-four, if one is required,
 3 engages in the business described in said section, shall be punished by
 4 a fine of not more than ten dollars.

Penalty for
 acting without
 license.
 1910, 400, § 3.

GENERAL PROVISIONS.

1 SECTION 197. Whoever, himself or by his servant or agent, admits
 2 a child under fourteen to any licensed show or place of amusement unless
 3 such child is accompanied by a person over twenty-one, shall, on com-
 4 plaint of a parent or guardian of the child or of any police officer or of a
 5 supervisor of attendance of the town in which the child is so admitted,
 6 be punished by a fine of not more than one hundred dollars; but he shall
 7 not be liable to said fine if a child apparently fourteen years old has
 8 obtained admission by any written misrepresentation or by any unau-
 9 thorized entrance to said place of amusement, or has entered with and

Admission of
 children to
 certain enter-
 tainments
 penalized.
 Exceptions-
 1887, 446.
 R. L. 102,
 § 184
 1906, 107,
 1907, 355
 1910, 532,
 1931, 394,
 § 118

apparently in the company of a person over twenty-one but does not remain with such person, provided the person in charge of said place of amusement shall remove such child immediately therefrom upon knowledge that the child is under fourteen and not then accompanied by a person over twenty-one. This section shall not apply to shows or entertainments which take place before six o'clock in the afternoon and during the hours that the school of which the child attending such show or entertainment is a pupil is not in session. It shall be prima facie evidence that such school is in session if the public schools are in session in the town where said show or entertainment takes place.

Admission of young persons to dance halls and skating rinks regulated. 1906, 384, §§ 1, 2.

SECTION 198. No proprietor, lessee or manager and no employee of a proprietor, lessee or manager of any public hall or room in which dancing or roller skating is practiced, and for admission to which money or other valuable thing is accepted, shall admit, while dancing or roller skating is practiced therein between six in the afternoon and six in the forenoon, any person under seventeen unless such person is accompanied by a parent, guardian or adult member of the family with whom such person is residing; and any minor may be refused admission to or excluded from any such hall or room while a dance or roller skating is being carried on therein, unless such minor produces evidence satisfactory to the proprietor or his agent that he is over seventeen. This section shall not apply to a dance given by any charitable or religious society, or by any public or private school, or by any class, society or club the membership of which is restricted to some particular charitable or religious society or to some particular public or private school.

Posting copy of law. 1906, 384, § 3.

SECTION 199. A copy of sections one hundred and ninety-eight to two hundred, inclusive, shall be posted at the entrance of every public hall or room where roller skating or public dances are practiced.

Penalty. 1906, 384, § 4.

SECTION 200. Whoever violates any provision of the two preceding sections shall be punished by a fine of not less than five nor more than one hundred dollars or by the forfeiture of his license, or both.

Officers may enter billiard rooms, etc. Penalty. 1855, 429, § 2. 1859, 219. G. S. 88, § 72. 1862, 222. 1880, 94. P. S. 102, § 123. 1885, 196, § 3; 309, § 3. R. L. 102, § 185.

SECTION 201. A sheriff, marshal or their deputies, a constable or police officer may at any time enter a billiard, pool or sippio room, bowling alley, skating rink, the licensed premises of a common victualler or room connected therewith, or a grove required to be licensed under section one hundred and eighty-eight, or any building therein, for the purpose of enforcing any law; and whoever obstructs or hinders the entrance of such officer shall be punished by a fine of not less than five nor more than twenty dollars.

Form, etc., of certain licenses. 1839, 53, § 2. 1855, 121, § 2. G. S. 88, §§ 26, 29. 1876, 147, § 1. 1879, 102, § 3. 1880, 84, 94. P. S. 102, § 124. 1882, 258. 1885, 196, § 1; 309, § 1; 323, § 2. 1895, 497, § 2. R. L. 102, § 186.

SECTION 202. Licenses granted to keepers of intelligence offices, dealers in junk, old metals and second hand articles, junk collectors, pawnbrokers and keepers of billiard saloons, pool or sippio rooms or tables, bowling alleys, skating rinks and picnic groves shall, except as hereinafter provided, be signed by the clerk of the town where they are granted. Every such license shall, before being delivered to the licensee, be recorded by the town clerk, in a book kept for that purpose. Such license shall set forth the name of the licensee, the nature of the business, and the building or place in such town in which it is to be carried on, and

10 shall continue in force until May first following unless sooner revoked. 1902, 187.
 11 The board or officer issuing such a license shall, except as provided in §§ 4, 5.
 12 section seventy-seven, receive for the use of the town such amount, not 1926, 28.
 13 less than two dollars for each license, as the board or officer considers
 14 reasonable. In Boston licenses for keepers of intelligence offices, billiard
 15 saloons, pool or sippio rooms or tables, bowling alleys, skating rinks and
 16 picnic groves shall be signed by the licensing board and recorded by its
 17 clerk; the other licenses shall be signed by the police commissioner and
 18 recorded by his clerk.

1 SECTION 203. Such licenses may be granted in April, to take effect on Term of such
 2 May first following. licenses
 1876, 147, § 2. P. S. 102, § 125. R. L. 102, § 187.

1 SECTION 204. A license issued as aforesaid shall not protect the Such licenses
 2 holder thereof in a building or place other than that designated in the valid only
 3 license unless consent to removal is granted by the licensing board or in places
 4 officer. specified
 1876, 147, § 3.
 P. S. 102, § 126. R. L. 102, § 188.

1 SECTION 205. Upon the revocation of such a license, such clerk shall Revocation of
 2 note the revocation upon the face of the record thereof, and shall give such licenses
 3 written notice to the licensee by delivering it to him in person or by leav- 1876, 147, § 4.
 4 ing it at the place of business designated in the license. P. S. 102, § 127.
 R. L. 102,
 § 189.

CHAPTER 141.

SUPERVISION OF ELECTRICIANS.

SECT.	SECT.
1. Registration of persons, firms, etc., to install wires or apparatus for electric light purposes, etc. Definitions.	5. Penalties.
2. State examiners of electricians. Rules, examinations, etc.	6. Liability of holder of a master's certificate.
3. Forms of licenses.	7. Not to apply to certain work.
4. Certificates not transferable. May be suspended or revoked.	8. Exemption of apprentices and certain electricians.
	9. Penalty for misstatement.
	10. Disposition of fees and fines.

1 SECTION 1. No person, firm or corporation shall enter into, engage Registration of
 2 in, or work at the business of installing wires, conduits, apparatus, fix- persons, firms,
 3 tures or other appliances for carrying or using electricity for light, heat etc., to install
 4 or power purposes, either as master electrician or as journeyman elec- wires or
 5 trician, unless such person, firm or corporation shall have received a apparatus
 6 license and a certificate therefor, issued by the state examiners of elec- for electric
 7 tricians and in accordance with the provisions hereinafter set forth. light purposes,
 8 The words "master electrician" as used in this chapter shall mean a etc.
 9 corporation, firm or person, having a regular place of business, who, by Definitions
 10 the employment of journeymen, performs the work of installing wires, 1915, 296, § 1
 11 conduits, apparatus, fixtures and other appliances for carrying or using
 12 electricity for light, heat or power purposes. "Master elec-
 tricain"
 defined

"Journeyman electrician" defined 4 Op. A. G. 496.

The words "journeyman electrician" as used in this chapter shall mean a person doing any work of installing wires, conduits, apparatus, fixtures and other appliances for hire. 13 14 15

State examiners of electricians. Rules, examinations, etc. 1915, 296, § 2.

SECTION 2. The state examiners of electricians, in this chapter called the examiners, may make necessary rules for the proper performance of their duties. 1 2 3

They shall hold frequent examinations in Boston, and, twice in each year, shall hold examinations in at least five other convenient places within the commonwealth, and they may hold annual or occasional examinations in other places. Public notice shall be given of all examinations. 4 5 6 7

Annual report.

They shall make an annual report of their doings. 8

Conduct of examinations, etc. 225 Mass. 192. 4 Op. A. G. 631.

In the conduct of the examinations they shall make uniform requirements for all towns, which may be revised from time to time, as circumstances require. Said examinations shall be sufficiently frequent to give ample opportunity for all applicants to be thoroughly and carefully examined, may be written or in practical work, and may be supervised by one or more of the examiners, but no license shall be granted without the sanction of the examiners. 9 10 11 12 13 14 15

Forms of licenses. 1915, 296, §§ 2, 3. 1918, 213, § 1; 257, § 342. 1919, 5; 56; 333, § 8. 1920, 2. 4 Op. A. G. 631.

SECTION 3. Two forms of licenses shall be issued. The first, hereinafter referred to as "Certificate A", shall be known as "master electrician's license", and the second, hereinafter referred to as "Certificate B", shall be known as "journeyman electrician's license". 1 2 3 4

(1) "Certificate A" shall be issued to any person, firm or corporation engaged in or about to engage in the business of installing electrical wires, conduits, apparatus, fixtures and other electrical appliances, qualified under this chapter. The certificate shall specify the name of the person, firm or corporation so applying, and the name of the person, who in the case of a firm shall be one of its members, and in the case of a corporation, one of its officers, passing said examination, by which he or it shall be authorized to enter upon or engage in business as set forth therein. The holding of "Certificate A" shall not entitle the holder individually to engage in or perform the actual work of installing electric wires, conduits and appliances as previously described in this chapter, but shall entitle him to conduct business as a master electrician. 5 6 7 8 9 10 11 12 13 14 15 16

(2) "Certificate B" shall be granted to any person who has passed an examination before the state examiners of electricians. It shall specify the name of such person, who shall thereby be authorized to engage in the occupation of a journeyman electrician. 17 18 19 20

Fees Re-examination. 1921, 221, § 1.

(3) Persons desiring an examination shall make written application therefor, accompanied by the proper fee, which shall be twenty-five dollars for "Certificate A" and five dollars for "Certificate B". An applicant failing in his examination shall not have his fee returned to him, but shall be entitled to one free re-examination. For each subsequent re-examination for "Certificate A", he shall pay fifteen dollars and for "Certificate B", one dollar. 21 22 23 24 25 26 27

Expiration and renewal. "Certificate A"

(4) Each "Certificate A" shall expire on July thirty-first in each year, but may be renewed by the same person, or the same firm or corporation, acting by one or more of its members or officers, without further examination, upon payment of a fee of fifteen dollars, application therefor being made during the preceding month. 28 29 30 31 32

33 (5) Each "Certificate B" shall expire on July thirty-first in each year, "Certifi-
 34 but may be renewed upon payment of a fee of one dollar, and upon the cate B"
 35 same conditions set forth in the preceding paragraph. 1921, 221, § 2

36 (6) Holders of "Certificate A" shall keep their certificate of registra- Holders to
 37 tion displayed in a conspicuous place in their principal offices or places display cer-
 38 of business. Holders of "Certificate B" shall be furnished by the exam- tificates, etc.
 39 iners with evidence of having been so licensed, in card form or otherwise,
 40 which shall be carried on the person of the licensee and exhibited on
 41 request.

42 (7) Any certificate expiring while the holder thereof is in the military
 43 or naval service of the United States shall be renewed without further
 44 examination, upon payment of the prescribed fee, at any time within
 45 four months after such person's discharge from the service.

46 (8) Examination papers and applications for "Certificate A" and Examination
 47 "Certificate B" shall be preserved for at least three years, after which papers to be
 48 time they may, at the discretion of the examiners, be destroyed. preserved
 1919, 56

49 (9) Records of the meetings of the examiners shall be open for inspec- Records to be
 50 tion at all times, and they shall have printed annually a manual of their open to public,
 51 regulations, including the names of all licensees. etc.

1 SECTION 4. No certificates issued under this chapter shall be assign- Certificates
 2 able or transferable. They may, after hearing, be suspended or revoked not transfer-
 3 by the examiners upon failure or refusal of the licensee to comply with able. May be
 4 the rules and requirements of the examiners, or for other sufficient cause. suspended or
 1915, 296, § 4
 1916, 199, § 2

1 SECTION 5. Any person, firm or corporation, or employee thereof, Penalties.
 2 and any representative, member or officer of such firm or corporation 1915, 296, § 5
 3 individually, entering upon or engaging in the business and work here-
 4 inbefore defined, without having complied with this chapter, shall for
 5 the first offence be punished by a fine of not less than ten nor more than
 6 one hundred dollars, and for a subsequent offence by a fine of not less
 7 than fifty nor more than five hundred dollars or by imprisonment in the
 8 house of correction for six months, or both.

1 SECTION 6. No person, firm or corporation holding a "Certificate A" Liability of
 2 shall be liable for work done by his or its employees, unless it appears holder of a
 3 that such work was done with his or its knowledge or consent or by his master's cer-
 4 or its authorization. tificate.
 1915, 296, § 6.

1 SECTION 7. This chapter shall not apply to the installation, repairing Not to apply
 2 and wiring of elevators or to work in connection with the erection, con- to certain
 3 struction, maintenance or repair of lines for transmission of electricity work.
 4 from the source of supply to the service switch on the premises where 1915, 296, § 7
 5 used by municipal electric plants, by electric companies as defined in
 6 section one of chapter one hundred and sixty-four, by gas companies
 7 authorized to make or sell electricity, by electric street railway com-
 8 panies, by electric railroad companies or by railroad companies; nor to
 9 the work of such plants or companies on premises owned or controlled
 10 by them; nor to the work of said municipal electric plants or of said elec-
 11 tric or gas companies in installing, maintaining and repairing, on the
 12 premises of customers, service connections and meters and other appa-
 13 ratus and appliances remaining the property of such plants or companies
 14 after installation; nor to work in connection with the lighting of public
 15 ways, alleys, private ways or private or public parks, areas or squares;

nor to the work of companies incorporated for the transmission of intelligence by electricity in installing, maintaining or repairing wires, apparatus, fixtures or other appliances used by such companies and necessary for or incident to their business, whether or not such wires, conduits, apparatus, fixtures or other appliances are on its own premises.

Exemption of apprentices and certain electricians. 1915, 296, § 8. 4 Op. A. G. 496.

SECTION 8. This chapter shall not forbid the employment of learners or apprentices working with and under the direct personal supervision of licensed journeymen electricians.

Electricians employed by theatrical companies may install temporary wiring and appliances required for the purpose of the engagement of any such company, subject to the supervision of a person licensed under this chapter.

Electricians regularly employed by firms or corporations other than holders of "Certificate A" may install such electrical wiring, conduits and appliances or make such repairs as may be required only on the premises and property of such firms or corporations; provided, that such electricians hold journeymen's licenses, and have complied with this chapter.

Penalty for misstatement. 1915, 296, § 9. 1918, 257, § 343. 1919, 5. 1920, 2.

SECTION 9. Any person applying for a journeyman's license and making any misstatement as to his experience or other qualifications, or any person, firm or corporation subscribing to or vouching for any such misstatement, shall be subject to the penalties set forth in section five.

Disposition of fees and fines. 1915, 296, § 6.

SECTION 10. Fees and fines collected under this chapter shall be paid to the commonwealth.

CHAPTER 142.

SUPERVISION OF PLUMBING.

SECT.

1. Definitions.
2. Application of chapter.
3. Master plumbers and journeymen must be licensed, etc.
4. Rules for examinations of plumbers, etc.
5. Fees for licenses, examinations and renewals.
6. Licenses valid throughout commonwealth. Registration. Revocation and deferred renewal of licenses.
7. Notice to examiners of violation of statute, etc.
8. Rules as to construction, etc., in certain towns. Revision of rules.
9. Appointment and compensation of inspectors of plumbing. Appeal from inspector's decision, etc.

SECT.

10. Inspection districts.
11. Appointment and duties of inspectors in cities and in certain towns.
12. Appointment of additional inspectors.
13. Regulation of plumbing, fixtures, etc.
14. Sections 1 to 16 to apply to persons learning business, when.
15. Expenditure of fees.
16. Penalty for certain violations. Penalty for violation by towns.
17. Marking, etc., of range boilers.
18. Same subject.
19. Penalty for violation of §§ 17 and 18.
20. Exception to §§ 17, 18 and 19.

Definitions. 1894, 455, § 1. R L. 103, § 1. 1909, 536, § 9.

SECTION 1. In this chapter the following words shall have the following meanings:

3 "Certificate", a certificate of registration issued in accordance with
 4 section three of chapter five hundred and thirty-six of the acts of nine-
 5 teen hundred and nine, section two of chapter five hundred and ninety-
 6 seven of the acts of nineteen hundred and ten or chapter five hundred
 7 and eighteen of the acts of nineteen hundred and twelve.

1925, 348, § 3.
 219 Mass. 33.
 225 Mass. 192.
 4 Op. A. G. 252.

8 "Examiners", the board of state examiners of plumbers appointed
 9 under section thirty-six of chapter thirteen.

10 "Journeyman", a person who himself does any work in plumbing sub-
 11 ject to inspection under any law, ordinance, by-law, rule or regulation.

12 "Master plumber", a plumber having a regular place of business and
 13 who, by himself or journeymen plumbers in his employ, performs plumb-
 14 ing work.

15 "Practical plumber", a person who has learned the business of plumb-
 16 ing by working for at least two years as an apprentice or under a verbal
 17 agreement for instruction and who has then worked for at least one year
 18 as a journeyman plumber.

19 "Registered", registered in accordance with section three of chapter
 20 five hundred and thirty-six of the acts of nineteen hundred and nine,
 21 section two of chapter five hundred and ninety-seven of the acts of nine-
 22 teen hundred and ten or chapter five hundred and eighteen of the acts of
 23 nineteen hundred and twelve.

1 SECTION 2. Sections one to seven, inclusive, sections eleven and
 2 twelve and sections fourteen to sixteen, inclusive, shall apply to all
 3 cities, and section thirteen shall apply to all cities except Boston; pro-
 4 vided, that any such city except Boston may by vote of its city council
 5 exempt from the provisions of said sections any or all of its territory
 6 lying outside of the limits of the water supply of such city, or uncon-
 7 nected with a common sewer. Sections one, three, six and seven and
 8 sections eleven to sixteen, inclusive, shall apply to all towns which by
 9 vote of their inhabitants accept said sections or have accepted cor-
 10 responding provisions of earlier laws, and said sections, except section
 11 thirteen, shall apply to all towns which accept rules formulated by the
 12 examiners under sections eight and nine or have accepted them under
 13 corresponding provisions of earlier laws.

Application
 of chapter.
 1895, 453.
 R. L. 103, § 12.
 1909, 536, § 8.
 1910, 349, § 4.
 1911, 262.

1 SECTION 3. No person shall engage in the business of a master
 2 plumber or work as a journeyman unless he is lawfully registered, or has
 3 been licensed by the examiners as provided in this chapter. The license
 4 or certificate of a journeyman shall be exhibited whenever required by
 5 an inspector of plumbing. Every master plumber's license or certificate
 6 shall at all times be displayed conspicuously within his place of business.

Master
 plumbers and
 journeymen
 must be
 licensed, etc.
 1893, 477, § 1.
 1894, 455, § 1.
 R. L. 103, § 1.
 1909, 536, § 4.
 213 Mass. 138.

217 Mass. 134.

219 Mass. 219.

248 Mass. 220.

4 Op. A. G. 252.

1 SECTION 4. The examiners may make such rules as they deem neces-
 2 sary for the proper performance of their duties, which shall take effect
 3 when approved by the department of public health. They shall examine
 4 each applicant desiring to engage in the business of a master plumber or
 5 to work as a journeyman, as to his practical knowledge of plumbing,
 6 house drainage and plumbing ventilation, and subject him to a practical
 7 test satisfactory to the examiners, who if satisfied of his competence shall
 8 issue to him a license as applied for. They shall hold frequent examina-
 9 tions in Boston and, twice in each year, hold examinations at five other
 10 convenient places within the commonwealth. Public notice shall be

Rules for
 examinations
 of plumbers,
 etc.
 1893, 477,
 §§ 2, 4.
 1894, 455,
 §§ 2, 4.
 R. L. 103,
 §§ 2, 4.
 1909, 536, § 2.
 225 Mass. 192.

given of all examinations. Every application for examination shall be in the handwriting of the applicant who shall be notified by the examiners of the time and place of examination. The examiners may, without payment of any fee, issue a probationary license in force for six months to a person who, having worked as an apprentice, or under a verbal agreement for instruction, for not less than three years, presents an application therefor with the signed endorsement of his employer agreeing to be responsible for all work done under the license and to have the licensee, at the expiration of the license, present himself for examination as a journeyman.

Fees for licenses, examinations and renewals. 1893, 477, § 4. 1894, 455, § 4. R. L. 103, § 4. 1909, 536, § 3. 1925, 348, § 4.

SECTION 5. The fee for the first license of a master plumber shall be fifteen dollars; for any renewal thereof or an examination therefor, five dollars. The fee for the first license of a journeyman shall be five dollars; for any renewal thereof, two dollars; and for an examination therefor, five dollars.

1927, 154.

Licenses valid throughout commonwealth. Registration. Revocation and deferred renewal of licenses. 1893, 477, § 4. 1894, 455, § 4. R. L. 103, § 4. 1909, 536, § 4. 1928, 76, § 1. 1930, 397. 1931, 193. Op. A. G. (1920) 106.

SECTION 6. Licenses and certificates issued by the examiners shall be valid throughout the commonwealth, but shall not be assignable or transferable. The examiners shall forward to the board of health of each town, or to the inspector of buildings having control of the enforcement of regulations relative to plumbing in such town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before May first upon payment of the required fee. Each holder of a master plumber's certificate or license shall register his name and business address with said inspector of buildings if he has such control, otherwise with the board of health, in the town wherein he desires to engage in business as a master plumber. Any such license or certificate may, after notice and hearing, be suspended or revoked by the examiners upon the violation by the holder thereof of any statute, ordinance, by-law, rule or regulation relative to plumbing, upon failure or refusal of the holder thereof to comply with the rules and requirements of the examiners, or for other sufficient cause. In case of failure to renew a license as aforesaid on or before May first in any year, the person named therein may, upon payment of the said fee and a deferred renewal fee of ten dollars, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof which shall expire on the ensuing first day of May; provided, that such renewed license shall not constitute its holder a licensee for any period preceding its issue.

Notice to examiners of violation of statute, etc. 1909, 536, § 4. 1928, 76, § 2.

SECTION 7. If in the opinion of such inspector of buildings, if any, otherwise of the board of health, of a town, the holder of a license or certificate violates any statute, ordinance, by-law, rule or regulation relative to plumbing, the said inspector or board of health of the town where such violation is committed shall give notice thereof to the examiners.

Rules as to construction, etc., in certain towns. Revision of rules. 1909, 536, § 5.

SECTION 8. Upon petition of the board of health of any town which has not prescribed regulations relative to plumbing under section thirteen or corresponding provisions of earlier laws, the examiners shall formulate rules relative to the construction, alteration, repair and in-

5 spection of all plumbing work within such town, which rules, when
 6 approved by the department of public health and accepted by the said
 7 board of health and published once a week for three consecutive weeks
 8 in some newspaper published in said town, shall have the force of law.
 9 Such rules may be revised by the examiners upon petition of the board
 10 of health.

1 SECTION 9. Within thirty days after rules have taken effect as pro-
 2 vided in the preceding section, the local board of health shall appoint
 3 an inspector of plumbing having the qualifications and duties specified
 4 in sections eleven and twelve to hold office for three years unless, after
 5 hearing, sooner removed for cause. He shall receive from the town
 6 compensation to be fixed by the appointing board, subject to the ap-
 7 proval of the selectmen. Appeal from a decision of such inspector may
 8 be made to the examiners within ten days from the date of notice of his
 9 decision. The appellant shall deposit five dollars with the examiners
 10 to be returned if the appeal is sustained, otherwise to be paid to the
 11 commonwealth. The decision of the examiners, a copy of which shall be
 12 served on each person interested, shall be subject to the approval of the
 13 department of public health and to review by the superior court.

Appointment and compensation of inspectors of plumbing. Appeal from inspector's decision, etc. 1909, 536, § 5.

1 SECTION 10. Two or more towns may unite in forming an inspection
 2 district, the expense thereof to be paid on such basis as may be agreed
 3 upon by the boards of health thereof.

Inspection districts. 1909, 536, § 6.

1 SECTION 11. The said inspector of buildings, if any, otherwise the
 2 board of health, of each city and town, shall, within three months after
 3 it becomes subject to sections one to sixteen, inclusive, appoint from the
 4 classified civil service list one or more inspectors of plumbing who shall
 5 be practical plumbers and shall have had practical experience either as
 6 master plumbers or journeymen, continuously, during five years next
 7 preceding their appointment; provided, that any time spent in service
 8 in the army, navy or marine corps of the United States in time of war
 9 or insurrection shall be deemed a part of the period of continuous practical
 10 experience so required. Such inspector of buildings or board may
 11 remove them for cause shown and shall, subject to approval of the city
 12 council or selectmen, fix their compensation which shall be paid by the
 13 city or town. Said inspectors of plumbing shall inspect all plumbing in
 14 process of construction, alteration or repair for which permits are granted
 15 within their respective cities and towns and shall report to their appoint-
 16 ing power or board violations of any law, ordinance, by-law, rule or
 17 regulation relative to plumbing; they shall perform such other appro-
 18 priate duties as may be required. The approval of plumbing by any
 19 inspectors other than those provided for by this chapter shall not be a
 20 compliance therewith.

Appointment and duties of inspectors in cities and in certain towns. 1893, 477, § 5. 1894, 455, § 5. 1895, 453. R. L. 103, § 5. 1909, 536, § 7. 1923, 194. 271 Mass. 380.

1 SECTION 12. No inspector of plumbing shall inspect or approve any
 2 plumbing work done by himself, his employer, employee or one employed
 3 with him, but in a city or town subject to sections one to sixteen, inclu-
 4 sive, the said inspector of buildings, or the board of health, shall in the
 5 manner provided in the preceding section appoint an additional inspector
 6 of plumbing as therein provided, who shall inspect plumbing so done.
 7 Said additional inspector may act in the absence or disability of the
 8 local inspector and for his services shall receive like compensation. This

Appointment of additional inspectors. 1894, 455, § 6. R. L. 103, § 6.

section shall not apply to any city or town establishing an annual salary for the inspector of plumbing, and in such city or town the inspector of plumbing shall not engage in or work at the business of plumbing.

Regulation of plumbing, fixtures, etc. 1888, 105, § 1. 1893, 477, § 6. 1894, 455, § 7. 1895, 453, § 1. R. L. 103, § 7. 1 Op. A. G. 290.

SECTION 13. Each city, except Boston, and each town which has five thousand inhabitants or more or which has a system of water supply or sewerage, shall by ordinance or by-law prescribe regulations for the materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by and through which waste water or sewage is used and carried; and shall provide that such pipes, tanks, faucets, valves or other fixtures shall not be placed in any building in such city or town, except in accordance with plans approved by said inspector of buildings, if any, otherwise by the board of health; and shall further provide that no plumbing shall be done, except to repair leaks, without a permit first being issued therefor, upon such terms and conditions as such cities or towns shall prescribe. This section shall not prevent boards of health from making such regulations relative to plumbing and house drainage authorized by law prior to July sixth, eighteen hundred and ninety-four, as are not inconsistent with any ordinance or by-law made under authority of this section.

Sections 1 to 16 to apply to persons learning business, when.

SECTION 14. Sections one to sixteen, inclusive, shall apply to all persons learning the business of plumbing when they are sent out to do the work of a journeyman.

1894, 455, § 9.

R. L. 103, § 9.

Expenditure of fees. 1894, 455, § 11. R. L. 103, § 11.

SECTION 15. Inspectors of buildings and boards of health may expend such portion of the fees collected by them under this chapter as is necessary to properly perform the duties imposed thereby, and they shall annually, before June first, make a detailed report to their respective cities or towns of all their proceedings under sections one to sixteen, inclusive, during the preceding year.

Penalty for certain violations. Penalty for violation by towns. 1888, 105, § 2. 1893, 477, § 7. 1894, 455, § 8. R. L. 103, § 8. 1909, 536, § 10. 1914, 287. 225 Mass. 192. 248 Mass. 165, 220.

SECTION 16. Every person engaged in the business of a master plumber or working as a journeyman not lawfully registered or licensed, if required by this chapter; and every person engaging in or working at the business of plumbing in a city or town when forbidden so to do under section seven; and every master plumber who engages or employs any person to work as a journeyman who has not been so registered or licensed; and every person violating any provision of sections one to fifteen, inclusive, of this chapter or any ordinance, by-law, rule or regulation made thereunder, shall be punished by fine not exceeding fifty dollars. Any city or town subject to the preceding sections of this chapter neglecting to comply with any of its provisions shall forfeit fifty dollars to the use of the commonwealth for each month during which such neglect continues.

Marking, etc., of range boilers. 1916, 154, § 1.

SECTION 17. No range boiler shall be sold or offered for sale unless its capacity is plainly marked thereon in terms of Massachusetts standard liquid measure, and with the maker's business name, in such manner as to be easily identified.

Same subject. 1916, 154, § 2. 1917, 39, § 1.

SECTION 18. No copper, iron or steel pressure range boiler, plain or galvanized, or other vessel or tank in which water is to be heated

3 under pressure, shall be sold or offered for sale without having stamped
 4 thereon the maker's guarantee that it has been tested to not less than
 5 two hundred pounds hydraulic or hydrostatic pressure to the square
 6 inch, together with the maximum working pressure at which it may be
 7 installed. And no such boiler, or other vessel or tank in which water is
 8 to be heated under pressure, shall be installed if the working pressure is
 9 greater than forty-two and one half per cent of the guaranteed test
 10 pressure marked thereon by the maker.

1 SECTION 19. Whoever sells or offers or exposes for sale any range
 2 boiler not marked or stamped as provided in the two preceding sections,
 3 or which is falsely marked as having a capacity which is greater by seven
 4 and one half per cent than its true capacity, or who marks or causes the
 5 same to be marked with such false capacity, shall be punished by a fine
 6 not exceeding fifty dollars. The inspectors of plumbing within their
 7 respective cities and towns shall cause this and the two preceding sec-
 8 tions to be enforced. Penalty for
violation of
§§ 17 and 18,
1916, 154, § 3,
1917, 39, § 2.

1 SECTION 20. The three preceding sections shall not apply to the sale Exception to
§§ 17, 18 and
19.
 2 or offering for sale of installed range boilers or to the sale or offering for
 3 sale of range boilers as junk.

1916, 154, § 4

CHAPTER 143.

INSPECTION AND REGULATION OF, AND LICENSES FOR, BUILDINGS, ELEVATORS AND CINEMATOGRAPHS.

SECT.

GENERAL PROVISIONS.

1. Definitions.
2. Height of buildings in cities.

INSPECTION OF BUILDINGS.

3. Regulations by cities and towns.
4. Building limits in towns.
5. Certain structures common nuisances.
6. Inspector of buildings.
7. Time allowed to remove or repair un-
safe structure.
8. Proceedings on failure to remove or
repair.
9. Dangerous structure to be removed
or repaired by building inspector.
Penalty.
10. Person aggrieved may apply for jury.
11. Notice to non-resident.
12. Restraining illegal construction, etc.
13. State inspector may inspect in certain
cities and towns.
14. Dangerous structures to be removed or
repaired.
15. Construction of public buildings.
16. Penalty.
17. Temporary flooring during construction.
18. Same subject.

SECT.

19. Penalty.
20. Hatchways, etc., to be protected.
Penalty.
21. Fire escapes, exits, etc.
22. Fire escapes to be kept clear. Penalty.
23. Stairways to be kept clear. Penalty.
24. Fire extinguishers, etc.
25. Wooden flues, etc., prohibited.
26. Construction of theatres.
27. Fire resisting partition, curtains, etc.
28. Certificate of inspection.
29. Application for certificate.
30. Notice of change in use of building.
31. Notice of failure to conform to law.
32. Schoolhouses in cities to have fire es-
capes.
33. Cities may require three story build-
ings to conform to this chapter.
34. Licenses for theatres, etc.
35. Liability of licensee.
36. Inspection of theatres, etc.
37. Reports to be kept on file.
38. Copies of ratings, etc., to be sent to
licensee. Penalty for non-compli-
ance with order.
39. Copy of ratings, etc., may be posted.
40. Penalty for false statement, etc.

- SECT.
- 41. Penalty for giving or receiving free pass.
 - 42. Ventilation and sanitation. Inspection by department of public health.
 - 43. Joint owner, etc., may provide fire escape.
 - 44. Watchmen in hotels, etc.
 - 45. Modification of preceding section.
 - 46. Further provisions for protection of life may be prescribed. Penalty.
 - 47. Rope fire escapes in hotels, etc.
 - 48. Inspection of hotels, etc.
 - 49. Certificate of inspector prerequisite to license.
 - 50. Penalty for hindering inspector, etc.
 - 51. Owner must see that law is obeyed.
 - 52. Penalty for unlicensed use as theatre, etc.
 - 53. General penalty.
 - 54. Enforcement.
 - 55. Appeal.
 - 56. Fees for experts.
 - 57. Restraining illegal erection, etc.
 - 58. Concurrent jurisdiction of inferior courts.
 - 59. Enforcement of inspectors' orders.
 - 60. Restraining illegal use, etc., of buildings.
 - 61. Notice to assessors of permits for building.
- ELEVATORS.
- 62. Installation and inspection.
 - 63. Test of safety devices.
 - 64. Report of inspection.

- SECT.
- 65. Certificate of inspection to be posted in elevator.
 - 66. Report of accidents and of defective elevators.
 - 67. Petition for changes in regulations.
 - 68. Board to amend regulations.
 - 69. Establishment of regulations.
 - 70. Appeal.
 - 71. Penalty.
- CINEMATOGRAPHS.
- 72. Regulation.
 - 73. Inspection.
 - 74. Fee for inspection.
 - 75. Licenses.
 - 76. Assistant's permit.
 - 77. Second class license.
 - 78. First class license.
 - 79. Eligibility for examination.
 - 80. Special license.
 - 81. Suspending or revoking license or permit.
 - 82. Permits for special exhibitions.
 - 83. Application of certain sections.
 - 84. Penalty.
 - 85. Special licenses for operators in churches, schools, etc.
 - 86. Use of certain motion picture apparatus in schools, etc.
 - 87. Penalty for sale, false marking, etc., of certain film.
 - 88. Sale, etc., of motion picture apparatus regulated. Penalty.

GENERAL PROVISIONS.

Definitions.
R. L. 104, § 14.
1904, 450, § 1.
1913, 610, § 2;
655, §§ 14,
30, 39, 41;
806, § 1.
270 Mass. 436.

SECTION 1. In this chapter the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:

“Alteration”, changes in or addition to a building. 4

“Department”, department of public safety. 5

“Inspector”, an inspector of the division of inspection of the department of public safety, except that in sections thirty-four to thirty-eight, inclusive, “inspector” shall include the inspectors of the building department of Boston and in sections sixty-three to sixty-six, inclusive, “inspector” shall include a building inspector of a city or town. 6-9

“Inspector of buildings”, a building inspector of a city or town. 11

“Miscellaneous hall”, a building or part thereof containing an assembly hall with a seating capacity of not more than four hundred, a society hall, or a hall in a public or private school building. 12-14

“Public building”, any building or part thereof used as a public or private institution, schoolhouse, church, theatre, special hall, public hall, miscellaneous hall, place of assemblage or place of public resort. 15-17

“Public hall”, any building or part thereof, except theatres, armories, churches and schools, containing an assembly hall with a seating capacity of more than four hundred and used for public gatherings and for such entertainments, not requiring the use of scenery and other stage appliances, as the licensing officer may approve. 18-22

2 Op. A. G. 564

23 "Repair", the reconstruction or renewal of a building or part thereof
24 damaged by fire or other cause.

25 "Special hall", a building or part thereof containing an assembly hall
26 with a seating capacity of more than four hundred which may be used
27 for occasional performances for the entertainment of spectators, with the
28 use of scenery under such conditions as the licensing officer shall direct,
29 and for public gatherings.

30 "Story", any horizontal portion through a building between floor and
31 ceiling of which the ceiling is six feet or more above the average grade
32 of the sidewalk or ground adjoining.

33 "Supervisor of plans", an inspector of the division of inspection of the
34 department of public safety designated by the commissioner of public
35 safety to receive the plans and specifications of all buildings subject to
36 this chapter, to be erected or in which alterations are to be made, and
37 to act officially upon them under the direction of the chief of inspections
38 of the department of public safety.

39 "Theatre", a building or part thereof in which it is intended to make
40 a business of the presentation of performances for the entertainment of
41 spectators, which has a seating capacity of more than four hundred, with
42 a stage which can be used for scenery and other stage appliances. 2 Op. A. G. 564.

1 SECTION 2. In a city no building shall be erected to a height of more
2 than one hundred and twenty-five feet above the grade of the street;
3 but this restriction shall not apply to grain or coal elevators or sugar
4 refineries, nor to steeples, domes, towers or cupolas erected for strictly
5 ornamental purposes, of fireproof material, on buildings of the above
6 height or less. The supreme judicial or superior court may enforce this
7 section and restrain any violation thereof. This section shall not apply
8 to Boston.

Height of
buildings in
cities.
1891, 355.
R. L. 26, § 37.
1907, 550, § 18.
214 U. S. 91.

INSPECTION OF BUILDINGS.

1 SECTION 3. Every city, except Boston, and every town which accepts
2 this section or has accepted corresponding provisions of earlier laws
3 may, for the prevention of fire and the preservation of life, health and
4 morals, by ordinances or by-laws consistent with law and applicable
5 throughout the whole or any defined part of its territory, regulate the
6 inspection, materials, construction, alteration, repair, height, area, loca-
7 tion and use of buildings and other structures within its limits, except
8 such as are owned or occupied by the United States or by the common-
9 wealth, and except bridges, quays and wharves, and may prescribe penal-
10 ties not exceeding one hundred dollars for every violation of such ordi-
11 nances or by-laws.

Regulations
by cities and
towns.
1872, 243,
§§ 1, 2, 4.
P. S. 104, § 1.
1894, 481, § 11.
R. L. 104, § 1.
1912, 334.
1913, 655, § 1.
123 Mass. 372.
143 Mass. 598.
180 Mass. 464.
203 Mass. 241.
207 Mass. 285.
211 Mass. 296.
212 Mass. 57.
215 Mass. 273.

224 Mass. 78.

244 Mass. 78.

262 Mass. 404.

1 SECTION 4. In a town which accepts this and the following section
2 or has accepted corresponding provisions of earlier laws, no dwelling
3 house or other structure more than eight feet in length or breadth and
4 seven feet in height, except detached houses or structures situated more
5 than one hundred feet from any other building and wooden structures
6 erected on wooden wharves, shall be built within such limits as the town
7 may from time to time prescribe, unless made of and covered with an
8 incombustible material, or unless a license is granted therefor by the
9 selectmen for public good or necessity and recorded in the town records.

Building
limits in
towns.
1870, 375,
§§ 1, 3.
P. S. 104, § 2.
1894, 481, § 12.
R. L. 104, § 2.
1913, 655, § 2.

Certain structures common nuisances.
 1870, 375, § 2.
 P. S. 104, § 3.
 1894, 481, § 13.
 R. L. 104, § 3.
 1913, 655, § 3.

SECTION 5. A building or structure erected in violation of the preceding section shall be deemed a common nuisance without other proof thereof than proof of its unlawful construction and use; and the selectmen may abate and remove it in the same manner in which boards of health may remove nuisances under sections one hundred and twenty-three to one hundred and twenty-five, inclusive, of chapter one hundred and eleven.

1
2
3
4
5
6
7

Inspector of buildings.
 1878, 47, § 1.
 P. S. 104, § 4.
 1894, 481, § 14.
 1899, 139, § 1.
 R. L. 104, § 4.
 1908, 221, § 1.
 1913, 655, § 4.
 1918, 291, § 23.
 207 Mass. 285.
 208 Mass. 51.

SECTION 6. In a city or town which accepts this and the six following sections or has accepted corresponding provisions of earlier laws, the superintendent of public buildings or such other person as the mayor of such city or the selectmen of such town may designate shall be inspector of buildings, and, immediately upon being informed by report or otherwise that a building or other structure or anything attached to or connected therewith in that city or town is dangerous to life or limb, shall inspect the same; and if it appears to him to be dangerous he shall forthwith in writing notify the owner, agent or any person having an interest therein to remove it or make it safe. If it appears that such structure would be specially unsafe in case of fire, it shall be deemed dangerous within the meaning hereof, and the inspector of buildings may affix in a conspicuous place upon its exterior walls a notice of its dangerous condition, which shall not be removed or defaced without authority from him.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Time allowed to remove or repair unsafe structure.
 1878, 47, § 2.
 P. S. 104, § 5.
 1888, 399, § 3.
 1894, 481, § 15, 49.
 1899, 139, § 2.
 R. L. 104, § 5.
 1913, 655, § 5.

SECTION 7. Any person so notified shall be allowed until twelve o'clock noon of the day following the service of the notice in which to begin to remove such structure or make it safe, and he shall employ sufficient labor speedily to make it safe or remove it; but if the public safety so requires and if the aldermen or selectmen so order, the inspector of buildings may immediately enter upon the premises with the necessary workmen and assistants and cause such unsafe structure to be made safe or taken down without delay, and a proper fence put up for the protection of passers-by.

1
2
3
4
5
6
7
8
9

Proceedings on failure to remove or repair.
 1878, 47, § 3.
 P. S. 104, § 6.
 1888, 399, § 4.
 1894, 481, § 16, 50.
 1899, 139, § 3.
 R. L. 104, § 6.
 1913, 655, § 6.

SECTION 8. If an owner, agent or person interested in such unsafe structure refuses or neglects to comply with the requirements of such notice within the time limited, and such structure is not made safe or taken down as therein ordered, a careful survey of the premises shall be made by a board consisting in a city of the city engineer, the chief engineer of the fire department and one disinterested person to be appointed by the inspector of buildings, and in a town of a surveyor, the chief engineer of the fire department and one disinterested person to be appointed by the inspector of buildings. If there is no city engineer in such city or no chief engineer of the fire department in such city or town, the mayor or selectmen shall designate one or more officers or other suitable persons in place of the officers so named as members of said board. A written report of such survey shall be made, and a copy thereof served on such owner, agent or interested person.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

Dangerous structure to be removed or repaired by building inspector.
 Penalty.
 1878, 47, § 4, 5.

SECTION 9. If such report declares such structure to be dangerous, and if the owner, agent or person interested continues such refusal or neglect, the inspector of buildings shall cause it to be made safe or taken down, and the costs and charges incurred shall constitute a lien upon the land upon which the building is located, and shall be enforced within the

1
2
3
4
5

6 time and in the manner provided for the collection of taxes on land;
 7 and such owner or interested person shall, for every day's continuance
 8 of such refusal or neglect after being so notified, forfeit to the city or
 9 town in which the structure is located not less than ten nor more than
 10 fifty dollars.

P. S. 104, § 7.
 1894, 481, § 17.
 1899, 139, § 4.
 R. L. 104, § 7.
 1913, 655, § 7.

1 SECTION 10. An owner or interested person aggrieved by such order
 2 may have the remedy prescribed by section two of chapter one hun-
 3 dred and thirty-nine; but this section shall not prevent the city or
 4 town from recovering the forfeiture provided in the preceding section
 5 from the date of the service of the original notice, unless the order is
 6 annulled by the jury.

Person ag-
 grieved may
 apply for jury.
 1873, 261
 1878, 47,
 §§ 6-8
 P. S. 104,
 §§ 5-10.

1894, 481, §§ 18-20. 1899, 139, § 5. R. L. 104, § 8. 1913, 655, § 8.

1 SECTION 11. If an owner or interested person lives out of the com-
 2 monwealth, the notice required by section six may be served upon him
 3 by a notary public, whose certificate of service under his notarial seal
 4 shall be sufficient evidence thereof.

Notice to
 non-resident
 1878, 47, § 10.
 P. S. 104, § 11
 1894, 481, § 21

R. L. 104, § 9. 1913, 655, § 9.

1 SECTION 12. The supreme judicial or superior court may restrain
 2 the construction, alteration, repair, maintenance or use of a building or
 3 structure in violation of any ordinance or by-law of a city or town and
 4 order its removal or abatement as a nuisance; and may restrain the further
 5 construction, alteration or repair of a building or structure reported to be
 6 dangerous, under a survey authorized by section eight, until the deter-
 7 mination of the matter, as provided in section ten.

Restraining
 illegal con-
 struction, etc.
 1870, 305.
 1872, 243, § 3.
 1878, 47, § 9
 P. S. 104, § 12.
 1891, 293
 1894, 481,
 §§ 4, 22.

R. L. 104, § 10. 1913, 655, § 10.

1 SECTION 13. Any inspector, if called upon by the aldermen of any
 2 city or by the selectmen of any town which has not accepted sections
 3 six to eleven, inclusive, shall inspect any building or other structure,
 4 or anything attached to or connected therewith, in such city or town
 5 which has been represented to be dangerous to life or limb.

State inspector
 may inspect in
 certain cities
 and towns.
 1888, 399, § 1
 1894, 481, § 47.
 R. L. 104, § 12.
 1913, 655, § 12.

1 SECTION 14. If it appears to such inspector that the building or
 2 other structure, or anything attached to or connected therewith, is dan-
 3 gerous to life or limb in case of fire or otherwise, he shall cause it to be
 4 removed or rendered safe in the manner provided by sections six to
 5 eleven, inclusive, and may cause proceedings to be instituted under sec-
 6 tion twelve.

Dangerous
 structures to
 be removed
 or repaired.
 1888, 399, § 2.
 1894, 481, § 48.
 R. L. 104, § 13.
 1913, 655, § 13.

1 SECTION 15. Except in Boston, no building which is designed to be
 2 used, or in which alteration shall be made for the purpose of using it, or
 3 continuing its use, in whole or in part, as a public building, or as a factory,
 4 workshop or mercantile or other establishment, and to have accommoda-
 5 tions for ten or more employees, and no building more than two stories
 6 in height designed to be used above the second story, or in which altera-
 7 tion shall be made for the purpose of using it, or continuing its use, in
 8 whole or in part, as an office building, dormitory, hotel, family hotel,
 9 apartment house, boarding house, lodging house or tenement house, and
 10 to have eight or more rooms above said story, shall be erected, and no
 11 alteration shall be made therein, until a copy of the plans and specifica-
 12 tions thereof has been deposited with the supervisor of plans by the
 13 person causing its erection or alteration or by the architect thereof. Such

Construction
 of public
 buildings.
 1888, 316, § 1.
 1892, 419,
 § 138.
 1893, 199, § 1.
 1894, 382, § 3;
 481, §§ 25, 39.
 R. L. 104,
 §§ 22, 53.
 1913, 655,
 §§ 15, 52.
 230 Mass. 306.
 241 Mass. 86.
 270 Mass. 490
 3 Op. A. G. 231-
 4 Op. A. G. 347.
 Op. A. G.
 (1919) 46.

plans and specifications shall include those for heating, ventilation and sanitation, if the supervisor of plans so requires. Such building shall not be so erected or altered without sufficient egresses and other means of escape from fire, properly located and constructed. The supervisor of plans may require that stairways shall be enclosed, that they shall have suitable landings, that they shall be provided with hand rails, that egress doors and windows shall open outward and have approved hardware, that places of egress shall be properly lighted and designated, and that proper fire stops shall be provided in the floors, walls, partitions and stairways of such building. He may make such further requirements as may be necessary to prevent the spread of fire or its communication from any steam boiler or heating apparatus therein. The certificate of approval by the supervisor of plans of such plans and specifications, endorsed with the approval of the chief of inspections of the department, or a specification of requirements necessary for compliance with sections fifteen to sixty, inclusive, set forth in detail and so endorsed, shall be issued to the person causing its erection or alteration, or to the architect thereof, and a copy of the same, together with the plans, shall then be turned over to the inspector in whose district the building is to be erected or altered, who shall enforce the requirements thereof and supervise such erection or alteration. After a certificate of approval and a specification of requirement has been issued, no change shall be made in the plans or specification or in the building without the written permission of the supervisor of plans.

Penalty.
1888, 316, § 2.
1892, 419,
§ 138
1893, 199, § 2.
1894, 382, § 3;
481, §§ 26, 39.
R. L. 104,
§§ 24, 53.

SECTION 16. Whoever, except in Boston, erects, constructs or makes alteration in a building, or draws plans or specifications, or superintends the erection, construction or alteration of a building in violation of sections fifteen to sixty, inclusive, shall be punished by a fine of not less than fifty nor more than one thousand dollars.

1913, 655, §§ 16, 52.

270 Mass. 490.

Temporary
flooring during
construction.
1901, 166, § 1
R. L. 104, 44
1909, 514, 97
1913, 655, 17.
194 Mass. 431
213 Mass. 229.
[Penalty, § 19.]

SECTION 17. If, in the erection of an iron or steel framed building, the spaces between the girders or floor beams of any floor are not filled or covered by the permanent construction of said floors before another story is added to the building, a close plank flooring shall be placed and maintained over such spaces from the time when the beams or girders are placed in position until said permanent construction is applied; but openings protected by a strong hand railing not less than four feet high may be left through said floors for the passage of workmen or material; provided, that when such flooring cannot be used without serious interference with the work of construction, such provision shall be made to protect the workmen from falling material as the inspector shall direct.

Same subject.
1901, 166, § 2
R. L. 104, 45
1909, 514, 98
1913, 655, 18
[Penalty, § 19.]

SECTION 18. In the construction of any iron or steel framed building having a clear story of twenty-five feet elevation or more, a staging with a close plank flooring shall be placed under and not more than ten feet below the under side of the whole extent of the beams, girders or trusses of such story upon which iron or steel workers are working.

Penalty
1901, 166, § 4
R. L. 104, 46.
1909, 514, 99.
1913, 655, 19.

SECTION 19. Violations of any provision of the two preceding sections shall be punished by a fine of not less than fifty nor more than five hundred dollars.

1 SECTION 20. The openings of hoistways, hatchways and well holes
 2 on every floor of a public building, except in Boston, shall be protected
 3 by sufficient trapdoors or self-closing hatches or such other safeguards
 4 as an inspector directs; and due diligence shall be used to keep such
 5 trapdoors closed at all times except when in actual use by the occupant
 6 of the building having the use and control of the same. Violations of
 7 this section shall be punished by a fine of not more than one hundred
 8 dollars.

Hatchways,
 etc., to be
 protected
 Penalty.
 1877, 214, § 2
 P. S. 104, § 14
 1882, 208.
 1894, 481.
 §§ 41, 62.
 R. L. 194.
 §§ 43, 56
 1909, 514.
 §§ 36, 96

1913, 806, § 13.

145 Mass. 123.

202 Mass. 82.

213 Mass. 573

1 SECTION 21. Except in Boston, any building in whole or in part used
 2 as a public building, and any building in which ten or more persons
 3 are employed in a factory, workshop, mercantile or other establishment,
 4 and an office building, dormitory, hotel, family hotel, apartment house,
 5 boarding house, lodging house or tenement house which has eight or
 6 more rooms, or in which ten or more persons are accommodated, lodge
 7 or reside above the second story, the owner, lessee or mortgagee in pos-
 8 session whereof is notified in writing by an inspector that sections fifteen
 9 to sixty, inclusive, apply thereto, shall be provided with proper egresses
 10 or other means of escape from fire sufficient for the use of all persons
 11 accommodated, assembled, employed, lodged or resident therein; but
 12 no owner, lessee or mortgagee in possession of such building shall be
 13 deemed to have violated this provision unless he has been notified in
 14 writing by an inspector as to what additional egresses or means of escape
 15 from fire are necessary, and for thirty days has neglected or refused to
 16 provide the same. The egresses and means of escape shall be kept un-
 17 obstructed, in good repair and ready for use, and, if the inspector so
 18 directs in writing, every such egress shall be properly lighted and pro-
 19 vided with a sign having on it the word "Exit" in letters not less than
 20 five inches in height, and so made and placed as plainly to indicate to
 21 persons within the building the situation of such egresses; stairways
 22 shall have suitable hand rails; egress doors and windows shall open
 23 outwardly, and women or children shall not be employed in a factory,
 24 workshop, mercantile or other establishment in a room above the sec-
 25 ond story from which there is only one egress. The certificate of the
 26 inspector shall be conclusive evidence of a compliance with the said
 27 requirements. Portable seats shall not be allowed in the aisles or passage-
 28 ways of such buildings during any service or entertainment held therein.
 29 Stairways on the outside of the building shall have suitable railed land-
 30 ings at each story above the first, accessible at each story from doors or
 31 windows, and such landings, doors and windows shall be kept clear of
 32 ice, snow and other obstructions.

Fire escapes,
 exits, etc.
 1877, 214.
 §§ 1, 5, 19
 1880, 197.
 P. S. 104,
 §§ 15, 16,
 18, 20, 23.
 1882, 266,
 §§ 1, 2
 1883, 251, § 2
 1888, 297;
 426, § 1
 1894, 481, § 24
 1900, 335, § 1
 R. L. 194,
 §§ 25, 53.
 1907, 593, § 1
 1913, 655,
 §§ 20, 52.
 1917, 156, § 1
 126 Mass. 84
 161 Mass. 35
 228 Mass. 368.
 3 Op. A. G. 319.
 4 Op. A. G. 347

1 SECTION 22. Any article placed upon a fire escape or an outside means
 2 of egress of any building is hereby declared a common nuisance. Any
 3 court authorized to issue warrants in criminal cases may, upon com-
 4 plaint under oath made by any police officer that any article is placed or
 5 maintained upon a fire escape or outside means of egress of any building,
 6 issue a warrant to bring such article when found before a court having
 7 jurisdiction of the same, and all articles seized under the authority of
 8 such a warrant shall be disposed of in like manner as gaming implements
 9 seized under chapter two hundred and seventy-six. Any owner, lessee,
 10 tenant or occupant of any building who maintains or permits to remain
 11 upon any fire escape or outside means of egress of any building any

Fire escapes
 to be kept
 clear.
 Penalty
 1905, 347, § 1.

article for more than twenty minutes shall be punished by a fine of not 12
 more than one hundred dollars. The existence of any article upon a fire 13
 escape or outside means of egress of any building shall be prima facie 14
 evidence that such article was so placed, maintained or permitted to 15
 remain by the occupant of the premises having access from said build- 16
 ing to said fire escape or outside means of egress. 17

Stairways to be kept clear. Penalty 1905, 347, § 2.

SECTION 23. Every stairway of every building shall be kept free and 1
 unobstructed, and any person who permits any article to remain in any 2
 stairway of any building in such a manner as may impede the egress of 3
 any person lawfully in said building or the ingress of any person lawfully 4
 entitled to enter said building shall be punished by a fine of not more 5
 than five hundred dollars. The existence of any article in any such 6
 stairway in any building shall be prima facie evidence that it was placed 7
 or permitted to remain therein by the owner, lessee, tenant or occupant 8
 of the building. 9

Fire extinguishers, etc. 1877, 214, §§ 4, 9. P. S. 104, §§ 19, 23. 1888, 426, § 9. 1894, 481, §§ 34, 39. R. L. 104, §§ 26, 53.

SECTION 24. Except in Boston, the basement and each story of a 1
 building which is subject to section twenty-one shall be supplied with 2
 means of extinguishing fire, consisting of a hose attached to a suitable 3
 water supply and capable of reaching any part of such basement or story, 4
 or of such portable apparatus as the inspector shall direct; and such 5
 appliances shall be kept at all times ready for use and in good condition. 6
 1913, 655, §§ 21, 52

Wooden flues, etc., prohibited. 1885, 326. 1888, 316, § 1; 426, § 8. 1892, 419, § 138. 1893, 199, § 1. 1894, 481, §§ 25, 33, 39.

SECTION 25. Except in Boston, no wooden flue or air duct for heat- 1
 ing or ventilating purposes shall be placed or remain placed in any build- 2
 ing subject to sections fifteen and twenty-one, and no pipe for conveying 3
 hot air or steam in such building shall be placed or remain placed 4
 within one inch of any woodwork, unless protected to the satisfaction 5
 of the inspector by suitable guards or casings of incombustible material. 6
 R. L. 104, §§ 23, 53. 1913, 655, §§ 22, 52.

Construction of theatres. 1877, 214, § 5. P. S. 104, § 20. 1894, 382, § 1. R. L. 104, §§ 36, 53. 1913, 655, §§ 23, 52. 189 Mass. 568. 1 Op. A. G. 306. 2 Op. A. G. 564.

SECTION 26. Except in Boston, the audience hall in a building erected 1
 or designed to be used in whole or in part as a theatre, or in which any 2
 change or alteration shall be made for the purpose of using it as a theatre, 3
 shall not be placed above the second floor of such building. The audi- 4
 ence hall and each gallery of every such building shall, respectively, 5
 have at least two independent exits, as far apart as may be; and if the 6
 audience hall is on the second floor, the stairways from said floor to the 7
 ground floor shall be enclosed with fireproof walls, and shall have no 8
 connection with the basement or first floor of the building. Every such 9
 exit shall have a width of at least twenty inches for every one hundred 10
 persons which such hall, or gallery from which it leads, is capable of 11
 holding; but two or more exits of the same aggregate width may be sub- 12
 stituted for either of the two required exits. None of the required exits 13
 shall be less than five feet wide; provided, that the exits from a gallery 14
 capable of holding not more than one hundred and fifty persons may each 15
 be less than five feet but not less than three feet wide. 16

Fire resisting partition, curtains, etc. 1888, 207; 426, § 1. 1892, 419, § 138.

SECTION 27. Except in Boston, the wall or partition between the 1
 auditorium and stage of every theatre shall be fireproof or fire resisting 2
 on the stage side, for the whole width of the auditorium and the whole 3
 height of the auditorium or stage, as the inspector shall direct, and all 4

5 doors in such wall or partition shall be fireproofed and provided with
 6 approved self-closing devices. The proscenium or curtain opening shall
 7 have a fire resisting curtain of an incombustible material, properly con-
 8 structed and operated by approved mechanism. There shall be one or
 9 more ventilators near the centre and above the highest part of the stage,
 10 equal in area to one tenth of that of the stage floor back of the fire re-
 11 sisting curtain, and arranged so as to open automatically from heat, and
 12 by a cord or cords from the stage floor, as the inspector shall direct.

1894, 481,
 §§ 24, 39
 1900, 335, § 1.
 R. L. 104,
 §§ 37, 53
 1913, 655,
 §§ 24, 52.

1 SECTION 28. Except in Boston and as otherwise provided by law,
 2 the inspectors shall from time to time examine all buildings within their
 3 respective districts which are subject to sections fifteen to sixty, in-
 4 clusive. If in the judgment of any such inspector such building con-
 5 forms to the requirements of said sections for buildings of its class, he
 6 shall issue to the owner, lessee or occupant thereof, or of any portion
 7 thereof used in the manner described in section twenty-one, a certificate
 8 to that effect, specifying the number of persons for whom the egresses
 9 and means of escape from fire are sufficient. Such certificate shall con-
 10 tinue in force for not more than five years after its date, but so long as
 11 it continues in force it shall be conclusive evidence of a compliance with
 12 said section by the person to whom it is issued. It shall be void if a
 13 greater number of persons than is therein specified are accommodated or
 14 employed, or assemble, lodge or reside within such building or portion
 15 thereof, or if such building is used for any purposes materially different
 16 from the purpose for which it was used at the time of the granting thereof,
 17 or if its interior arrangement is materially altered, or if any egresses or
 18 means of escape from fire in such building at the time of granting the
 19 said certificate are rendered unavailable or are materially changed.
 20 The certificate may be revoked by an inspector at any time upon written
 21 notice to the holder thereof or to the occupant of the premises for which
 22 it was granted, and shall so be revoked if, in the opinion of the inspector,
 23 circumstances have so changed that the existing egresses and means of
 24 escape are not proper and sufficient. A copy of said certificate shall
 25 be kept posted in a conspicuous place upon each story of such building
 26 by the occupant of the premises covered thereby.

Certificate
 of inspection.
 1888, 426, § 2.
 1892, 419,
 § 138
 1894, 481,
 §§ 27, 39,
 R. L. 104,
 §§ 15, 53,
 1913, 655,
 §§ 25, 52
 4 Op. A. G. 305.

1 SECTION 29. Except in Boston, upon application to an inspector for a
 2 certificate under the preceding section, he shall issue to the applicant an
 3 acknowledgment thereof, which for ninety days, pending the granting
 4 or refusal of the certificate, shall have the same effect as the certificate,
 5 and such acknowledgment may be renewed by him with the same effect
 6 for a further period, not exceeding ninety days.

Application
 for certificate.
 1888, 426, § 3.
 1892, 419,
 § 138.
 1894, 481,
 §§ 28, 39,
 R. L. 104,
 §§ 16, 53.

1913, 655, §§ 26, 52.

1 SECTION 30. Except in Boston, if any change shall be made upon
 2 premises for which such certificate has been issued or in the use thereof
 3 which would render the certificate void according to section twenty-eight,
 4 the person making such change shall forthwith give written notice thereof
 5 to an inspector for the district or to the commissioner of public safety.

Notice of
 change in use
 of building.
 1888, 426, § 4.
 1892, 419,
 § 138.
 1894, 481,
 §§ 29, 39.

R. L. 104, §§ 17, 53.

1913, 655, §§ 27, 52.

1 SECTION 31. Except in Boston, if an inspector finds that any building
 2 or part thereof subject to sections fifteen to sixty, inclusive, fails to con-
 3 form thereto, or if any change is made therein which would render a

Notice of
 failure to
 conform to
 law
 1888, 426, § 5.

1892, 419, § 138.
1894, 481, §§ 30, 39.
R. L. 104, § 18, 53.
1913, 655, §§ 28, 52.

certificate void under section twenty-eight, he shall give written notice 4
to the owner, lessee, occupant or agent in charge thereof, specifying such 5
additional provisions, egresses or other means of escape from fire as in 6
his opinion may be necessary to make it conform to said section and to 7
obtain a certificate; and any such owner, lessee, occupant or agent in 8
charge thereof failing to comply with such notice for a period of thirty 9
days shall be punished by a fine of not less than fifty nor more than one 10
thousand dollars. 11

Schoolhouses in cities to have fire escapes. 1894, 337; 481, § 40. R. L. 104, § 11. 1913, 655, § 11.

SECTION 32. If a schoolhouse in any city, except Boston, has not 1
been provided with a safe and proper egress or other means of escape from 2
fire, as required by sections fifteen to sixty, inclusive, within six months 3
after the written notice provided for in the preceding section, the mayor, 4
for the purpose of conforming to the provisions of this chapter relative 5
to egresses or other means of escape from fire in schoolhouses, may, upon 6
petition of one hundred citizens or taxpayers in such city, authorize the 7
expenditure upon such schoolhouse of not more than fifteen per cent of 8
the cost thereof, payable from any money in the treasury of that city 9
which is not otherwise appropriated. 10 11

Cities may require three story buildings to conform to this chapter. 1882, 266, § 1. 1888, 426, § 11.

SECTION 33. Any city, except Boston, may by ordinance provide that 1
sections fifteen, sixteen, twenty-one to thirty-one, inclusive, forty-seven 2
and forty-eight shall apply to any building of three or more stories in 3
height within its limits. 4

1894, 481, §§ 36, 39. R. L. 104, §§ 53, 54. 1913, 655, §§ 29, 52.

Licenses for theatres, etc. 1904, 450, § 2. 1905, 342, §§ 1, 2. 1907, 463. 1908, 335, § 1. 1910, 284, § 1. 1913, 655, § 31. 213 Mass. 213.

SECTION 34. In sections thirty-four to thirty-eight, inclusive, the 1
term "licensing officer" shall mean the mayor of Boston and the com- 2
missioner of public safety. In Boston the mayor and elsewhere the 3
commissioner of public safety shall issue licenses for theatres, special 4
halls and public halls. He may require such changes in the structural 5
or other condition of any building before issuing any license as in his 6
opinion the public safety requires, but no change shall be ordered in 7
excess of the requirements for a new building of like character. In 8
buildings existing on November first, nineteen hundred and thirteen, 9
an equivalent of the conditions required by law may be accepted by 10
the licensing officer; provided, that such equivalents are set forth in 11
detail in the license. The licenses provided for herein shall be con- 12
spicuously posted near the main entrance of the theatre, special hall 13
or public hall. Licenses for theatres, except in Boston, shall expire on 14
September first, for special halls on August first, and for public halls on 15
July first of each year. 16

Liability of licensee. 1904, 450, § 3. 1913, 655, § 32.

SECTION 35. The licensee shall be responsible, civilly and criminally, 1
for non-compliance with the laws applicable to the theatre, special hall 2
or public hall covered by his license, and for non-compliance with the 3
conditions thereof. The licensing officer shall cause a complete inspec- 4
tion of all theatres to be made once in each month, of special halls and 5
public halls once in every six months, and as much oftener as circum- 6
stances may require. 7

Inspection of theatres, etc. 1904, 450, § 4. 1913, 655, § 33.

SECTION 36. Every inspection of theatres, special halls or public 1
halls shall cover all details relating to the condition of the building as 2
regards the safety of life and property. The inspector shall make a 3

4 signed report as to all such details upon a tabulated inspection blank, the
 5 form of which shall be determined by the licensing officer. The forms of
 6 such blanks may be adapted to the circumstances of the different classes
 7 of buildings, but shall be such as to enable the inspectors to report a
 8 rating on the points and in the form hereinafter specified, and shall
 9 include a detailed table of legal requirements, with a statement as to
 10 compliance or non-compliance with each. All inspectors inspecting
 11 theatres, special halls and public halls shall on the first of each week
 12 forward to the licensing officer the reports of their inspections of the
 13 previous week, and shall rate each theatre, special hall or public hall on
 14 the following points in the following form:

- 15 1. Compliance with existing laws, non-compliance in any particular
 16 to be specified.
 17 2. The following ratings of each building as to the safety of the audi-
 18 ence, in the judgment of the inspectors, in the light of improved methods
 19 of insuring safety:

Condition, whether poor, fair, good or excellent.	Remarks.
a. Structural condition.	
b. Facility of escape of audience.	
c. Heating apparatus.	
d. Water supply.	
e. Lighting apparatus.	
f. Condition of fire apparatus.	
g. Condition of sprinklers.	
h. Condition of fire resisting curtain.	
i. Protection against neighborhood hazard.	
j. General condition of appliances and apparatus.	
k. General condition of stage.	
Rating as a whole.	
With regard to safety of audience.	

20 And such other points as in the opinion of the licensing officer may be
 21 suitable. These reports and ratings shall be signed by the inspectors,
 22 and shall give the date of the inspection, with such remarks upon the
 23 condition of each theatre, special hall and public hall as may be suitable
 24 to give notice of danger or to give confidence in the safety of such build-
 25 ings. After each inspection of a theatre, special hall or public hall, the
 26 inspector shall post a notice in conspicuous type, near the main entrance
 27 thereof, in the following form:

This theatre (or special hall) (or public hall) has been inspected by inspector
 (name of inspector) on (date).

1 SECTION 37. The full inspection reports of theatres, special halls and
 2 public halls shall be kept on file by the licensing officer, but, except as
 3 hereinafter provided, shall not be open to examination by the public
 4 until the expiration of one month from the time when they were rendered,
 5 except with the consent of the licensing officer. Every licensee shall be
 6 entitled to examine the full reports of his own building at any time.
 7 The licensing officer shall make a full report annually of the condition
 8 of all theatres, special halls and public halls, which shall be open to
 9 examination by the public at all times. The reports of inspectors shall
 10 be public records of matters of public interest; and a fair publication of
 11 these reports, or parts thereof, or comment thereon, by any person, in
 12 newspapers or otherwise, shall be privileged.

Reports to be
 kept on file,
 1904, 450, § 6.
 1913, 655, § 34.

Copies of ratings, etc., to be sent to licensee.
Penalty for non-compliance with order.
1904, 450, § 8.
1906, 105, §§ 2, 3.
1913, 655, § 35

SECTION 38. A certified copy of all ratings and conclusions of the inspectors in respect to any licensed theatre, special hall or public hall shall be delivered or mailed by the licensing officer to the licensee at the building. If any inspector shall report that the laws or the conditions of the license are not complied with by any licensee, the licensing officer may notify the licensee, fixing a time within which he shall comply with the law and the conditions of the license. If at the expiration of such time there has not been such compliance, the licensing officer shall give a hearing to the licensee; and if upon investigation he shall find that there is cause, he shall revoke the license. The licensing officer may, if in his opinion the public safety requires it, order any theatre, special hall or public hall to be closed pending a hearing upon the revocation of the license, and any person failing to comply with such order shall be punished by a fine of not less than fifty nor more than one thousand dollars.

Copy of ratings, etc., may be posted.
1904, 450, § 9.
1913, 655, § 36.

SECTION 39. Any licensee may post upon his premises a certified copy of the complete table of ratings and conclusions relating to the theatre, special hall or public hall covered by his license, but he shall not post an incomplete copy of such table.

Penalty for false statement, etc.
1904, 450, § 13.
1913, 655, § 37.

SECTION 40. Any person having any duty to perform under this chapter in connection with the licensing or inspection of theatres, special halls or public halls who wilfully makes any false statement or report or any false record of any statement, report or rating as to any such theatre, special hall or public hall shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Penalty for giving or receiving free pass.
1904, 450, § 14.
1913, 655, § 38.

SECTION 41. Any officer or person having any duty in any way connected with the inspection of theatres, special halls or public halls, who requests for himself or another, or accepts or uses any ticket or pass or privilege of admission, or admission, to any theatre, special hall or public hall for which he is to pay or has paid either nothing or a price less than that demanded of the public generally, and any owner, proprietor, manager, lessee, agent or employee of any theatre, special hall or public hall, or any other person who issues, delivers, offers or allows any such ticket, pass, privilege or admission to any such officer or person, or to any other person, at the request, solicitation, procurement or with the connivance of any such officer or person, shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Ventilation and sanitation. Inspection by department of public health.
1913, 655, §§ 40, 41.
1914, 792, § 1.
3 Op. A. G. 192.

SECTION 42. Every public building as defined in section one, except schoolhouses in which public or private instruction is afforded to less than eleven pupils at one time, shall be kept clean and free from effluvia arising from any drain, privy or nuisance, shall be provided with a sufficient number of proper water closets, earth closets or privies, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health. If it appears to an inspector that further or different heating, ventilating or sanitary provisions are required in any such public building, in order to conform to the requirements of this section, and that such requirement can be provided without unreasonable expense, he may issue a written order to the proper person or authority, directing such heating, ventilating or sanitary provisions to be provided. A school committee, public officer or person

14 who has charge of, owns or leases any such public building, who neglects
 15 for four weeks to comply with the order of such inspector, shall be
 16 punished by a fine of not more than one hundred dollars. The district
 17 health officers or such other officers as the department of public health
 18 may from time to time appoint shall make such examinations of school
 19 buildings subject to this section as in the opinion of the department
 20 the protection of the health of the pupils may require. This section
 21 shall not apply to Boston.

1 SECTION 43. Except in Boston, if a building subject to sections
 2 fifteen to sixty, inclusive, is owned, leased or occupied, jointly or in
 3 severalty, any owner, lessee or occupant may affix to any part of the
 4 outside wall of such building any means of egress or of escape from fire
 5 specified and described by an inspector, notwithstanding the objection
 6 of any other such owner, lessee or occupant; and such means of egress
 7 or of escape may project over the highway, or over a right of way for
 8 a distance not exceeding one half the width of the right of way.

Joint owner,
 etc., may
 provide fire
 escape.
 1888, 426, § 6.
 1892, 419,
 § 138.
 1894, 481,
 §§ 31, 39.
 R. L. 104,
 §§ 48, 53.
 1913, 655,
 §§ 47, 52.

1 SECTION 44. The keeper of a hotel, boarding or lodging house or
 2 family hotel containing one hundred or more sleeping rooms, and being
 3 four or more stories high, shall have therein at least two competent
 4 watchmen, each properly assigned, and each on duty between the hours
 5 of nine o'clock at night and six o'clock in the morning. The keeper of
 6 every hotel, boarding or lodging house or family hotel containing fifty
 7 or more sleeping rooms, but less than one hundred, and being three
 8 stories high, shall have between said hours at least one competent
 9 watchman on duty therein. In all such hotels, lodging houses or family
 10 hotels, the halls, corridors and stairways shall be properly lighted at
 11 night, and a red light shall be kept during the night at the top and
 12 bottom of each flight of stairs; and one or more proper alarms or gongs,
 13 capable of being heard throughout the house, shall always remain easy
 14 of access and ready for use in every such building to give to the in-
 15 mates warning of fire. The keeper of every such hotel, boarding or
 16 lodging house or family hotel shall keep a notice descriptive of such
 17 means of escape conspicuously posted in every sleeping room.

Watchmen in
 hotels, etc.
 1883, 251, § 1
 1884, 223, § 2
 R. L. 104, § 29
 1913, 655, § 42
 [Penalty, § 46.]

1 SECTION 45. Except in Boston, the keeper of any such hotel, board-
 2 ing or lodging house or family hotel who adopts a system of electric
 3 watch clocks which register at the office the movements of the watch-
 4 men throughout the house, or who adopts a system of thermostats or
 5 fire alarm bells in the rooms, or who provides a watchman's watch with
 6 key stations, the record of which is kept at the office, shall not be re-
 7 quired to maintain more than one watchman in addition to the regular
 8 night clerk and porters; provided, that the system or device so adopted
 9 or provided is approved by the inspector.

Modification
 of preceding
 section
 1884, 223, § 1.
 R. L. 104,
 §§ 30, 53
 1913, 655,
 §§ 43, 52
 [Penalty, § 46.]

1 SECTION 46. The aldermen of any city, except Boston, and the select-
 2 men of towns may prescribe additional night watch to be kept and
 3 further provision for the prevention of fires and for the better protection
 4 of life in case of fire to be made by the keepers of hotels, boarding or
 5 lodging houses or family hotels within their cities and towns. Who-
 6 ever neglects or refuses to comply with any provision of this or the two
 7 preceding sections shall be punished by a fine of not less than fifty nor
 8 more than one thousand dollars.

Further pro-
 visions for pro-
 tection of life
 may be pre-
 scribed.
 Penalty.
 1883, 251,
 § 3, 4.
 1884, 223, § 2.
 R. L. 104,
 §§ 31, 32, 53.
 1913, 655,
 §§ 44, 52.

Rope fire escapes in hotels, etc. 1890, 307, § 1. 1894, 341; 481, § 44. R. L. 104, § 33. 1913, 655, § 45. 3 Op. A. G. 319. [Penalty, § 48.]

SECTION 47. The owner, lessee, proprietor or manager of a hotel which is not otherwise suitably provided with fire escapes, or of a lodging house which contains eight or more rooms above the second story, shall place or cause to be placed a knotted rope, or better appliance, for use as a fire escape in every room of such hotel or lodging house used as a sleeping room, except rooms on the ground floor. One end of such rope shall be securely fastened to a suitable iron hook or eye securely serewed into one of the timbers next adjoining the frame of a window, or into the frame of a window, of said room, at least five feet from the floor, and the rope shall at all times be kept coiled and exposed to the plain view of the occupant of the room. The coil shall be fastened in such manner as to be easily and quickly loosened and uncoiled. The rope shall contain knots not more than eighteen inches apart, a loop at the end at least three inches in length, shall not be less than one half inch in diameter, and shall be of sufficient length to reach from such iron hook or eye to the ground. Such rope, iron hook or eye and fastenings shall be of sufficient strength to sustain a weight of four hundred pounds, and plain directions for the use of such rope or other appliance shall be printed and posted within six inches of the hook or eye to which the rope is fastened. This section shall not apply to Boston.

Inspection of hotels, etc. 1890, 307, §§ 2, 3. 1894, 481, §§ 45, 58. R. L. 104, §§ 34, 35. 1913, 655, § 46.

SECTION 48. The inspector of buildings of each city and town, if there be any, otherwise the chief engineer of the fire department, if there be any, otherwise such person as the mayor of a city or the selectmen of a town shall designate, shall annually in the month of April inspect every room of every hotel and lodging house of eight or more sleeping rooms above the second story in his city or town and ascertain if the preceding section is being complied with, and shall report the condition of the rope or other appliance to the commissioner of public safety, upon forms to be furnished by him. Whoever violates any provision of this or the preceding section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both. This section shall not apply to Boston.

Certificate of inspector prerequisite to license 1888, 426, § 7. 1892, 419, § 138. 1894, 481, §§ 32, 39. R. L. 104, §§ 49, 53. 1913, 655, §§ 48, 52.

SECTION 49. Except in Boston, a license which is required by law, ordinance or by-law to authorize any building or part thereof to be used for any purpose specified in section twenty-one shall not be granted until a license by the commissioner of public safety, or a certificate by an inspector, as required by sections fifteen to sixty, inclusive, shall have been issued therefor, and, when granted, shall not continue in force after the expiration of such license or certificate.

Penalty for hindering inspector, etc. 1904, 450, § 12. 1908, 389, § 2. 1913, 655, § 49.

SECTION 50. Any person who hinders or prevents or attempts to prevent the commissioner of public safety, the chief of inspections of the department or any inspector from entering any building, structure or enclosure or part thereof in the performance of his duty in the enforcement of the laws of the commonwealth relating thereto shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Owner must see that law is obeyed 1877, 214, § 8.

SECTION 51. Except in Boston, the owner, lessee or occupant of a theatre, factory, workshop or manufacturing establishment, or who-

3 ever owns any building or part thereof mentioned in and subject to
 4 sections twenty-one, twenty-four to twenty-eight, inclusive, and thirty,
 5 or controls the use thereof, shall cause the provisions thereof to be
 6 observed, and such person shall be liable to any person injured for all
 7 damages caused by a violation of the provisions of said sections. No
 8 criminal prosecution shall be begun for such violation until four weeks
 9 after written notice to such person has been given by an inspector of any
 10 changes necessary to be made in order to conform to said sections, nor
 11 if such changes shall have been made in accordance with such notice.
 12 Notice to one member of a firm or to the clerk or treasurer of a cor-
 13 poration or to the person in charge of the building or part thereof shall
 14 be sufficient notice hereunder to all members of any firm or corporation
 15 owning, leasing or controlling the building or any part thereof. Such
 16 notice may be served personally or sent by mail.

1881, 137,
 § 2; 195,
 P. S. 101, § 22.
 1882, 266, § 3.
 1888, 426, § 12.
 1894, 382, § 2;
 481, §§ 37, 39.
 R. L. 104,
 §§ 50, 53.
 1913, 655,
 §§ 50, 52.
 161 Mass. 35.

1 SECTION 52. No person shall occupy or use any building or part
 2 thereof as a theatre, special hall, public hall, miscellaneous hall, place
 3 of assemblage or place of public resort until a license therefor has been
 4 issued by the commissioner of public safety or the mayor of Boston, or
 5 a certificate therefor by an inspector or an inspector of the building
 6 department of Boston. The certificate of the inspector shall be con-
 7 clusive evidence of a compliance with sections fifteen to sixty, inclusive,
 8 for such use of a hall as he shall set forth in detail in the certificate,
 9 and shall be conspicuously posted near the main entrance of the hall.
 10 Violations of this section or of the conditions of a license or certificate
 11 shall be punished by a fine of not less than twenty-five nor more than
 12 one thousand dollars or by imprisonment for not more than one year,
 13 and the license or certificate may be revoked.

Penalty for
 unlicensed use
 as theatre,
 etc.
 1906, 105, § 1.
 1907, 163.
 1908, 335,
 §§ 1, 2.
 1910, 143,
 284, § 1.
 1913, 655,
 §§ 39, 51.

1 SECTION 53. Whoever, being the owner, lessee or occupant of any
 2 building or part of a building described in section twenty-one, violates
 3 any provision of sections fifteen to fifty-two, inclusive, for which no
 4 other penalty is specifically prescribed, shall be punished by a fine of
 5 not less than fifty nor more than five hundred dollars.

R. L. 104, §§ 55, 56.

1913, 655, § 53.

General
 penalty:
 1882, 266, § 3.
 1885, 326, § 2.
 1888, 426, § 12.
 1894, 382, § 2;
 481, §§ 60, 62.

1 SECTION 54. Sections fifteen to fifty-two, inclusive, shall, except
 2 when otherwise specifically provided, be enforced by the commissioner
 3 of public safety, the chief of inspections of the department and the
 4 inspectors. The commissioner of public safety shall issue regulations
 5 necessary for their uniform enforcement. All sections of this chapter
 6 which apply to Boston shall be enforced by the building commissioner.

Enforcement.
 1901, 166, § 3.
 R. L. 104, § 46.
 1909, 514, § 99.
 1910, 284, § 1.
 1913, 619, § 2;
 655, § 54.

1 SECTION 55. Any person aggrieved by an order, requirement or direc-
 2 tion of an inspector under any of the preceding sections may, within
 3 thirty days after the service thereof, appeal to a judge of the superior
 4 court for the county where the building to which such order, require-
 5 ment or direction relates is situated for an order forbidding its enforce-
 6 ment; and after such notice as said court shall direct to all parties
 7 interested, a hearing may be had before the court at an early and con-
 8 venient time and place fixed by it; or the court may appoint three
 9 disinterested persons, skilled in the subject matter of the controversy,
 10 to examine the matter and hear the parties; and the decision of said
 11 court, or the written decision under oath of a majority of said experts,

Appeal.
 1890, 438, § 1.
 1894, 481, § 5.
 R. L. 104, § 19.
 1904, 450, § 10.
 1906, 105, § 4.
 1907, 499.
 1908, 487,
 § 1, 3.
 1913, 655,
 §§ 55, 61.
 1917, 156, § 2.
 228 Mass. 368.

filed in the office of the clerk of courts in said county within ten days 12
 after such hearing, may alter, annul or affirm such order, requirement 13
 or direction. Such decision or a certified copy thereof shall have the 14
 same authority, force and effect as the original order, requirement or 15
 direction of the inspector. If such decision annuls or alters the order, 16
 requirement or direction of the inspector, the court shall order the 17
 inspector not to enforce his order, requirement or direction, and in 18
 every case the certificate required by law shall thereupon be issued by 19
 said court or by said experts. 20

Fees for
 experts.
 1890, 438,
 §§ 2, 3.
 1894, 481,
 §§ 6, 7.
 R. L. 104,
 §§ 20, 21.
 1906, 105, § 4.
 1908, 487, § 2.
 1913, 655, § 56.

SECTION 56. The court may award reasonable compensation to such 1
 experts, to be paid by the county in which the application for an order 2
 of the court was made, if the order, requirement or direction of the 3
 inspector is altered or annulled, otherwise by the applicant. If the 4
 order, requirement or direction of the inspector is affirmed by the court 5
 or the experts, costs shall be taxed against the applicant as in civil 6
 cases, and shall be paid into the treasury of the said county. 7

Restraining
 illegal erection,
 etc.
 1888, 316, § 2;
 426, § 12.
 1893, 199, § 2.
 1894, 382, § 2;
 481, §§ 26, 38.
 R. L. 104,
 §§ 51, 53.

SECTION 57. The supreme judicial or superior court may, upon the 1
 petition of an inspector or, in Boston, of the building commissioner, 2
 temporarily or permanently restrain the erection, construction, alter- 3
 ation, use or occupation of a building in violation of any provision of 4
 sections fifteen to fifty-two, inclusive. 5

1910, 284, § 1. 1913, 655, § 57.

Concurrent
 jurisdiction of
 inferior courts.
 1906, 105, § 6.
 1908, 335,
 § 3; 389, § 3.

SECTION 58. District courts shall have jurisdiction concurrently with 1
 the superior court of prosecutions and proceedings at law under sections 2
 three to fifty-two, inclusive. 3

1913, 655, § 58.

Enforcement
 of inspectors'
 orders.
 1904, 450, § 11.
 1906, 105, § 5.
 1910, 284, § 1.
 1913, 655, § 59.

SECTION 59. The supreme judicial or superior court may, upon the 1
 application of the commissioner of public safety, the chief of inspec- 2
 tions of the department or any inspector or, in Boston, of the building 3
 commissioner, enforce, by any suitable process or decree, any provision 4
 of sections fifteen to fifty-two, inclusive, and any order or requirement 5
 of any person made under authority thereof. 6

Restraining
 illegal use,
 etc., of
 buildings.
 1899, 326.
 R. L. 104, § 52.
 1913, 655, § 60.

SECTION 60. The supreme judicial or superior court may restrain 1
 the illegal placing, maintenance or use of any building, structure 2
 or other thing. It may, upon the petition of a city or town for such 3
 relief, require the removal of any such building, structure or other 4
 thing by the owner, and may authorize the city or town, in default of 5
 such removal by the owner, to remove it at his expense. Upon such 6
 petition, the defendant shall be presumed to have acted without a 7
 license or authority until he proves the contrary. 8

Notice to
 assessors of
 permits for
 building.
 1913, 676, § 1.

SECTION 61. The inspector of buildings in every city and town 1
 having such an officer shall give written notice to the assessors thereof 2
 of the granting by him of permits for the construction of any building 3
 therein or for any substantial alteration therein or addition thereto. 4
 Such notice shall be given within seven days after the granting of each 5
 permit, and shall state the name of the person to whom the permit 6
 was granted and the location of the building to be constructed or 7
 altered or to which an addition is to be made. 8

ELEVATORS.

1 SECTION 62. In cities and towns not having a building department
 2 or an inspector of buildings, the installation and alteration of all ele-
 3 vators shall be under the supervision of the inspectors of the division
 4 of inspection of the department. In cities and towns having an in-
 5 spector of buildings or a person acting as such, the installation and al-
 6 teration of all elevators shall be under his supervision. No elevator
 7 shall be installed or altered until a copy of the plans and specifications
 8 of such elevator or of the proposed alterations shall have been filed by
 9 the owner of the premises where the elevator is to be installed or altered,
 10 or by the manufacturer of the elevator, with the inspector or building
 11 inspector having jurisdiction, and a certificate of approval or a speci-
 12 fication of requirements shall have been issued by him. The inspectors
 13 and inspectors of buildings or the departments of buildings of cities and
 14 towns shall enforce the regulations made by the board of elevator regu-
 15 lations as hereafter provided.

Installation
and inspection.
1901, 439
R. L. 104,
§ 27
1913, 806,
§§ 1, 7.
189 Mass. 580
190 Mass. 518
200 Mass. 200
204 Mass. 559
213 Mass. 217
235 Mass. 137
[Penalty, § 71]

1 SECTION 63. On completion of the work of installation or alteration,
 2 the manufacturer of the elevator or the person making the alterations
 3 shall make a practical test of the safety devices of the elevator in the
 4 presence of the inspector having jurisdiction thereof; and if the test is
 5 satisfactory to him, he shall issue a certificate approving the elevator and
 6 safety devices thereof.

Test of safety
devices.
1913, 806, § 2.

1 SECTION 64. All elevators shall be thoroughly inspected and a
 2 practical test made of the safety devices required therefor at intervals
 3 of not more than one year, and at such other times as may be deemed
 4 necessary by the inspector having jurisdiction thereof. Within ten
 5 days after the inspection, he shall report the result thereof to the com-
 6 missioner of public safety, upon forms to be furnished by him. This
 7 requirement for the making of inspection reports shall not apply to
 8 Boston.

Report of
inspection.
1913, 806, § 3.

1 SECTION 65. If in the judgment of any inspector having juris-
 2 diction thereof an elevator is safe, and if the elevator has been con-
 3 structed in the manner required by law or by the regulations of the
 4 board of elevator regulations, the inspector shall issue a certificate to
 5 that effect to the owner of the elevator or to the person in charge
 6 thereof, who shall post the certificate in a conspicuous place in or near
 7 the cab or car of such elevator. Otherwise, the inspector shall im-
 8 mediately post conspicuously upon the entrance or door of the cab or
 9 car of such elevator, or upon the elevator, a notice of its dangerous
 10 condition, and shall prohibit the use of the elevator until it has been
 11 made safe to his satisfaction. No person shall remove such notice or
 12 operate such elevator until the inspector has issued his certificate as
 13 aforesaid.

Certificate of
inspection to
be posted in
elevator.
1883, 173.
1894, 481, § 43.
R. L. 104, § 28.
1911, 455.
1913, 806, § 4
227 Mass. 415
[Penalty, § 71]

1 SECTION 66. Any owner, operator or person in charge of an elevator
 2 or any person employed to inspect an elevator shall, if he thinks such
 3 elevator is unsafe, make a written report thereof to the inspector having
 4 jurisdiction thereof, who shall forthwith inspect such elevator. If any
 5 accident occurs to an elevator, the operator, person in charge or owner

Report of
accidents and
of defective
elevators.
1913, 806, § 5
[Penalty, § 71]

having knowledge thereof shall immediately report such accident to the inspector having jurisdiction, who shall forthwith inspect such elevator.

Petition for changes in regulations. 1913, 806, § 9. 1919, 350, § 106.

SECTION 67. Any person engaged in the inspection, alteration, construction, repair or operation of elevators may from time to time, by written petition to the commissioner of public safety, request that rules and regulations established by a board of elevator regulations heretofore or hereafter appointed be altered or amended. The commissioner may grant public hearings upon such petition, and if he deems it advisable may appoint a new board of elevator regulations as provided in section eleven of chapter twenty-two.

Board to amend regulations. 1913, 806, § 6. 221 Mass. 489. 231 Mass. 151. 232 Mass. 563. 242 Mass. 386.

SECTION 68. The board of elevator regulations shall frame amendments to the regulations relating to the construction, installation, alteration and operation of all elevators, and relative to the location, design and construction of shafts or enclosures for elevators, safety devices, gates and other safeguards, protection against the elevator or hoisting machinery, and means to prevent the spread of fire, and also amendments to the regulations designed to make uniform the work of the inspectors of the division of inspection of the department and of inspectors of buildings throughout the commonwealth.

Establishment of regulations. 1913, 806, §§ 7, 8. 1919, 350, §§ 99, 106.

SECTION 69. The board of elevator regulations shall, within three months after its members are appointed, draft amendments to the regulations and submit the same to the governor and council for their approval. Within sixty days after such submission they shall approve the same, with such alterations and amendments and after such public hearings as they may deem proper; and the regulations so altered and amended shall become part of the rules and regulations pertaining to elevators. The commissioner of public safety shall furnish upon application a printed copy of the regulations to all manufacturers of elevators operating in the commonwealth, to all inspectors of buildings in the cities and towns of the commonwealth, and to all others who are concerned. The board shall be dissolved upon the approval of the regulations by the governor and council.

Appeal. 1913, 806, § 11. 246 Mass. 340.

SECTION 70. Whoever, except in Boston, is aggrieved by the order, requirement or direction of an inspector of buildings of a city or town in reference to the installation or alteration of elevators may, within ten days after the service thereof, appeal as provided in section fifty-five; and all the provisions of said section, except as otherwise provided herein, shall apply to the procedure on such appeal. In Boston the right of appeal shall be the same as that provided by section seven of chapter five hundred and fifty of the acts of nineteen hundred and seven.

Penalty. 1913, 806, § 12.

SECTION 71. Any person violating or failing to comply with any provision of sections sixty-two to seventy, inclusive, or of any regulation established thereunder shall be punished by a fine of not more than five hundred dollars.

CINEMATOGRAPHS.

1 SECTION 72. No cinematograph or similar apparatus involving the
 2 use of a combustible film more than ten inches in length, except one
 3 using only an enclosed incandescent lamp and cellulose acetate films
 4 not more than one and one quarter inches in width, shall, except as
 5 provided by sections eighty-five and eighty-six, be kept or used for the
 6 purpose of exhibiting such films in or upon the premises of a public
 7 building until such cinematograph or similar apparatus has been in-
 8 spected and approved by an inspector, who shall have placed thereon a
 9 numbered metal tag; nor until a booth or enclosure, which has been
 10 inspected and approved by such an inspector and his certificate issued
 11 therefor, has been provided for said apparatus; nor until such precau-
 12 tions against fire as the commissioner of public safety may specify have
 13 been taken by the owner, user or exhibitor; provided, that no such
 14 apparatus shall be operated with oxyhydrogen gas, so-called, or with
 15 limelight. In addition, in Boston the location of any booth or enclosure
 16 surrounding such apparatus shall be approved by the building commis-
 17 sioner, who may order such additional precautions against fire as he may
 18 deem necessary.

Regulation.
 1905, 176, § 1.
 1908, 566, § 1.
 1914, 791, § 1.
 1915, 169, § 1.
 1923, 478, § 1.

1 SECTION 73. The inspectors shall inspect any such apparatus which
 2 is to be kept or used as specified in the preceding section, and any
 3 booth or enclosure provided therefor, and the commissioner of public
 4 safety shall make such rules and regulations as he may deem necessary
 5 for the safe use thereof.

Inspection.
 1905, 176, § 2.
 1908, 566, § 2.
 1914, 791, § 2.

1 SECTION 74. For the inspection of such apparatus or of a booth or
 2 enclosure, as provided by the preceding section, a fee of two dollars shall
 3 be paid by the owner or user thereof.

Fee for
 inspection.
 1909, 281, § 1.

1911, 48, § 1.

1914, 791, § 3.

1 SECTION 75. Except as provided in section seventy-seven, no person
 2 shall operate such apparatus in any public building until he has received
 3 a special or first class license so to do from an inspector. No such license
 4 shall be granted until the applicant has passed an examination proving
 5 him to be thoroughly skilled in the working of the mechanical and
 6 electrical apparatus or devices used therein or connected therewith,
 7 and no person under twenty-one shall be eligible for such examination.
 8 Three dollars shall accompany the application for a license. The special
 9 or first class license shall be for the term of one year from the date
 10 thereof, but may be renewed yearly, without examination, by an in-
 11 spector upon the payment of a fee of one dollar. A first class license
 12 shall apply only to the operation of a hand driven apparatus. A special
 13 license shall apply to one driven by hand or motor.

Licenses
 1908, 566, § 4
 1909, 281, § 2
 1912, 182, § 1
 1914, 791, § 4, 9, 10

1 SECTION 76. Any person over eighteen desiring to act as an assist-
 2 ant to a holder of a special or first class license shall register his name,
 3 age and address on a form furnished by the commissioner of public
 4 safety; and upon the receipt of one dollar the commissioner may issue
 5 a permit allowing such person to assist such a licensed operator in a
 6 booth or enclosure, but such person shall not himself operate the appa-
 7 ratus. The permit shall be for the term of one year from the date thereof,

Assistant's
 permit.
 1908, 566, § 5.
 1909, 281, § 3.
 1914, 791, § 5.

but may be renewed yearly by the commissioner upon the receipt of fifty cents. 8
9

Second class
license
1914, 791, § 6.

SECTION 77. A second class license giving the right to operate a hand driven cinematograph or similar apparatus, but only in the presence of a holder of a special or first class license, may be granted to any person over twenty who has been employed for three months as an assistant under the supervision of a licensee in or upon a public building. The applicant, as a condition of receiving the said second class license, shall pass an examination satisfactory to an inspector, and shall present to the commissioner of public safety an affidavit, signed and sworn to by him, stating that he has so worked for said period. The commissioner may require that the affidavit be corroborated. A fee of two dollars shall accompany the application for the license. The license shall be for the term of one year from the date thereof, but may be renewed yearly by an inspector upon the receipt of fifty cents. 1
2
3
4
5
6
7
8
9
10
11
12
13

First class
license.
1914, 791, § 7.

SECTION 78. Any person over twenty-one who has held a second class license for three months or more and has worked regularly during that period in a booth or enclosure in or upon a public building, upon presenting to the commissioner of public safety an affidavit, signed and sworn to by him, stating that he has so worked for the said period, and upon passing the examination and payment of three dollars, may receive a first class license. 1
2
3
4
5
6
7

Eligibility for
examination
1914, 791, § 8.

SECTION 79. Any person over twenty-one who presents to the commissioner of public safety an affidavit, signed and sworn to by him, stating that he has operated a cinematograph or similar apparatus in a booth or enclosure in a theatre or hall devoted to public exhibitions of moving pictures outside of the commonwealth for a period of three months or more, shall be eligible for the examination, as provided in section seventy-five, for a special or a first class license. 1
2
3
4
5
6
7

Special license.
1914, 791, § 10.

SECTION 80. The holder of a first class license, or any person designated in the preceding section, who passes an examination satisfactory to the department may be granted a special license. 1
2
3

Suspending
or revoking
license or
permit
1914, 791, § 11.

SECTION 81. An operator's license or an assistant's permit may be suspended or revoked for cause at any time by an inspector; but the person whose license or permit is so suspended or revoked may appeal to the commissioner of public safety, whose decision in the matter shall be final. 1
2
3
4
5

Permits for
special
exhibitions.
1914, 791, § 12.

SECTION 82. Except in Boston, the commissioner of public safety may grant permits for the special exhibition of pictures by the use of a cinematograph or similar apparatus in a public building which in his opinion is in safe condition for such exhibitions, and he may prescribe such regulations as he may deem necessary for the presentation of the same. Two dollars shall accompany the application for each permit. 1
2
3
4
5
6

Application
of certain
sections.
1914, 791, § 13.

SECTION 83. Sections seventy-two to seventy-six, inclusive, shall not apply to any motion picture machine operated with only cellulose acetate films not more than one inch and one fourth in width and requiring not more than five hundred watts of electric current to operate 1
2
3
4

5 the are; provided, that such machines shall not be kept or used in a
 6 public building except under such regulations as the commissioner of
 7 public safety shall prescribe.

1 SECTION 84. Any person keeping or using a cinematograph or similar
 2 apparatus contrary to any provision of sections seventy-two to eighty-
 3 four, inclusive, or in violation of any rule or regulation made by the
 4 commissioner of public safety, or, in Boston, in violation of any regula-
 5 tion or requirement made by the building commissioner in accordance
 6 with said sections, shall be punished by a fine of not less than fifty nor
 7 more than five hundred dollars.

Penalty.
 1905, 176, § 3.
 1908, 566, § 3.
 1914, 791, § 15.

1 SECTION 85. Notwithstanding any provision of sections seventy-two
 2 to eighty-four, inclusive, the commissioner of public safety, upon appli-
 3 cation accompanied by a fee of two dollars, may grant special licenses
 4 for operators of motion picture machines in churches, schoolhouses or
 5 public institutions which in his opinion are in safe condition for said
 6 exhibitions, and he may prescribe regulations for the proper conduct of
 7 the same, but no such license shall be valid for use in the city of Boston
 8 unless it also bears the written approval of the building commissioner
 9 of said city.

Special licenses
 for operators
 in churches,
 schools, etc.
 1911, 410,
 §§ 1-3.
 1914, 791, § 17.
 1927, § 2.
 Op. A. G.
 (1920) 291.

1 SECTION 86. Notwithstanding any of the provisions of sections
 2 seventy-two to eighty-five, inclusive, a cinematograph or similar ap-
 3 paratus adapted to the use of standard width films, if specifically licensed
 4 and approved by the commissioner of public safety as evidenced by a tag
 5 attached thereto by his authority, may be used as hereinafter provided,
 6 in connection with a portable projector and without a booth and subject
 7 to such further conditions and regulations as the commissioner may
 8 prescribe, for educational purposes in schools and other institutions of
 9 learning, or for business or demonstration purposes. Said cinematograph
 10 or apparatus shall be used only with cellulose acetate or equally incom-
 11 bustible films marked in the margin at least once in every linear foot as
 12 safe and incombustible, and tagged or marked as inspected by an in-
 13 spector, and only in connection with an incandescent electric lamp of
 14 not more than six hundred watts. Such approval and license shall be
 15 granted only upon the written application, accompanied by a fee of
 16 two dollars, of the superintendent of schools in a city or town in case
 17 of intended use in a public school, or of the responsible head of the
 18 university, college, technical or private school or county extension service,
 19 as the case may be, or if to be used for business or demonstration pur-
 20 poses, upon the written application of a responsible citizen. The com-
 21 missioner shall also cause to be posted on apparatus so approved and
 22 licensed a statement of the terms and conditions governing its use and
 23 the penalty hereinafter prescribed for their violation. The said com-
 24 missioner, or such local authority as the commissioner may designate,
 25 may, upon payment of a fee of two dollars, grant a license for the term
 26 of one year to operate such a cinematograph or apparatus, under the
 27 conditions herein specified, to any suitable person twenty-one years of
 28 age or over. Said license may be renewed on payment of a like fee.
 29 Any license or approval granted under this section may be revoked by the
 30 commissioner, or the local authority authorized to grant the same.
 31 Violation of any provision of this section or of any rule, regulation, term
 32 or condition imposed by the commissioner of public safety under its

Use of certain
 motion picture
 apparatus in
 schools, etc.
 1923, 478, § 2.

provisions shall be punished by a fine of not more than five hundred dollars or by imprisonment for not less than two nor more than six months, or both.

Penalty for sale, false marking, etc., of certain film 1923, 478, § 2.

SECTION 87. Whoever sells or leases or offers or exposes for sale or lease, or loans any nitrous or combustible film as cellulose acetate, incombustible or safety film, or whoever stamps or marks any nitrous or combustible film as cellulose acetate, incombustible or safety film, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not less than six months nor more than two years, or both.

Sale, etc., of motion picture apparatus regulated. Penalty. 1923, 478, § 2.

SECTION 88. No cinematograph or similar apparatus intended for use as a motion picture machine shall be sold, offered for sale or leased unless and until it has been inspected and approved by an inspector as evidenced by a plate which the inspector shall affix thereto upon which shall be set forth the kind of films which may lawfully be used in operating said cinematograph or apparatus and the penalties prescribed for its unlawful use. Violation of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not less than six months nor more than two years, or both.

CHAPTER 144.

TENEMENT HOUSES IN CITIES.

SECT.

GENERAL PROVISIONS.

1. Application of chapter.
2. Definitions.
3. Application of certain sections.
4. Law not to be modified.
5. Sewer connection and water supply.
6. Powers of department of public health.
7. Improvements to be made within one year after acceptance.
8. Buildings converted or altered.
9. Alterations and change in occupancy.

NEW BUILDINGS. LIGHT AND VENTILATION.

10. Distance from side lot line.
11. Height.
12. Yards.
13. Courts.
14. Courts to be open at top.
15. Air intakes.
16. Extensions or offsets to courts.
17. Building of walls across angles in courts.
18. Buildings on same lot with tenement houses.
19. Rear tenements.
20. Lighting.
21. Windows.
22. Size of rooms.

SECT.

23. Alcoves, etc.
24. Privacy.
25. Windows in public halls.
26. Sizes of windows in halls.

SANITATION.

27. Use of basements and cellars for living purposes regulated.
28. Damp proofing, etc., of cellars.
29. Spaces under floors.
30. Courts, yards, etc., to be drained, etc.
31. Sinks.
32. Water closets.
33. Plumbing.
34. Water supply.
35. Privies.

FIRE PROTECTION.

36. Construction required.
37. Fire escapes.
38. Construction of bulkheads and scuttles.
39. Stairs and public halls.
40. Fireproof stairs and stair halls required in tenement houses of second class construction.
41. Entrance halls.
42. Shafts to be of fireproof construction.
43. Ceiling of cellar, etc.

SECT.

- 44. Closets under first story stairs not allowed.
- 45. Outside cellar entrance.
- 46. Finish about chimneys.
- 47. Fire walls.
- 48. Roofing materials.
- 49. Wooden tenement houses not to be used for certain purposes above second story.

IMPROVEMENTS IN OLD BUILDINGS.

- 50. Lighting and ventilating of rooms.
- 51. Lighting and ventilating of public halls.
- 52. Sinks.
- 53. Water closets.
- 54. Removal of cesspools, etc.
- 55. Basements and cellars to be damp proof, etc.
- 56. Doors in shafts and courts.
- 57. Fire escapes.
- 58. Means of egress.

ALTERATIONS OF OLD BUILDINGS.

- 59. Alterations.

MAINTENANCE AND USE.

- 60. Lighting in the daytime.
- 61. Lighting at night.
- 62. Water closets in cellars.
- 63. Water closet accommodations.
- 64. Basements and cellars not to be occupied for living purposes.
- 65. Floors around water closets and sinks.
- 66. Repairs.
- 67. Water supply.
- 68. Buildings to be kept clean and free from refuse matter, etc.
- 69. Walls of courts to be whitened, etc.

SECT.

- 70. Walls and ceilings of rooms to be whitened, etc.
- 71. Wall paper.
- 72. Receptacles for ashes, etc., to be provided.
- 73. Certain uses prohibited.
- 74. Not to be used for storage of combustible materials, etc.
- 75. Bakeries and fat boiling.
- 76. Other dangerous businesses.
- 77. Janitor or housekeeper.
- 78. Overcrowding.
- 79. Letting of lodgings regulated.
- 80. Board of health may order repairs, etc.
- 81. Infected and uninhabitable houses to be vacated.
- 82. Repair of fire escapes.
- 83. Scuttles, bulkheads, etc., to be easily accessible at all times, etc.

REQUIREMENTS AND REMEDIES.

- 84. Inspector of buildings.
- 85. Permit for construction or alteration.
- 86. Building not to be occupied until after approval, etc.
- 87. Enforcement of provisions.
- 88. Building erected, etc., in violation of this chapter to be deemed a common nuisance, etc.
- 89. Penalties.
- 90. Jurisdiction of the superior court.
- 91. Right of entry.
- 92. Liens.
- 93. Notice of pendency of action to be filed, etc.
- 94. Owner's name, etc., to be registered.
- 95. Service of notices, etc.
- 96. Service of process.
- 97. Certain names and addresses to be indexed, etc.
- 98. Repeal.

GENERAL PROVISIONS.

1 SECTION 1. This chapter shall apply to all cities except Boston which
 2 accept it or have accepted corresponding provisions of earlier laws by a
 3 vote of the city council with the approval of the mayor.

Application of chapter 1913, 786, § 98

1 SECTION 2. The following words used in this chapter shall have the
 2 following meanings:

Definitions, 1913, 786, § 2.

3 "Acceptance of this chapter" shall include the acceptance of corre-
 4 sponding provisions of earlier laws.

5 "Alcove", any part of a room partitioned off by fixed or movable
 6 partitions of any material, by curtains or portieres, or by other con-
 7 trivance or device, and intended or designed to be used for living pur-
 8 poses.

9 "Basement", a story partly under ground but having not less than
 10 one half its height above the level of the curb, and also having one
 11 half its height in every part above the level of the adjoining ground.

12 "Cellar", a story more than one half below the level of the curb or
 13 adjoining ground.

“Corner lot”, a lot situated at the junction or intersection of two streets each not less than sixteen feet in width, but any lot the outer angle of which is over one hundred and twenty-five degrees shall not be considered a corner lot. Any portion of the width of the front of such lot distant more than fifty feet and any portion of the depth of such lot distant more than one hundred feet from such a junction or intersection shall not be regarded as part of a corner lot, but shall be subject to the provisions of this chapter respecting interior lots.

“Court”, an open unoccupied space, other than a yard or front yard, on the same lot with a tenement house. A court extending to the street, yard, front yard or side yard is an “outer court”. A court not so extending is an “inner court”.

“Existing”, existing at the time of the acceptance of this chapter or corresponding provisions of earlier laws.

“First class construction”. A tenement house of first class construction is one constructed of fireproof material throughout, with floors built of steel or re-enforced concrete beams, filled in between with terra cotta or other masonry arches or with concrete or re-enforced concrete slabs; wood may be used only for under and upper floors, windows and door frames, sashes, doors, interior finish, hand rails for stairs, necessary sleepers bedded in cement, and for isolated furrings bedded in mortar. There shall be no air space between the top of any floor arches and the floor boarding.

“First story”, the lowest story, the ceiling of which is six feet or more above both the level of the curb and the level of the adjacent ground. In determining the height of any building by stories, the stories thereof beginning with such first story shall be numbered upward.

“Front” of a lot, that boundary line which borders on the street. In the case of a corner lot the owner may elect by statement on his plans either street boundary line as the front.

“Half story” or “attic”, any story included in the roof, the cubic contents of which, exclusive of cockloft or blind attic not exceeding three feet in height at the highest point, is not more than sixty per cent of the cubic contents of the first story.

“Height”, the perpendicular distance measured in a straight line from the curb level, or from the finished grade line of the lot where such grade is higher than the curb, to the mean height above the eaves of any sloping roof, and to the highest point of the roof beams in the case of flat roofs, except that in the case of flat roofs a parapet exceeding three feet in height shall be considered a part of the height of the building, the measurements in all cases to be taken through the centre of the street front of the house. Where a building is on a corner lot and there is more than one grade or curb level, the measurements shall be taken from the centre of the front on the street having the lowest elevation.

“Interior lot”, any lot other than a corner lot.

“Lot”, the plot of ground covered by and adjacent to a tenement house or dwelling house and devoted exclusively to the purposes of such house, as shown by the plan of such lot furnished to the building department pursuant to section eighty-five.

“Nuisance” includes all public nuisances as known at common law or in equity jurisprudence; and furthermore, whatever is dangerous to human life or detrimental to health, whatever building or erection, or part or cellar thereof, is overcrowded with occupants or is not provided with adequate ingress or egress to and from the same or apartments

68 thereof, or is not sufficiently supported, ventilated, sewered, drained,
69 cleaned or lighted in reference to its or their intended or actual use; and
70 whatever renders the air or human food or drink unwholesome, are also
71 severally in contemplation of this chapter, nuisances; and such nuisances
72 are hereby declared unlawful.

73 "Occupied spaces". Porches, platforms, except those on the first story
74 when the basement is not occupied or designed or intended to be occupied
75 for habitation, and outside stairways, except fire escapes and steps lead-
76 ing to the first story, shall be considered as part of the building and not
77 as part of the yard or courts or unoccupied areas.

78 "Public hall", a hall, corridor or passageway not within an apartment.

79 "Rear" of a lot, the side opposite to the front. In the case of a corner
80 lot with streets on three sides, or of a triangular or irregularly shaped
81 lot abutting on two streets at their junction or intersection, the rear shall
82 be a side not bordering on a street.

83 "Second class construction". A tenement house of second class con-
84 struction is one of which the exterior and party walls are fireproof and
85 conform to the requirements of first class construction as defined by
86 law or by ordinance of the city in which it is situated.

87 "Stair hall" includes the stairs, stair landings and those parts of the
88 public halls through which it is necessary to pass in going from the en-
89 trance floor to the roof.

90 "Street" includes any right of way dedicated to public use, any public
91 alley, or railroad right of way sixteen feet or more in width, any eeme-
92 tery or public park.

93 "Tenement house", any house or building, or part thereof, which is
94 rented, leased, let or hired out, to be occupied, or is occupied, or intended,
95 arranged or designed to be occupied as the home or residence of two or
96 more families (a family may consist of one or more persons), living in-
97 dependently of each other and doing their cooking on the premises and
98 having a common right in the halls, stairways, yard, courts, cellar, sinks,
99 water closets or privies, or any of them. Where the occupants of dwelling
100 houses contiguous and vertically divided, each occupied or intended,
101 arranged or designed to be occupied as the home or residence of one
102 family or more, have a common right in or use in common the halls,
103 stairways, yards, cellars, sinks, water closets or privies, or any of them,
104 such dwelling houses shall be deemed to be tenement houses and shall be
105 subject to this chapter.

106 "Hereafter", after the acceptance of this chapter or corresponding
107 provisions of earlier laws.

108 "Third class construction". A tenement house of third class con-
109 struction is one of which the exterior walls or parts thereof are of com-
110 bustible materials and do not conform to the requirements of first class
111 construction.

112 "Yard", an open unoccupied space on the same lot with the tenement
113 house between the extreme rear line of the house and the extreme rear
114 line of the lot. A "front yard" is an open unoccupied space between
115 the front line of the house and the front line of the lot. A "side yard" is
116 an open unoccupied space between the side line of the main part of the
117 house and the side line of the lot and shall be deemed an outer court on
118 the lot line.

119 Words used in the present tense include the future; words in the
120 masculine gender include feminine and neuter; the word "shall" is al-
121 ways mandatory, and denotes that the house shall be maintained in all

respects according to the mandate so long as it continues to be a tenement house; whenever the words "charter", "ordinances", "regulations", "building department", "building inspector", "health department", "board of health", "department charged with the enforcement of this chapter", or "city solicitor" occur in this chapter they shall be construed as if followed by the words "of the city in which the tenement house is situated"; wherever the words "is occupied" are used in this chapter applying to any building, such words shall be construed as if followed by the words "or is intended, arranged or designed to be occupied".

Application of certain sections.

SECTION 3. Unless otherwise specifically provided therein, sections nine to forty-nine, inclusive, shall apply only to tenement houses erected after the acceptance of this chapter, and sections fifty to fifty-nine, inclusive, only to tenement houses erected prior to such acceptance.

Law not to be modified. 1913, 786, § 5.

SECTION 4. This chapter shall be held to provide the minimum requirements adopted for the protection of the health and safety of the community. Nothing in this chapter shall be construed as prohibiting any city from enacting from time to time supplementary ordinances imposing further restrictions, but no city authority shall have power to minimize, avoid or repeal any provision of this chapter.

Sewer connection and water supply. 1913, 786, §§ 6, 7. 1914, 792, § 1. 1919, 350, § 96.

SECTION 5. The provisions of this chapter with reference to sewer connection and water supply shall be deemed to apply only where connection with a sewer and with a water main is or becomes practicable. The questions of the practicability of such sewer and water connections shall be decided by the local board of health, or by the department of public health upon request of the local board.

Powers of department of public health. 1913, 786, § 7. 1914, 792, § 1. 1919, 350, § 96.

SECTION 6. The department of public health may examine into the enforcement of the laws relating to tenement houses in any city. Whenever so required by the governor, it shall make such an examination and shall report the result thereof to the governor within the time prescribed by him.

Improvements to be made within one year after acceptance. 1913, 786, § 8.

SECTION 7. In tenement houses erected prior to the acceptance of this chapter by a city, all improvements specifically required thereby shall be made within one year thereafter, or at such earlier time as may be fixed by the building inspector.

Buildings converted or altered. 1913, 786, § 3.

SECTION 8. A building not a tenement house, if converted or altered to such use after the acceptance of this chapter, shall thereupon become subject to all the provisions thereof affecting tenement houses erected thereafter.

Alterations and change in occupancy. 1913, 786, § 4.

SECTION 9. No tenement house shall at any time be altered so as to be in violation of any provision of this chapter. If any tenement house, whenever erected, or any part thereof is occupied by a number of families in excess of the number specified in this chapter, or is erected or altered or occupied contrary to law, such tenement house shall be deemed an unlawful structure, and the board of health may cause such building to

7 be vacated; and it shall not again be occupied until it or its occupation,
8 as the case may be, has been made to conform to the law, and a written
9 permit is obtained from the board of health.

NEW BUILDINGS. LIGHT AND VENTILATION.

1 SECTION 10. No tenement house of third class construction shall be
2 erected, enlarged or placed with the side walls, bay windows or other
3 projections, except cornices, belt courses and window sills, nearer than
4 five feet to the line of any adjoining lot, nor shall any lot upon which
5 such a tenement house stands be so changed in size as to bring the side
6 walls or bay windows or other projections, except as aforesaid, nearer
7 than five feet to the line of any adjoining lot. But any such tenement
8 house may be constructed to the lot line if protected by a fire wall as
9 provided in section forty-seven.

Distance from
side lot line
1913, 786, § 9.

10 If the side walls of any tenement house of first or second class con-
11 struction are built to the lot line there shall be no windows or any other
12 openings in such walls.

1 SECTION 11. No tenement house shall have more than one legally
2 habitable story for each full ten feet of the width of the street, unless
3 such house be set back from the street a distance equal to the excess of
4 its height over that permitted at the street line. On a corner lot the
5 height shall be governed by the width of the wider street, as above, but
6 this height shall not extend along the narrower street a distance greater
7 than twice the width of said street.

Height
1913, 786, § 10

1 SECTION 12. Behind every tenement house there shall be a yard
2 extending across the entire width of the lot and at every point open
3 from the ground to the sky unobstructed, except as hereinafter provided.
4 Every part of such yard shall be directly accessible from every other part
5 thereof. The depth of said yard shall be measured from the extreme
6 rear of the house toward the rear line of the lot. Where the rear of the
7 lot abuts on a public alley or right of way dedicated to public use for
8 the full width of the lot, the depth of the lot may be measured to the
9 middle line of such alley or right of way; where there is no such alley
10 or right of way the measurements shall be taken to the rear lot line. If
11 the tenement house is three stories or less in height the depth of the yard
12 in the case of interior lots shall be not less than fifteen feet, and the depth
13 of the yard in the rear of corner lots shall be not less than ten feet. If
14 the tenement house exceeds three stories in height, the depths above
15 prescribed in the case of interior lots shall be increased five feet and in
16 the case of corner lots shall be increased two feet for each story above
17 three stories. When a lot upon which a tenement house is built is
18 bounded on every side by a street the yard may be omitted.

Yards
1913, 786, § 11.

1 SECTION 13. The sizes of all courts shall be proportionate to the
2 height of the building: No court shall be less in any part than the mini-
3 mum sizes prescribed in this section. The minimum width of a court
4 for a two story building shall be ten feet, and the width shall increase
5 two feet for each additional story. The length of an inner court shall
6 never be less than twice the minimum width prescribed by this section.
7 The length of an outer court shall never be greater than twice its mini-
8 mum width unless provided at the inner end with an air intake at the

Courts.
1913, 786, § 12.

bottom, as prescribed in section fifteen, which shall communicate di- 9
rectly with the street or yard or front yard. The minimum width for 10
an outer court on the lot line extending from the street or front yard to 11
the yard shall be ten feet for a three story building, and the width shall 12
increase one foot for each additional story. 13

Courts to be
open at top.
1913, 786, § 13.

SECTION 14. No court shall be covered by a roof or skylight, but 1
every court shall be at every point open from the ground to the sky 2
unobstructed. 3

Air intakes.
1913, 786, § 14.

SECTION 15. In every tenement house four stories or under in 1
height, every inner court shall be provided with one or more horizontal 2
air intakes at the bottom. Such intakes shall communicate directly 3
with the street, front yard or yard, and shall consist of a fireproof 4
passageway not less than three feet wide and seven feet high which 5
shall be left open, or be provided with an openwork gate at each end, 6
and such gate shall not be covered over in any way either by glass or 7
any other material. If the tenement house is over four stories in height 8
there shall be two or more such intakes, one communicating with the 9
street or front yard and one with the yard. 10

Extensions or
offsets to
courts
1913, 786, § 15.

SECTION 16. Extensions or offsets to courts are permitted for the 1
purpose of lighting bathrooms, water closets and corridors only, but 2
no such extension or offset shall be less than six feet in width in any part; 3
its depth may be less than but never greater than its width. Such 4
dimensions shall be deemed the minimum dimensions for a two story 5
house, and shall increase one foot for each story above two stories. 6

Building of
walls across
angles in
courts.
1913, 786, § 16.

SECTION 17. Nothing in the foregoing sections concerning courts 1
shall be construed as prohibiting the building of walls across the angles 2
of said courts to contain windows; provided, that the running length of 3
the wall containing such windows does not exceed six feet. 4

Buildings on
same lot with
tenement
houses.
1913, 786, § 17.

SECTION 18. If any building is thereafter placed on the same lot 1
with a tenement house, whenever erected, there shall always be main- 2
tained between the said buildings an open unoccupied space extending 3
upward from the ground and extending across the entire width of the 4
lot. Except as otherwise provided by special acts, such space shall 5
never be less than twenty-five feet in depth, and where either building 6
exceeds three stories in height the depth of such open space shall be in- 7
creased five feet for each story above three. No building of any kind 8
shall thereafter be placed upon the same lot with a tenement house, 9
whenever erected, so as to diminish the minimum size of courts or yards 10
as hereinbefore prescribed, except that where an alley not less than ten 11
feet wide abuts on the rear of the lot, a rear building, if not used for 12
tenement house or stable or manufacturing purposes, may be built up 13
to the rear line of the lot; provided, that it does not exceed one story in 14
height and that the space between it and the front building is maintained 15
as required by this section. If any tenement house is erected upon any 16
lot upon which there is already another building, it shall comply with 17
this chapter, and, in addition, the space between the said building and 18
the said tenement house shall be of such size and arranged in such 19
manner as is prescribed in this section, the height of the highest building 20
on the lot to regulate the dimensions. 21

1 SECTION 19. No tenement house shall be erected upon the rear of
 2 a lot where there is a building on the front of the said lot, nor upon the
 3 front of any such lot upon the rear of which there is a tenement house
 4 whenever erected or a stable or building used for manufacturing pur-
 5 poses. This provision shall not apply to tenement houses abutting on
 6 two streets and situated on the outside corner of the lot.

Rear
tenements
1913, 786, § 18.

1 SECTION 20. Every apartment shall have at least one room with a
 2 window opening directly upon the street or yard, and every room shall
 3 have at least one window opening directly upon the street or upon a
 4 yard or court of the dimensions specified in this chapter, except that
 5 kitchenettes, pantries, water closet compartments and bathrooms may
 6 have such window opening upon an offset to a court, as provided in sec-
 7 tion sixteen, and such window shall be so located as properly to light all
 8 parts of such rooms.

Lighting
1913, 786, § 19.

1 SECTION 21. The total area of the windows between stop beads in
 2 each room, including kitchenettes, water closet compartments and bath-
 3 rooms, shall be at least one seventh of the floor area of the room, and
 4 the top of at least one window shall be not less than seven feet six inches
 5 above the floor, and the upper half of it shall be made so as to open the
 6 full width. No such room shall have less than twelve square feet of
 7 window area measured between stop beads, except that in kitchenettes,
 8 water closet compartments and bathrooms such windows shall be not less
 9 than six square feet in area between stop beads.

Windows.
1913, 786, § 20.

1 SECTION 22. There shall be in each apartment at least one room con-
 2 taining not less than one hundred and fifty square feet of floor area, and
 3 every other room, except kitchenettes, water closet compartments and
 4 bathrooms, shall contain not less than eighty-four square feet of floor
 5 area. All rooms shall be in every part not less than eight feet six inches
 6 from the finished floor to the finished ceiling, except that a half story
 7 room need be eight feet six inches in height in but one half of its area.

Size of rooms.
1913, 786, § 21.

1 SECTION 23. An alcove in any room shall be separately lighted and
 2 ventilated as provided for rooms in the foregoing sections. No part of
 3 any room in a tenement house, whenever erected, shall be enclosed or
 4 subdivided at any time, wholly or in part, by a curtain, portiere, fixed or
 5 movable partition, or other contrivance or device so as to make an alcove,
 6 unless the part of the room so enclosed or subdivided shall contain a sepa-
 7 rate window, as herein required, and shall have a floor area of not less than
 8 eighty-four square feet.

Alcoves, etc.
1913, 786, § 22.

1 SECTION 24. In each apartment there shall be access to every living
 2 room and bedroom, and to at least one water closet compartment with-
 3 out passing through a bedroom or bathroom or water closet compartment.

Privacy.
1913, 786, § 23.

1 SECTION 25. Every public hall and stair hall shall have at each story
 2 at least one window opening directly upon the street or upon a yard or
 3 court of the dimensions specified in this chapter. Such window in a
 4 public hall shall be at the end of the hall with the natural direction of the
 5 light parallel to the hall's axis. Any part of a public hall which is in
 6 any way shut off from any other part of the hall shall be deemed a sepa-
 7 rate hall within the meaning of this section.

Windows in
public halls.
1913, 786, § 24.

Sizes of windows in halls.
1913, 786, § 25.

SECTION 26. The windows provided to light and ventilate each public hall and stair hall, or part thereof, shall contain not less than twelve square feet clear opening, measured between stop beads. The top of one such window shall be not less than seven feet six inches above the floor, and the upper half thereof shall be made so as to open the full width. A sash door shall be deemed the equivalent of a window in this and the foregoing section; provided, that said door contains a clear opening of the size prescribed for such windows. In every tenement house of three or more stories, whenever erected, there shall be in the roof directly over each stair well a ridge ventilator having a minimum opening of forty square inches and with fixed or movable louvres.

SANITATION.

Use of basements and cellars for living purposes regulated.
1913, 786, § 26.

SECTION 27. No room in the cellar or basement shall be constructed, altered, converted, or occupied for living purposes, unless, in addition to the other requirements of this chapter, all of the following conditions are complied with: In a cellar no room shall be so occupied unless it is in every part entirely above the finished grade of the adjoining land. Such occupied cellar shall be counted as a story in determining the size of courts and yard. In a basement no room shall be so occupied unless the ceiling in every part is at least four and one half feet above the curb level of the street in front of such room. Every such room shall be an integral part of an apartment containing a room opening directly upon the street or yard. There shall be appurtenant to every such apartment a separate water closet, constructed and arranged as required by section thirty-two. All walls surrounding such room, and the floor thereof, shall be damp proof.

Damp proofing, etc., of cellars.
1913, 786, § 27.

SECTION 28. The cellar floor and the walls below the ground level shall be damp proof. All cellars and basements shall be properly lighted and ventilated in all their parts to the satisfaction of the board of health.

Spaces under floors.
1913, 786, § 28.

SECTION 29. In any tenement house under any part of which there is no cellar, the first story shall be at least two feet above the ground beneath and that adjacent thereto, and the space beneath such floor shall be kept free and clear and shall be enclosed to prevent the accumulation of rubbish, but provided with ample ventilation and adequate drainage.

Courts, yards, etc., to be drained, etc.
1913, 786, § 29.

SECTION 30. All courts, areas and yards shall be properly graded and drained and, subject to section five, connected with the street sewer. And when necessary in order to keep such premises in a sanitary condition such courts, areas or yards, or such part thereof as the board of health shall order, shall be properly paved.

Sinks.
1913, 786, § 30.

SECTION 31. There shall be a proper sink in each apartment.

Water closets.
1913, 786, § 31.

SECTION 32. There shall be within each apartment a separate water closet, located in a bathroom or in a separate compartment; provided, that where there are apartments of but one or two rooms there shall be at least one water closet for every two such apartments, and such water closet shall not open into any apartment but shall be accessible through a public hall, and the door thereof shall be provided with lock

7 and keys, and such compartment and water closet shall comply in all
 8 other respects with this chapter. Said compartment shall be not less
 9 than three feet wide, and shall be enclosed with brick, concrete, stone,
 10 tiled or plastered partitions which shall extend to the ceiling. No wooden
 11 sheathing or wainscoting shall be permitted. Every such compartment
 12 shall have a window opening directly upon the street or upon a yard or
 13 court of the minimum size prescribed by this chapter. Every water
 14 closet compartment thereafter placed in any tenement house, whenever
 15 erected, shall be provided with proper means of lighting the same at
 16 night. The floor of every such water closet compartment shall be made
 17 waterproof with asphalt, tile, stone or some other non-absorbing water-
 18 proof material; and such waterproofing shall extend at least six inches
 19 above the floor so that the floor can be washed or flushed out without
 20 leaking. When the water closet fixture is located in a bathroom the
 21 floor directly beneath the fixture and extending at least one foot beyond
 22 it in each direction shall be waterproofed as above provided. No drip
 23 trays shall be permitted. No water closet fixtures shall be enclosed with
 24 woodwork. No water closet shall be placed out of doors nor in the cellar
 25 of any tenement house, whenever erected, except as provided in section
 26 twenty-seven or as an appurtenance to an engine or boiler room or
 27 laundry and then only in case such cellar closet is lighted and ventilated
 28 as required in this chapter for a basement room.

1 SECTION 33. Plumbing fixtures shall not be enclosed with wood-
 2 work. All plumbing pipes shall be exposed, except as may otherwise
 3 be permitted by the board of health. Wherever plumbing or other pipes
 4 pass through floors or partitions they shall pass through metal bushings
 5 or casings extending entirely through the floor or partition, and the inner
 6 diameter of such bushing or casing shall in no case exceed the outer
 7 diameter of such pipe by more than one thirty-second of one inch, and
 8 such bushings or casings shall be so set in floors or partitions as to be
 9 externally air tight. All plumbing work shall be sanitary in every par-
 10 ticular and except as otherwise specified in this chapter shall be in
 11 accordance with the local plumbing regulations. Pan and long hopper
 12 closets shall not be used.

Plumbing,
 1913, 786, § 32.

1 SECTION 34. All sinks and water closets shall be provided with an
 2 adequate supply of running water as approved by the board of health.

Water
 supply,
 1913, 786, § 33.

1 SECTION 35. No privy or privy vault shall be permitted on the same
 2 lot with any tenement house.

Privies,
 1913, 786, § 34

FIRE PROTECTION.

1 SECTION 36. No tenement house of third class construction shall
 2 be erected exceeding two and one half stories in height in any part, nor
 3 shall it be occupied, nor intended, arranged or designed to be occupied,
 4 by more than two families. No tenement house of second class con-
 5 struction shall be erected exceeding four stories in height, nor shall it
 6 exceed twenty-five hundred square feet in superficial area between fire
 7 walls. Any tenement house which exceeds four stories in height shall
 8 be of first class construction. A basement or cellar the ceiling of which
 9 extends more than three feet above the curb level shall be a story within
 10 the meaning of this section.

Construction
 required,
 1913, 786, § 35.

Fire escapes,
1913, 786, § 36.

SECTION 37. In every tenement house which exceeds two and one half stories in height in any part, there shall be one or more fire escapes located and constructed as provided in this section.

Such fire escape shall be so located as to permit of unobstructed egress from every apartment on each floor above the ground floor, and in no case shall such egress be through any bathroom, water closet, storage room or public hall, nor shall any opening giving egress to any fire escape be smaller in size than the minimum provided for windows by section twenty-six.

No fire escape shall be placed within or open upon any inner court unless such court measures at least twenty-four feet in its least dimension, and unless the consent of the building department shall have been obtained for such location.

Fire escapes shall, at the option of the owner, be constructed after one of the methods hereinafter specified and described, to wit:

A. A wholly enclosed tower stairway, with an adjacent open air vestibule at each floor.

Every such vestibule shall be constructed with brick, terra cotta or concrete walls not less than eight inches thick at any point, and shall have at least one of such enclosing walls formed by an outer wall of the building, and in such outer wall there shall be a permanent opening to the outer air, of an area not less than eighty per cent of the total area of such vestibule wall, and of a height not less than the clear story height. Such opening, if reaching to the floor of the vestibule, shall be provided with a railing of suitable height and strength. The floors of vestibules shall be constructed wholly of incombustible material.

If one apartment on each floor is to be served by this fire escape then one side wall (i.e., a wall at right angles to the outer wall) of each vestibule shall have an approved fire door giving egress from the adjacent apartment; or, if two apartments on any floor are to be served by this fire escape, the vestibule at such floor must be so located as to provide unobstructed egress from each apartment by means of an approved fire door in each side wall of the vestibule. Such fire doors shall be not less than three feet in clear width nor less than six feet and six inches in clear minimum height, and shall not be secured or fastened except upon the apartment side, and then only by means of locking bars or other easily operated device having no removable parts. If there are openings from basement or cellar floors into the vestibule they shall be provided with self-closing fire doors and there shall be a permanent opening in the outer wall, all as hereinbefore described.

On the side of each vestibule opposite the opening to the outer air shall be constructed an approved fire door giving access to the stairway tower. Every such door shall be of the size hereinbefore described, of self-closing pattern but without locks or other fastenings, and shall contain an upper lighting panel of wire glass at least six feet in area. There shall be no openings into such a vestibule other than those hereinbefore described.

The stairway tower shall be not less than six feet six inches in clear width, and shall be constructed with walls of brick, terra cotta, or concrete not less than eight inches thick at any point. Such walls shall extend from the ground to a point not less than two feet above the roof, and shall be so constructed as to be impervious to smoke. There shall be no doorways or other openings of any kind in such walls except the doorways connecting with the above described vestibules, and excepting an egress doorway opening at the ground level, such egress door to open

55 outwardly, and if secured to be fastened upon the inside only. No such
56 ground level door shall be secured by means of sliding bolts, nor by a
57 lock or other apparatus requiring a key or other similar removable device.

58 Within the stairway tower shall be provided a stairway with a landing
59 at the level of each doorway, each landing to extend the full width of
60 the shaft and to be at least six inches wider in clear width than the door
61 opening thereon. Stairs and such intermediate landings as may be re-
62 quired shall be not less than three feet in width measured to the centre
63 of balustrades, and shall be provided with balustrades and wall rails.
64 Stairs shall be placed at an angle not exceeding forty-five degrees from the
65 horizontal; treads to be not less than eight inches wide, and risers not to
66 exceed nine inches in height. Winders shall not be permitted, nor shall
67 there be less than three steps between any two landings. All such stair-
68 ways, landings and balustrades shall be of incombustible material, ex-
69 cept that wooden hand rails and wall rails may be used.

70 Every such shaft shall be roofed and provided with a skylight not less
71 than sixteen square feet in area, glazed with wire glass one fourth inch or
72 more in thickness set in metal frame and sash, and shall also have placed
73 centrally in such skylight a suitable ventilator of not less than two hun-
74 dred and twenty-five square inches area.

75 The above described type of fire escape may at the option of the owner
76 be used as a regular service stairway.

77 B. An enclosed tower stairway, similar to the above, except that
78 access to the same shall be provided by means of an outside balcony in
79 each story above the ground floor, instead of by means of the vestibules
80 hereinbefore described. Such balconies shall be constructed wholly of
81 incombustible material, shall be provided with well braced balustrades
82 of proper height on outer side and ends, and shall extend beyond at least
83 one door or window opening into each adjacent apartment. All doors
84 opening into the stairway tower shall be as described for type "A" fire
85 escape.

86 C. An outside balcony or balconies at each floor above the first floor.
87 Such balconies shall be constructed wholly of incombustible material
88 approved by the building department. They shall be not less than two
89 feet in width at any point, and shall be provided with suitable balustrades
90 and hand rails on outer sides and ends.

91 Each balcony shall communicate with the balcony next below by
92 permanent stairways placed at an angle of not more than forty-five de-
93 grees from the horizontal, treads shall not be less than eight inches wide
94 nor shall risers exceed nine inches in height, and each stairway shall be
95 provided with balustrades and hand rails and shall measure in width not
96 less than twenty-four inches measured from centres of hand rails.

97 A counterbalanced stairway shall be provided extending from the low-
98 est balcony to the ground, arranged to be lifted and supported when
99 not in use in a manner satisfactory to and approved by the building
100 inspector.

101 All such balconies shall extend to and include at least one floor or
102 window in every apartment on every floor above the ground floor, exclu-
103 sive of windows in bathrooms, water closets, storage rooms or public
104 halls.

105 Floors of all balconies required by this chapter and treads of stairs
106 appurtenant to balconies and fire escapes shall be constructed of grating
107 pattern, and shall have the bars separated by a clear space of not over
108 one inch, and shall be so constructed as safely to sustain a live load of not

less than seventy pounds to the square foot of floor area. Balconies, 109
 unless it is otherwise provided by existing building laws or regulations, 110
 may project into the public highway for a distance not greater than four 111
 feet beyond the established building line. In case of tenements with flat 112
 roof, the balconies on the upper floors shall, if required by the building 113
 department, be provided with stairs or a gooseneck ladder leading from 114
 such balcony to the roof and securely fastened thereto. 115

All balustrades in this section shall have vertical bars placed not more 116
 than six inches on centres. 117

All balconies forming part of or constituting fire escapes, and all appur- 118
 tenances thereof, shall be subject to such supplementary regulations as 119
 are in force or as may hereafter be adopted by any city or by the building 120
 department thereof. 121

All doors opening upon fire escape balconies within six feet of the stair- 122
 ways shall be of self-closing fire resisting pattern. 123

All windows opening upon fire escape balconies within six feet of the 124
 stairways shall be self-closing of wire glass set in metal frames and sash. 125

Construction
 of bulkheads
 and scuttles.
 1913, 786, § 37.

SECTION 38. Every tenement house exceeding two and one half 1
 stories in height and having a flat roof shall have in the roof a bulkhead 2
 or scuttle not less than two feet by three feet in size. Such bulkhead or 3
 scuttle shall be covered with metal on the outside and shall be provided 4
 with stairs leading thereto and easily accessible to all tenants of the 5
 building. No bulkhead or scuttle shall be located in a closet or room, but 6
 shall be placed in the ceiling of the public hall on the top floor, and access 7
 through the same to the roof shall be direct and uninterrupted. 8

Stairs and
 public halls.
 1913, 786, § 38.

SECTION 39. In every tenement house there shall be at least one 1
 flight of stairs extending from the entrance floor to the top story. In 2
 every tenement house of third class construction there shall be at least 3
 two independent flights of stairs with separate entrances leading from the 4
 entrance floor to the top story, said flights of stairs being at two points 5
 as far apart as is possible in the opinion of the building department, and 6
 one of said flights of stairs may consist of outside, open stairs and bal- 7
 conies. In all cases said stairs shall be directly accessible from each 8
 apartment, without passing through any other apartment. All stairs 9
 and balconies and all public halls shall be at least three feet six inches 10
 wide in the clear. All stairs shall be constructed with a rise of not more 11
 than eight inches and with treads not less than nine inches wide. 12
 Winders shall not be permitted in any staircase. 13

Fireproof
 stairs and
 stair halls re-
 quired in ten-
 ement houses of
 second class
 construction.
 1913, 786, § 39.

SECTION 40. In every tenement house of second class construction 1
 exceeding two and one half stories in height the stairs and stair halls 2
 shall be constructed of incombustible material throughout, except that 3
 treads may be of hard wood not less than one and three quarters inches 4
 thick. Wooden hand rails shall be permitted. The floors of all such stair 5
 halls shall be constructed of incombustible material, and no wooden 6
 flooring or sleepers shall be permitted. All such stairs and stair halls 7
 shall be enclosed on all sides with brick, terra cotta or concrete walls 8
 not less than eight inches thick. There shall be no transom or sash 9
 opening from any such stair hall to any other part of the house. Each 10
 stair hall shall be shut off from all non-fireproof parts of the building, 11
 on each story, by self-closing fire doors, and if glass is used in such doors 12
 it shall be of wire glass in metal frames and sash. 13

1 SECTION 41. Every entrance hall shall be at least four feet wide in
2 the clear.

Entrance
halls.

1913, 786, § 40.

1 SECTION 42. All shafts shall be constructed of incombustible ma-
2 terials throughout, with self-closing fire doors at all openings at each
3 story; and, if they extend to the cellar, shall also be enclosed in the
4 cellar with incombustible walls and self-closing fire doors at all openings.
5 In no case shall any shaft be constructed of materials in which any in-
6 flammable material or substance enters into any of the component
7 parts. But nothing in this section shall be so construed as to require
8 such enclosures about elevators or dumb-waiters in the well hole of stairs
9 where the stairs themselves are enclosed in brick or stone walls, and
10 are entirely constructed of incombustible materials as provided in this
11 chapter.

Shafts to be
of fireproof
construction.
1913, 786, § 41.

1 SECTION 43. In every tenement house of second class construction
2 the cellar ceiling and the ceiling and side walls of the cellar stairs shall
3 be plastered on metal lath, and the stairs shall be provided at the top
4 with a self-closing fire door.

Ceiling of
cellar, etc.
1913, 786, § 42.

1 SECTION 44. No closet of any kind shall be constructed under any
2 staircase leading from the first story to the upper stories.

Closets under
first story
stairs not
allowed

1913, 786, § 43.

1 SECTION 45. There shall be an entrance to the cellar or other lowest
2 story from the outside of the building.

Outside cellar
entrance.

1913, 786, § 44.

1 SECTION 46. Whenever the plaster finish about any chimney is
2 carried on furring, the furring strips shall be of metal, and only metal
3 lathing shall be used. All recesses about funnel holes shall be finished
4 wholly with incombustible material at sides, top and bottom.

Finish about
chimneys.
1913, 786, § 45.

1 SECTION 47. Where non-fireproof tenement houses are built in the
2 form of double houses or terraces or attached or semi-attached rows,
3 there shall be a fire wall of brick, concrete or terra cotta or other hard
4 incombustible material approved by the inspector of buildings, separat-
5 ing every such house from each adjoining house, and such wall shall have
6 no openings therein, and shall extend from the floor of the basement or
7 cellar to not less than one foot above the roof, and out to the boarding
8 of the walls. No wooden beams shall be carried through the fire walls.

Fire walls.
1913, 786, § 46.

1 SECTION 48. Roofs in all parts and the sides of all dormer windows
2 shall be covered with fire resisting material satisfactory to the building
3 inspector.

Roofing
materials.
1913, 786, § 47.

1 SECTION 49. In no wooden tenement house shall any story or part
2 thereof above the second story be rented, leased, let or hired out to be
3 occupied for housekeeping, nor shall it be intended, arranged or designed
4 to be occupied for housekeeping, nor shall any provision be made for
5 cooking, nor shall any cooking be done above the second story.

Wooden tenement
houses
not to be used
for certain
purposes above
second story.
1913, 786, § 48.

IMPROVEMENTS IN OLD BUILDINGS.

Lighting and ventilating of rooms. 1913, 786, § 49.

SECTION 50. No room or alcove shall thereafter be occupied for living purposes unless it shall have a window with an area of not less than ten square feet between stop beads opening directly upon the street, or upon a yard not less than ten feet deep, or above the roof of an adjoining building, or upon a court of not less than thirty square feet in area, open to the sky without roof or skylight.

Lighting and ventilating of public halls. 1913, 786, § 50.

SECTION 51. Public halls and stairs shall be provided with sufficient light to permit the reading of twelve point type in the daytime in any part thereof. Light and ventilation in such halls shall be from the outer air, except when in the opinion of the building inspector it is impracticable, in which case the lighting and ventilation shall be such as to meet the approval of the board of health.

All new skylights thereafter placed in a tenement house shall be provided with ridge ventilators having a minimum opening of forty square inches, and also with either fixed or movable louvres, or with movable sashes, and shall be of such size as may be determined to be practicable by the building inspector.

Sinks. 1913, 786, § 51.

SECTION 52. Woodwork enclosing sinks placed in the public halls or stairs shall be removed and the spaces underneath shall be left open. The floors and wall surfaces beneath and around the sink shall be put in good order and repairs, and if of wood shall be well painted with light colored paint.

Water closets. 1913, 786, § 52.

SECTION 53. Woodwork enclosing every water closet fixture shall be removed, and the space underneath the seat shall be left open. The floor and other surfaces beneath and around the closet shall be put in good order and repair, and if of wood shall be well painted with light colored paint.

Removal of cesspools, etc. 1913, 786, § 53.

SECTION 54. Where a connection with a sewer is possible, all cesspools, school sinks, privy vaults or other similar receptacles used to receive fecal matter, urine or sewage shall within one year thereafter be completely removed and the places where they were located properly disinfected under the direction of the board of health. Such appliances shall be replaced by individual water closets of durable non-absorbent material, properly sewer connected, with individual traps and properly connected flush tanks providing an ample flush of water thoroughly to cleanse the bowl. Each water closet shall be located inside the tenement house in a compartment completely separated from every other water closet, and such compartment shall contain a window of not less than three square feet in area opening directly upon the street or yard, or on a court of which the least dimension is not less than three feet and the area not less than fifteen square feet. The floors of the water closet compartment shall be waterproof, as provided in section thirty-two. There shall be provided at least one water closet for each apartment unless, in the opinion of the building inspector, this shall be impracticable; but in no case shall there be less than one water closet for every two apartments. Such water closets and all plumbing in connection therewith shall be sanitary in every respect, and, except as in this section

21 otherwise provided, shall be in accordance with the laws, ordinances and
 22 regulations in relation to plumbing and drainage. Pan and long hopper
 23 closets shall not be permitted.

1 SECTION 55. Any part of a floor or wall below the adjoining grade, Basements
and cellars
to be damp
proof, etc
1913, 786, § 54.
 2 and in any case the lowest floor, shall be damp proof, and, when neces-
 3 sary, shall be concreted with a finished surface. The cellar ceiling shall
 4 be plastered when so required by the building inspector, except where
 5 such ceiling is already well covered with a metal ceiling or where the
 6 first floor above the cellar is constructed of iron beams and fireproof
 7 filling.

1 SECTION 56. At the bottom of every shaft and court there shall be Doors in shafts
and courts
to be damp
proof, etc
1913, 786, § 55
 2 a door giving sufficient access to such shaft or court to enable it to be
 3 properly cleaned out; provided, that where there is already a window
 4 giving proper access to such shaft or court, such window shall be deemed
 5 sufficient.

1 SECTION 57. All non-fireproof tenement houses which are three or Fire escapes
1913, 786, § 56.
 2 more stories in height and do not have fireproof stairs and stair halls or
 3 adequate fire escapes as required by this chapter, except those of three
 4 stories which have two independent means of egress not directly con-
 5 nected with each other, approved in writing by the building inspector,
 6 and directly accessible to each apartment, shall be provided either with
 7 incombustible outside stairways or with incombustible fire escapes
 8 directly accessible to each apartment without passing through a public
 9 hall.

10 All fire escapes thereafter erected shall be located and constructed as
 11 prescribed in section thirty-seven.

12 No existing fire escape shall be deemed adequate unless the following
 13 conditions are complied with:

14 (1) Each apartment above the ground floor shall have a fire escape
 15 balcony directly accessible to it. All balconies shall be capable of sus-
 16 taining a live load of seventy pounds per square foot.

17 (2) Each balcony shall be properly connected with one other balcony
 18 by adequate stairs or stationary ladders with openings not less than
 19 twenty-four by thirty-six inches, unless such balconies connect adjoining
 20 houses or adjoining parts of the same house separated from each other
 21 by a fire wall in which there are no openings except such as are protected
 22 by self-closing fire doors.

23 (3) All fire escapes shall have proper ladders from the lowest balcony
 24 of sufficient length to reach a safe landing place beneath.

25 (4) All fire escapes not on the street shall have a safe and adequate
 26 means of egress from the yard or court to the street or to adjoining
 27 premises.

28 (5) Prompt and ready access shall be had to all fire escapes, which
 29 shall not be obstructed in any way.

30 No existing fire escape shall be extended or have its location changed
 31 except with the written approval of the inspector of buildings.

1 SECTION 58. Whenever a tenement house is not provided with Means of
egress
1913, 786, § 57
 2 sufficient fire escapes or with sufficient means of egress in case of fire,
 3 the building inspector shall order such additional fire escapes and other
 4 means of egress as may be necessary.

ALTERATIONS OF OLD BUILDINGS.

Alterations.
1913, 786, § 58.

SECTION 59. No tenement house shall at any time be so altered as to be in violation of the requirements of sections ten to forty-nine, inclusive, except as hereinafter provided:

(1) Any additional room or hall that is thereafter constructed or created in a tenement house shall comply in all respects with said sections, except that such rooms may be of the same height as the other rooms in the same story of the house.

(2) All shafts shall be constructed fireproof throughout; with fireproof self-closing doors at all openings, at each story; and, if they extend to the cellar, shall also be enclosed in the cellar with fireproof walls and fireproof self-closing doors at all openings. In no case shall any shaft be constructed of materials in which any inflammable material or substance enters into any of the component parts. But nothing in this section shall be so construed as to require such enclosures about elevators or dumb-waiters in the well hole of stairs where the stairs themselves are enclosed in brick or stone walls, and are entirely constructed of fireproof materials as provided in this chapter.

(3) No tenement house of third class construction containing more than two apartments shall thereafter be enlarged or extended; except that a wooden extension not exceeding in total area seventy square feet may be added to an existing wooden tenement house, provided that such extension is used solely for bathrooms or water closets.

MAINTENANCE AND USE.

Lighting in
the daytime.
1913, 786, § 59.

SECTION 60. In every tenement house where the public halls and stairs are not, in the opinion of the board of health, sufficiently lighted, the owner of the house shall keep a proper light burning in the hallway, near the stairs, upon each floor, as may be necessary, from sunrise to sunset.

Lighting at
night.
1913, 786, § 60.

SECTION 61. In every tenement house occupied by more than two families a proper light shall be kept burning by the owner in the public hallways, near the stairs, upon the entrance floor, and upon the second floor above the entrance floor of the house, every night from sunset to sunrise throughout the year, and upon all other floors of the said house from sunset until ten o'clock in the evening.

Water closets
in cellars.
1913, 786, § 61.

SECTION 62. No water closet shall be permitted in the cellar of any tenement house, except as provided in sections twenty-seven and thirty-two.

Water closet
accommoda-
tions.

SECTION 63. In every existing tenement house, there shall be provided at least one water closet for every two apartments.

1913, 786, § 62.

Basements and
cellars not to be
occupied for
living purposes.
1913, 786, § 63.

SECTION 64. In existing tenement houses no room in the cellar shall thereafter be occupied for living purposes except as provided in section twenty-seven. And no room in the basement of such houses shall be so occupied unless all the following conditions are complied with: Every such room shall be at least eight feet high in every part from the floor to the ceiling, and the ceiling in every part shall be at least four and one

7 half feet above the curb level of the street or the level of the yard or
 8 court in front of such room. There shall be appurtenant to every such
 9 room the use of a water closet. Every such room shall have a window
 10 opening, as provided in section fifty, of at least twelve square feet in size
 11 clear of the sash frame, which shall open readily for purposes of ventila-
 12 tion. The lowest floor shall be waterproof and damp proof. Every such
 13 room shall have sufficient light and ventilation, shall be well drained and
 14 dry, and shall be fit for human habitation.

1 SECTION 65. In all tenement houses the floor or other surface be-
 2 neath and around water closets and sinks shall be maintained in good
 3 order and repair, and if of wood shall be kept well painted with light
 4 colored paint.

Floors around
water closets
and sinks
1913, 786, § 64

1 SECTION 66. Every tenement house and all the parts thereof shall be
 2 kept in good repair, and the roof shall be kept so as not to leak, and all
 3 rain water shall so be drained and conveyed therefrom as to prevent
 4 dampness in the walls, ceilings, yards or areas.

Repairs
1913, 786, § 65

1 SECTION 67. Every tenement house shall have water furnished in
 2 sufficient quantity at one or more places in each apartment. The owner
 3 shall provide proper and suitable tanks, pumps or other appliances to
 4 receive and distribute an adequate and sufficient supply of water at each
 5 apartment in the said house at all times of the year during all hours of
 6 the day and night. But a failure in the general supply of water furnished
 7 by the city authorities or from the freezing or bursting of pipes shall not
 8 be construed to be a failure on the part of such owner, provided that
 9 proper and suitable appliances to receive and distribute water have been
 10 provided in the said house.

Water supply
1913, 786, § 66

1 SECTION 68. The owner of every tenement house shall cause every
 2 part thereof to be kept clean and free from any accumulation of dirt,
 3 filth and garbage or other refuse matter in or on the same, or in the
 4 cellars, halls, passages, rooms, areas, yards, courts, and spaces appurte-
 5 nant thereto. The owner shall thoroughly cleanse every part of a tene-
 6 ment house whenever ordered so to do by the board of health.

Buildings to
be kept clean
and free from
refuse matter,
etc.
1913, 786, § 67

1 SECTION 69. The walls of all courts, except those opening on a
 2 street, unless built of a light colored brick or stone, shall be thoroughly
 3 whitened by the owner, or shall be painted a light color by him, and
 4 shall so be maintained. Such whitening or paint shall be renewed when-
 5 ever necessary as may be required by the board of health.

Walls of courts
to be whitened,
etc.
1913, 786, § 68

1 SECTION 70. In all tenement houses the board of health may re-
 2 quire the walls and ceilings of every room that does not open directly
 3 on the street to be whitened or painted with white paint when necessary
 4 to improve the lighting of such room, and may require this to be re-
 5 newed as often as may be necessary.

Walls and
ceilings of
rooms to be
whitened, etc.
1913, 786, § 69.

1 SECTION 71. No wall paper shall be placed upon the wall or ceiling
 2 of any tenement house unless the wall or ceiling has been thoroughly
 3 cleaned.

Wall paper.
1913, 786, § 70.

Receptacles for ashes, etc., to be provided. 1913, 786, § 71.	SECTION 72. The owner of every tenement house shall provide and maintain therefor suitable covered water tight receptacles for ashes, rubbish, garbage, refuse and other like matter.	1 2 3
Certain uses prohibited. 1913, 786, § 72.	SECTION 73. No swine shall be kept in a tenement house, or on the same lot therewith. No horse, cow, calf, sheep, goat or fowl shall be kept in a tenement house or on the same lot therewith within twenty-five feet of the tenement house. No tenement house, or the lot upon which it is situated, shall be used for the storage or handling of rags, nor as a place of public assemblage.	1 2 3 4 5 6
Not to be used for storage of combustible materials, etc. 1913, 786, § 73.	SECTION 74. No tenement house, and no part thereof, or of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any article dangerous or detrimental to life or health, nor for the storage, keeping or handling of feed, hay, straw, excelsior, cotton, paper stock, feathers, rags or other easily combustible articles.	1 2 3 4 5
Bakeries and fat boiling. 1913, 786, § 74.	SECTION 75. No bakery or place of business in which fat is boiled shall be maintained in any tenement house.	1 2
Other dangerous businesses. 1913, 786, § 75.	SECTION 76. There shall be no transom, window or door opening into a hall from any part of a tenement house where paint, oil, spirituous liquors or drugs are stored for the purpose of sale or otherwise.	1 2 3
Janitor or housekeeper. 1913, 786, § 76.	SECTION 77. In any tenement house in which the owner thereof does not reside, there shall be a janitor, housekeeper or other responsible person who shall have charge of the same if the board of health shall so require.	1 2 3 4
Overcrowding. 1913, 786, § 77.	SECTION 78. If a room in a tenement house is overcrowded, the board of health may order the number of persons sleeping or living in said room to be so reduced that there shall not be less than four hundred cubic feet of air to each adult, and three hundred cubic feet of air to each child under twelve occupying the room.	1 2 3 4 5
Letting of lodgings regulated. 1913, 786, § 78.	SECTION 79. No tenement house or part thereof, shall be used for the letting of lodgings unless the person letting the same shall first file a notice in writing of the proposed letting in the office of the board of health, nor shall any person not a member of the family be taken to live within an apartment occupied by any family without such written notice. The owner shall see that this section is at all times complied with, and a failure so to comply on the part of any tenant, after due and proper notice from the owner, shall be deemed sufficient cause for the summary eviction of such tenant and the cancellation of his lease.	1 2 3 4 5 6 7 8 9
Board of health may order repairs, etc. 1913, 786, § 79.	SECTION 80. Whenever any tenement house or building, structure, excavation, business pursuit, matter or thing, in or about a tenement house, or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof, is, in the opinion of the board of health, in a condition or in effect dangerous or detrimental to life or health, the board may declare that the same, to the extent which it may specify, is a public nuisance, and may order the same to be removed, abated, suspended, altered or otherwise improved or purified, as the order shall specify. The board may also order or cause any tenement	1 2 3 4 5 6 7 8 9

10 house or part thereof, or any excavation, building, structure, sewer,
 11 plumbing, pipe, passage, premises, ground, matter or thing, in or about
 12 a tenement house, or the lot on which it is situated, to be purified,
 13 cleansed, disinfected, removed, altered, repaired or improved. If any
 14 order of the board is not complied with, within ten days after the service
 15 thereof, or within such longer or shorter time as the board may designate,
 16 then such order may be executed by said board through its officers,
 17 agents, employees or contractors.

1 SECTION 81. Whenever it shall be certified by an inspector or officer
 2 or agent of the board of health that a tenement house, or any part thereof,
 3 is infected with contagious disease, or that it is unfit for human habita-
 4 tion, or dangerous to life or health by reason of want of repair, or of
 5 defects in the drainage, plumbing, ventilation or the construction of the
 6 same, or by reason of the existence on the premises of a nuisance likely
 7 to cause sickness among the occupants of said house, the board may
 8 issue an order requiring all persons therein to vacate such house, or part
 9 thereof, within not less than twenty-four hours nor more than ten days,
 10 for the reasons to be mentioned in said order. In case such order is not
 11 complied with within the time specified, the board may cause said tene-
 12 ment house or part thereof to be vacated. The board, whenever it is
 13 satisfied that the danger from said house or part thereof has ceased to
 14 exist, or that it is fit for human habitation, may revoke said order, or
 15 may extend the time within which to comply with the same.

Infected and
 uninhabitable
 houses to be
 vacated
 1913, 786, § 80.

1 SECTION 82. The owner of every tenement house shall keep all fire
 2 escapes thereon in good order and repair, and whenever they become
 3 rusty shall have them properly painted with two coats of paint. No
 4 person shall at any time place any encumbrance of any kind before or
 5 upon any such fire escape.

Repair of
 fire escapes.
 1913, 786, § 81

1 SECTION 83. All scuttles and bulkheads, and all stairs or ladders
 2 leading thereto, shall be easily accessible to all tenants of the building,
 3 and kept free from encumbrance, and ready for use at all times. No
 4 scuttle or bulkhead door shall at any time be locked with a key, but
 5 either may be fastened on the inside by movable bolts or hooks.

Scuttles, bulk-
 heads, etc., to
 be easily
 accessible at
 all times, etc.
 1913, 786, § 82

REQUIREMENTS AND REMEDIES.

1 SECTION 84. In a city which accepts this chapter, or has accepted
 2 corresponding provisions of earlier laws, and in which the office of build-
 3 ing inspector or a similar office does not exist, the mayor shall annually
 4 appoint an inspector of buildings.

Inspector of
 buildings.
 1913, 786, § 83.

1 SECTION 85. Before the construction or alteration of a tenement
 2 house, or the alteration or conversion of a building for use as a tenement
 3 house, is begun, and before the construction or alteration of any building
 4 or structure on the same lot with a tenement house, the owner shall sub-
 5 mit to the building inspector a detailed statement in writing, verified by
 6 the affidavit of the person making the same, of the specifications for such
 7 tenement house or building, upon blanks or forms to be furnished by
 8 such inspector, and also full and complete copies of the plans of the work,
 9 together with a plan of the lot on which the same is or is to be situated,
 10 showing the location, character and size of all buildings thereon, and the

Permit for
 construction
 or alteration
 1913, 786, § 84

exact dimensions of said lot together with its description by metes and 11
 bounds. The said statement shall give in full the name and residence, 12
 by street and number, of the owner of the tenement house or other build- 13
 ing. If such construction, alteration or conversion is proposed to be 14
 made by any other person than the owner of the land in fee, the statement 15
 shall contain the full name and residence, by street and number, not 16
 only of the owner of the land, but of every person interested in the tene- 17
 ment house, either as owner, lessee or in any representative capacity. 18
 The affidavit shall allege that said specifications and plans are true and 19
 contain a correct description of such tenement house or other building, 20
 structure, lot and proposed work. The statements and affidavit herein 21
 provided for may be made by the owner, or by the person who proposes 22
 to make the construction, alteration or conversion, or by his agent. 23
 No person shall be recognized as the agent of the owner, unless he shall 24
 file with the building inspector a written instrument, signed by the 25
 owner, designating him as such agent. Any false swearing in a material 26
 point in any such affidavit shall be deemed perjury. The said specifica- 27
 tions, plans and statements shall be filed in the office of the building in- 28
 spector and shall be public records, and no such specifications, plans or 29
 statements shall be removed from the said office. The building inspector 30
 shall cause all such plans and specifications to be examined. 31

If such plans and specifications conform to the provisions of law they 32
 shall be approved in writing by the building inspector, and he may from 33
 time to time approve changes in any plans and specifications, provided 34
 that the plans and specifications so altered are in conformity with law, 35
 but the building inspector shall not approve any plans or specifications 36
 or any changes in the same until the board of health has certified that 37
 the said plans and specifications conform to the law relative to light, 38
 ventilation and sanitation. The construction, alteration or conversion 39
 of such tenement house, building or structure or any part thereof, shall 40
 not be begun until the filing of the said specifications, plans and state- 41
 ments, and the approval thereof, as above provided. The construction, 42
 alteration or conversion of any such house, building or structure, shall 43
 be in accordance with the said approved specifications and plans. Any 44
 permit or approval which may be issued by the building inspector but 45
 under which no work has been done above the foundation walls within 46
 one year after the issuance of the permit or approval, shall expire by 47
 limitation. Said inspector may revoke or cancel any permit or approval 48
 in case of any failure or neglect to comply with any provision of this 49
 chapter, or in case any false statement or representation was made in 50
 any specifications, plans or statements submitted or filed for such permit 51
 or approval. 52

Building not
 to be occupied
 until after
 approval, etc.
 1913, 786, § 85.

SECTION 86. No building thereafter constructed as or altered into a 1
 tenement house shall be occupied in whole or in part for human habitation 2
 until the building conforms in all respects to the requirements of law. 3
 Upon notice of the completion of the construction, alteration or conver- 4
 sion of a tenement house, the building inspector and the board of health 5
 shall inspect the building forthwith and it shall not be occupied as a place 6
 of habitation unless it conforms to the requirements of this chapter. 7

Enforcement
 of provisions
 1913, 786, § 85.

SECTION 87. Any court having jurisdiction in equity, or any justice 1
 thereof may upon the application of the city solicitor, building inspector 2
 or the board of health of any city, restrain the construction, alteration, 3

4 repair, maintenance, use, or occupation of a building or other structure
 5 in violation of this chapter and order its removal or abatement as a
 6 nuisance, and compel compliance with any provision of this chapter.

1 SECTION 88. A building or other structure which is erected, altered,
 2 maintained or used in violation of this chapter shall be deemed a com-
 3 mon nuisance without other proof thereof than proof of such unlawful
 4 construction, maintenance or use, and the board of health may, if such
 5 violation is of any section of this chapter relative to light, ventilation or
 6 sanitation, and the building inspector may, if said violation is of any
 7 other provision of this chapter, order the owner of said premises at his
 8 own expense to abate or remove said nuisance within twenty-four hours,
 9 or within such further time as said board of health or said building in-
 10 spector, as the case may be, considers reasonable, after notice to be served
 11 in the manner provided in section ninety-five, and if the owner or occu-
 12 pant fails to comply with such order, the board may abate or remove the
 13 nuisance, and all expenses incurred thereby shall be paid by the person
 14 who caused or permitted the same.

Building erected, etc., in violation of this chapter to be deemed a common nuisance, etc. 1913, 786, § 87.

1 SECTION 89. Whoever violates any provision of this chapter shall
 2 be punished by a fine of not less than ten dollars. Any person who
 3 violates any provision of this chapter, after he has been served with
 4 a notice or order as provided by section ninety-five, or who fails to comply
 5 with such notice or order within ten days after such service, or continues
 6 to violate any provision or requirement of this chapter in the respect
 7 named in such notice or order, shall in addition be punished by a fine of
 8 not less than five nor more than twenty dollars for each day after the
 9 first day during which the violation continues.

Penalties. 1913, 786, § 88.

1 SECTION 90. Any person, the value of whose property may be affected
 2 by any action of the board of health or of the building inspector, may
 3 have the action of said board or inspector reviewed by the superior court
 4 by any appropriate process; provided, that proceedings are instituted
 5 within twenty days after such action.

Jurisdiction of the superior court. 1913, 786, § 89.

1 SECTION 91. Any person having any duty to perform under this
 2 chapter in regard to any building or premises may, if it be necessary for
 3 the performance of such duty, enter the same.

Right of entry. 1913, 786, § 90.

1 SECTION 92. Every fine imposed by judgment under section eighty-
 2 nine of this chapter or section fifty-four of chapter one hundred and
 3 forty-five upon a tenement house owner shall be a lien upon the house
 4 in relation to which the fine is imposed from the time of the filing of a
 5 certified copy of the judgment in the office of the register of deeds for
 6 the county or district where the tenement house is situated, subject only
 7 to taxes, assessments and water rates and other existing lawful encum-
 8 brances, and the board of health and the building inspector, upon the
 9 entry of said judgment, shall forthwith file the copy as aforesaid, and
 10 the copy, upon such filing, shall forthwith be properly indexed by the
 11 register of deeds.

Liens. 1913, 786, § 91.

1 SECTION 93. In any action or proceeding instituted by the officer
 2 or department charged with the enforcement of this chapter, the plain-
 3 tiff or petitioner may file in the office of the register of deeds for the

Notice of pendency of action to be filed, etc. 1913, 786, § 92.

county or district where the property affected by such action or proceeding is situated, a notice of the pendency of the action or proceeding. The register of deeds with whom the notice is filed shall record it, and shall index it under the name of each person against whom said proceeding is instituted. Any such notice may be vacated by the order of a justice of the court in which the action or proceeding was instituted or is pending. The register of deeds of the county or district where the notice is filed is hereby directed to mark the notice and any record or docket thereof as cancelled of record, upon the presentation and filing of a certified copy of such order.

Owner's name,
etc., to be
registered.
1913, 786, § 93.

SECTION 94. Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file with the board of health a notice containing his name and address, and also a description of the property, by street and number or otherwise, as the case may be, in such manner as will enable the said board easily to find the same; and also the number of rooms in each apartment, and the number of families occupying the apartments.

When the owner or agent is not a resident of the city the notice shall contain the name and address of some agent residing within the city for the purpose of receiving service of process, and notice to and service of process upon such agent shall bind the principal. Blanks for the said registration shall be provided by the board of health.

Service of
notices, etc.
1913, 786, § 94.

SECTION 95. Unless otherwise provided in this chapter, every notice or order in relation to a tenement house shall be served ten days before the time for doing the thing in relation to which it is issued. The service of a notice or order as aforesaid shall be made by the delivery of an attested copy in hand to the owner or his agent, or by leaving an attested copy at the last or usual place of abode of the owner or agent, or, if the owner is a non-resident and has no agent duly appointed, it shall be placed in a conspicuous place in said tenement house and a copy thereof mailed by a registered letter, on the same day on which it is posted, to the owner or his agent at his residence.

Service of
process.
1913, 786, § 95.

SECTION 96. In any action brought by any city official in relation to a tenement house for injunction, vacating of the premises or other abatement of nuisance, or to establish a lien thereon, service of process shall be in the manner provided in the preceding section, except that the service of process shall be made only by a sheriff or one of his deputies or by a constable.

Certain names
and addresses
to be indexed,
etc.
1913, 786, § 96.

SECTION 97. The names and addresses filed in accordance with section ninety-four shall be indexed by the board of health in such a manner that all those filed in relation to each tenement house shall be together, and readily ascertainable. The board of health shall provide the necessary books and clerical assistance for that purpose, and the expense thereof shall be paid by the city. Said indexes shall be public records, open to public inspection during business hours.

Repeal.
1913, 786, § 97.

SECTION 98. Upon acceptance of this chapter by any city all ordinances of such city inconsistent herewith shall be annulled.

CHAPTER 145.

TENEMENT HOUSES IN TOWNS.

SECT.

GENERAL PROVISIONS.

1. Application of chapter.
2. Definitions.
3. Application of certain sections.
4. Certain provisions as to tenement houses in cities applicable.
5. Law not to be modified.
6. Sewer connection and water supply.
7. Powers of department of public health.
8. Improvements to be made within one year after acceptance.
9. Buildings converted or altered.

NEW BUILDINGS. LIGHT AND VENTILATION.

10. Percentage of lot occupied.
11. Distance from side lot line.
12. Height.
13. Yards.
14. Courts.
15. Air intakes.
16. Angles in courts.
17. Buildings on same lot with tenement houses.
18. Frontage on street.
19. Lighting.
20. Windows.
21. Size of rooms.
22. Alcoves, etc.
23. Chimneys, etc.
24. Privacy.
25. Public halls.
26. Size of windows in public halls.
27. Size of windows in stair halls.

SANITATION.

28. Basements or cellars not to be used for living purposes.
29. Courts, yards, etc., to be drained, etc.
30. Water closets.
31. Plumbing.
32. Sewer connection.
33. Cesspools.

FIRE PROTECTION.

34. Certain tenement houses to be fire-proof.

SECT.

35. Stairs and public halls.
36. Fire walls.

IMPROVEMENTS IN OLD BUILDINGS.

37. Lighting and ventilating of rooms.
38. Privy vaults, etc.
39. Basements and cellars to be damp proof, etc.
40. Fire escapes.

ALTERATIONS OF OLD BUILDINGS.

41. Alterations.

MAINTENANCE AND USE.

42. Lighting at night.
43. Water closets not permitted in cellars.
44. Basements and cellars, occupation for living purposes regulated.
45. Cellar walls, etc., to be whitened or painted.
46. Walls of courts to be whitened, etc.
47. Wall paper.
48. Janitor or housekeeper.

REQUIREMENTS AND REMEDIES.

49. Inspector of buildings.
50. Permit for construction or alteration.
51. Building not to be occupied until after approval, etc., when.
52. Enforcement of provisions.
53. Building erected, etc., in violation of this chapter to be deemed a common nuisance, etc.
54. Penalties.
55. Jurisdiction of the superior court.
56. Right of entry.
57. Liens.
58. Notice of pendency of action to be filed, etc.
59. Owner's name, etc., to be registered.
60. Service of notices, etc.
61. Service of process.
62. Certain names and addresses to be indexed, etc.
63. Repeal.

GENERAL PROVISIONS.

1 SECTION 1. This chapter shall apply to all towns which accept it or
 2 have accepted corresponding provisions of earlier laws by vote of the
 3 town at a town meeting.

Application of chapter. 1912, 635, § 94.

1 SECTION 2. The following words used in this chapter shall have the
 2 following meanings:

Definitions. 1912, 635, § 2.

“Acceptance of this chapter” shall include the acceptance of corresponding provisions of earlier laws. 3

“Basement”, a story partly but not more than one half below the level of the adjacent ground. 4 5

“Cellar”, a story more than one half below the level of the adjacent ground. 6 7 8

“Corner lot”, a lot situated at the junction of two streets, each not less than twenty feet in width. Any part of the width of such lot distant more than seventy feet from such junction shall not be regarded as part of a corner lot, but shall be subject to the provisions of this chapter respecting interior lots. 9 10 11 12 13

“Court”, an open unoccupied space, other than a yard, on the same lot with the tenement house. A court not extending to the street or yard is an “inner court”. A court extending to the street or yard is an “outer court”. 14 15 16 17

“Existing”, existing at the time of the acceptance of this chapter or corresponding provisions of earlier laws. 18 19

“Fireproof tenement house”, one constructed of fireproof material throughout, with floors built of iron, steel or re-enforced concrete beams, filled in between with terra cotta or other masonry arches or with concrete or re-enforced concrete slabs; wood may be used only for under and upper floors, windows and door frames, sashes, doors, interior finish, hand rails for stairs, necessary sleepers bedded in the cement, and for isolated furrings bedded in mortar. There shall be no air space between the top of any floor arches and the floor boarding. 20 21 22 23 24 25 26 27

“Front” of a lot, that boundary line which borders on the street. In the case of a corner lot, the owner may elect by statement on his plans either street boundary line as the front. 28 29 30

“Half story”, any story included in the roof of which the floor area of the rooms is not more than seventy-five per cent of the area of the ground floor. 31 32 33

“Height” of a tenement house, the perpendicular distance measured in a straight line from the curb level, or from the finished grade line of the lot, where such grade is higher than the curb, to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the case of pitched roofs, the measurements in all cases to be taken through the centre of the façade of the house. Where a building is on a corner lot and there is more than one grade or level, the measurements shall be taken through the centre of the façade on the street having the lowest elevation. 34 35 36 37 38 39 40 41 42

“Interior lot”, any lot other than a corner lot. 43

“Lodging house” or “boarding house”, any house or building, or part thereof, in which six or more persons are harbored, received or lodged for hire, or any building, or part thereof, which is used as a sleeping place or lodging for six or more persons not members of the family residing therein. 44 45 46 47 48

“Nuisance” includes all public nuisances as known at common law or in equity jurisprudence; and furthermore whatever is dangerous to human life or detrimental to health, whatever building or erection, or part or cellar thereof, is overcrowded with occupants or is not provided with adequate ingress and egress to and from the same, or the apartments thereof, or is not sufficiently supported, ventilated, sewerred, drained, cleaned or lighted, in reference to their or its intended or actual use, and whatever renders the air or human food or drink unwholesome, 49 50 51 52 53 54 55 56

57 are also severally in contemplation of this chapter, nuisances; and all
58 such nuisances are hereby declared unlawful.

59 "Occupied spaces". Outside stairways, fire escapes, porches, plat-
60 forms and other projections shall be considered as part of the building
61 and not as part of the yard or courts or unoccupied area.

62 "Public hall", a hall, corridor or passageway not within an apartment.

63 "Rear" of a lot, the side opposite to the front. In the case of a
64 triangular or gore lot the rear shall be the side not bordering on the
65 street.

66 "Stair hall", the stairs, stair landings and those parts of the public
67 halls through which it is necessary to pass in going from the entrance
68 floor to the roof.

69 "Street", any right of way dedicated to public use, any public alley,
70 railroad right of way, cemetery or public park, twenty feet or more in
71 width.

72 "Tenement house", any house or building, or part thereof, which is
73 rented, leased, let or hired out to be occupied, or is occupied or is in-
74 tended, arranged or designed to be occupied as the home or residence of
75 more than two families (a family may consist of one or more persons)
76 living independently of each other and having a common right in the
77 halls, stairways, yard, cellar, sinks, water closets or privies, or any of
78 them, and includes lodging and boarding houses, apartment houses, and
79 flat houses. Dwelling houses built in continuous rows of more than
80 two houses occupied or intended, arranged or designed to be occupied
81 as the home or residence of one family or more having a common right
82 in or using in common the halls, stairways, yards, cellars, sinks, water
83 closets or privies, or any of them, shall be deemed to be tenement houses
84 and shall be subject to all the provisions of this chapter.

85 "Thereafter", after the acceptance of this chapter or corresponding
86 provisions of earlier laws.

87 "Wooden building", a building of which the exterior walls or a part
88 thereof are wood.

89 "Yard", an open unoccupied space in the same lot with a tenement
90 house between the extreme rear line of the house and the extreme rear
91 line of the lot. An open unoccupied space between the front line of the
92 house and the front line of the lot is a "front yard". A "side yard" shall
93 be deemed an outer court on the lot line.

94 Words used in the present tense include the future; words in the
95 masculine gender include the feminine and neuter; the word "shall"
96 is always mandatory, and denotes that the house shall be maintained in
97 all respects according to the mandate as long as it continues to be a
98 tenement house; wherever the words "by-laws", "regulations", "build-
99 ing inspector" or "board of health" occur in this chapter they shall be
100 construed as if followed by the words "of the town in which the tene-
101 ment house is situated"; wherever the words "is occupied" are used
102 in this chapter applying to any building they shall be construed as if
103 followed by the words "or is intended, arranged or designed to be
104 occupied".

1 SECTION 3. Unless otherwise specifically provided therein, sections
2 ten to thirty-six, inclusive, shall apply only to tenement houses erected
3 after the acceptance of this chapter, and sections thirty-seven to forty-
4 one, inclusive, only to tenement houses erected prior to such accept-
5 ance.

Application of
certain sections.
1912, 635,
§§ 9-13, 15, 17-
28, 31, 33, 34,
37, 39, 40, 45,
49, 52, 54

Certain provisions as to tenement houses in cities applicable.
 1912, 635, §§ 4, 14, 29, 30, 32, 35, 36, 41, 43, 44, 46-48, 51, 53, 58, 61-64, 66, 68-72, 74-78

SECTION 4. The provisions of sections nine, fourteen, twenty-eight, twenty-nine, thirty-one, thirty-four, thirty-five, forty-five, forty-eight, forty-nine, fifty-one to fifty-three, inclusive, fifty-six, fifty-eight, sixty-three, sixty-five to sixty-eight, inclusive, except the provision in section sixty-seven as to the freezing or bursting of pipes, seventy, seventy-two to seventy-six, inclusive, seventy-eight and eighty to eighty-three, inclusive, of chapter one hundred and forty-four shall apply to tenement houses in towns, but unless otherwise specifically provided therein the provisions of the first ten of said sections shall apply only to tenement houses erected after acceptance of this chapter and the provisions of said sections fifty-one, fifty-two, fifty-three, fifty-eight and sixty-three only to tenement houses erected prior to such acceptance.

Law not to be modified.
 1912, 635, § 5.

SECTION 5. The provisions of this chapter shall be held to be the minimum requirements adopted for the protection of the health and safety of the community. Nothing in this chapter shall be construed as prohibiting any town from enacting from time to time by-laws imposing further restrictions, but no regulation or ruling of any town authority shall repeal, amend or dispense with any provision of this chapter.

Sewer connection and water supply.
 1912, 635, § 6
 1914, 792, § 1
 1919, 350, § 96.

SECTION 6. The provisions of this chapter with reference to sewer connection and water supply shall be deemed to apply only where connection with a public sewer and with public water mains is or becomes practicable. The questions of the practicability of such sewer and water connections shall be decided by the local board of health, or by the department of public health upon request of the local board.

Powers of department of public health.
 1912, 635, § 7.
 1914, 792, § 1.
 1919, 350, § 96.

SECTION 7. The department of public health may examine into the enforcement of the laws relating to tenement houses in any town. Whenever required by the governor, it shall make such an examination and shall report the result thereof to the governor within the time prescribed by him therefor.

Improvements to be made within one year after acceptance.
 1912, 635, § 8.

SECTION 8. In tenement houses erected prior to the acceptance of this chapter by a town all improvements specifically required thereby shall be made within one year thereafter, or at such earlier time as may be fixed by the board of health.

Buildings converted or altered.
 1912, 635, § 3

SECTION 9. A building not a tenement house, if converted or altered to such use after the acceptance of this chapter, shall thereupon become subject to all the provisions thereof affecting tenement houses erected thereafter.

NEW BUILDINGS. LIGHT AND VENTILATION.

Percentage of lot occupied
 1912, 635, § 9.

SECTION 10. No tenement house shall occupy either alone or with other buildings more than sixty-five per cent of a corner lot, nor more than fifty per cent of any other lot; the measurements shall be taken at the ground level. No measurements of lot area shall include any part of any street or alley.

Distance from side lot line
 1912, 635, § 10

SECTION 11. No non-fireproof tenement house shall be erected, enlarged, or placed with the side walls nearer than ten feet to the line of any adjoining lot, or with any wall nearer than twenty feet to the wall

4 of any other building. No lot upon which stands a tenement house
 5 erected before or after the acceptance of this chapter shall be changed
 6 in size to bring the side walls of said house nearer than ten feet to the
 7 lines of any adjoining lot or any wall of said house nearer than twenty
 8 feet to the wall of any other building.

1 SECTION 12. No tenement house shall exceed in height the width of Height
 2 the widest street upon which it stands, unless such house be set back 1912, 635, § 11
 3 from the street a distance at least equal to the excess of such height over
 4 the width of such street, nor shall it in any ease exceed four stories in
 5 height.

1 SECTION 13. Behind every tenement house there shall be a yard Yards
 2 extending across the entire width of the lot and at every point open from 1912, 635, § 12
 3 the ground to the sky unobstructed. Every part of the yard shall be
 4 directly accessible from every other part thereof. The depth of the yard
 5 shall be measured from the extreme rear of the house to the rear line of
 6 the lot. If the tenement house is three stories or less in height the depth
 7 of the yard, in the case of interior lots, shall be at least twenty-five feet,
 8 and the depth of the yard in the rear of corner lots shall be at least fifteen
 9 feet. If the tenement house exceeds three stories in height, the depths
 10 above prescribed in each case shall be increased five feet for each story
 11 above three.

1 SECTION 14. The sizes of all courts shall be proportionate to the Courts.
 2 height of the building. No court shall be less in any part than the 1912, 635, § 13.
 3 minimum sizes prescribed in this section. The minimum width of a
 4 court for a two story building shall be ten feet, and the width shall
 5 increase two feet for each additional story. The length of an inner court
 6 shall never be less than twice the minimum width prescribed by this
 7 section. The length of an outer court shall never be greater than twice
 8 its minimum width, but this limitation of length shall not apply to an
 9 outer court on the lot line extending from yard or street to yard.

1 SECTION 15. Every inner court shall be provided with two or more Air intakes.
 2 horizontal air intakes at the bottom. One such intake shall always com- 1912, 635, § 15
 3 municate directly with the street, and one with the yard, and each shall
 4 consist of a fireproof passageway not less than three feet wide and seven
 5 feet high which shall be left open, or be provided with an openwork gate
 6 at each end, and the gate shall not be covered in any way either by glass
 7 or any other material.

1 SECTION 16. Nothing in the foregoing sections concerning courts Angles in
 2 shall be construed as preventing windows at the angles of said courts; courts.
 3 provided, that the running length of the wall containing such windows 1912, 635, § 16.
 4 does not exceed six feet.

1 SECTION 17. If any building is thereafter placed on the same lot with Buildings on
 2 a tenement house, whenever erected, or a tenement house erected upon same lot with
 3 any lot upon which there is already another building, it shall comply tenement
 4 with the provisions of this chapter and section eighteen of chapter one houses
 5 hundred and forty-four, except that no rear building shall diminish the 1912, 635, § 17.
 6 minimum size of courts or yards as hereinbefore prescribed.

- Frontage on street
1912, 635, § 18. SECTION 18. Every tenement house shall have an unobstructed frontage upon a street not less than twenty feet wide. No tenement house and no other building shall thereafter be erected, enlarged or placed on the same lot with a tenement house in such manner that any tenement house shall be left without an unobstructed frontage upon a street not less than twenty feet wide. 1
2
3
4
5
6
- Lighting.
1912, 635, § 19. SECTION 19. Every room, including water closet compartments and bathrooms, shall have at least one window opening directly upon the street or upon a yard or court of the dimensions specified in sections thirteen and fourteen, and the window shall be so located as properly to light all parts of the room. 1
2
3
4
5
- Windows.
1912, 635, § 20. SECTION 20. The total window area in each room, including water closet compartments and bathrooms, shall be at least one seventh of the superficial area of the room, and the top of at least one window shall be not more than eight inches below the ceiling, and the upper half of it shall be made so as to open the full width. At least one such window in rooms other than bathrooms or water closets shall be not less than twelve square feet in area between the stop beads; and in water closet compartments and bathrooms at least one such window shall be not less than six square feet in area between the stop beads. 1
2
3
4
5
6
7
8
9
- Size of rooms.
1912, 635, § 21. SECTION 21. There shall be in each apartment at least one room containing not less than one hundred and fifty square feet of floor area. All rooms shall be in every part not less than nine feet from the finished floor to the finished ceiling, except that an attic room need be nine feet high in but one half of its area. 1
2
3
4
5
- Alcoves, etc.
1912, 635, § 22. SECTION 22. An alcove in any room shall be lighted and ventilated separately, as provided for rooms in the foregoing sections, and shall not be less than one hundred square feet in area. No part of any room shall be enclosed or subdivided at any time, wholly or in part, by a curtain, portiere, fixed or movable partition or other contrivance or device, unless the part of the room so enclosed or subdivided shall contain a separate window as herein required and shall have a floor area of not less than one hundred square feet. 1
2
3
4
5
6
7
8
- Chimneys, etc.
1912, 635, § 23. SECTION 23. There shall be adequate chimneys running through every floor with an open fireplace or grate or place for a stove, for every apartment, properly connected with one of the chimneys. 1
2
3
- Privacy.
1912, 635, § 24. SECTION 24. In each apartment access to every living room and bedroom, and to at least one water closet compartment shall be had without passing through a bedroom or bathroom. 1
2
3
- Public halls.
1912, 635, § 25. SECTION 25. Every public hall shall have at each story at least one window opening directly upon the street or upon a yard or court of the dimensions specified in sections thirteen and fourteen. Such window shall be at the end of said hall with the plane of the window at right angles to the hall's axis. Any part of a public hall which is in any way shut off from any other part of the hall shall be deemed a separate hall within the meaning of this section. 1
2
3
4
5
6
7

1 SECTION 26. One at least of the windows provided to light each
 2 public hall or part thereof shall be at least two feet six inches wide and
 3 five feet high, measured between stop beads, and the top of the window
 4 shall be not more than eight inches below the ceiling. There shall be
 5 in the roof, directly over each stair well, a ridge ventilator having a
 6 minimum opening of forty square inches and with movable louvres.

Size of win-
 dows in
 public halls.
 1912, 635, § 26.

1 SECTION 27. There shall be provided for each story at least one
 2 window to light and ventilate each stair hall which shall be at least
 3 two feet six inches wide and five feet high measured between the stop
 4 beads. A sash door shall be deemed the equivalent of the window
 5 specified in this section and the two foregoing sections, provided that
 6 each door contains the amount of glazed surface prescribed for such
 7 windows.

Size of win-
 dows in stair
 halls.
 1912, 635, § 27

SANITATION.

1 SECTION 28. No room in the basement or cellar shall be constructed,
 2 altered, converted or occupied for living purposes.

Basements or
 cellars not to be
 used for living
 purposes.

1912, 635, § 28.

1 SECTION 29. All courts, areas and yards shall be properly graded
 2 and drained; and when necessary in order to keep such premises in a
 3 sanitary condition such courts, areas or yards, or such part thereof as
 4 the board of health shall order, shall be properly concreted.

Courts, yards,
 etc., to be
 drained, etc.
 1912, 635, § 31.

1 SECTION 30. In every tenement house there shall be within each
 2 apartment a separate water closet, located in a bathroom or in a sepa-
 3 rate compartment. Each such water closet shall be completely sepa-
 4 rated from every other water closet. Said compartment shall be not
 5 less than three feet wide, and shall be enclosed with plastered partitions
 6 which shall extend to the ceiling. Every such compartment shall have
 7 a window opening directly upon the street or upon a yard or court of
 8 the minimum size prescribed by this chapter. Every water closet com-
 9 partment thereafter placed in any tenement house whenever erected
 10 shall be provided with proper means of lighting the same at night, and
 11 floors beneath the water closet shall be waterproofed as provided in sec-
 12 tion thirty-two of chapter one hundred and forty-four. No drip trays
 13 shall be permitted. No water closet fixtures shall be enclosed with any
 14 woodwork. No water closet shall be placed in the cellar

Water closets.
 1912, 635, § 33.

1 SECTION 31. No plumbing fixtures shall be enclosed with woodwork.
 2 All plumbing pipes shall be exposed except as otherwise permitted by
 3 the board of health. Wherever plumbing or other pipes pass through
 4 floors or partitions the openings around such pipes shall be sealed or
 5 made air tight with plaster or other incombustible materials, so as to
 6 prevent the passage of air or the spread of fire from one floor to another
 7 or from room to room. All plumbing work shall be sanitary in every
 8 particular and, except as otherwise specified in this chapter, shall be
 9 in accordance with the local plumbing regulations. Pan and long hopper
 10 closets shall not be used.

Plumbing.
 1912, 635, § 34

1 SECTION 32. Every tenement house on a street in which there is a
 2 public sewer, or in which a public sewer shall hereafter be placed, shall
 3 be connected therewith.

Sewer con-
 nection
 1912, 635, § 37

Cesspools. 1912, 635, § 38.	SECTION 33. No cesspool shall be permitted in the cellar or court	1
	of any tenement house, nor within fifteen feet of any wall of said tene-	2
	ment house, or of any dwelling house.	3

FIRE PROTECTION.

Certain tene- ment houses to be fireproof. 1912, 635, § 39.	SECTION 34. No tenement house shall be erected exceeding two and	1
	one half stories in height, nor shall it be occupied, nor intended, ar-	2
	ranged or designed to be occupied, by more than two families, unless	3
	it be a fireproof tenement house.	4

Stairs and public halls. 1912, 635, § 40.	SECTION 35. There shall be at least two independent flights of stairs	1
	with separate entrances leading from the entrance floor to the top story,	2
	said flights of stairs being at two points as far apart as is possible in	3
	the opinion of the building inspector. Said stairs shall be directly ac-	4
	cessible from each apartment, without passing through any other apart-	5
	ment. One of said flights of stairs may consist of outside, open stairs	6
	and balconies. All stairs and balconies and all public halls shall be at	7
	least three feet wide in the clear. All stairs shall be constructed with a	8
	rise of not more than seven and one half inches and with treads not	9
	less than ten and one half inches wide, and not less than three feet long	10
	in the clear. Winders shall not be permitted in any staircase.	11

Fire walls. 1912, 635, § 42.	SECTION 36. The provisions of section forty-seven of chapter one	1
	hundred and forty-four shall apply to tenement houses in towns except	2
	that the fire walls therein specified need extend only to the underside of	3
	the sheathing of the roof.	4

IMPROVEMENTS IN OLD BUILDINGS.

Lighting and ventilating of rooms. 1912, 635, § 45.	SECTION 37. The provisions of section fifty of chapter one hundred	1
	and forty-four except as to area of the window provided therein shall	2
	apply to tenement houses in towns.	3

Privy vaults, etc. 1912, 635, § 49.	SECTION 38. Where a connection with a sewer is possible, all school	1
	sinks, privy vaults or other similar receptacles used to receive fecal	2
	matter, urine or sewage, shall within one year thereafter be completely	3
	removed, and the place where they were located properly disinfected	4
	under the direction of the board of health. Such appliances shall be	5
	replaced by individual water closets of durable non-absorbent material,	6
	properly sewer connected, with individual traps and properly connected	7
	flush tanks providing an ample flush of water thoroughly to cleanse the	8
	bowl. Each water closet shall be located inside the tenement house in a	9
	compartment completely separated from every other water closet, and	10
	such compartment shall contain a window of not less than three square	11
	feet in area opening directly upon the street or yard, or on a court of the	12
	minimum size prescribed in section fourteen. The floors of the water	13
	closet compartments shall be waterproof as provided in section thirty.	14
	There shall be provided at least one water closet for every two families	15
	in every existing tenement house. Such water closets and all plumbing	16
	in connection therewith shall be sanitary in every respect, and except as	17
	otherwise provided in this section shall be in accordance with the laws,	18
	town by-laws and regulations in relation to plumbing and drainage. Pan	19
	and long hopper closets shall not be used.	20

1 SECTION 39. The floor of the cellar or lowest floor shall be free from
 2 dampness, and, when necessary, shall be concreted with four inches of
 3 concrete of good quality and with a finished surface. The cellar ceiling of
 4 every tenement house shall be plastered, when so required by the build-
 5 ing inspector, except where the ceiling is already well sheathed with
 6 matched boards or well covered with a metal ceiling, or where the first
 7 floor above the cellar is constructed of iron beams and fireproof filling.

Basements and
 cellars to be
 damp proof,
 etc.
 1912, 635, § 50.

1 SECTION 40. All non-fireproof tenement houses, which are three or
 2 more stories in height, and do not have fireproof stairs and stair halls
 3 or adequate fire escapes, as required by this chapter, shall be provided
 4 either with fireproof outside stairways or with fireproof fire escapes
 5 directly accessible from each apartment without passing through a public
 6 hall.

Fire escapes.
 1912, 635, § 52.

7 No existing fire escape shall be deemed adequate unless the following
 8 conditions are complied with:

9 (1) In every tenement house each apartment above the ground floor
 10 shall have a fire escape balcony directly accessible from it.

11 (2) All balconies shall be properly connected with each other by ade-
 12 quate stairs or stationary ladders with openings not less than twenty-
 13 four by thirty-six inches.

14 (3) All fire escapes shall have proper ladders from the lowest balcony
 15 of sufficient length to reach a safe landing place beneath.

16 (4) All fire escapes not on the street shall have a safe and adequate
 17 means of egress from the yard or court to the street or to adjoining
 18 premises.

19 (5) Prompt and ready access shall be had to all fire escapes, which
 20 shall not be obstructed in any way.

21 No existing fire escape shall be extended or have its location changed
 22 except with the written approval of the inspector of buildings.

23 All fire escapes thereafter placed on tenement houses shall be located
 24 and constructed as follows: All such fire escapes shall open directly
 25 from at least one room or private hall in each apartment at each story
 26 above the ground floor, other than a bathroom or water closet compart-
 27 ment, and such room or private hall shall be accessible to every room
 28 thereof without passing through a public hall. Access to fire escapes
 29 shall not be obstructed in any way. Fire escapes shall not be placed in
 30 any court. Fire escapes may project into a public street, but not more
 31 than four feet beyond the building line. All fire escapes shall consist of
 32 outside fireproof balconies and stairways. All balconies shall be not less
 33 than three feet in width, and shall include at least one window or outside
 34 door of each apartment at each story above the ground floor.

35 All fire escape stairways shall be placed at an angle of not more than
 36 forty-five degrees, with flat open steps, not less than nine inches in width
 37 and twenty-four inches in length, and with a rise of not more than nine
 38 inches. The openings for stairways in all balconies shall be not less than
 39 twenty-four by thirty-six inches, and shall have no covers of any kind.
 40 When tenement houses upon which fire escapes are placed have flat
 41 roofs the balcony on the top floor, except in the case of a balcony on
 42 the street, shall be provided with stairs or with a gooseneck ladder
 43 leading from the balcony to and above the roof and properly fastened
 44 thereto. A drop ladder or stairs shall be provided from the lowest bal-
 45 cony of sufficient length to reach to a safe landing place beneath. All
 46 fire escapes shall be constructed and erected to sustain safely in all their

parts any reasonable load. In addition to the foregoing requirements, 47
all fire escapes thereafter erected upon tenement houses shall be con- 48
structed in accordance with such supplementary regulations as may be 49
adopted by the building department. 50

ALTERATIONS OF OLD BUILDINGS.

Alterations.
1912, 635, § 54.
1913, 614, § 1.

SECTION 41. No tenement house shall at any time be altered so as 1
to be in violation of the requirements of section four, which relate to 2
new buildings, and sections ten to thirty-six, inclusive, but the provisions 3
of subdivisions one to three, inclusive, of section fifty-nine of chapter 4
one hundred and forty-four shall apply to tenement houses in towns. 5
Said subdivision three shall apply to wooden tenement houses of more 6
than two apartments. 7

MAINTENANCE AND USE.

Lighting at
night
1912, 635,
§§ 55, 56.
1913, 441, § 1.

SECTION 42. The provisions of sections sixty and sixty-one of chapter 1
one hundred and forty-four shall apply to the lighting of public halls and 2
stairs in tenement houses except three-apartment houses, so called, which 3
are provided with push buttons with a three-point switch for turning 4
on or off the electric lights in the halls of the said apartments when it is 5
necessary to use the stairway therein. 6

Water closets
not permitted
in cellars.

SECTION 43. No water closet shall be permitted in the cellar of any 1
tenement house. 2

1912, 635, § 57.

Basements and
cellars, occupa-
tion for living
purposes
regulated.
1912, 635, § 59.

SECTION 44. The provisions of section sixty-four of chapter one hun- 1
dred and forty-four shall apply to tenement houses in towns except in 2
so far as they refer to section twenty-seven of chapter one hundred and 3
forty-four, and provide for height of ceiling above specified exterior levels. 4

Cellar walls,
etc., to be
whitened or
painted.
1912, 635, § 60.

SECTION 45. The cellar walls and ceilings of every tenement house 1
shall be thoroughly whitened or painted a light color by the owner, and 2
shall be so maintained. The whitening or paint shall be renewed when- 3
ever necessary, as may be required by the board of health. 4

Walls of courts
to be whitened,
etc.
1912, 635, § 65.

SECTION 46. The walls of all courts, unless built of a light colored 1
brick or stone, shall be thoroughly whitened by the owner, or shall be 2
painted a light color by him, and shall be so maintained. The whiten- 3
ing or paint shall be renewed whenever necessary, as may be required by 4
the board of health. 5

Wall paper.
1912, 635, § 67.

SECTION 47. No wall paper shall be placed upon a wall or ceiling of 1
any tenement house unless all wall paper shall be first removed there- 2
from and the wall and ceiling thoroughly cleaned. 3

Janitor or
housekeeper
1912, 635, § 73.

SECTION 48. In any tenement house in which the owner thereof 1
does not reside, there shall be a janitor, housekeeper or other responsible 2
person who shall reside in said house and have charge of the same, if the 3
board of health shall so require. 4

REQUIREMENTS AND REMEDIES.

1 SECTION 49. In a town which accepts this chapter or has accepted
 2 corresponding provisions of earlier laws the selectmen shall annually
 3 appoint an inspector of buildings.

Inspector of buildings.
 1912, 635, § 79.

1 SECTION 50. The provisions of section eighty-five of chapter one
 2 hundred and forty-four shall apply to tenement houses in towns, except
 3 that the specifications, plans and statements required therein shall be
 4 filed in the office of the town clerk. But information submitted to the
 5 building inspector under said section shall also be submitted to the board
 6 of health upon blanks or forms furnished by it; and it shall cause all
 7 plans and specifications so submitted to be examined.

Permit for construction or alteration
 1912, 635, § 80.

1 SECTION 51. No building thereafter constructed as or altered into a
 2 tenement house shall be occupied in whole or in part for human habita-
 3 tion until the issuance of a certificate by the building inspector that the
 4 building conforms in all respects to the requirements of law, and the
 5 building inspector shall not issue said certificate until the board of health
 6 certifies to him that the building conforms to all requirements of law rela-
 7 tive to the light, ventilation and sanitation of tenement houses. Upon
 8 notice of the completion of the construction, alteration or conversion of a
 9 tenement house, the building inspector and the board of health shall in-
 10 spect the building forthwith, and the building inspector shall issue a cer-
 11 tificate of compliance within five days after written application therefor,
 12 if the building at the date of such application is found to conform to the
 13 requirements of this chapter.

Building not to be occupied until after approval, etc., when.
 1912, 635, § 81.

1 SECTION 52. Any court having jurisdiction in equity, or any justice
 2 thereof may upon the application of any town by its attorney restrain the
 3 construction, alteration, repair, maintenance, use or occupation of a
 4 building or structure in violation of this chapter and order its removal
 5 or abatement as a nuisance, and compel compliance with any provision
 6 of this chapter.

Enforcement of provisions.
 1912, 635, § 82.

1 SECTION 53. A building or structure which is erected, altered, main-
 2 tained or used in violation of this chapter shall be deemed a common
 3 nuisance without other proof thereof than proof of such unlawful con-
 4 struction, maintenance or use and the building inspector may, and if
 5 said violation is of any section of this chapter relative to light, ventila-
 6 tion or sanitation of said building shall, if required in writing by the board
 7 of health, order the owner of said premises at his own expense to abate
 8 or remove said nuisances within twenty-four hours, or within such further
 9 time as said board considers reasonable after notice to be served in the
 10 manner provided in section sixty, and if the owner or occupant fails to
 11 comply with such order, the board may abate or remove the nuisance
 12 and all expenses incurred thereby shall be paid by the person who caused
 13 or permitted the same.

Building erected, etc., in violation of this chapter to be deemed a common nuisance, etc.
 1912, 635, § 83.

1 SECTION 54. Whoever violates any provision of this chapter shall
 2 be punished by a fine of not less than ten dollars. Any person who
 3 violates any provision of this chapter, having been served with a notice
 4 or order as provided by section sixty, or who fails to comply with such

Penalties
 1912, 635, § 84.

notice or order within ten days after such service, or continues to violate any provision or requirement of this chapter in the respect named in said notice or order, shall in addition be punished by a fine of not less than five nor more than twenty dollars for each day after the first during which the violation continues.

Jurisdiction of the superior court 1912, 635, § 85. SECTION 55. Any person, the value of whose property may be affected by any action of the board of health or the building inspector, may have the action of said board of health or said building inspector reviewed by the superior court by any appropriate process, provided proceedings are instituted within ten days after such action.

Right of entry. 1912, 635, § 86. SECTION 56. Any person having any duty to perform in regard to any building or premises under this chapter may, if necessary for the performance of such duties, enter the same.

Liens. 1912, 635, § 87. SECTION 57. The provisions of section ninety-two of chapter one hundred and forty-four shall apply to fines imposed by judgment under section fifty-four of this chapter.

Notice of pendency of action to be filed, etc. 1912, 635, § 88. SECTION 58. In any action or proceeding instituted by the departments charged with the enforcement of this chapter, the procedure provided by section ninety-three of chapter one hundred and forty-four shall apply.

Owner's name, etc., to be registered. 1912, 635, § 89. SECTION 59. The owner of a tenement house and every lessee of the whole house or of two or more tenements therein, or the agent of the owner or other person having control of a tenement house, shall annually during the month of April file in the office of the town clerk a notice containing his name and address, and also a description of the property, by street number or otherwise, as the case may be, in such manner as will enable the board of health and building inspector easily to find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. The notice shall contain the name and address of some agent for the house, for the purpose of receiving service of process, and notice to and service of process upon such agent shall bind the principal.

Service of notices, etc. 1912, 635, § 90. SECTION 60. Unless otherwise provided in this chapter, every notice or order in relation to a tenement house shall be served ten days before the time for doing the thing in relation to which it is issued. The service of notices or orders as aforesaid shall be made by the delivery of an attested copy in hand to the owner or his agent, duly registered as provided in section fifty-nine, or by leaving an attested copy at the last or usual place of abode of the owner or agent, or, if the owner is a non-resident and has no agent duly appointed, as provided in said section fifty-nine, it shall be posted in a conspicuous place in said tenement house and a copy thereof mailed by a registered letter on the same day on which it is posted, to the owner or his agent at the residence designated in the notice provided by said section.

Service of process 1912, 635, § 91. SECTION 61. In any action brought by any town official in relation to a tenement house for injunction, vacating of the premises or other abatement of nuisance, or to establish a lien thereon, service of process

4 shall be in the manner provided in the preceding section, except that the
 5 service of process shall be made only by a sheriff or one of his deputies
 6 or by a constable.

1 SECTION 62. The names and addresses filed in accordance with
 2 section fifty-nine shall be indexed by the town clerk in such a manner
 3 that all of those filed in relation to each tenement house shall be together
 4 and readily ascertainable. The town clerk shall provide the necessary
 5 books and clerical assistance for that purpose, and the expense thereof
 6 shall be paid by the town. Said indexes shall be public records, open to
 7 public inspection during business hours.

Certain names
 and addresses
 to be indexed,
 etc.
 1912, 635, § 92.

1 SECTION 63. Upon acceptance of this chapter by any town all by-
 2 laws and regulations of such town inconsistent therewith shall be annulled.

Repeal,
 1912, 635, § 93

CHAPTER 146.

INSPECTION OF BOILERS, AIR TANKS, ETC. LICENSES OF ENGINEERS, FIREMEN, AND OPERATORS OF HOISTING MACHINERY.

SECT.

1. Definitions.

DUTIES OF BOARD OF BOILER RULES.

- 2. Rules affecting boilers.
- 3. Hearings.
- 4. Changes in rules.

INSPECTION OF BOILERS.

- 5. Duties of inspectors of the division.
- 6. Annual inspection.
- 7. Certain boilers excepted.
- 8. Boilers not to be operated without inspection.
- 9. Boiler not to be operated in excess of prescribed pressure.
- 10. Report of uninsured boiler.
- 11. Duties of inspector.
- 12. Tampering with safety appliance
- 13. Inspection by insurance companies or inspectors of the division.
- 14. Insurance companies must have licensed inspectors.
- 15. Acting as inspector without a license prohibited.
- 16. Company may lose authority to insure for issuing improper certificate of inspection.
- 17. Reports of inspectors of the division.
- 18. Reports by insurance companies.
- 19. Insurance companies must report cancelled risks.
- 20. Safety appliances.
- 21. Preparation of boiler for inspection.
- 22. Fees for inspection by the division.
- 23. Certificate of inspection by the division.

SECT.

- 24. Inspected boiler to be stamped or tagged.
- 25. Certificate of inspection by insurance company.
- 26. First inspection.
- 27. Contents of certificate.
- 28. [Repealed.]
- 29. Notice of defect in boiler.
- 30. Uninsured boiler not to be operated.
- 31. Hydrostatic pressure test.
- 32. Hindering inspector forbidden.
- 33. Penalty.

COMPRESSED AIR TANKS.

- 34. Air tanks.
- 35. Rules for tanks.
- 36. Inspection.
- 37. Notice.
- 38. Reports of inspection.
- 39. Tests for inspection.
- 40. Fees.
- 41. Penalty.

AMMONIA COMPRESSORS.

- 42. Ammonia compressors.
- 43. Rules.
- 44. Rules to have force of law.
- 45. Changes in rules.

LICENSES OF ENGINEERS AND FIREMEN.

- 46. Licenses for operating boilers or engines.
- 47. Violation of preceding section.
- 48. Determination of power.

<p>SECT. 49. Classes of licenses. 50. Qualifications of licensees. 51. Posting of license. Daily record. 52. Licenses in force on May 17, 1915.</p> <p>LICENSES FOR OPERATING HOISTING MACHINERY NOT RUN BY STEAM.</p> <p>53. Hoisting machinery. 54. License to be carried on the person. 55. Penalty.</p> <p>EXAMINATIONS OF APPLICANTS FOR LICENSES, ETC.</p> <p>56. Inspectors of the division to act as examiners. 57. Applications for licenses. 58. Applicants may have a person present. 59. Revocation of licenses.</p>	<p>SECT. EXAMINATION OF INSPECTORS OF BOILERS.</p> <p>60. Application for license. 61. Board of examiners. 62. Certificate of competency. 63. Appeal.</p> <p>EXAMINATION OF ENGINEERS, FIREMEN OR OPERATORS OF HOISTING MACHINERY.</p> <p>64. Application for license as engineer or fireman. Examination. 65. Application for license to operate hoisting machinery. 66. Appeal. 67. License in force until revoked or suspended.</p> <p>GENERAL PROVISIONS.</p> <p>68. Trial justices. 69. Appropriation for apparatus.</p>
---	---

<p>Definitions.</p>	<p>SECTION 1. The following words as used in this chapter, unless a contrary meaning is specifically prescribed or the context otherwise requires, shall have the following meanings:</p> <p>“Board”, the board of boiler rules appointed under section ten of chapter twenty-two. 4</p> <p>“Chief”, the chief of inspections of the department of public safety. 5</p> <p>“Commissioner”, the commissioner of public safety. 6</p> <p>“Department”, the department of public safety. 7</p> <p>“Division”, the division of inspection of the department of public safety. 8</p> <p>“Inspector”, a boiler inspector of the division of inspection of the department of public safety, or an inspector of an insurance company authorized to insure steam boilers in the commonwealth. 9</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>
---------------------	--	--

DUTIES OF BOARD OF BOILER RULES.

<p>Rules affecting boilers. 1907, 465, §§ 25-27. 1909, 393, § 2. 1918, 257, § 344. 1919, 5. 1920, 2.</p>	<p>SECTION 2. The board shall formulate rules for the construction, installation and inspection of steam boilers, and for ascertaining the safe working pressure to be carried therein; prescribe tests, if it deems it necessary, to ascertain the qualities of materials used in the construction of boilers; formulate rules regulating the construction and sizes of safety valves for boilers of different sizes and pressures, the construction, use and location of fusible safety plugs, appliances for indicating the pressure of steam and the level of water in the boiler, and such other appliances as the board may deem necessary to safety in operating steam boilers; and make a standard form of certificate of inspection. The attorney general shall assist the board in framing the rules. Such rules shall be submitted to the governor and council for their approval, and when approved shall have the force of law, and shall be printed and furnished by the commissioner to those requesting them.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>
---	---	---

<p>Hearings. 1909, 393, § 2.</p>	<p>SECTION 3. The board shall hold public hearings annually on the first Thursday in May and November, and at such other times as it may determine, on petitions for changes in the rules formulated by it. If, after any such hearing, it shall deem it advisable to make changes in said rules, it shall appoint a day for a further hearing, and shall give notice</p>	<p>1 2 3 4 5</p>
---	---	----------------------------------

6 thereof and of the changes proposed by advertising in at least one news-
7 paper in each of the cities of Boston, Worcester, Springfield, Fall River,
8 Lowell and Lynn, at least ten days before said hearing. If the board on
9 its own initiative contemplates changes in said rules, like notice and a
10 hearing shall be given and held before the adoption thereof.

1 SECTION 4. Changes in the rules which affect the construction of
2 new boilers shall take effect six months after the approval of the same
3 by the governor and council: provided, that the board may, upon request,
4 permit the application of such change in rules to boilers manufactured
5 or installed during said six months. When a person desires to manufac-
6 ture a special type of boiler the design of which is not covered by the
7 rules formulated by the board, he shall submit drawings and specifica-
8 tions of such boiler to said board, which, if it approves, shall permit the
9 construction thereof.

Changes
in rules
1909, 393, § 2

INSPECTION OF BOILERS.

1 SECTION 5. The division shall enforce this chapter and the rules of
2 the board except when otherwise provided. All inspectors of the division
3 may enter any premises in the pursuance of their duty.

Duties of
inspectors of
the division
1895, 471,
§§ 5, 8

- | | | |
|---------------------------|------------------|------------------|
| 1896, 546, §§ 4, 7. | 1906, 387, § 6. | 1913, 610, § 4. |
| 1899, 368, §§ 8, 11 | 1907, 465, § 28. | 1914, 467, § 5. |
| R. L. 102, § 86. | 1909, 393, § 3. | 1915, 259, § 11. |
| 1905, 310, § 3; 472, § 3. | 1911, 656, § 6. | |

1 SECTION 6. All steam boilers and their appurtenances except those
2 specified in the following section shall be thoroughly inspected externally
3 and internally at least once a year.

Annual
inspection
1895, 418, § 2

- | | | |
|-----------------|-----------------|-----------------|
| 1898, 167. | 1907, 465, § 1. | 1909, 393, § 1. |
| R. L. 105, § 3. | 1908, 563, § 1. | 1912, 531, § 1. |
| 1906, 387, § 1. | | |

1 SECTION 7. The preceding section shall not apply to boilers of rail-
2 road locomotives, motor vehicles or steam fire engines brought into the
3 commonwealth for temporary use in times of emergency, nor to boilers
4 used in private residences, nor to those used solely for heating public
5 buildings or apartment houses which carry pressures not exceeding fifteen
6 pounds to the square inch and have less than four square feet of grate
7 surface, nor to boilers of not more than three horse power. The said
8 section shall not apply to boilers under the jurisdiction of the United
9 States nor to those used exclusively for horticultural or agricultural
10 purposes.

Certain boilers
excepted.
1895, 418,
§§ 1, 2.
1898, 167.
R. L. 105,
§§ 2, 3.
1905, 472, § 1
1906, 387, § 1.
1907, 465, § 1.
1908, 563, § 1.
1909, 393,
§§ 1, 3
1912, 531, § 1.

1 SECTION 8. No person shall operate or cause to be operated any
2 boiler required by this chapter to be inspected until it has been inspected,
3 and the certificate of inspection required by section twenty-three or
4 twenty-five has been issued and so placed in the engine or boiler room of
5 the plant as to be easily read, or in the case of a portable boiler kept with
6 it and always accessible.

Boilers not to
be operated
without
inspection.
1906, 387, § 2
1907, 465, § 19.
1912, 531, § 1.
[Penalty, § 33]

1 SECTION 9. No person shall operate or cause to be operated any
2 boiler required by this chapter to be inspected at pressures in excess of
3 the safe working pressure ascertained by the rules of the board and
4 stated in the certificate of inspection nor unless the boiler is equipped with
5 such safety appliances as are prescribed by the board.

Boiler not to
be operated in
excess of
prescribed
pressure
1907, 465, § 1.
1908, 563, § 1.

- | | |
|-----------------|-----------------|
| 1909, 393, § 1. | 1912, 531, § 1. |
|-----------------|-----------------|

[Penalty, § 33]

Report of uninsured boiler. 1895, 418, § 1. R. L. 105, § 2. 1907, 465, § 2. 1912, 531, § 2. 1913, 610, § 4. [Penalty, § 33.]

SECTION 10. Whoever owns, or uses or causes to be used, any such boiler, unless the same is under the periodically guaranteed inspection of an insurance company authorized to insure boilers in the commonwealth, shall report in writing to the chief the location of such boiler, before the work of installation of such boiler is completed, and annually thereafter; provided, that the owner or user of an insured boiler shall report immediately in writing to the chief whenever the insurance company ceases for any cause to inspect the boiler.

Duties of inspector 1907, 465, § 3.

SECTION 11. All such boilers shall be inspected externally at least once each year when in operation, and the inspector shall observe the pressure of steam carried and the general condition of each boiler, and ascertain if the safety valve and the appliances for indicating the pressure of steam and level of the water in the boiler are in proper working order.

Tampering with safety appliance. 1895, 418, § 4. R. L. 105, § 5. 1907, 465, § 3.

SECTION 12. No person shall remove or tamper with any safety appliance prescribed by the board nor load the safety valve to a greater pressure than that allowed by the certificate of inspection.

[Penalty, § 33.]

Inspection by insurance companies or inspectors of the division. 1893, 387. 1894, 481, § 3.

SECTION 13. The inspection of boilers and appurtenances shall be made by the division, under the supervision of the chief, or by inspectors of insurance companies authorized to insure steam boilers in the commonwealth.

1895, 418, § 8. 1896, 546, § 4. 1898, 261. R. L. 105, § 1. 1907, 465, § 4. 1913, 610, § 4.

Insurance companies must have licensed inspectors. 1907, 465, §§ 5, 6. 1912, 531, § 3.

SECTION 14. Every insurance company authorized to insure steam boilers in the commonwealth shall have in its employ at least one inspector who holds a certificate of competency under section sixty-two and resides in the commonwealth. When an inspector holding such a certificate ceases to be employed by an insurance company, it shall notify the commissioner, giving the reasons therefor.

Acting as inspector without a license prohibited. 1907, 465, § 5.

SECTION 15. No person shall act as an inspector of boilers for an insurance company unless he holds a certificate of competency under section sixty-two.

1912, 531, § 3. [Penalty, § 33.]

Company may lose authority to insure for issuing improper certificate of inspection.

SECTION 16. Any insurance company which issues a certificate of inspection signed by an inspector who does not hold a certificate of competency may have its authority to insure steam boilers revoked by the commissioner of insurance.

1907, 465, § 8.

Reports of inspectors of the division. R. L. 105, § 1. 1907, 465, § 9.

SECTION 17. The inspectors of the division shall make reports of all inspections and shall make such recommendations to the chief as they may deem expedient.

1913, 610, § 4.

Reports by insurance companies. 1905, 472, § 2.

SECTION 18. Every insurance company shall forward to the chief, within fourteen days after each inspection, reports of all boilers inspected

3 by it. Such reports shall be made on blanks furnished by the chief, and
 4 shall contain all orders made by the company regarding such boilers.

1906, 387, § 1.
 1907, 465, § 10.
 1913, 610, § 4.

[Penalty, § 33.]

1 SECTION 19. Every insurance company shall report immediately to
 2 the chief the name of the owner or user and the location of every boiler
 3 required by this chapter to be inspected, upon which they have cancelled
 4 or refused insurance, giving the reasons therefor.

Insurance
 companies must
 report cancelled
 risks.
 1907, 465, § 11.
 1913, 610, § 4.

[Penalty, § 33.]

1 SECTION 20. Boilers and their appurtenances used exclusively for
 2 heating purposes, which are not required by this chapter to be inspected,
 3 shall be provided with such safety appliances as shall be prescribed by
 4 the board, and the division shall inspect such boilers upon application
 5 of the owner.

Safety
 appliances.
 1907, 465, § 12.

1 SECTION 21. The owner or user of a boiler required by this chapter
 2 to be inspected shall prepare the boiler for inspection as directed by the
 3 inspector. The inspector shall, if requested, give the owner or user at
 4 least fourteen days' notice to prepare a boiler for inspection; provided,
 5 that no notice shall be required of an external inspection under steam,
 6 nor if the boiler is being installed or has not been inspected within one
 7 year and a certificate of inspection issued. If, in the judgment of an
 8 inspector of the division, any such boiler or its appurtenances is in a
 9 defective or dangerous condition, he may immediately forbid the opera-
 10 tion of the boiler, whether or not it is under the inspection of an insurance
 11 company; and no person shall again operate such boiler, or cause it to
 12 be operated, until a certificate of inspection has been issued by an inspec-
 13 tor of the division.

Preparation of
 boiler for
 inspection
 1895, 418, § 2
 1898, 167,
 R. L. 105, § 3
 1907, 465, § 13.
 1912, 531, § 4.
 [Penalty, § 33.]

1 SECTION 22. The owner or user of a boiler inspected by the division
 2 shall pay to the commissioner ten dollars for each boiler internally
 3 and externally inspected, and two dollars for each visit for external
 4 inspection under steam, and five dollars for each cast iron sectional
 5 boiler inspected. The commissioner shall pay to the commonwealth
 6 all sums so received.

Fees for ins-
 pection by
 the division.
 1895, 418, § 5.
 R. L. 105, § 4
 1905, 472, § 1
 1907, 465, § 11
 1912, 531, § 5
 1913, 610, § 4

1919, 133.

1926, 291.

1 SECTION 23. If, upon inspection, the inspector of the division finds
 2 the boiler to be in safe working order, with the fittings necessary to safety,
 3 and properly set up, and the boiler and its appurtenances conform to the
 4 rules of the board, he shall issue to the owner or user thereof a certificate
 5 of inspection stating the maximum pressure at which the boiler may be
 6 operated, as ascertained by the rules of the board, and thereupon such
 7 owner or user may operate the boiler mentioned in the certificate; if the
 8 inspector finds otherwise, he shall withhold his certificate until the boiler
 9 and its fittings are put in a condition to insure safety of operation, and
 10 the boiler and its appurtenances conform to the rules of the board, and
 11 the owner or user shall not operate such boiler, or cause it to be operated,
 12 until such certificate has been granted.

Certificate of
 inspection by
 the division.
 1895, 418,
 §§ 3, 4
 R. L. 105,
 §§ 4, 5.
 1905, 472, § 2
 1907, 465, § 15.
 1912, 531, § 6.
 [Penalty, § 33.]

1 SECTION 24. Every boiler which has been inspected by the division
 2 shall be numbered either by stamping the number upon the boiler or by
 3 attaching a numbered metal tag by a seal or otherwise to the boiler or

Inspected boiler
 to be stamped
 or tagged
 1906, 522,
 §§ 2, 3
 1907, 465, § 16.

its fittings. No person except an inspector of the division shall deface 4
or remove any such number or tag. 5

[Penalty, § 33.]

Certificate of inspection by insurance company. 1905, 472, § 2. 1907, 465, § 17. 1912, 531, § 7.

SECTION 25. Insurance companies shall, after each internal and 1
external inspection, if the boiler and its appurtenances conform to the 2
rules of the board, and if they deem the boiler to be in safe working 3
condition otherwise, issue a certificate of inspection stating the maximum 4
pressure at which the boiler may be operated as ascertained by the rules 5
of the board. 6

First inspection. 1907, 465, § 18. 1908, 563, § 2. 1913, 610, § 4.

SECTION 26. If a boiler is insured which has not previously been 1
inspected externally and internally and a certificate of inspection issued, 2
the company so insuring shall forthwith notify the chief to that effect, 3
and shall inspect such boiler internally and externally within one month 4
after the insurance is effected. No insurance shall be effected on any 5
boiler which does not conform to the rules of the board. 6

Contents of certificate. 1907, 465, § 19.

SECTION 27. The certificate of inspection issued by the division, or 1
by an insurance company, shall state the name of the owner or user, the 2
location, size and number of the boiler, the date of inspection and the 3
maximum pressure at which it may be operated, with the signature of 4
the inspector, and shall contain such extracts from the statutes as shall 5
be deemed necessary by the board. It shall be so placed in the engine 6
or boiler room of the plant where the boiler is located as to be easily 7
read, except that the certificate of inspection for a portable boiler shall 8
be kept with it and shall be always accessible. 9

SECTION 28. [REPEALED, 1924, 461.] 1

Notice of defect in boiler. 1907, 465, § 21.

SECTION 29. The owner or user of any boiler required by this chapter 1
to be inspected shall immediately notify the division or the insurance 2
company, if the boiler is insured, if a defect affecting the safety of the 3
boiler is discovered. 4

Uninsured boiler not to be operated. 1907, 465, § 22. [Penalty, § 33.]

SECTION 30. If the insurance on any boiler required by this chapter 1
to be inspected expires, or is cancelled because the insurers deem it un- 2
safe to continue the operation thereof, the owner or user shall cease to 3
operate it until it has been put in a safe condition, satisfactory to the 4
insurers, or has been inspected by the division and a certificate of inspec- 5
tion has been issued. 6

Hydrostatic pressure test. 1907, 465, § 23.

SECTION 31. If, in the judgment of the inspector of the division or of 1
the insurance company, it is advisable to apply a hydrostatic pressure 2
test to a boiler, the owner or user shall prepare the boiler for such test, 3
as directed by the inspector of the division or by the insurance company. 4

Hindering inspector forbidden. 1906, 387, § 5. 1907, 465, § 28.

SECTION 32. No person shall prevent or attempt to prevent the 1
chief or any inspector of the division from entering any premises on which 2
a boiler is situated. 3

1909, 393, § 3.
[Penalty, § 33.]

1 SECTION 33. Whoever violates any provision of sections five to
 2 thirty-two, inclusive, or of the rules of the board shall be punished by
 3 a fine of not less than twenty nor more than five hundred dollars or by
 4 imprisonment for not more than six months, or both.

1895, 418, § 7.
 R. L. 105, §§ 6, 11.

1906, 387, §§ 4, 5;
 522, § 3.

1907, 465, § 28.
 1909, 393, § 3.

Penalty
 1850, 277, § 3.
 1852, 247.
 G. S. 88, § 45.
 P. S. 102, § 53.

COMPRESSED AIR TANKS.

1 SECTION 34. No person shall install or use, or cause to be installed
 2 or used, any tank or other receptacle, except when attached to loco-
 3 motives, street or railway cars, vessels or motor vehicles, for the storing
 4 of compressed air at any pressure exceeding fifty pounds per square inch,
 5 for use in operating pneumatic machinery, unless the owner or user thereof
 6 shall hold a certificate of inspection issued by the division, certifying that
 7 the said tank or other receptacle has duly been inspected within two
 8 years, or unless the owner or user shall hold a policy of insurance upon
 9 the said tank or other receptacle issued by an insurance company author-
 10 ized to insure air tanks within the commonwealth, together with a certifi-
 11 cate of inspection from an insurance inspector who holds a certificate of
 12 competency described in section sixty-two.

Air tanks.
 1913, 629,
 §§ 1, 7.
 1914, 127, § 1;
 649, §§ 1, 7.
 [Penalty, § 41.]

1 SECTION 35. The board shall prescribe regulations for the size, shape,
 2 construction, gauges, operation, maximum pressure, safety devices, use
 3 of oil, and other appurtenances necessary for the safe operation of such
 4 tanks or other receptacles.

Rules for
 tanks.
 1913, 629, § 2.
 1914, 127, § 2;
 649, § 2.

1 SECTION 36. The division shall inspect at least once in two years all
 2 such tanks or other receptacles, except such as are covered by a policy of
 3 insurance and inspected by insurance inspectors as specified in section
 4 thirty-four.

Inspection
 1913, 629, § 3
 1914, 649, § 3

1 SECTION 37. Owners of such tanks or other receptacles shall notify
 2 the commissioner of the location thereof.

1914, 649, § 4.

Notice
 1913, 629, § 4

1 SECTION 38. Every insurance company authorized to insure air
 2 tanks within the commonwealth shall forward to the commissioner,
 3 within fourteen days after each inspection of an air tank or other such
 4 receptacle, a report of such inspection. The reports shall be made on
 5 blanks furnished by the division, and shall contain all orders and regula-
 6 tions made by the company regarding the air tanks or other receptacles
 7 so inspected.

Reports of
 inspection
 1913, 629, § 5.
 1914, 649, § 5.

1 SECTION 39. The inspection shall consist of a hammer test, and, if
 2 required by the inspector, a hydrostatic test the pressure of which shall
 3 be one and one half times the pressure allowed on the air tank or other
 4 receptacle inspected. The air tank or other receptacle shall be prepared
 5 for inspection by the owner or user thereof.

Tests for
 inspection.
 1913, 629, § 6
 1914, 127, § 3.
 649, § 6.

1 SECTION 40. Three dollars shall be paid to the commissioner by the
 2 owner, agent or user of any such tank or other receptacle for every inspec-
 3 tion thereof. The commissioner shall pay to the commonwealth all sums
 4 so received.

Fees.
 1913, 629, § 8.
 1914, 649, § 8.
 1919, 133.

Penalty. 1913, 629, § 9. 1914, 467, § 9.	SECTION 41. Whoever violates any provision of sections thirty-four to thirty-nine, inclusive, or any regulation made under authority thereof, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month, or both.	1 2 3 4
--	---	------------------

AMMONIA COMPRESSORS.

Ammonia compressors. 1914, 467, § 1.	SECTION 42. No person shall use an ammonia compressor unless it is equipped with a safety valve.	1 2
---	--	--------

[Penalty, § 55.]

Rules. 1914, 467, § 2.	SECTION 43. The board shall formulate rules for the size, design, location and piping of safety valves on ammonia compressors.	1 2
---------------------------	--	--------

Rules to have force of law. 1914, 467, § 3.	SECTION 44. The rules so formulated shall have the force of law and shall be printed and furnished to those requesting them by the division.	1 2 3
--	--	-------------

Changes in rules. 1914, 467, § 4.	SECTION 45. Any changes in the rules as formulated by the board shall be made in accordance with sections three and four.	1 2
--------------------------------------	---	--------

LICENSES OF ENGINEERS AND FIREMEN.

Licenses for operating boilers or engines. 1895, 471, § 1. 1896, 546, § 1. 1899, 368, §§ 1, 5. R. L. 102, §§ 78, 80. 1907, 373, § 1. 1911, 562, §§ 1, 2. 1914, 451. 1915, 259, §§ 1, 3. 196 Mass. 402. 1 Op. A. G. 485. [Penalty, § 55.]	SECTION 46. No person shall have charge of or operate a steam boiler or engine or its appurtenances, except boilers and engines upon locomotives, motor vehicles, boilers and engines in private residences, boilers in apartment houses of less than five apartments, boilers and engines under the jurisdiction of the United States, boilers and engines used for agricultural purposes exclusively, boilers and engines of less than nine horse power, and boilers used for heating purposes exclusively which are provided with a device approved by the commissioner limiting the pressure carried to fifteen pounds to the square inch, unless he holds a license as hereinafter provided. The owner or user of a steam boiler or engine, other than boilers or engines above excepted, shall not operate or cause to be operated a steam boiler or engine or its appurtenances for a period of more than one week, unless the person in charge of and operating it is duly licensed; provided, that in manufacturing plants an unlicensed person may operate, under a licensed person on duty, a simple non-condensing engine of not more than one hundred and fifty horse power, and in any plant one unlicensed person may be employed under the personal direction of each licensed person in the plant to operate the appurtenances of a boiler or engine.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19
---	--	---

Violation of preceding section. 1899, 368, § 2. R. L. 102, § 79. 1915, 259, §§ 2, 3.	SECTION 47. If such steam engine or boiler or an appurtenance thereof is found to be in charge of, or operated by, a person not duly licensed as an engineer or fireman, and, after a lapse of one week from such time, it is again found to be so operated by an unlicensed person, it shall be deemed prima facie evidence of a violation of the preceding section.	1 2 3 4 5
---	---	-----------------------

Determination of power. 1899, 368, § 6. R. L. 102, § 83. 1911, 562, § 5. 1915, 259, § 8.	SECTION 48. The horse power of a boiler shall be ascertained upon a basis of three horse power for each square foot of grate surface or equivalent, when the safety valve is set to blow at a pressure exceeding twenty-five pounds per square inch, and on a basis of one and one half horse power for each square foot of grate surface or equivalent, when the safety valve is set to blow at twenty-five pounds pressure per square inch or less.	1 2 3 4 5 6
--	---	----------------------------

7 The horse power of a reciprocating steam engine shall be ascertained
 8 upon the basis of a mean effective pressure of forty pounds per square
 9 inch of piston for a simple engine, fifty pounds for a condensing engine,
 10 and seventy pounds for a compound engine, calculated upon the area of
 11 the high pressure piston. A variable speed engine shall be rated at its
 12 designed mean speed.

13 A steam turbine engine shall be rated at less than nine horse power
 14 when the external diameter of the steam supply pipe does not exceed one
 15 and three fourths inches, at fifty horse power when it exceeds one and
 16 three fourths inches and does not exceed three and one half inches, and
 17 at one hundred and fifty horse power when it exceeds three and one half
 18 inches and does not exceed five inches.

1 SECTION 49. Licenses shall be granted according to the competence
 2 of the applicant, and shall be classified as follows: Engineers' licenses:
 3 First class, to have charge of and operate any steam plant. Second class,
 4 to have charge of and operate a boiler or boilers, and to have charge of
 5 and operate engines, no one of which shall exceed one hundred and fifty
 6 horse power, or to operate a first class plant under the engineer in direct
 7 charge thereof. Third class, to have charge of and operate a boiler or
 8 boilers not exceeding in the aggregate one hundred and fifty horse power,
 9 and an engine or engines not exceeding fifty horse power each, or to
 10 operate a second class plant under the engineer in direct charge thereof.
 11 Fourth class, to have charge of and operate hoisting and portable steam
 12 engines and boilers. Portable class, to have charge of or to operate port-
 13 able boilers and portable engines, except hoisting engines or steam fire
 14 engines. Steam fire engineer's class, to have charge of or to operate steam
 15 fire engines and boilers. Firemen's licenses: Extra first class, to have
 16 charge of and operate any boiler or boilers. First class, to have charge of
 17 and operate any boiler or boilers where the safety valve or valves are
 18 set to blow at a pressure not exceeding twenty-five pounds to the square
 19 inch, or to operate high pressure boilers under the engineer or fireman
 20 in direct charge thereof. Second class, to operate any boiler or boilers
 21 under the engineer or fireman in direct charge thereof. A person holding
 22 an extra first class or first class fireman's license may operate a third class
 23 plant under the engineer in direct charge thereof. Special licenses: A
 24 person who desires to have charge of or to operate a particular steam
 25 plant may, if he files with his application for such examination a written
 26 request signed by the owner or user of the plant, be examined as to his
 27 competence for such service and no other, and, if found competent and
 28 trustworthy, he shall be granted a license for such service, and no other;
 29 provided, that no special license shall be granted to give any person charge
 30 of or permission to operate an engine of over one hundred and fifty horse
 31 power, except that where the main power plant is run by water power
 32 exclusively during the major part of the time, and has auxiliary steam
 33 power for use during periods of low water, a special license may be issued
 34 to an applicant holding an engineer's license.

Classes of
 licenses.
 1895, 171, § 7
 1899, 368, § 1
 1900, 291,
 R. L. 102, § 8.2.
 1905, 310, § 2.
 1906, 414,
 1907, 373, § 2.
 1911, 562, § 4
 1913, 209,
 1915, 259, § 7

1 SECTION 50. To be eligible for examination for a first class fireman's
 2 license, a person must have been employed as a steam engineer or fire-
 3 man in charge of or operating boilers for not less than one year, or he
 4 must have held and used a second class fireman's license for not less than
 5 six months. To be eligible for examination for a third class engineer's
 6 license, a person must have been employed as a steam engineer or fire-

Qualifications
 of licensees.
 1911, 562, § 3.
 1915, 259, § 4.

man in charge of or operating boilers for not less than one and one half 7
 years, or he must have held and used a first class fireman's license for not 8
 less than one year. To be eligible for examination for a second class 9
 engineer's license, a person must have been employed as an engineer in 10
 charge of a steam plant or plants having at least one engine of over 11
 fifty horse power for not less than two years, or he must have held and 12
 used a third class engineer's license either as an engineer, assistant engi- 13
 neer or fireman for not less than one year, or have held and used a special 14
 license to operate a first class plant for not less than two years; except 15
 that any person who has served three years as apprentice to the machinist 16
 or boiler making trade in stationary, marine or locomotive engine or 17
 boiler works and who has been employed for one year in connection with 18
 the operation of a steam plant, or any person graduated as a mechanical 19
 engineer from a duly recognized school of technology who has been 20
 employed for one year in connection with the operation of a steam plant, 21
 shall be eligible for examination for a second class engineer's license. 22
 To be eligible for examination for a first class engineer's license, a person 23
 must have been employed for not less than three years as an engineer 24
 in charge of a steam plant or plants having at least one engine of over one 25
 hundred and fifty horse power, or he must have held and used a second 26
 class engineer's license in a second class or first class plant for not less 27
 than one and one half years. 28

Posting of
 license.
 Daily record,
 1899, 368, § 10.
 R. L. 102, § 85.
 1907, 373, § 4.
 1911, 562, § 7.
 1915, 259, § 10.

SECTION 51. An engineer's or fireman's license shall be so placed in 1
 the engine or boiler room of the plant operated by the licensee as to be 2
 easily read. The person in charge of a stationary steam boiler upon 3
 which the safety valve is set to blow off at more than twenty-five pounds 4
 pressure to the square inch, except boilers in private residences, boilers 5
 in apartment houses of less than five apartments, boilers under the jur- 6
 isdiction of the United States, boilers used for agricultural purposes exclu- 7
 sively, and boilers of less than nine horse power, shall keep a daily 8
 record of the boiler, its condition when under steam, and of all repairs 9
 made and work done on it, upon forms to be obtained upon application 10
 to the department. These records shall be kept on file and shall be 11
 always accessible to the chief and inspectors of the division. 12

Licenses in
 force May 17,
 1915.
 1895, 471, § 2
 1896, 546, § 2.
 1899, 368, § 3
 R. L. 102, § 81
 1911, 562, § 8
 1915, 259, § 12.
 196 Mass 402.

SECTION 52. A license in force on May seventeenth, nineteen hun- 1
 dred and fifteen, shall continue in force until it is suspended or revoked 2
 for the incompetency or untrustworthiness of the licensee, except that 3
 a special license shall not continue in force after the holder thereof 4
 ceases to be employed in the plant specified in the license. A license in 5
 force on said date may be exchanged for a license of the same class under 6
 section forty-nine at any time thereafter, on application to the division, 7
 upon forms to be furnished by said division. The applicant shall make 8
 oath to the statements contained in the said application, and the chief or 9
 any inspector of the division may administer the oath. 10

LICENSES FOR OPERATING HOISTING MACHINERY NOT RUN BY STEAM.

Hoisting
 machinery.
 1911, 656.
 §§ 1, 2.
 1915, 211, § 1.
 [Penalty, § 55.]

SECTION 53. No person shall operate derricks, cableways, machinery 1
 used for discharging cargoes, temporary elevator cars used on excavation 2
 work or used for hoisting building material, when the motive power to 3
 operate such machinery is mechanical and other than steam, unless he 4
 holds a license as hereinafter provided. The owner or user of such hoist- 5

ing machinery shall not operate, or cause to be operated, such machinery for a period of more than one week, unless the person operating it is duly licensed.

SECTION 54. A license to operate such hoisting machinery shall be carried on the person of the holder thereof when operating the same.

License to be carried on the person.

1911, 656, § 5.

SECTION 55. Whoever violates any provision of sections forty-two to fifty-four, inclusive, or any rule made thereunder, or prevents or attempts to prevent an inspector from entering on any premises in the discharge of his duty shall be punished by a fine of not less than ten nor more than three hundred dollars or by imprisonment for not more than three months.

Penalty
1895, 471, § 8.
1896, 546, § 7.
R. L. 102, § 86
1905, 310, § 3
1911, 656, § 6
1914, 497, § 5
1915, 259, § 11.

EXAMINATIONS OF APPLICANTS FOR LICENSES, ETC.

SECTION 56. The chief and inspectors of the division shall act, as provided in sections fifty-seven to sixty-seven, inclusive, as examiners of applicants for certificates of competency to inspect boilers, and for licenses as engineers or firemen or operators of hoisting machinery. The chief or any such inspector may administer the oath to applicants.

Inspectors of the division to act as examiners.
1893, 387.
1894, 481, § 3.
1895, 471, § 5.
1896, 546, § 4
1898, 261.

1899, 368, § 8.
R. L. 102, § 86; 105, § 1.

1905, 310, § 3.
1911, 562, § 3; 656, §§ 3, 6.

1915, 259, §§ 5, 11.

SECTION 57. Each application for a license as an engineer or fireman of a class specified herein or as an operator of hoisting machinery not run by steam shall be made upon a blank furnished by the department, signed and sworn to by the applicant, and shall show the total experience of the applicant. Each such application shall be accompanied by an examination fee, as follows: For a first class or second class engineer's license or for a special license, seven dollars; for a third class, fourth class or portable class engineer's license or a steam fire engineer's license, three dollars; for an extra first class, a first class or second class fireman's license, two dollars; and for a license for operating hoisting machinery not run by steam, three dollars. Each such application shall entitle the applicant to one examination only, except in case of an appeal under section sixty-six; provided, however, that no person shall make application hereunder for a license of any particular class oftener than once in ninety days. The fee for an examination on appeal shall be one dollar.

Applications for licenses.
1895, 471,
§§ 2, 4
1896, 546,
§§ 2, 3
1899, 368,
§§ 3, 7
R. L. 102, § 81
1905, 310, § 1
1907, 465, § 6.
1911, 562, § 3;
656, § 3
1915, 259,
§§ 4, 5
1927, 298.

SECTION 58. In all examinations or appeals the applicant may have one person present who may take notes if he so desires. In case of applicants for certificates of competency to inspect boilers such person shall be a representative of an insurance company employing the applicant or wishing to do so.

Applicants may have a person present.
1899, 368,
§§ 3, 9
R. L. 102,
§§ 81, 81

1905, 310, § 1.
1907, 373, § 3; 465, § 7.

1911, 562, §§ 3, 6; 656, §§ 3, 4.
1915, 259, §§ 5, 9.

SECTION 59. A certificate of competency to inspect boilers shall be revoked and a license as engineer or fireman or operator of hoisting machinery shall be suspended or revoked for incompetence or untrustworthiness of the holder thereof. A wilfully false statement in the application shall be sufficient cause for revocation at any time. If a certificate or license is lost or destroyed a new certificate shall be issued without examination upon satisfactory proof thereof.

Revocation of licenses
1895, 471, § 12
1896, 546, § 12
1899, 368, § 3
R. L. 102, § 81
1905, 310, § 1.
1907, 465, § 6.
1911, 562, § 3;
656, § 3.

1915, 259, §§ 5, 6

EXAMINATION OF INSPECTORS OF BOILERS.

Application for license. 1907, 465, § 6. 1927, 296, § 1.	SECTION 60. The application of a person desiring to act as inspector of boilers for an insurance company shall be accompanied by a written request of said company for an examination of such person, together with a fee of fifteen dollars.	1 2 3 4
Board of examiners. 1907, 465, § 6.	SECTION 61. Three inspectors of the division shall act as a board of examiners. The applicant shall be examined as to the construction, installation, maintenance and repair of steam boilers and their appurtenances.	1 2 3 4
Certificate of competency. 1907, 465, § 6.	SECTION 62. If the applicant is found competent he shall receive a certificate of competency to inspect steam boilers for the company which requested the examination. The certificate shall remain in force during his employment by the company unless sooner revoked.	1 2 3 4
Appeal 1907, 465, § 7. 1927, 296, § 2.	SECTION 63. A person who is refused a certificate of competency, or whose certificate is revoked, may appeal from such decision to the commissioner, who shall grant a rehearing of the case by a board of five examiners, no one of whom shall have acted as an examiner in the former instance; provided, that in the case of a person desiring to appeal from a refusal to issue to him a certificate of competency such appeal is accompanied by a fee of fifteen dollars. Their decision shall be final if approved by said commissioner.	1 2 3 4 5 6 7 8

EXAMINATION OF ENGINEERS, FIREMEN OR OPERATORS OF HOISTING MACHINERY.

Application for license as engineer or fireman. Examination. 1895, 471, § 2. 1896, 546, § 2. 1899, 368, § 3. R. L. 102, § 81. 1905, 310, §§ 1, 3. 1911, 562, § 3. 1913, 610, § 4. 1915, 259, §§ 4, 5.	SECTION 64. Whoever desires to act as an engineer or fireman shall apply for a license to the inspector of the division for the town where he resides or is employed. The examination shall be uniform throughout the commonwealth. The applicant shall be given a practical examination, and, if found competent and trustworthy, he shall receive a license graded according to the merits of his examination. An applicant for a first class or second class engineer's license or for a special license shall be examined by a board consisting of three inspectors of the division, or two inspectors and the chief, and, if the applicant is employed, one member of said board shall be the department inspector of boilers for the town where the applicant is employed, and the decision of said board shall be final. An applicant for a license as an engineer of any other class or as a fireman shall be examined by one inspector of the division, from whose decision there shall be an appeal as provided in section sixty-six.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15
Application for license to operate hoisting machinery. 1911, 656, §§ 1, 3. 1915, 211, § 1.	SECTION 65. Whoever desires to act as an operator of hoisting machinery shall apply to the inspector of the division for the town where he resides or is employed. He shall be given a practical examination by a department inspector, and if found competent and trustworthy shall receive a license to operate such machinery. He shall be examined only as to his ability to use the particular machinery, whether a gasoline or electric engine or otherwise, which he desires to operate, and the license shall be limited to that particular kind of machinery; but if he so requests, the applicant may be examined as to his proficiency in the various kinds	1 2 3 4 5 6 7 8 9

10 of machinery used for hoisting, and the license shall include those kinds
 11 of machinery in respect to which he is found competent.

1 SECTION 66. A person aggrieved by the action of a single examiner
 2 in refusing, suspending or revoking a license to act as engineer, fireman
 3 or operator of hoisting machinery may, within one week, appeal there-
 4 from to the chief, who shall appoint three inspectors of the division,
 5 or himself and two inspectors, to act together as a board of appeal. The
 6 decision of a majority of the members of the board of appeal shall be final.

Appeal.
 1895, 471, § 7
 1896, 546, § 5
 1899, 368, § 9
 R. L. 102, § 84
 1907, 373, § 3
 1911, 562, § 6.
 656, § 4.
 1913, 610, § 4
 1915, 259, § 9

1 SECTION 67. A license shall continue in force until it is suspended or
 2 revoked for incompetence or untrustworthiness of the licensee, except
 3 that a special license shall not continue in force after the holder thereof
 4 ceases to be employed in the plant specified in the license. A person whose
 5 license is suspended or revoked shall surrender his license to the chief or
 6 an inspector of the division. If a new license of a different grade is issued,
 7 the old license shall be destroyed by the examiner.

License in
 force until
 revoked or
 suspended.
 1895, 471, § 2.
 1896, 546, § 2
 1899, 368, § 3
 R. L. 102, § 81
 1905, 310, § 1
 1911, 562, § 3.
 656, § 3.

1915, 259, § 6.

GENERAL PROVISIONS.

1 SECTION 68. Trial justices shall have jurisdiction of complaints for
 2 violation of the provisions of this chapter, or of rules made hereunder,
 3 and may impose fines of not more than fifty dollars.

Trial justices
 1899, 368, § 11
 R. L. 102, § 86

1905, 310, § 3.
 1907, 465, § 28.

1909, 393, § 3.
 1911, 656, § 6.

1915, 259, § 11.

1 SECTION 69. The commissioner may expend the amount annually
 2 appropriated for investigation work, for apparatus used in connection
 3 with the inspection of steam boilers and for the installation and main-
 4 tenance of apparatus in the examination of engineers and firemen.

Appropriation
 for apparatus.
 1909, 131.

CHAPTER 147.

STATE AND OTHER POLICE, AND CERTAIN POWERS AND DUTIES
 OF THE DEPARTMENT OF PUBLIC SAFETY.

SECT.
 1. Certain duties of the commissioner of public safety.
 2. Officers and inspectors. Powers and duties. Purchase of land to house units of state police.
 3. Same subject. Penalty for receiving rewards, etc.
 4. Extra police officers from metropolitan district commission.
 4A. Bureau of criminal identification.
 5. Appeal from certain orders, etc.
 6. Destruction of old reports, etc.
 6A. Disposition of property recovered by department.
 6B. Same subject. Perishables.
 6C. Same subject. Proceeds of sales, disposition.
 6D. Same subject. Payments to owners.

SECT.
 7. Constables, etc., to aid governor, when. Penalty.
 8. County police, appointment, powers and duties.
 SPECIAL POLICE OFFICERS.
 9. Agents of Massachusetts Society for the Prevention of Cruelty to Children.
 10. Agents of certain corporations for protection of animals.
 RESERVE POLICE FORCE IN CITIES.
 11. Reserve police force in certain cities.
 12. Same subject. Number of members.
 13. Same subject. Powers, duties, compensation.

SECT.

RESERVE POLICE FORCE IN TOWNS.

13A. Reserve police force in certain towns.

DAYS OFF FOR POLICE.

14. Days off for police in certain cities and towns.

15. Same subject. One day in fifteen.

16. Same subject. One day in eight.

17. Same subject. General provisions

POLICE MATRONS.

18. Police matrons in cities. Designation, etc.

19. Same subject. Tenure of office, salary, duties.

20. Same subject. Duties.

21. "Police station", "station", defined.

PRIVATE DETECTIVES.

22. License. When required.

23. Same subject. To whom granted, assistants.

24. Same subject. Application.

25. Same subject. Contents and term.

26. Same subject. Fee. Bond.

27. Same subject. Revocation.

28. Penalty for divulging information or making false report.

29. Penalty for acting without license.

30. Application of §§ 22-29 limited.

SECT.

LIST OF POLICE.

31. List of police to be sent to commissioner. Penalty.

LICENSED BOXING MATCHES.

32. Unlicensed boxing matches forbidden. Penalty. Special licenses.

33. Licenses for boxing matches.

34. Same subject. Bond.

35. Licenses for officials.

36. Referee and judges.

37. Physician.

38. Number of rounds. Gloves.

39. Age of participants or spectators.

40. Payment to commonwealth. Report of proceeds, etc.

41. Tickets not to be sold beyond capacity of hall.

42. Revocation or suspension of license.

43. Licensee not to have financial interest in boxer.

44. Witnesses before the commission.

45. Superior court may enjoin unlicensed match.

46. Rules and regulations. Report.

47. Distribution of money received by commonwealth.

48. Sections 32-47 in effect in cities and towns which accept them.

49. Acceptance.

50. Resubmission.

51. Certain provisions of law not applicable to boxing matches.

Certain duties of the commissioner of public safety. 1865, 219, §§ 1, 4. 1871, 394, § 3. 1874, 405. 1875, 15, § 1. 1877, 211, § 6. 1879, 305, § 3. P. S. 103, §§ 2, 11. 1894, 481, § 57. 1895, 418, § 6. R. L. 108, § 2.

SECTION 1. The commissioner of public safety, in this chapter called the commissioner, shall have charge of the administration and enforcement of all laws, rules and regulations which it is the duty of the department of public safety, in this chapter called the department, to administer and enforce, and shall, except as is otherwise provided, direct all inspections and investigations. He shall, subject to the approval of the governor, make all necessary rules for the government of his department, for reports to be made by officers under him and for the performance of their duties. He shall make an annual report.

1906, 521, § 1. 1912, 726, § 5. 3 Op. A. G. 492. 1911, 619. 1919, 350, §§ 1, 99, 100.

Officers and inspectors Powers and duties Purchase of land to house units of state police 1865, 249, § 5. 1866, 261, § 4. 1871, 394, §§ 2, 4, 7. 1875, 15, § 5. 1879, 305, §§ 2, 12. P. S. 103, § 2. 1888, 113. 1894, 481, § 1. R. L. 108, § 7. 1906, 262. 1908, 143, § 1. 1913, 619, § 1. 1919, 350, § 102. 1921, 164.

SECTION 2. All officers and inspectors of the department shall have and exercise throughout the commonwealth the powers of constables, police officers and watchmen, except as to service of civil process. The governor may command their services in suppressing riots and in preserving the peace. The commissioner may detail any officer or inspector in the division of inspection or in the division of fire prevention for temporary service in the division of state police. He may from time to time appoint employees of the department to serve at his pleasure as special state police officers and may invest them with such of the powers of state police as he may deem advisable. The commissioner, with the approval of the governor, may authorize the officers and inspectors of the department to carry badges, revolvers, clubs, handcuffs and twisters, or such other articles as may be required in the performance of their

14 duties. The commissioner, with the approval of the governor and
 15 council, may expend such sums as may be appropriated for the purchase
 16 of land for housing units of the state police or, if the price to be paid for
 17 such land is in any case less than one hundred dollars, the expenditure,
 18 approved as aforesaid, may be made from the current appropriation for
 19 the expenses of the division of state police.

1925, 322, § 2.
 1926, 199.
 3 Op. A. G. 515.

1 SECTION 3. Any officer or inspector of the department who directly
 2 or indirectly receives a reward, gift or gratuity on account of his official
 3 services shall be punished by a fine of not more than one hundred dollars
 4 or by imprisonment for not more than three months, and shall also be
 5 discharged from office. Any officer or inspector who fails to faithfully
 6 perform his duties shall be immediately discharged from office.

Same subject.
 Penalty for
 receiving
 rewards, etc.
 1871, 394.
 § 3, 9.
 1875, 15, § 6.
 1877, 214, § 10
 1879, 395, § 6.

P. S. 103, § 6; 104, § 24
 1882, 266, § 5.

1891, 481, § 56.
 R. L. 108, § 6.

1919, 350, § 108.
 133 Mass. 233.

1 SECTION 4. The commissioner may, when public exigency requires,
 2 with the approval of the governor, call upon the metropolitan district
 3 commission for assistance in performing the duties imposed upon him
 4 by law; and the said commission shall, when so called upon, assign to duty
 5 under said commissioner such of the police force under its control as it
 6 and the commissioner shall determine.

Extra police
 officers from
 metropolitan
 district com-
 mission.
 1919, 350,
 § 107.

1 SECTION 4A. The commissioner shall provide within the depart-
 2 ment for receiving, arranging and keeping proper means for the identi-
 3 fication of criminals and for the furnishing of means of identification of
 4 criminals to police departments of cities and towns, to the department
 5 of correction and to prosecuting officers within the commonwealth. He
 6 may in his discretion furnish means of identification of criminals to
 7 proper officers in other states and in foreign countries. He may secure
 8 means of identification including measurements, photographs, finger
 9 prints and other means, so that known criminals may be identified in
 10 this commonwealth. The commissioner shall, on his own initiative, or
 11 upon request of the chief police officer of any city or town, or of any
 12 district attorney within the commonwealth, furnish to such chief police
 13 officer or district attorney such information as he has in his possession
 14 which may tend to assist in the identification of or apprehension of
 15 criminals.

Bureau of
 criminal
 identification.
 1931, 350, § 1.

1 SECTION 5. Any person affected by an order of the department or
 2 of a division or office thereof, except one made by the state fire marshal
 3 under chapter one hundred and forty-eight, may, within such time as
 4 the commissioner may fix, which shall not be less than ten days after
 5 notice of such order, appeal to the commissioner, who shall thereupon
 6 grant a hearing, and after such hearing may amend, suspend or revoke
 7 such order. Any person aggrieved by an order approved by the com-
 8 missioner, or by an order made by the state fire marshal as aforesaid,
 9 may appeal to the superior court; provided, that such appeal is taken
 10 within fifteen days from the date when such order is approved or made.
 11 The superior court shall have jurisdiction in equity upon such appeal to
 12 annul such order if found to exceed the authority of the department or
 13 of the marshal, as the case may be, or upon petition of the commissioner
 14 to enforce all valid orders issued by the department. Nothing herein

Appeal from
 certain
 orders, etc.
 1919, 350,
 § 109.
 1928, 320
 1930, 399, § 5.
 255 Mass. 5
 260 Mass. 548
 271 Mass. 596.
 272 Mass. 307.
 Op. A. G.
 (1920) 45,
 134, 302.

contained shall be construed to deprive any person of the right to pursue 15
any other lawful remedy. 16

Destruction
of old reports,
etc.
1916, 145, § 1.

SECTION 6. The commissioner may after two years destroy or other- 1
wise dispose of applications for approval of entertainments on Sunday, 2
inspection reports of theatres and halls under section thirty-six of 3
chapter one hundred and forty-three, and applications for permits for 4
special exhibitions of pictures under section eighty-two of said chap- 5
ter. Any proceeds received from their disposal shall be paid to the 6
commonwealth. 7

Disposition of
property
recovered
by department.
1926, 225.

SECTION 6A. If money, goods or other property which has been 1
stolen, lost, abandoned or taken from a person under arrest comes into 2
the possession of an officer or other employee of the department by virtue 3
of his office or employment, he shall deliver the same to the person desig- 4
nated by the commissioner to receive the same and shall thereupon be 5
relieved from further responsibility therefor. If no person proves 6
ownership of such money, goods or other property within six months, 7
the commissioner may cause the same, except money unclaimed, to be 8
sold at public auction at such place and time and by such person as the 9
commissioner may designate. Notice of the time and place of such 10
sale, with a description of the property, shall be given by publishing the 11
same once in a newspaper published in the county where the property 12
was found or taken as aforesaid. 13

Same subject.
Perishables.
1926, 225.

SECTION 6B. Such property, if perishable or liable to deteriorate 1
greatly in value by keeping, or the value of which will probably be less 2
than the expense of keeping, may be sold at public auction at such 3
place and at such time within six months and by such person as the 4
commissioner may designate, such notice of the time and place of sale 5
as the commissioner may deem reasonable and proper first being given. 6

Same subject.
Proceeds of
sales, dis-
position.
1926, 225.

SECTION 6C. The proceeds of such sales, together with such un- 1
claimed money, after deducting all reasonable charges and expenses 2
incurred on account of such property, shall be accounted for and paid 3
to the commonwealth. 4

Same subject.
Payments
to owners.
1926, 225.

SECTION 6D. If, within two years and six months after such money 1
has come into the possession of an officer or other employee of said 2
department or within two years after any such sale, the owner claims 3
such property and proves ownership to the satisfaction of the com- 4
missioner, the amount of such unclaimed money or the proceeds of the 5
sale of such property, after deducting reasonable expenses, shall be paid 6
to him by the state treasurer. 7

Constables,
etc., to aid
governor,
when.
Penalty.
1865, 249, § 2.
1866, 261,
§§ 2, 3.
1871, 394, § 4.
1875, 15, § 9.
P. S. 103, § 12.

SECTION 7. Constables, city marshals, chiefs of police and all other 1
police officers shall, within their respective cities and towns, aid the 2
governor in the performance of his duties whenever called upon, and any 3
such officer who refuses so to do when called upon shall be punished by a 4
fine of not more than one hundred dollars or by imprisonment for not 5
more than three months. 6

1 SECTION 8. County commissioners may appoint as police officers
 2 persons who are in the employment of the county, who shall, when on
 3 duty, wear in plain sight a metallic badge inscribed with the words
 4 "County Police" and the name of the county for which they are ap-
 5 pointed. Such officers may preserve order in any court house or in any
 6 room or building used for county business and upon the adjoining prem-
 7 ises. They may, without a warrant, arrest idle, intoxicated or disorderly
 8 persons who by their presence or conduct obstruct or annoy persons
 9 using county buildings or premises, or who violate section ninety-seven
 10 of chapter two hundred and sixty-six, and may take persons so arrested
 11 to the nearest police station or other place of lawful detention.

County police,
 appointment,
 powers and
 duties.
 1899, 196,
 §§ 2-4
 R. L. 108, § 10.
 1902, 544,
 § 12.
 193 Mass. 280.

SPECIAL POLICE OFFICERS.

1 SECTION 9. The governor may appoint two or more agents of the
 2 Massachusetts Society for the Prevention of Cruelty to Children as
 3 special state police officers for a term of three years, who shall be subject
 4 to removal by the governor, shall serve without pay and shall have and
 5 exercise throughout the commonwealth the powers of state police officers
 6 to serve warrants and other criminal processes, except the authority to
 7 arrest without a warrant.

Agents of
 Massachusetts
 Society for
 the Prevention
 of Cruelty to
 Children.
 1903, 333.

1 SECTION 10. The commissioner may appoint, at the request of the
 2 Massachusetts Society for the Prevention of Cruelty to Animals, the
 3 Animal Rescue League of Boston or the Boston Work Horse Relief
 4 Association, duly accredited agents of the corporation so requesting as
 5 special police officers to serve for one year, subject to removal by the
 6 commissioner. Such special police officers shall report to him as to
 7 their official acts at such times and in such manner as he may require.
 8 They shall serve without pay, except their regular compensation as
 9 agents of said corporation. They shall receive no fees for services or
 10 return of any criminal process and shall have throughout the common-
 11 wealth the powers of constables and police officers to arrest and detain
 12 any person violating any law for the prevention of cruelty to animals.

Agents of
 certain cor-
 porations for
 protection of
 animals.
 1909, 302, § 1.
 1912, 384, § 1.
 1918, 99,
 1924, 218.

RESERVE POLICE FORCE IN CITIES.

1 SECTION 11. Any city, except Boston, in which the city council,
 2 with the approval of the mayor, accepts this and the two following sec-
 3 tions or has accepted corresponding provisions of earlier laws, may estab-
 4 lish a reserve police force; and appointments thereto shall, subject to
 5 chapter thirty-one, be made in the same manner as appointments to the
 6 regular police force of said city.

Reserve police
 force in cer-
 tain cities.
 1896, 314,
 §§ 1, 4
 R. L. 108, § 26.
 213 Mass. 15.

1 SECTION 12. The number of members of such reserve force shall not
 2 exceed five in cities in which the number of members of the regular force
 3 does not exceed fifteen. If the number of members of the regular force
 4 exceeds fifteen, one member may be added to the reserve force for every
 5 three of the regular force above fifteen and not above thirty; one for
 6 every five of the regular force above thirty and not above eighty; and
 7 one for every ten of the regular force above eighty.

Same subject.
 Number of
 members.
 1896, 314, § 2.
 R. L. 108, § 27.

1 SECTION 13. The mayor, chief of police or city marshal of a city
 2 in which such reserve force is established may assign the members thereof
 3 to duty in said city whenever and for such length of time as said mayor,

Same subject.
 Powers, duties,
 compensation.
 1896, 314, § 3.
 R. L. 108, § 28.

chief of police or marshal may deem necessary; and when on duty the members of said reserve force shall have all the powers and duties of members of the regular police force of said city. The compensation of the members of said reserve force shall be fixed by the city council.

RESERVE POLICE FORCE IN TOWNS.

Reserve police force in certain towns 1930, 15.

SECTION 13A. A town having an organized police force or department, other than a town in which a reserve police force is established under special law, which accepts the provisions of this section, may establish a reserve police force consisting of such number of members as the town may determine. Appointments to such force shall be made in the same manner and subject to the same provisions of law as appointments to its regular police force. Members of said reserve force may be removed by the selectmen at any time for any reason satisfactory to them and shall be subject to such rules and regulations as the selectmen may prescribe. Said members shall, when on duty, have all the powers and duties of members of the regular police force of said town and shall be paid by the town such compensation as the selectmen may fix.

DAYS OFF FOR POLICE.

Days off for police in certain cities and towns. 1908, 476. §§ 1, 3.

SECTION 14. Members of the police department of every city, except Boston and such cities as have accepted chapter two hundred and ten of the acts of nineteen hundred and eleven or chapter one hundred and sixty-six of the acts of nineteen hundred and twenty, and of every town which accepted chapter four hundred and seventy-six of the acts of nineteen hundred and eight and afterward did not accept chapter two hundred and ten of the acts of nineteen hundred and eleven or chapter one hundred and sixty-six of the acts of nineteen hundred and twenty, shall be excused from duty for one day out of every thirty without loss of pay.

Same subject. One day in fifteen. 1911, 210. §§ 1, 3.

SECTION 15. Except in Boston, members of the police department of every town which accepted chapter two hundred and ten of the acts of nineteen hundred and eleven and did not accept chapter one hundred and sixty-six of the acts of nineteen hundred and twenty shall be excused from duty for one day out of every fifteen without loss of pay.

Same subject. One day in eight. 1920, 166. §§ 1, 4, 5. 1927, 304. 1930, 58.

SECTION 16. Except in Boston, members of the police department of every town which accepts or has accepted the provisions of this section by vote of its city council or selectmen, or has accepted the corresponding provisions of earlier laws in the manner therein provided, shall be excused from duty for one day out of every eight without loss of pay.

Same subject. General provisions. 1908, 476. §§ 1, 2. 1911, 210. §§ 1, 2. 1920, 166. §§ 1, 2. 1927, 304.

SECTION 17. The time and manner of excusing members of police departments from duty in any town subject to any of the three preceding sections shall be determined by the chief, superintendent or other officer or board at the head of the police department. A member so excused shall be exempt from duty and from attendance at a police station or other place, but otherwise shall be subject to all laws, rules and regulations relating to members of the department to which he belongs. The chief, superintendent or other officer or board at the head of the police

9 department of any such town may, in case of any public emergency, or of
 10 any unusual demand for the services of the police in that town, prevent
 11 any member of the department from taking the day off at the time when
 12 he is entitled thereto, or at the time assigned therefor, provided that such
 13 day off shall be granted to him as soon thereafter as is practicable. In
 14 no case shall the number of such days off be less than twelve in each
 15 year in a town subject to section fourteen, or twenty-four in each year
 16 in a town subject to section fifteen, or forty-five in each year in a town
 17 subject to section sixteen, and they shall be in addition to any annual
 18 vacation now or hereafter allowed to members of the said departments,
 19 and such annual vacation shall not be diminished on account thereof.

POLICE MATRONS.

1 SECTION 18. In every city having a population of over thirty thou-
 2 sand inhabitants as shown by the latest census, state or national, except
 3 Boston, the mayor shall, and in any other city the mayor, and in Boston,
 4 the police commissioner, may designate one or more police stations for
 5 the detention and confinement of females under arrest, and for the
 6 detention and lodging of females not under arrest, within such city. Such
 7 mayor or police commissioner may at any time designate additional sta-
 8 tions, or may discontinue any stations so designated; but one such
 9 station shall always remain so designated, except in Boston. The police
 10 commissioner of Boston and the mayor of any other city shall appoint,
 11 as soon as may be after any station has been so designated, one or two
 12 police matrons to be attached thereto.

Police matrons
 in cities.
 Designation,
 etc.
 1887, 234, § 1
 1888, 181.
 R. L. 108, § 32.

1 SECTION 19. A woman shall not be appointed a police matron unless
 2 she is suitable therefor and has been recommended in writing by at least
 3 ten women of good standing, residents of the city where the appoint-
 4 ment is to be made. A police matron may be removed by the mayor or
 5 police commissioner, as the case may be, by written order stating the
 6 cause of removal. Upon her death, resignation or removal her successor
 7 shall be appointed as soon as may be. She shall receive a reasonable
 8 compensation, which shall be fixed, except in Boston, by the city council,
 9 and in Boston, by the concurrent action of the city council and of the
 10 police commissioner, and shall be paid by the city treasurer upon the
 11 requisition of the body fixing her compensation. If only one police
 12 matron is attached to a station, she shall reside within a reasonable
 13 distance thereof and shall be ready to respond to a call therefrom at any
 14 hour of the day or night. If two police matrons are attached to a station,
 15 the hours during which they shall respond to calls therefrom, respectively,
 16 shall be so fixed by the mayor or police commissioner that one of them
 17 shall be ready to respond at any hour of the day and night, and each such
 18 matron shall, during the hours so fixed for her, remain within a reason-
 19 able distance of such station and be ready to respond to any call there-
 20 from. One of such matrons shall remain constantly at the police station
 21 to which she is attached, ready for service, so long as any female is
 22 detained, lodged or held under arrest therein. A police matron shall
 23 have the entire care and charge of all females held under arrest, detained
 24 or lodged in the station to which she is attached, and she may call upon
 25 the officer in command of such station for assistance. She shall be
 26 subject to the authority of the head of the police department of the
 27 city where she serves, and to the rules and regulations, consistent with

Same subject.
 Tenure of
 office, salary,
 duties.
 1887, 234, § 2.
 1888, 181.
 R. L. 108, § 33.

sections eighteen to twenty, inclusive, which may be prescribed by such authority; but she shall not be subject to the control or direction of any police officer attached to a station except the officer in command thereof at the time. In every station to which a police matron is attached, the mayor or police commissioner shall, at the expense of the city, provide sufficient and proper accommodation for females held under arrest, detained or lodged therein.

Same subject.
Duties.
1887, 234, § 4.
1888, 181.
R. L. 108, § 34.

SECTION 20. If a female is arrested and taken to a police station to which a matron is attached or, if not under arrest, is detained or lodged therein, the police officer there in command shall cause the matron to be summoned forthwith; and if in a city in which a police matron has been appointed, or in Boston, a female is arrested and taken to a station to which no matron is attached, or is received therein for the purpose of detention or lodging, such officer shall cause her to be removed as soon as possible to the nearest station to which a matron is attached, or in Boston, to the house of detention, and the city treasurer shall pay the reasonable expense of such removal upon the requisition of the head of the police department. Such removal of a female shall not deprive any court of any jurisdiction which it would otherwise have had.

"Police station",
"station",
defined.
1887, 234, § 5.

SECTION 21. The words "police station" or "station" in the three preceding sections shall mean any place in which persons are temporarily confined under arrest.

R. L. 108, § 35.

PRIVATE DETECTIVES.

License.
When required.
1879, 305, § 7.
P. S. 103, § 7.
1898, 486.
R. L. 108, § 36.
1919, 271,
§§ 1, 10.
217 Mass. 294

SECTION 22. No person shall engage in the business of or solicit business as a private detective, or the business commonly transacted by a private detective, under any name or title whatsoever, without first obtaining a license so to do as provided in sections twenty-three to thirty, inclusive.

Op. A. G. (1919) 119.

Same subject.
To whom granted,
assistants.
1919, 271, § 2.

SECTION 23. The said license may be granted by the commissioner to any reputable citizen of the United States, or to any firm or corporation making written application therefor. The persons making the application shall be not less than twenty-one years of age, and shall have had at least three years' experience as investigators. The holder of a license may employ as many agents, operatives and assistants as may be deemed necessary by the licensee for the conduct of the business.

Same subject.
Application
1919, 271, § 3.

SECTION 24. Application for the license shall be made on blank forms to be furnished by the commissioner. The material facts stated in the application shall be verified by the oath of the applicants, or, in the case of corporations, by the oath of the resident manager or superintendent to whom the license may be issued. The application shall contain the certificates of at least three reputable citizens of the commonwealth, residing in the town where the applicant proposes in his application to establish his principal place of business, and said certificates shall be received as evidence of the good repute of the applicants, and as evidence that the representations made in the application are true.

1 SECTION 25. The license shall be granted for one year, and shall
 2 state therein the name and address of the principal office or place of
 3 business of the licensee, and the name under which the licensed business
 4 is to be conducted.

Same subject.
 Contents and
 term
 1919, 271, § 4.

1 SECTION 26. For each license, the licensee, if an individual, shall
 2 pay to the commissioner the sum of one hundred dollars annually, and,
 3 if a partnership or corporation, the sum of two hundred dollars annually,
 4 and shall give to the commissioner a bond in the sum of five thousand
 5 dollars, executed by the applicant as principal and by a surety company
 6 authorized to do business in the commonwealth as surety. The bond
 7 shall be in such form as the commissioner may prescribe, conditioned
 8 upon the honest conduct of the business of the licensee, and the right
 9 of any person injured by the wilful, malicious or wrongful act of the
 10 licensee to bring in his own name an action on the bond.

Same subject.
 Fee. Bond.
 1919, 271, § 5.
 217 Mass. 294.

1 SECTION 27. A license may be revoked at any time by the commis-
 2 sioner for good cause shown; provided, that due notice shall have been
 3 given to the licensee to appear before the commissioner to show cause
 4 why the license should not be revoked.

Same subject.
 Revocation.
 1919, 271, § 6.

1 SECTION 28. Any person who is or has been an employee of a licensee
 2 and who divulges any information gained by him in the said employ-
 3 ment except as his employer may direct, or as he may be required by
 4 law to do, or who wilfully makes a false report to his employer, shall be
 5 punished by a fine of not more than five hundred dollars or by imprison-
 6 ment for not more than one year, or both.

Penalty for
 divulging
 information or
 making false
 report
 1919, 271, § 7
 240 Mass. 264

1 SECTION 29. Any person other than an agent, employee or assistant
 2 of a licensee hereunder, and any corporation acting as a private detective
 3 without obtaining a license in accordance with sections twenty-three to
 4 thirty, inclusive, shall be punished by a fine of not more than five hun-
 5 dred dollars or by imprisonment for a term not exceeding one year, or
 6 both; but no corporation shall be liable to the said penalty if its resident
 7 manager or superintendent is duly licensed under said sections.

Penalty for
 acting with-
 out license.
 1879, 305, § 8
 P. S. 103, § 8.
 R. L. 108, § 37.
 1919, 271,
 §§ 9, 10.

1 SECTION 30. Sections twenty-two to twenty-nine, inclusive, shall not
 2 apply to any detective or officer belonging to the police force of the
 3 commonwealth, or of any subdivision thereof, while engaged in the per-
 4 formance of his official duties; nor to a charitable, philanthropic or law
 5 enforcement society or association duly incorporated under the laws of
 6 the commonwealth, nor to any agent thereof while engaged in the dis-
 7 charge of his duties as such agent, provided the society or organiza-
 8 tion is promoted and maintained for the public good and not for private
 9 profit; nor to any person employed by any person as an investigator in
 10 connection with the business of such employer, and whose services are
 11 not let out to another for profit or gain; nor to any regularly established
 12 credit reporting or mercantile agency.

Application of
 §§ 22-29
 limited
 1919, 271, § 8

LIST OF POLICE.

1 SECTION 31. The clerk of each town in which a chief of police or city
 2 marshal is appointed shall, within one week after such appointment,
 3 notify the commissioner of the name of the person so appointed; and

List of police
 to be sent to
 commissioner
 Penalty
 1892, 290

R. L. 108. the clerk of each town not having a chief of police shall annually, on 4
 § 38. October first, send to the commissioner the names of all the police officers 5
 1916, 241, § 1. and constables in such town. If he neglects or refuses so to do, he shall 6
 be punished by a fine of fifty dollars. 7

LICENSED BOXING MATCHES.

Unlicensed boxing matches forbidden. Penalty. Special licenses. 1920, 619, § 3. Op. A. G. (1920) 300. SECTION 32. No boxing or sparring match or exhibition for a prize 1
 or a purse, or at which an admission fee is charged, either directly or in- 2
 directly, in the form of dues or otherwise, shall take place or be conducted 3
 in this commonwealth except in pursuance of a license granted as herein- 4
 after provided by the state boxing commission, in sections thirty-two 5
 to forty-seven, inclusive, called the commission. In no case shall any 6
 boxing or sparring match or exhibition occur on Sunday. Applications 7
 for the license shall be accompanied by such fee, not less than twenty-five 8
 nor more than eight hundred dollars, as the commission may establish 9
 on the basis of the population of the city or town in which the match or 10
 exhibition is to be held. Any persons holding, conducting, participating 11
 in or attending a match or exhibition held without a license, as provided 12
 in the following section, shall be punished by a fine not exceeding one 13
 hundred dollars or by imprisonment for a term not exceeding three 14
 months, or both. In the case of exhibitions or bouts held in accordance 15
 with the rules and regulations of such amateur organizations as may be 16
 approved by the commission, the commission may issue special licenses 17
 without the requirement of a bond as provided in section thirty-four or 18
 of payment of the annual fee. 19

Licenses for boxing matches. 1920, 619, § 4. SECTION 33. The commission may, subject to the provisions of sec- 1
 tions thirty-two to forty-seven, inclusive, issue licenses to conduct boxing 2
 or sparring matches and exhibitions, which shall expire on December 3
 thirty-first of the year of issue. 4

Same subject. Bond. 1920, 619, § 5. SECTION 34. No license as aforesaid shall be granted unless the 1
 licensee has executed and filed with the commission a bond in a penal 2
 sum of five thousand dollars, with such surety or sureties as shall be 3
 satisfactory to the commission, running to the commission, conditioned 4
 upon the payment to the commonwealth of the sums mentioned in section 5
 forty, and upon faithful compliance by the licensee with the provisions 6
 of sections thirty-two to forty-seven, inclusive, the rules and regulations 7
 of the commission, and with such other laws of the commonwealth as 8
 may be applicable to anything done by the licensee in pursuance of the 9
 license. The bond shall also provide for a forfeiture to the common- 10
 wealth, recoverable at the suit of the attorney general, of such sum, not 11
 exceeding one thousand dollars, as may be stipulated in the bond for 12
 each case of non-compliance. 13

Licenses for officials 1920, 619, § 6. SECTION 35. No person shall act, except at a purely amateur match 1
 or exhibition, directly or indirectly, as physician, referee, judge, time- 2
 keeper, professional boxer or as manager, trainer or second of such a 3
 boxer, at a boxing or sparring match or exhibition unless licensed by the 4
 commission upon receipt of such classified fee, not exceeding twenty- 5
 five dollars, as the commission may fix. For the purposes of sections 6
 thirty-two to forty-seven, inclusive, a professional boxer is one who 7
 competes for a money prize or teaches or pursues or assists in the practice 8

9 of boxing as a means of obtaining a livelihood or pecuniary gain. Phy-
 10 sicians who desire to officiate without charge at amateur boxing or
 11 sparring matches or exhibitions shall be licensed without charge.

1 SECTION 36. At every boxing or sparring match or exhibition there
 2 shall be in attendance a referee, duly licensed under the provisions of
 3 sections thirty-two to forty-seven, inclusive, who shall direct and con-
 4 trol the same. The referee shall have full power to stop the match or
 5 exhibition whenever he deems it advisable because of the physical con-
 6 dition of the contestants or one of them, or when one of the contestants
 7 is clearly outclassed by his opponent, or for other sufficient reason. The
 8 referee shall declare forfeited any prize, remuneration or purse or any
 9 part thereof belonging to the contestants or one of them if, in the judg-
 10 ment of a majority of the judges and the referee, such contestant or con-
 11 testants are not or were not competing in good faith. There shall also
 12 be in attendance two duly licensed judges, and each of said judges and
 13 the referee shall, at the termination of every such match or exhibition,
 14 vote for the contestant in whose favor the decision should, in his opinion,
 15 be rendered, and the decision shall be rendered in favor of the contestant
 16 receiving a majority of said votes. Upon the rendering of said deci-
 17 sion, the vote of each judge and the referee shall be announced from the
 18 ring. The fees of the referee and other licensed officials shall be fixed
 19 by said commission, and shall be paid by the licensed organization prior
 20 to the match or exhibition.

Referee and
 judges.
 1920, 619, § 7
 1931, 437, § 1.

1 SECTION 37. At any boxing or sparring match or exhibition there
 2 shall be in attendance a duly licensed physician, whose duty it shall be
 3 to observe the physical condition of the boxers and advise the referee or
 4 judges with regard thereto. Any competent physician who has had not
 5 less than three years' experience as a medical practitioner may be licensed.
 6 No boxer shall be permitted to enter the ring unless, not more than
 7 three hours before, a physician licensed under the provisions of sec-
 8 tions thirty-two to forty-seven, inclusive, shall certify in writing that
 9 the boxer is physically fit to engage in the proposed contest. The phy-
 10 sician's fee, as fixed by the commission, shall be paid by the licensee
 11 conducting the match or exhibition.

Physician
 1920, 619, § 8.

1 SECTION 38. Boxing or sparring matches or exhibitions shall not
 2 exceed ten rounds in length, but if such matches or exhibitions are to
 3 determine championships, they may, in the discretion of the commis-
 4 sion, exceed ten rounds in length but not fifteen. No round in any such
 5 match or exhibition shall exceed three minutes. No contestant, pro-
 6 fessional or amateur, shall, except as aforesaid, participate in more than
 7 ten such rounds during any period of twenty-four hours; and no amateur
 8 contestant shall participate in more than three contests between twelve
 9 o'clock noon of any day and twelve thirty o'clock in the morning of the
 10 next day. All amateur boxing or sparring matches or exhibitions held
 11 on any day shall terminate at or before twelve thirty o'clock in the
 12 morning of the next day. The contestants in professional matches or
 13 exhibitions shall wear, during the contest, gloves weighing at least six
 14 ounces each and in amateur matches or exhibitions, unless otherwise
 15 authorized by the commission, the contestants shall wear, during the
 16 contest, gloves weighing at least eight ounces each. Every boxer par-

Number
 of rounds.
 Gloves.
 1920, 619, § 9.
 1931, 437, § 2.

icipating in a boxing or sparring match or exhibition shall be required 17
to wear a standard protective device, to be approved by the commission. 18

Age of
participants
or spectators.
1920, 619, § 10.

SECTION 39. No contestant under eighteen shall be permitted to en- 1
gage in any boxing or sparring match or exhibition. No person under 2
sixteen shall be admitted to or be present at any boxing or sparring 3
match or exhibition. 4

Payment
to common-
wealth.
Report of
proceeds, etc.
1920, 619, § 11.

SECTION 40. Every licensee holding or conducting any such boxing 1
or sparring match or exhibition shall, within seventy-two hours after its 2
conclusion, pay to the state treasurer a sum equal to five per cent of the 3
total gross receipts from the sale of tickets or from admission fees; pro- 4
vided, that if such match or exhibition is conducted as an incidental 5
feature in an event or entertainment of a different character, such portion 6
of the total receipts shall be paid to the commonwealth as the commis- 7
sion may determine or as may be fixed by rule adopted under section 8
forty-six. Within said time the licensee shall furnish to the commission 9
a report, duly verified by the treasurer and secretary, showing the exact 10
number of tickets sold and admission fees collected for the contest, and 11
the gross receipts thereof, and such other data as the commission may 12
require. 13

Tickets not
to be sold
beyond
capacity of
hall.
1920, 619, § 12.

SECTION 41. No licensee under section thirty-three shall sell or cause 1
to be sold or issued more tickets or invitations purporting to admit to 2
any such match or exhibition, or otherwise admit to the same, more 3
persons than are admissible according to the authorized capacity of 4
the building, or part thereof actually used therefor. 5

Revocation
or suspension
of license.
1920, 619, § 13.

SECTION 42. Any license may be revoked or suspended by the com- 1
mission for a violation of any provision of sections thirty-two to forty- 2
seven, inclusive, or of any other law of the commonwealth or of any rule 3
or regulation adopted by the commission or whenever the licensee has, 4
in the judgment of the commission, been guilty of any act or offence 5
detrimental to the public interest. 6

Licensee
not to have
financial
interest in
boxer.
1920, 619, § 14.
1931, 437, § 3.

SECTION 43. No licensee under section thirty-three shall have, 1
directly or indirectly, any financial interest in a boxer competing on 2
premises owned or leased by the licensee, or in which the licensee is 3
otherwise interested. No contestant in such a match or exhibition 4
shall be paid for services before the same are rendered. 5

Witnesses
before the
commission.
1920, 619, § 16.

SECTION 44. The commission shall have the same authority to 1
summon and require the attendance and testimony of witnesses as to 2
all matters within its jurisdiction as is conferred upon city councils 3
by section eight of chapter two hundred and thirty-three, and sec- 4
tions nine, ten and eleven of said chapter shall apply to witnesses so 5
summoned. 6

Superior court
may enjoin
unlicensed
match.
1920, 619, § 17.

SECTION 45. The superior court shall have jurisdiction in equity 1
upon any information filed by the commission, the attorney general, the 2
district attorney for the district, the police authorities of the city or 3
town where the boxing or sparring match or exhibition is held or is 4
announced to be held, or by any five legal voters of the commonwealth 5
stating that a certain building, tenement or place is used for boxing 6

7 or sparring matches or exhibitions by an individual, group, partner-
 8 ship, club, corporation or association not licensed under section thirty-
 9 three, or contrary to any provision of sections thirty-two to forty-seven,
 10 inclusive, or that a boxing or sparring match or exhibition is being ad-
 11 vertised or announced, or has been advertised or announced, to take
 12 place in a certain building or place, or that a certain individual, club,
 13 corporation or association is selling, exchanging or giving away tickets,
 14 tokens or symbols purporting to entitle the holder to the right or privi-
 15 lege of attending a certain boxing or sparring match or exhibition not
 16 licensed by the commission and contrary to the provisions of sections
 17 thirty-two to forty-seven, inclusive, to enjoin and abate the same as a
 18 common nuisance.

1 SECTION 46. The commissioner, in consultation with the other mem-
 2 bers of the commission, may make such rules and regulations for the
 3 administration and enforcement of sections thirty-two to forty-seven,
 4 inclusive, as he may deem necessary, subject to the approval of the gov-
 5 ernor and council. Such rules and regulations may provide for and
 6 regulate the granting of a special permit for exhibitions where no deci-
 7 sion is to be rendered and where a skilled boxer or boxers merely dem-
 8 onstrate the science of boxing. The commissioner shall make an annual
 9 report to the general court of the acts of the commission.

Rules and regulations Report 1920, 619, § 18, 1931, 426, § 246.

1 SECTION 47. The remainder of the sums received under section forty,
 2 after paying the expense to the commonwealth of administering sections
 3 thirty-two to forty-seven, inclusive, shall, annually on or before Novem-
 4 ber first, be distributed by the state treasurer to the several towns in
 5 proportion to the amounts collected from licensees acting therein under
 6 said sections.

Distribution of money received by commonwealth. 1920, 619, § 19. Op. A. G. (1920) 300.

1 SECTION 48. Sections thirty-two to forty-seven, inclusive, shall be
 2 in force in any city or town which accepts said sections in the manner
 3 provided in the following section or has accepted corresponding pro-
 4 visions of earlier laws in the manner provided therein and has not on
 5 a resubmission under section fifty voted against said sections.

Sections 32-47 in effect in cities and towns which accept them. 1920, 619, § 20

1 SECTION 49. Sections thirty-two to forty-seven, inclusive, shall take
 2 effect in a city if accepted by the voters at a city election; provided,
 3 that a petition signed by not less than ten per cent of the registered
 4 voters is filed with the city clerk not less than thirty days before the
 5 election. Said sections shall take effect in a town on their acceptance
 6 by the voters at an annual or special town meeting, the question having
 7 been submitted upon a like petition; and the selectmen shall upon a like
 8 petition call a special town meeting for the purpose of voting upon such
 9 acceptance.

Acceptance 1920, 619, § 20.

1 SECTION 50. In any city or town in which the provisions of sections
 2 thirty-two to forty-seven, inclusive, are in force, said sections shall again
 3 be submitted to the voters at any municipal election; provided, that a
 4 petition to that effect signed by not less than ten per cent of the voters
 5 is filed with the city or town clerk not less than thirty days before the
 6 election. If upon such resubmission the voters vote against said sec-
 7 tions, they shall cease to have effect in that city or town until reaccepted
 8 by the voters as provided in the preceding section.

Resubmission. 1920, 619, § 21.

Certain provisions of law not applicable to boxing matches. 1920, 619, § 22.

SECTION 51. Sections nine to twelve, inclusive, of chapter two hundred and sixty-five and section twenty-eight of chapter one hundred and eighty shall not apply to any boxing or sparring match or exhibition licensed under section thirty-three and conducted under and in accordance with sections thirty-two to forty-seven, inclusive, and the rules and regulations issued under section forty-six.

CHAPTER 148.

FIRE PREVENTION.

SECT.	SECT.
1. Definitions.	28. Rules as to fires and fire protection.
2. Duties of certain officials.	29. Orders to occupant or owner.
3. Investigation of fires.	30. Penalty. Jurisdiction of superior court.
4. Inspection of premises, when authorized.	31. Appeals.
5. Entry upon premises and removal of combustible materials regulated. Penalty.	32. Reports by fire insurance companies.
6. Penalty for violations of §§ 2-5.	33. Marshal to study fire hazard, fire prevention, etc.
7. Report of fires.	34. Penalty.
8. Report to insurance companies, etc.	35. Possession of bombs and explosives. Penalty.
9. Rules and regulations for explosives.	36. Notice of seizure.
10. Submission and effective date of such rules and regulations.	37. Tanks for storage of fluid. Penalty.
11. Appropriation for expert assistance and laboratory.	38. Rules and regulations.
12. Manufacture of fireworks or fire-crackers.	39. Blank cartridges, toy pistols, fireworks, etc.
13. Licenses for storing, manufacturing, etc., explosives. Term, fee, revocation, appeal.	40. Bonds by manufacturers, etc., of fireworks.
14. Inflammable fluids in motor vehicles.	41. Same subject. Actions.
15. Penalty for violation of regulation relative to transportation of explosives or inflammable fluids, etc.	42. Same subject. Public exhibitions.
16. Penalty for violation of regulation relative to storing, etc., explosives.	43. Same subject. Limitation of actions: pro rata payment of claims.
17. Powers of courts.	44. Same subject. Pyrotechnical ship or railway signals, etc.
18. Inspectors of petroleum.	45. Same subject. Penalty.
19. Blasting bond.	46. Explosive stove polish.
20. Actions on bond.	47. Penalty for violations of §§ 39, 46.
21. Power of superior court.	48. Dangerous illuminating oils, etc. Penalties.
22. Damages for illegal use, etc., of explosives.	49. Same subject.
23. Keeping, using and storage of volatile inflammable fluids, etc., regulated.	50. Search warrant for explosives illegally kept.
24. Storage, keeping or handling of combustible material.	51. Forfeiture of such explosives.
25. Salamanders.	52. Matches.
26. Automatic sprinklers.	53. Fire balloons.
27. Penalty.	54. Dropping, etc., lighted cigarettes, etc., penalized.
	55. Explosive golf balls.
	56. Licensing of open-air parking spaces. Penalty.

Definitions. 1914, 795, § 1. 1930, 399, § 1.

SECTION 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings: —

“Commissioner”, the commissioner of public safety of the commonwealth.

- 6 "Department", the department of public safety.
- 7 "Division", the division of fire prevention of the department of
- 8 public safety.
- 9 "Head of the fire department", the fire commissioner, board of fire
- 10 commissioners or fire engineers, or commissioner of public safety in those
- 11 cities and towns having such an officer or officers; the chief executive
- 12 officer of the fire department of each other city, town or fire district; and,
- 13 in towns not having a fire department, the chief engineer, if any, other-
- 14 wise the chairman of the board of selectmen.
- 15 "Inspector", an inspector or police officer of the department of public
- 16 safety.
- 17 "Local licensing authority", in towns, the board of selectmen; in
- 18 Boston, the board of street commissioners; in other cities, the board of
- 19 aldermen, or the licensing board or commission in cities wherein such a
- 20 board or commission is authorized to grant licenses under this chapter.
- 21 In case the board of aldermen or city council constitute such authority,
- 22 any hearing required by this chapter may be held before a committee
- 23 thereof.
- 24 "Marshal", the state fire marshal.

1 SECTION 2. Heads of fire departments in cities, towns or fire districts
 2 shall investigate the cause and circumstances of every fire in their
 3 respective jurisdictions by which property has been destroyed or dam-
 4 aged, especially to ascertain whether it was caused by carelessness or
 5 design. They shall begin such investigation forthwith after such fire,
 6 and if it appears to the official making such investigation that the fire
 7 is of suspicious origin or is the result of a violation of law, or if he is unable
 8 to determine the cause, he shall immediately notify the marshal. All
 9 other fires by which a loss is sustained shall, within forty-eight hours,
 10 excluding Sundays and holidays, be reported in writing to the marshal.
 11 Reports required by this section shall be on forms furnished by the
 12 department, and shall contain a statement of all facts relating to the
 13 cause and origin of the fire that can be ascertained, the extent of damage
 14 thereof, the insurance upon the property damaged, and such other
 15 information as may be required. The marshal shall keep in his office a
 16 record of all fires occurring in the commonwealth, with the results of
 17 such investigations, and such records shall be open to public inspection.

Duties of
 certain
 officials.
 1886, 354, § 2
 1889, 451, § 1
 1894, 444, § 2
 1896, 303
 R. L. 32, § 2.
 1902, 142,
 §§ 1, 2.
 1903, 365, § 1
 1904, 433, § 1.
 1914, 795,
 §§ 19, 21
 1919, 350,
 §§ 101, 104
 G. L. (ed. of
 1920) 148,
 §§ 3, 46, 48.
 1930, 399, § 1
 210 Mass. 275

1 SECTION 3. The marshal shall investigate or cause to be investigated
 2 the circumstances of all fires of suspicious origin of which he has notice,
 3 except such fires occurring in the city of Boston, and may investigate
 4 or cause to be investigated the circumstances of any fire occurring
 5 anywhere within the commonwealth. For such purposes the marshal, or
 6 some person designated by the commissioner, may summon and examine
 7 on oath, administered by the marshal or such person so designated, any
 8 person supposed to know or have means of knowing any material facts
 9 touching the subject of investigation. Such witnesses may be kept
 10 apart and examined separately, and such examination shall be reduced
 11 to writing, and false testimony therein shall be perjury. Any justice
 12 of a district court or of the superior court, upon application of the mar-
 13 shal, or person so designated, may compel the attendance of such wit-
 14 nesses and the giving of such testimony in the same manner and to the
 15 same extent as before said court. If, upon such investigation, the marshal,
 16 or person so designated, believes that the evidence is sufficient to charge

Investigation
 of fires.
 1886, 354, § 2.
 1894, 444,
 §§ 3, 4
 R. L. 32, § 3.
 1902, 142,
 §§ 1, 2.
 1903, 365, § 1.
 1904, 433, § 1.
 1919, 350,
 § 101.
 G. L. (ed. of
 1920) 148, § 4
 1930, 399, § 1
 1931, 383, § 1
 2 Op. A. G. 386.

any person with crime, he shall make a complaint therefor, and shall 17
 furnish the proper officers with the evidence and names of witnesses 18
 obtained by him. The marshal shall, when required, report to the 19
 commissioner of insurance his proceedings and the progress of prosecu- 20
 tions instituted hereunder. In respect to fires of suspicious origin 21
 occurring in the city of Boston, the fire commissioner of said city shall 22
 have and exercise all the powers and duties conferred or imposed by 23
 this section on the commissioner or on the marshal, and any person 24
 designated by the said fire commissioner shall have and exercise all the 25
 powers and duties conferred or imposed as aforesaid on such person as 26
 the commissioner is hereinbefore authorized to designate. The fire 27
 commissioner shall report to the marshal the results of any investigation 28
 as to such fires held by said commissioner or by a person designated by 29
 him. 30

Inspection of
 premises, when
 authorized.
 1894, 444, § 4.
 R. L. 32, § 4.
 1902, 142,
 §§ 1, 2.
 1903, 365, § 1.
 1905, 433, § 1.
 1914, 795, § 17.
 1919, 350,
 § 104.
 G. L. (ed. of
 1920) 148,
 §§ 5, 44
 1930, 399, § 1.

SECTION 4. The marshal, an inspector, the head of the fire depart- 1
 ment, or any person to whom the marshal or the head of the fire depart- 2
 ment may delegate the authority, may, in the performance of the duties 3
 imposed by this chapter, or in furtherance of the purpose of any provision 4
 of any law, ordinance or by-law relating to the subject matter of this 5
 chapter, or of any rule or regulation of the department, or any order of 6
 the marshal or head of the fire department, enter at any reasonable hour 7
 any building or other premises, or any ship or vessel, to make inspection 8
 or investigation, without being held or deemed to be guilty of trespass. 9

Entry upon
 premises and
 removal of
 combustible
 materials
 regulated.
 Penalty.
 1894, 444, § 5.
 R. L. 32, § 5.
 1902, 142,
 §§ 1, 2.
 1903, 365, § 1.
 1904, 433, § 1.
 1914, 795, § 18.
 1919, 350,
 § 104.
 1920, 436.
 G. L. (ed. of
 1920) 148,
 §§ 6, 34
 1928, 277,
 1929, 205, § 12-13.
 1930, 399, § 1.
 1 Op. A. G. 211.

SECTION 5. The marshal, the head of the fire department or any 1
 person to whom the marshal or the head of the fire department may 2
 delegate his authority in writing, may, and upon complaint of a person 3
 having an interest in any building or premises or property adjacent 4
 thereto, shall, at any reasonable hour, enter into buildings and upon 5
 premises, which term for the purposes of the remainder of this section 6
 shall include alleys adjacent thereto, within their jurisdiction and make 7
 an investigation as to the existence of conditions likely to cause fire. 8
 They shall, in writing, order such conditions to be remedied, and when- 9
 ever such officers or persons find in any building or upon any premises 10
 any accumulation of combustible rubbish, including waste paper, rags, 11
 cardboard, string, packing material, sawdust, shavings, sticks, waste 12
 leather or rubber, broken boxes or barrels or other refuse that is or may 13
 become dangerous as a fire menace or as an obstacle to easy ingress into 14
 or egress from such buildings or premises, they shall, in writing, order the 15
 same to be removed or such conditions to be remedied. Notice of such 16
 order shall be served upon the owner, occupant or his authorized agent. 17
 If said order is not complied with within twenty-four hours, the person 18
 making such order, or any person designated by him, may enter into 19
 such building or upon such premises and remove such rubbish or abate 20
 such condition at the expense of such owner or occupant. Any expense 21
 so incurred by or on behalf of the commonwealth or of any city or 22
 town, shall be a lien upon such building or premises, effective upon the 23
 filing in the proper registry of deeds of a claim thereof signed by such 24
 person and setting forth the amount for which the lien is claimed; and 25
 the lien shall be enforced within the time and in the manner provided 26
 for the collection of taxes upon real estate. Any such owner or occu- 27
 pant who fails or refuses to comply with said order shall be punished 28
 by a fine of not more than fifty dollars for each consecutive forty-eight 29
 30

30 hours during which such failure or refusal to comply continues. Neither
 31 this section nor section four shall authorize entry into a one-family or
 32 two-family dwelling without the consent of the occupant.

1 SECTION 6. Any city, town or district officer who willfully neglects
 2 or refuses to comply with any duty or requirement imposed upon him
 3 by the preceding sections shall be punished by a fine of not less than
 4 twenty-five nor more than two hundred dollars.

Penalty for
 violations of
 §§ 2-5
 1889, 451, § 6.
 1894, 444, § 6.

R. L. 32, § 6. G. L. (ed. of 1920) 148, § 7. 1930, 399, § 1.

1 SECTION 7. The marshal shall submit annually, before February
 2 fifteenth, a detailed report of all official action in relation to fires to the
 3 commissioner of insurance, who shall embody the material portions
 4 thereof in his annual report.

Report of
 fires.
 1886, 354, § 7.
 1894, 444,
 §§ 8, 9.

R. L. 32, § 8.
 1902, 142, §§ 1, 2
 1903, 365, § 1 1904, 433, § 1
 1919, 350, § 101. G. L. (ed. of 1920) 148, § 8
 1930, 399, § 1.

1 SECTION 8. The marshal shall report to insurance companies, to
 2 owners of property, or to other persons interested in the subject matter
 3 of an investigation of the cause and circumstances of a fire any informa-
 4 tion obtained by such investigation which may in his opinion require
 5 attention from or by such insurance companies, owners of property or
 6 other persons. The fire commissioner of the city of Boston shall make
 7 like reports of fires investigated by him or by a person by him designated
 8 under section three. The marshal shall also report to the head of the
 9 fire department the results of any investigation into fires of suspicious
 10 origin reported to him by such head as required by section two.

Report to
 insurance com-
 panies, etc.
 1910, 328, § 1.
 G. L. (ed. of
 1920) 148, § 9.
 1930, 399, § 1.
 1931, 383, § 2.

1 SECTION 9. The department shall make rules and regulations for the
 2 keeping, storage, use, manufacture, sale, handling, transportation or
 3 other disposition of gunpowder, dynamite, crude petroleum or any of
 4 its products, or explosive or inflammable fluids or compounds, tablets,
 5 torpedoes or any explosives of a like nature, or any other explosives,
 6 fireworks, firecrackers, or any substance having such properties that it
 7 may spontaneously, or acting under the influence of any contiguous
 8 substance, or of any chemical or physical agency, ignite, or inflame or
 9 generate inflammable or explosive vapors or gases to a dangerous extent,
 10 and may prescribe the location, materials and construction of buildings
 11 to be used for any of the said purposes, except that cities and towns may
 12 by ordinances or by-laws prohibit the sale or use of fireworks or fire-
 13 crackers within the city or town, or may limit the time within which
 14 firecrackers and torpedoes may be used. Such rules and regulations
 15 shall require persons keeping, storing, using, selling, manufacturing,
 16 handling or transporting dynamite or other high explosives to make
 17 reports to the department in such particulars and in such detail that the
 18 quantity and location thereof will always be a matter of authentic
 19 record in the department. Cities and towns may also make and enforce
 20 ordinances and by-laws, not inconsistent with said rules and regula-
 21 tions, relative to the subject matter of this section, in addition to such
 22 as it may make as aforesaid relative to fireworks and firecrackers.

Rules and
 regulations for
 explosives.
 1871, 6, § 2.
 1877, 216,
 §§ 4, 5.
 1878, 6,
 P. S. 102,
 §§ 54, 62, 63.
 R. L. 102,
 §§ 87, 88, 94,
 99, 100,
 1904, 370,
 §§ 1, 2.
 1905, 280, § 1.
 1910, 565; 588,
 §§ 1, 2.
 G. L. (ed. of
 1920) 148, § 10
 1921, 273;
 485, § 2
 1930, 399, § 1.
 197 Mass. 188
 155 Mass. 531
 189 Mass. 377
 217 Mass. 185.

1 SECTION 10. The marshal shall submit to the commissioner rules
 2 and regulations required to be made by the department under any of
 3 the provisions of this chapter and shall, upon request of the commis-
 4 sioner, submit to the department a copy of such rules and regulations.

Submission and
 effective date of
 such rules
 and regulations.
 1919, 350, § 104

G. L. (ed. of 1920) 148, § 11. 1930, 399, § 1.

sioner, so submit rules and regulations which the department is authorized to make hereunder, and the same shall take effect, subject to section thirty-seven of chapter thirty, when approved by the commissioner and by the governor and council, and on such dates as the governor and council may fix. 4 5 6 7 8

Appropriation for expert assistance and laboratory. 1914, 421, § 1. 1915, 229. 1916, 65, § 1. 1918, 275, § 4. G. L. (ed. of 1920) 148, § 12. 1921, 255. 1924, 398. 1930, 399, § 1.

SECTION 11. The commissioner may expend the amount annually appropriated for the employment of expert assistance, and also for maintaining a laboratory to aid in the enforcement of the laws relative to explosives and inflammable fluids and compounds. Expert assistants employed under this section shall aid in the enforcement of all laws, rules and regulations which it is the duty of the department to administer and enforce, and shall perform such other duties as the commissioner may prescribe. Said expert assistants shall be exempt from chapter thirty-one and the rules and regulations made thereunder. 1 2 3 4 5 6 7 8 9

Manufacture of fireworks or firecrackers. 1910, 565, § 2.

SECTION 12. No building shall be used for the manufacture of fireworks or firecrackers without a license from the local licensing authority and a permit from the marshal. 1 2 3

G. L. (ed. of 1920) 148, § 13.

1930, 399, § 1.

Licenses for storing, manufacturing, etc., explosives. Term, fee, revocation, appeal. 1866, 285, § 2. 1869, 152, § 6. P. S. 102, § 73. R. L. 102, § 114. 1904, 370, § 3. 1905, 280, § 1. 1908, 502, § 1. 1910, 223, § 1. 1913, 452, § 1. 1916, 162. G. L. (ed. of 1920) 148, § 14. 1921, 485, § 3. 1924, 254. 1925, 335, § 1. 1928, 260, § 1; 325, § 1. 1930, 399, § 1. 168 Mass. 388. 185 Mass. 64. 190 Mass. 280. 217 Mass. 185. 258 Mass. 508. 260 Mass. 548. 271 Mass. 565. 3 Op. A. G. 52. 4 Op. A. G. 405, 426. Op. A. G. (1920) 134, 148.

SECTION 13. No building or other structure shall, except as provided in section fourteen, be used for the keeping, storage, manufacture or sale of any of the articles named in section nine, except fireworks, firecrackers and torpedoes, unless the local licensing authority shall have granted a license therefor after a public hearing, notice of the time and place of which hearing shall have been given, at the expense of the applicant, by the clerk of the city or of the local licensing authority, by publication, not less than seven days prior thereto, in a newspaper published in the representative district, if there is any published in the English language therein, otherwise in the city or town, wherein the land on which such license is to be exercised is situated, and also by the applicant by registered mail, not less than seven days prior to such hearing, to all owners of real estate abutting on said land, and unless the application for such license shall have endorsed thereon the certificate of approval or disapproval of the head of the fire department; provided, that any building or other structure once used under a license granted as aforesaid, or any building or other structure lawfully used for any of said purposes, may be continued in such use from year to year if the owner or occupant thereof shall annually, on or before April thirtieth, while such use continues, file for registration with the clerk of the city or town where such building or other structure is situated, or in Boston, with the fire commissioner, a certificate reciting such use and occupancy; and provided, further, that any building used as a garage for storing not more than three vehicles, when once used under such a license, or lawfully used for such purpose, may be continued in such use from year to year without such annual registration, and continuous use and occupancy thereof for such purpose shall be presumed. The department may by regulation prescribe the amount of ammunition, crude petroleum or any of its products or of any other inflammable fluid or compound, that may be kept for private use in a building or other structure without a license and registration, or either of them. Every license issued hereunder shall expire on April thirtieth following the date of issue, and registrations hereunder shall be effected on or before April thirtieth to 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33

34 take effect on May first following. Such fee as may be established from
 35 time to time by ordinance or by-law may be charged for any such
 36 license, registration or certificate of the head of the fire department,
 37 respectively; provided, that the fee for such registration shall be not
 38 more than one half of the amount of the fee for such a license.

39 The right to use a building or other structure for any of said purposes
 40 may be revoked for cause, after notice and a hearing given to such owner
 41 or occupant, by the local licensing authority, or by the marshal. Such
 42 building or structure shall always be subject to such alterations in con-
 43 struction and to such regulations of its use in respect to protection
 44 against fire or explosion as the department may prescribe.

45 Any person aggrieved by the granting of a license hereunder on the
 46 ground that the exercise thereof would constitute a fire or explosion
 47 hazard may, within ten days after the granting thereof, appeal to the
 48 marshal who, after notice and hearing, shall finally determine whether
 49 such a hazard would result. If, in his opinion, such a hazard would
 50 result he shall notify the authority granting the license, who shall forth-
 51 with revoke the same.

1 SECTION 14. Gasoline or any other volatile inflammable fluid which
 2 emits a vapor at a temperature below one hundred degrees Fahrenheit
 3 when tested in the open air shall, when in any motor vehicle which is in
 4 a building or other structure, be deemed to be kept in such building or
 5 other structure within the meaning of the preceding section; provided,
 6 that this section shall not apply to any building in existence on July
 7 first, nineteen hundred and eleven, in which not more than two auto-
 8 mobiles or motor vehicles are kept, if such building or part thereof is
 9 not used either for human habitation or for holding gatherings of more
 10 than twenty persons, or for giving entertainments, instruction or em-
 11 ployment to more than that number.

Inflammable
 fluids in
 motor vehicles.
 1911, 477, § 1
 G. L. (ed. of
 1920) 148, § 15.
 1921, 485, § 1
 1930, 399, § 1
 4 Op. A. G. 397.

1 SECTION 15. Whoever knowingly violates or knowingly causes or
 2 permits the violation of any regulation adopted and prescribed for the
 3 transportation of gunpowder and other explosives or explosive or in-
 4 flammable fluids or compounds shall be punished by a fine of not more
 5 than one thousand dollars or by imprisonment for not more than one
 6 year, or both.

Penalty for
 violation of
 regulation
 relative to
 transportation
 of explosives
 or inflammable
 fluids, etc.
 1871, 6, § 4.

1877, 216, § 6	1910, 588, §§ 1, 4	1921, 485, § 1.
P. S. 102, § 64.	G. L. (ed. of 1920)	1930, 399, § 1.
R. L. 102, § 101.	148, § 17.	

1 SECTION 16. Whoever keeps, stores, uses, manufactures, sells, han-
 2 dles or otherwise disposes of any of the articles mentioned in section
 3 nine, in violation of section twelve or thirteen or of any regulation, ordi-
 4 nance or by-law made under section nine, or whoever violates any regu-
 5 lation made under section thirteen, shall, except as provided in sections
 6 fifteen and thirty-five and in section one hundred and two A of chapter
 7 two hundred and sixty-six, be punished by a fine of not more than one
 8 hundred dollars or by imprisonment for not more than one month, or
 9 both.

Penalty for
 violation of
 regulation
 relative to
 storing, etc.,
 explosives
 1904, 370, § 4.
 1905, 280, § 3
 1910, 565,
 §§ 2, 5.
 1921, 485, § 1.
 1930, 399, § 1.

1 SECTION 17. The supreme judicial or superior court may restrain
 2 the erection, occupation or use of a building in violation of section thirteen
 3 or of any regulation made thereunder.

Powers
 of courts
 1894, 399, § 5.

R. L. 102, § 117	1921, 485, § 1.
G. L. (ed. of 1920) 148, § 18.	1930, 399, § 1.

Inspectors of petroleum.
 1866, 262, §§ 1, 2, 3, 5.
 1867, 286, §§ 1, 2.
 1869, 152, §§ 1, 11; 315, § 2.
 P. S. 59, §§ 6, 7.
 1882, 250.
 1885, 122, §§ 1, 2.
 R. L. 102, §§ 109-112.
 1911, 204, §§ 1-3.
 G. L. (ed. of 1920) 148, §§ 20-23.
 1921, 485, § 1.
 1930, 399, § 1.
 118 Mass. 548.

SECTION 18. The mayor of a city and the selectmen of a town shall annually appoint one or more inspectors of petroleum, who, before entering upon their official duties, shall be sworn, and who shall not be interested in the manufacture, sale or distribution of petroleum or any products thereof. Said inspectors shall enforce in their respective cities and towns the rules and regulations of the department relative to the selling or keeping for sale, for illuminating, heating, power or cooking purposes, of kerosene, petroleum or any product thereof. Their compensation shall be fixed in cities by the aldermen and in towns by the selectmen, and shall be paid by the city or town. Cities and towns may establish reasonable fees for inspections required by said rules or regulations, payable into the city or town treasury unless otherwise provided by ordinance or by-law.

Blasting bond.
 1911, 325, § 1.
 1914, 155, § 1.
 G. L. (ed. of 1920) 148, § 24.
 1930, 399, § 1.

SECTION 19. Before the issue of a permit to use an explosive in the blasting of rock or any other substance as prescribed by the department, the applicant for the permit shall file with the clerk of the city or town where the blasting is to be done a bond running to the city or town, with sureties approved by the treasurer thereof, for such penal sum, not exceeding ten thousand dollars, as the marshal or the officer granting the permit shall determine to be necessary in order to cover the risk of damage that might ensue from the blasting or its keeping therefor; provided, that the marshal or the officer granting the permit may determine that a single and blanket bond in a penal sum not exceeding fifteen thousand dollars is sufficient to cover the risk of damage from all blasting operations of the applicant, either under the permit so issued or under future permits to use explosives in blasting operations. The bond shall be conditioned upon the payment of any loss, damage or injury resulting to persons or property by reason of such blasting or keeping.

Actions on bond.
 1911, 325, § 2.
 G. L. (ed. of 1920) 148, § 25.
 1930, 399, § 1.

SECTION 20. Action on a bond filed under the preceding section may be brought by any person to whom loss, damage or injury has resulted by reason of such blasting or keeping, and shall be brought in the name of, and for the use and at the cost and expense of, such person; but in no event shall action be brought on the bond for personal injury of an employee of the person receiving the permit. If claims on any bond are established to an amount greater than the penal sum thereof, such claims shall be paid pro rata to the amount of the penal sum, and executions shall issue accordingly.

Power of superior court.
 1899, 242.
 R. L. 102, § 95.
 1904, 370, § 1.
 1905, 280, § 1.
 1914, 795, § 3.
 1916, 138.
 G. L. (ed. of 1920) 148, § 26.

SECTION 21. The superior court shall have jurisdiction in equity, upon the petition of the commonwealth or of a city or town, to enforce the laws of the commonwealth and the regulations of the department relative to the blasting of rock, stone or other substance with any explosive.

1930, 399, § 1.

Damages for illegal use, etc., of explosives.
 1877, 216, § 10.
 P. S. 102, § 66.
 R. L. 102, § 103.
 1904, 370, § 1.

SECTION 22. Whoever suffers injury by the explosion of an explosive which is being kept or transported contrary to the provisions of this chapter or of the regulations of the department may recover damages therefor in tort against the persons who so violate said provisions or regulations.

1905, 280, § 1
 1914, 795, § 3

1916, 138
 G. L. (ed. of 1920) 148, § 27.

1930, 399, § 1.
 189 Mass. 377.

1 SECTION 23. No volatile inflammable fluid except an amount not
 2 exceeding one quart contained in an approved safety can and no non-
 3 volatile inflammable fluid except an amount not exceeding ten gallons
 4 for domestic use shall be kept, used or stored in any part of any building
 5 used for habitation, and no volatile inflammable fluid in quantity exceed-
 6 ing one gallon contained in an approved safety can, and no non-volatile
 7 inflammable fluid in quantity exceeding thirty gallons, shall be kept,
 8 used or stored, except in the tank of an automobile, motor boat or sta-
 9 tionary engine, within fifty feet of any building used for habitation,
 10 unless a permit has first been obtained therefor from the head of the
 11 fire department under such terms and conditions as he may prescribe.

Keeping, using
 and storage
 of volatile in-
 flammable
 fluids, etc.,
 regulated
 1914, 795, § 6.
 G. L. (ed. of
 1920) 148, § 32
 1928, 325, § 2
 1930, 399, § 1
 4 Op. A. G. 397

1 SECTION 24. No part of any building used for habitation nor that
 2 part of any lot within fifty feet of any building so used shall, except as
 3 permitted by section twenty-three, be used for the storage, keeping or
 4 handling of any article or material that is or may become dangerous to
 5 the public safety as a fire menace, and no part of any such building
 6 shall be used as a carpenter shop or paint shop, nor for the storage,
 7 keeping or handling of excelsior, shavings, sawdust, cotton, paper stock,
 8 feathers or rags, except under such terms and conditions as the head
 9 of the fire department may prescribe in writing.

Storage, keep-
 ing or han-
 dling of com-
 bustible
 material.
 1914, 795, § 7.
 G. L. (ed. of
 1920) 148, § 33.
 1928, 325, § 3
 1930, 399, § 1.

1 SECTION 25. No salamander or stove for drying any construction
 2 material shall be used in any building except under such conditions as
 3 may be prescribed by the marshal; and no such salamander or stove
 4 shall be set upon a wooden floor unless it is raised above the floor at least
 5 four inches and set upon brick or other incombustible material in a bed
 6 of sand at least two inches thick, spread upon the floor and covering an
 7 area of at least two feet in all directions larger than the area of the
 8 salamander or stove.

Salamanders
 1914, 795, § 9
 G. L. (ed. of
 1920) 148, § 35
 1930, 399, § 1.

1 SECTION 26. Any building used in whole or in part for the business
 2 of woodworking, or for the business of manufacturing or working upon
 3 wooden, basket, rattan or cane goods or articles, or tow, shavings,
 4 excelsior, oakum, rope, twine, string, thread, bagging, paper, paper
 5 stock, cardboard, rags, cotton or linen, or cotton or linen garments or
 6 goods, or rubber, leathers, paint, grease, soap, oil, varnish, petroleum,
 7 gasoline, kerosene, benzine, naphtha or other inflammable fluids or
 8 compounds, and any building used in whole or in part for the business
 9 of keeping or storing any such goods or articles except in such small
 10 quantities as are usual for domestic use or for use in connection with and
 11 as incident to some business other than such keeping or storing, shall,
 12 upon the order of the marshal, be equipped with automatic sprinklers;
 13 provided, that no such order shall apply to any building unless four or
 14 more persons live or are usually employed therein above the second
 15 floor.

Automatic
 sprinklers
 1914, 795, § 10.
 G. L. (ed. of
 1920) 148, § 36.
 1930, 399, § 1.
 243 Miss. 137
 4 Op. A. G. 585

1 SECTION 27. Any owner of a building who, within six months after
 2 having received an order from the marshal under the preceding section,
 3 fails to comply with the requirement of such order shall be punished by
 4 a fine of not more than one thousand dollars.

Penalty.
 1914, 795, § 12
 G. L. (ed. of
 1920) 148, § 38
 1930, 399, § 1.

1 SECTION 28. The department shall make such regulations, and the
 2 head of the fire department shall make such orders or rules not incon-

Rules as to
 fires and fire
 protection

1914, 795, § 13.
G. L. (ed. of
1920) 148, § 39.
1928, 277, § 3
[G. L. 148,
§ 7A]; 325,
§§ 4, 5.
1930, 399, § 1.
4 Op. A. G. 580.
Op. A. G.
(1920) 124.

sistent therewith, as may be necessary for the purpose of remedying any condition found to exist in or about any building or other premises or on any ship or vessel in respect to fires, the prevention of fire and fire hazard, but limited, except as otherwise provided, to the following subjects: —

A. Requiring the keeping of portable fire extinguishers, buckets of water or other portable fire extinguishing devices on any premises by the occupant thereof, and prescribing the number and situation of such devices.

B. Causing obstacles that may interfere with the means of access or exit or with the operations of the fire department in case of fire to be removed from floors, halls, stairways and fire escapes.

C. The removal of any vessel moored to or anchored near any dock or pier if such vessel is in danger of catching fire, or is by reason of its condition or the nature of its cargo a menace to shipping or other property.

D. The cleaning of chimney flues and smoke and vent pipes and incinerators, and the installation of spark arresters in incinerators and in chimneys connected with permanent wood-burning furnaces.

E. The keeping of covered metal containers as receptacles for waste paper, oily rags and oily waste, and metal containers for ashes.

F. The use of self-closing safety cans of a type approved by the marshal for the keeping of volatile inflammable liquids.

G. Prohibiting or regulating the storage in any lot, building, shed, enclosure or other structure, of any empty packing boxes, cases, or barrels in such quantity as to amount to a fire hazard, and regulating the height of piles of lumber in lumber yards.

II. Prohibiting the fumigation of warehouses, factories or commercial buildings by the use of any volatile inflammable liquid, or any material requiring flame, without a permit from the marshal or the head of the fire department.

I. Prohibiting or regulating smoking in factories, workshops, mercantile establishments, docks, wharves and warehouses.

J. Requiring and regulating fire drills for employees of hospitals, theatres and other places of public amusement, and in public and private schools.

K. Requiring proper safeguards to be placed and maintained about or over roof skylights and about outer or inner courts or shafts at the roof line.

L. Prohibiting or regulating inflammable decorations in stores, halls and places of public assembly.

Orders to
occupant or
owner.
1914, 795, § 22.
G. L. (ed. of
1920) 148, § 41.
1930, 399, § 1.
243 Mass. 137.
4 Op. A. G. 572.

SECTION 29. If buildings or other premises are owned by one person and occupied by another under lease or otherwise, the orders of the marshal or head of the fire department shall apply to the occupant alone, except where the rules or orders require the making of additions to or changes in the premises themselves, such as would immediately become real estate and be the property of the owner of the premises. In such cases the rules or orders shall affect the owner and not the occupant; and unless it is otherwise agreed between the owner and the occupant, the occupant whose use of the premises has caused the making of such additions or changes, in addition to his rent or other payments, shall, after the additions or changes are made, pay a reasonable per cent of the cost thereof annually to the owner of the premises. No rule or

13 order shall be made or enforced which requires an expenditure by the
 14 owner or occupant of more than five per cent of the last annual assessed
 15 valuation of the buildings to which such rule or order relates.

1 SECTION 30. Violation of any lawful rule, order or regulation of the
 2 department or of any lawful rule or order of the marshal or of the head
 3 of a fire department, punishment whereof is not otherwise provided for,
 4 shall be punished by a fine of not more than ten dollars for each day
 5 during which such violation continues after notice to the offender. Such
 6 notice may be given by personal service or by posting the same in a
 7 conspicuous place on the premises affected thereby. The superior court
 8 shall have jurisdiction in equity to enforce any lawful rule, order or
 9 regulation of the department, or any lawful rule or order of the marshal
 10 or of the head of a fire department, upon application respectively of the
 11 commissioner, the marshal or the head of the fire department.

Penalty.
 Jurisdiction of
 superior court
 1914, 795, § 16.
 G. L. (ed. of
 1920) 148, § 43.
 1930, 399, § 1.
 1931, 162.

1 SECTION 31. Any person aggrieved by any act, order or decision of
 2 the head of a fire department, or other person or persons acting or pur-
 3 porting to act under authority derived from this chapter, except section
 4 five, or any rule or regulation thereunder, may appeal to the marshal,
 5 who shall make all necessary and proper orders thereon, but only in so
 6 far as the appeal presents a direct question of fire or explosion hazard.
 7 Such appeal shall be filed with the marshal not later than ten days fol-
 8 lowing the act, order or decision appealed from.

Appeals.
 1914, 795, § 18.
 G. L. (ed. of
 1920) 148, § 45
 1930, 399, § 1
 260 Mass. 548
 271 Mass. 506
 272 Mass. 307
 Op. A. G.
 (1929) 45,
 134, 392

1 SECTION 32. The marshal may require every fire insurance company
 2 authorized to transact business in the commonwealth to report to him,
 3 through the secretary or some other officer of the company designated
 4 by the board of directors, such information as he may deem desirable
 5 concerning all fire losses on property insured in such company. Every
 6 insurance company adjusting a fire loss shall forward forthwith to the
 7 marshal a written statement of the amount of such adjustment on build-
 8 ing and contents.

Reports by
 fire insurance
 companies.
 1914, 795, § 20.
 G. L. (ed. of
 1920) 148, § 47
 1930, 399, § 1.

1 SECTION 33. The marshal shall study fire hazard and fire prevention
 2 and all matters relating thereto, hear suggestions and complaints from
 3 all persons and from all cities and towns, advise with the officers of such
 4 cities and towns and make suggestions to the general court and to the
 5 cities and towns looking to the improvement of the laws, ordinances and
 6 by-laws relating to fire departments, construction of buildings, building
 7 or fire limits, use and occupation of buildings and other premises, pro-
 8 tection of existing buildings, fire escapes and other life-saving devices,
 9 segregation and licensing of trades dangerous by reason of fire hazard,
 10 and all other matters relating to fire prevention and fire hazard.
 11 The marshal may order the head of a fire department to assist, in his
 12 jurisdiction, in carrying out the provisions of this chapter.

Marshal to
 study fire
 hazard, fire
 prevention, etc.
 1914, 795, § 24
 G. L. (ed. of
 1920) 148, § 49
 1930, 399, § 1.

1 SECTION 34. Except as otherwise provided, any person violating any
 2 provision of this chapter shall be liable to a fine of fifty dollars, or, in
 3 case of a continuing offence after notice of such violation, to a fine of not
 4 more than ten dollars for every day during which the violation continues.

Penalty.
 1914, 795, § 27.
 G. L. (ed. of
 1920) 148, § 51.
 1930, 399, § 1.

1 SECTION 35. No person shall have in his possession or under his
 2 control any bomb or other high explosive, as defined by the rules and

Possession of
 bombs and
 explosives.

Penalty.
 1847, 51.
 1877, 216,
 §§ 1-3
 P. S. 102,
 §§ 59-61
 R. L. 102,
 §§ 96-98,
 1904, 370,
 1905, 280,
 1913, 452,
 1919, 323,
 §§ 1, 3.
 G. L. (ed. of
 1920) 148, § 52.

regulations made under section nine, contrary to the provisions of this 3
 chapter or of any rule or regulation made thereunder. Whoever violates 4
 this section shall be punished by a fine of not more than one thousand 5
 dollars, or by imprisonment for not more than two and one half years, 6
 or both, and any bomb or explosive found in his possession or under his 7
 control on such violation shall be forfeited to the commonwealth. Any 8
 officer qualified to serve criminal process may arrest without a warrant 9
 any person violating this section. 10

1930, 399, § 1.

Notice of
 seizure.
 1919, 323, § 2.
 G. L. (ed. of
 1920) 148, § 53
 1930, 399, § 1.

SECTION 36. Notice of the seizure of any bomb or explosive found in 1
 the possession or under the control of any person in violation of the 2
 preceding section shall immediately be sent to the marshal by the officer 3
 making the seizure, and, upon final conviction of such person, such bomb 4
 or explosive shall be adjudged forfeited to the commonwealth and deliv- 5
 ered to the marshal or his authorized representative and disposed of 6
 at his discretion. 7

Tanks for
 storage of
 fluid. Penalty.
 1919, 303,
 §§ 1, 3.
 G. L. (ed. of
 1920) 148, § 54.
 1921, 194
 1930, 399, § 1.

SECTION 37. No person shall construct, maintain or use any tank or 1
 container of more than ten thousand gallons' capacity, for the storage of 2
 any fluid other than water, unless the same is located underground, 3
 without first securing a permit therefor from the commissioner. The 4
 commissioner may, after notice and hearing, revoke any such permit for 5
 cause. Whoever violates this section or a rule or regulation made under 6
 the following section shall be punished by a fine of not less than fifty nor 7
 more than one thousand dollars. 8

Rules and
 regulations.
 1919, 303, § 2.
 G. L. (ed. of
 1920) 148, § 55.
 1930, 399, § 1.

SECTION 38. The department shall make rules and regulations govern- 1
 ing the construction, use and maintenance of tanks to which the pre- 2
 ceding section applies. Such rules and regulations shall not take effect 3
 until approved by the governor and council, and filed in the office of the 4
 state secretary. 5

Blank
 cartridges, toy
 pistols, fire-
 works, etc.
 1805, 55.
 1823, 149, § 2.
 1826, 3, § 1.
 1828, 62, § 1.
 R. S. 58,
 §§ 5-7,
 1847, 51.
 G. S. 88,
 §§ 46-48,
 1877, 216,
 §§ 1-3
 P. S. 102,
 §§ 54-56,
 59-61
 1882, 272.
 R. L. 102,
 §§ 87-89, 91,
 96-98.
 1904, 370.
 1905, 280
 1910, 565, § 1.
 1913, 452.
 G. L. (ed. of
 1920) 148, § 57.
 1925, 95
 1930, 399, § 1.
 Op. A. G.
 (1917) 66.
 [Penalty, § 47.]

SECTION 39. No person shall sell or keep for sale any blank cartridge, 1
 toy pistol, toy gun or toy cannon that can be used to fire a blank car- 2
 tridge; or sell or keep for sale, or fire, explode or cause to explode any 3
 blank cartridge or bomb, or sell or keep for sale, or set off, explode or 4
 cause to explode any fireworks containing any picric acid or picrates, or 5
 any firecracker exceeding two inches in length and three eighths of an 6
 inch in diameter or of a greater explosive power than a firecracker of 7
 such size containing black gunpowder only; provided, that this section 8
 shall not apply to illuminating fireworks set off between the hours of six 9
 and twelve o'clock post meridian, excepting those containing picric 10
 acid or picrates, or to the sale of any article herein named to be shipped 11
 directly out of the commonwealth, or to the sale or use of explosives 12
 in the firing of salutes by official authorities, or to the sale or use of 13
 blank cartridges for a duly licensed show or theatre or for signal purposes 14
 in athletic sports, or to experiments at a factory for explosives, or to the 15
 firing of salutes with cannon where a permit has been secured from 16
 the marshal or some officer designated by him therefor, or to the sale of 17
 blank cartridges for the use of, or their use by, the militia or any organ- 18
 ization of war veterans, or other organization authorized by law to 19
 parade in public a color guard armed with firearms, or in teaching the 20
 use of firearms by experts. 21

1 SECTION 40. No person shall store fireworks in quantities except
 2 such as may be permitted by the rules and regulations of the depart-
 3 ment outside the premises of a fireworks manufactory in any building
 4 or other structure located within one thousand feet of any church,
 5 theatre, hall, place of public assembly, factory or any inhabited building,
 6 nor shall any person manufacture fireworks, unless he has previously filed
 7 with the clerk of the city or town in which the said fireworks are to be
 8 manufactured or stored a bond running to the treasurer of the said city
 9 or town with a surety or sureties approved by the said treasurer, in such
 10 penal sum, not less than ten thousand dollars, as the mayor of the city
 11 or the selectmen of the town, with the approval of the marshal, shall
 12 determine to be necessary to cover the losses, damages or injuries that
 13 might ensue from the said manufacture or storage. The bond shall be
 14 conditioned upon the payment of any judgment obtained in an action
 15 against said person so manufacturing or storing fireworks for or on ac-
 16 count of any loss, damage or injury resulting to persons or property by
 17 reason of the said manufacture or wholesale storage.

Bonds by
 manufacturers,
 etc., of fire-
 works.
 1921, 500
 (G. L. 148,
 § 57A).
 1930, 399, § 1.
 259 Mass. 310.

1 SECTION 41. Action on a bond filed under section forty or forty-two
 2 may be brought by any person holding a judgment to secure the pay-
 3 ment of which the bond was filed and may be brought by such person
 4 in the name of the city or town treasurer, or of the state treasurer, as the
 5 case may be, but for the use and benefit, and at the cost and expense, of
 6 the person so bringing the said action; provided, that such a judgment
 7 was recovered in an action brought within twelve months of the time
 8 when the cause of action accrued.

Same subject.
 Actions.
 1921, 500
 (G. L. 148,
 §§ 57A-57D).
 1930, 399, § 1.
 259 Mass. 310.

1 SECTION 42. No person engaged in the business of displaying or
 2 exhibiting fireworks shall, by himself or his agents, discharge, fire off,
 3 explode or display fireworks unless he has on file with the state treasurer
 4 a bond running to the state treasurer with a surety or sureties approved
 5 by him for the penal sum of fifteen thousand dollars, and for such addi-
 6 tional penal sum as the marshal shall determine to be necessary to cover
 7 the losses, damages or injuries that might ensue to persons or property
 8 by reason thereof. The bond shall be conditioned upon the payment of
 9 any judgment obtained in an action brought against said person so dis-
 10 charging, firing off, exploding or displaying fireworks, for or on account
 11 of any loss, damage or injury resulting to persons or property by reason
 12 of the said discharging, firing off, exploding or displaying of said fireworks.

Same subject.
 Public ex-
 hibitions.
 1921, 500
 (G. L. 148,
 § 57C).
 1930, 399, § 1.

1 SECTION 43. No action for injury to an employee of a person required
 2 to give a bond under section forty or forty-two shall be brought on such
 3 bond if such injury arises out of and in the course of the employment.
 4 If claims under any bond filed under either of said sections are established
 5 to an amount greater than the penal sum of the bond, such claims shall
 6 be paid pro rata to the amount of the penal sum and executions shall
 7 issue accordingly. Nothing in the three preceding sections shall deprive
 8 a person suffering loss, damage or injury of any other right or remedy
 9 provided by law.

Same subject.
 Limitation of
 actions; pro
 rata payment
 of claims.
 1921, 500
 (G. L. 148,
 § 57E).
 1930, 399, § 1.

1 SECTION 44. Firecrackers and pyrotechnical ship or railway signals
 2 shall be included and classed as fireworks, but the provisions of the four
 3 preceding sections shall not apply to the storage of pyrotechnical ship

Same subject.
 Pyrotechnical
 ship or rail-
 way signals,
 etc.

1921, 500
[G. L. 148,
§ 57F]. or railway signals nor to the discharge, firing or exploding of the said 4
signals when used for the protection of life and property. 5
1930, 399, § 1.

Same subject. SECTION 45. Whoever violates any provision of the five preceding 1
Penalty. sections shall be punished by a fine of not more than five hundred dol- 2
1921, 500, lars or by imprisonment for not more than six months, or both. 3
[G. L. 148,
§ 57G].
1930, 399, § 1.

Explosive stove polish. SECTION 46. No person shall manufacture, store, keep for sale, sell 1
1917, 153, § 1. or transport any compound for use as a stove polish containing any 2
G. L. (ed. of liquid or compound whatsoever which will emit a gas that will flash at 3
1920) 148, § 58. a temperature of less than one hundred and forty degrees Fahrenheit, 4
1928, 325, § 7. a temperature of less than one hundred and forty degrees Fahrenheit, 4
1930, 399, § 1. except that foundry paste which contains inflammable compound, if 5
(Penalty, § 17) packed in metal containers, sealed by fusion and weighing in gross not 6
less than five pounds, and if such container is labeled "Dangerous — 7
Inflammable compound — Keep away from fire, heat and lights" may 8
be manufactured, stored, kept for sale, sold or transported for use only 9
by stove foundries, stove manufacturers and stove dealers on their 10
own premises under regulations prescribed by the marshal. The flash 11
point of said compound shall be ascertained by use of some standard 12
closed cup instrument or other method approved by the marshal. 13

Penalty for violations of §§ 39, 46. SECTION 47. Violation of any provision of section thirty-nine or 1
1828, 62, § 3. forty-six shall be punished by a fine of not more than one hundred 2
R. S. 58, § 9 dollars or by imprisonment for not more than one month, or both. 3
G. S. 88, § 50. 1905, 280, § 3. G. L. (ed. of 1920)
P. S. 102, § 57. 1910, 565, § 5. 148, § 59.
R. L. 102, § 90. 1917, 153, § 2. 1930, 399, § 1.
1904, 370, § 4.

Dangerous illuminating oils, etc. SECTION 48. Whoever mixes for sale naphtha and illuminating oils 1
Penalties. or naphtha and oils to be used for fuel in dwellings or other buildings 2
1867, 286, whereby human life is endangered or exposed, or sells or offers for sale 3
§§ 3, 5. such mixture, or oils for illuminating, heating or cooking purposes so 4
1869, 152, mixed with any other substance as to render their use for such purposes 5
§§ 2, 4. a menace to human life, or sells or offers for sale, except for remanu- 6
P. S. 102, facture, illuminating or fuel oils made from coal or petroleum which 7
§§ 69, 71. will evaporate a gas that will flash at a temperature of less than one hun- 8
1885, 98, § 1. dred and fifteen degrees Fahrenheit or ignite at a temperature of less 9
R. L. 102, than one hundred and twenty-five degrees Fahrenheit, to be ascertained 10
§§ 106, 108. by the application of some standard approved instrument, or whoever 11
G. L. (ed. of sells or keeps or offers for sale naphtha under a name which tends to 12
1920) 148, conceal its inflammable character, shall be punished by a fine of not 13
§§ 69, 62. more than one hundred dollars or by imprisonment for not more than 14
1921, 485, § 6. any person from the explosion or ignition of such oil thus unlawfully 15
1925, 335, § 2. sold or kept or offered for sale. Such oil thus unlawfully sold or kept 16
1930, 399, § 1. or offered for sale, and the casks or packages containing the same, shall 17
104 Mass. 64. be forfeited and sold, and the proceeds shall be paid to the common- 18
110 Mass. 470. wealth. 19
118 Mass. 441. 20
211 Mass. 60.
248 Mass. 575.

Same subject. SECTION 49. For the purposes of the preceding section, illuminating 1
1867, 286, § 4. or fuel oils made from coal or petroleum and having an igniting point of 2
1869, 152, § 3. less than one hundred and twenty-five degrees Fahrenheit, to be deter- 3
P. S. 102, § 70.
1885, 98, § 2.

4 mined as therein provided, shall be deemed to be mixed with naphtha,
 5 and shall be branded unsafe for illuminating purposes or for use as fuel.
 1925, 335, § 3. 1930, 399, § 1.

1 SECTION 50. Upon complaint made to a court or justice authorized
 2 to issue warrants in criminal cases that the complainant has probable
 3 cause to suspect and does suspect that gunpowder, dynamite or any
 4 other explosives, crude petroleum or any of its products, or explosive or
 5 inflammable fluids are kept or are to be found in any place contrary to
 6 this chapter or regulations made hereunder, such court or justice may
 7 issue a search warrant in conformity with chapter two hundred and
 8 seventy-six, so far as applicable, commanding the officer to whom the
 9 warrant is directed to enter any shop, building, manufactory, vehicle or
 10 vessel specified in the warrant, and there make diligent search for the
 11 articles specified in the warrant, and make return of his doings forth-
 12 with to the court or justice having jurisdiction thereof. Such warrants
 13 may be directed to an inspector or to the head of the fire department.

1 SECTION 51. Articles seized under the preceding section may, after
 2 due notice and hearing, be adjudged to be forfeited, and may be ordered
 3 to be sold or destroyed in such manner as the court or magistrate may
 4 direct, and the proceeds, if any, paid into the county treasury.
 G. L. (ed of 1920) 148, § 64. 1930, 399, § 1.

1 SECTION 52. Whoever keeps matches for sale or use in any store
 2 unless the same are in unbroken cases or in a metal or other fireproof
 3 receptacle with the cover closed, except when it is necessary to obtain
 4 access thereto, shall be punished by a fine of not more than fifty dollars.

1 SECTION 53. Whoever liberates or flies a fire balloon shall be pun-
 2 ished by a fine of not more than one hundred dollars or by imprison-
 3 ment for not more than one month, or both.
 1921, 485, § 7. 1930, 399, § 1.

1 SECTION 54. Whoever drops or throws from any vehicle while the
 2 same is upon a public or private way running along or near forest land,
 3 or, except as permitted by law, drops, throws, deposits or otherwise
 4 places in or upon forest land, any lighted cigarette, cigar, match, live
 5 ashes or other flaming or glowing substance, or any substance or thing
 6 which in and of itself is likely to cause a fire, shall be punished by a fine
 7 of not more than twenty-five dollars.

1 SECTION 55. Whoever manufactures or sells or knowingly uses, or
 2 has in possession for the purpose of sale, any golf ball containing any
 3 acid, fluid, gas or other substance tending to cause the ball to explode
 4 and to inflict bodily injury shall for the first offence be punished by a
 5 fine of not more than five hundred dollars, and for any subsequent
 6 offence by a fine of not more than one thousand dollars or by imprison-
 7 ment for not more than one year, or both.

1 SECTION 56. In any city or town which accepts the provisions of
 2 this section no person shall engage in the business of conducting
 3 or maintaining an open-air parking space without a license therefor
 4 granted by the licensing authority, approved in all cases by the head

R. L. 102,
 § 107.
 G. L. (ed of
 1920) 148, § 61.

Search war-
 rant for ex-
 plosives ille-
 gally kept
 1823, 149, § 2.
 1828, 62, § 2.
 R. S. 58, § 8
 1847, 51.
 G. S. 88, § 49.
 1869, 152, § 7.
 1877, 216, § 7.
 P. S. 102,
 §§ 76, 78.
 R. L. 102,
 § 120.
 G. L. (ed of
 1920) 148, § 63.
 1930, 399, § 1.

Forfeiture of
 such explosives
 1877, 216, § 8.
 P. S. 102, § 79
 R. L. 102,
 § 121.

Matches.
 1909, 184,
 §§ 1, 2.
 G. L. (ed. of
 1920) 148, § 65.
 1930, 399, § 1.

Fire balloons.
 1910, 141.
 G. L. (ed of
 1920) 148, § 66.

Dropping, etc.,
 lighted cigar-
 ettes, etc.,
 penalized
 1930, 399, § 1.

Explosive
 golf balls.
 1913, 722,
 §§ 1, 2.
 G. L. (ed of
 1920) 148, § 56.
 1930, 399, § 1.

Licensing of
 open-air park-
 ing spaces.
 Penalty.
 1930, 399, § 1.

of the fire department. The license shall specify all the premises to be 5
occupied by the licensee for the purpose of conducting the licensed 6
business. The fee for each such license shall be such amount as may be 7
established by the authority granting the license, and said authority 8
may reasonably classify said licenses and fees. Licenses granted here- 9
under shall expire on April thirtieth following the date of issue, or on 10
such date as may be specified therein, and may be suspended or revoked 11
by such authority and by the head of the fire department. Whoever, 12
not being licensed, engages in a business required by this section to be 13
licensed, or is concerned therein, or, being licensed, engages in such busi- 14
ness, or is concerned therein, in any other place than that designated 15
in his license or after notice to him that his license has been suspended 16
or revoked, shall be punished by a fine of not more than one hundred 17
dollars. 18

TITLE XXI.

LABOR AND INDUSTRIES.

- CHAPTER 149. Labor and Industries.
- CHAPTER 150. Conciliation and Arbitration of Industrial Disputes.
- CHAPTER 151. The Minimum Wage.
- CHAPTER 152. Workmen's Compensation.
- CHAPTER 153. Liability of Employers to Employees for Injuries not resulting in Death.
- CHAPTER 154. Assignment of Wages.

CHAPTER 149.

LABOR AND INDUSTRIES.

SECT.

DEFINITIONS.

- 1. Definitions.

DUTIES AND POWERS OF DEPARTMENT OF LABOR AND INDUSTRIES.

- 2. Duties and powers in general.
- 3. Inspection.
- 4. Report of certain cases of disease.
- 5. Investigations and prosecutions.
- 6. Investigations as to safety and health. Rules, etc.
- 7. Committees to make investigations and recommend rules.
- 8. Hearings on proposed rules. Publication and effective date of rules.
- 9. Appeals. Amendment, annulment, etc., of rules, etc.
- 10. Entry into places of employment to make certain investigations.
- 11. Reports to department by physicians.
- 12. Rules of department as to safety prevail over rules of insurance companies.
- 13. Violation of rules forbidden.
- 14. Annual report.
- 15. Inspection districts.
- 16. Penalty for inspector accepting a reward.
- 17. Entry into buildings for purposes of inspection.
- 18. Duties of industrial health inspector.

SECT.

GENERAL PROVISIONS AS TO EMPLOYMENT.

- 19. Interfering with employment forbidden.
- 20. Compelling a person not to join a labor organization forbidden.
- 21. Fraudulent advertisements concerning employment penalized.
- 22. Advertising for employees during strike, etc.
- 23. Same subject. Penalty.
- 24. Peaceful persuasion not penalized.

PUBLIC EMPLOYMENT.

- 25. Public employee may select lodging, etc.
- 26. Preference to veterans and citizens in public work. Wages. Penalty.
- 27. Dispute as to wages.
- 28. Actions against cities or towns for labor.
- 29. Security for payment of labor on public works.
- 30. Eight hour day and forty-eight hour week for certain public employees. Exception.
- 31. Eight hour day for certain employees in certain cities and towns.
- 32. Definitions.
- 33. Limitation of §§ 30 and 31.
- 34. Contracts for public work to contain stipulation as to eight hour day, etc. Exception. Certain contracts void.

SECT.		SECT.	
35.	Penalty for violating § 30, 31 or 34.	64.	Employment of persons under twenty-one.
36.	Eight hour day not applicable in certain cases.	65.	Hours of labor of children under sixteen.
37.	Nine hour day in certain cities and towns.	66.	Hours of labor of boys under eighteen and girls under twenty-one.
38.	Vacations for certain public employees.	67.	Same subject.
39.	Hours of labor of officers, etc., of state penal institutions.	68.	Employment of minors as messengers, etc., regulated.
40.	Hours of labor in county institutions. Penalty.	69.	Street trades for children regulated.
41.	Laborers, etc., employed by the commonwealth to be given Saturday half holiday.	70.	Same subject.
42.	Laborers, etc., in employ of commonwealth to be on day work basis if possible.	71.	Issue of badges.
43.	Equal opportunity of certain employment for all citizens.	72.	Wearing, etc., of badges.
44.	Holiday for veterans on Memorial Day.	73.	Hours of street trades for boys under sixteen.
	PRIVATE EMPLOYMENT.	74.	Lists of hours of employment of minors to be posted.
45.	Penalty for requiring labor on holiday.	75.	Forms of lists to be furnished by the department.
46.	Requiring illegal number of hours to make up for holiday forbidden.	76.	Duties of inspectors.
47.	One day's rest in seven. Penalty.	77.	Powers of supervisors of attendance.
48.	Same subject. Penalty.	78.	Penalty for violation of §§ 60-74.
49.	Limitation of two preceding sections.	79.	Penalty for hindering inspectors, etc.
50.	Exceptions.	80.	Penalty for furnishing articles to be illegally sold by minors engaged in street trades, or aiding in violation of §§ 69-73.
51.	List of persons working on Sunday.	81.	Penalty on parent or guardian, etc.
52.	Time book. Penalties for violating §§ 51 and 52.	82.	Penalty on officials.
	WORK BY WOMEN AND CHILDREN.	83.	Penalty on minors.
53.	Heavy boxes, etc., moved by women to be provided with casters, etc. Penalty.	84.	Service of process for violation of sections relating to employment of children.
54.	Investigations of core rooms where women are employed. Rules. Penalty.	85.	Limitation of §§ 60-83.
55.	Employment of women shortly before and after confinement forbidden.	86.	Employment of children under sixteen without employment certificates, etc., forbidden. Penalty.
56.	Hours of labor for women and children.	87.	Employment certificates.
57.	Penalty for violation of preceding section.	88.	School record required for employment certificate.
58.	Women and minors operating elevators.	89.	Contents of employment certificate.
59.	Night labor for women. Penalty.	90.	Penalties for illegal employment of children under sixteen, altering employment certificate, etc.
60.	Employment of children under fourteen.	91.	Employer to discharge child who does not attend a continuation school if required to do so. Penalty.
61.	Employment of children under sixteen. Penalty for violation of certain provisions.	92.	Duties of supervisors of attendance and inspectors in regard to illegal employment of children.
62.	Employment of minors under eighteen.	93.	Further duties of supervisors of attendance.
63.	Department may determine processes, etc., injurious to children. Prohibition of employment therein.	94.	Educational certificates, etc., to be shown on request of officials.
		95.	Educational certificates for minors between sixteen and twenty-one. Penalty.
		96.	Limitation of §§ 86-95.
		97.	Penalty for employment of minor in violation of § 95.

- SECT.
- 98. Penalty on parent, etc., allowing minor to be employed in violation of § 95.
 - 99. Hours for meals for women and children.
 - 100. Same subject. Penalty for violation of § 99 or 100.
 - 101. Limitation of §§ 99 and 100.
 - 102. Working during meal time without knowledge of superintendent, etc.
 - 103. Seats for women and children. Penalty.
 - 104. Employment, etc., of children under fifteen in theatrical exhibitions, etc., penalized.
 - 105. License not to be granted for exhibitions in which such children take part.

PROVISIONS AS TO HEALTH AND SAFETY.

- 106. Drinking water to be provided. Penalty.
- 107. Water for humidifying. Penalty.
- 108. Thermometers for testing humidity.
- 109. Section 108 not applicable to textile factories equipped with other approved testing devices.
- 110. Limits of humidity.
- 111. Sources of water for humidifying.
- 112. Penalty for violation of §§ 108-111.
- 113. Factories, etc., to be properly lighted, ventilated and kept clean.
- 114. Investigations by industrial health inspectors as to effect of industries on eyesight.
- 115. Devices for preventing injury to eyes, when to be provided. Penalty.
- 116. Investigation as to lighting of factory, etc. Order. Penalty.
- 117. Ventilation of factories.
- 118. Devices for removal of dust.
- 119. Emery wheels, etc., to be provided with devices for removing dust.
- 120. Same subject.
- 121. Limitation of §§ 119 and 120.
- 122. Penalty for violation of §§ 117-121.
- 123. Inspection of factories, etc., not equipped with dust removers. Complaint. Prosecution.
- 124. Communication with engine room.
- 125. Penalty for violation of preceding section.
- 126. Doors not to be locked during working hours. Penalty.
- 127. Guards for gears, etc.
- 128. Wrongful operation of traversing carriages of certain machines penalized.
- 129. Openings of hoistways, etc., to be guarded.
- 130. Storage of explosives.
- 131. Guards for shuttles. Penalty.

- SECT.
- 132. Use of suction shuttles penalized.
 - 133. Toilet facilities.
 - 134. Apportionment of expense of changing toilet facilities.
 - 135. Prosecutions for violation of two preceding sections.
 - 136. Notice to department of public health of unsanitary conditions.
 - 137. Toilet rooms, etc., in foundries. Penalty.
 - 138. Penalty for injuring toilet appliances.
 - 139. Lockers for clothes, when required. Penalty.
 - 140. Spittoons.
 - 141. Medical appliances, etc., when to be provided. Penalty.
 - 142. Cloths for cleaning printing presses.

MANUFACTURE OF CLOTHING IN TENEMENT HOUSES.

- 143. License.
- 144. Notice to and examination by local boards of health.
- 145. Tags for clothing made in unlicensed tenement houses.
- 146. Penalties.
- 147. Clothing made outside commonwealth. Examination. Report to department of public health.

WEEKLY PAYMENT OF WAGES.

- 148. Weekly payment of wages. Penalty.
- 149. Summons and warrant for violation of preceding section.
- 150. Complaint for violation of § 148. Procedure upon trial.
- 151. Payment in factories when over one hundred employed.
- 152. Deductions for tardiness regulated. Penalty.
- 153. Weavers' fines regulated.
- 154. Same subject. Penalty.
- 155. Specifications for weavers.
- 156. Same subject. Penalty.
- 157. Penalty for violation of § 155 and for interference with inspector.
- 158. Deduction from wages of women or children for stopping machinery regulated. Penalty.
- 158A. Unpaid probationary employment of woman or minor penalized.
- 159. Notice of discharge. When required.

FREE EMPLOYMENT OFFICES.

- 160. Free employment offices. Annual report.
- 161. Superintendents and clerks. Sign.
- 162. Registration, etc., of applicants for employment. Procedure in case of strike.

- SECT.
 163. Fees prohibited. Penalty.
 164. Preference to residents.
 165. Reports.
 166. Appropriation for expenses.
 167. Bulletins as to demand for employment, weekly distribution to city, etc., clerks.
 168. Bulletins to be posted. Penalty.

STATISTICS OF LABOR AND MANUFACTURES.

169. Commissioner, etc., may require attendance of witnesses, etc.
 170. Statistics of labor and manufactures.
 171. Schedules for collecting statistics.
 172. Information collected not to be so published as to disclose private affairs. Penalty.
 173. Distribution or sale of old papers.

SECT.
 COMMISSION ON FOREIGN AND DOMESTIC COMMERCE.

174. [Repealed.]
 MISCELLANEOUS PROVISIONS.
 175. Use of bells, etc.
 176. Emergency police officer.
 177. Assistance of police officers to protect property. Penalty.
 177A. Contracts by employers exempting themselves from liability for certain injuries to employees forbidden.
 178. Voting of employees.
 179. Posting notices.
 179A. Preference to citizens in awarding contracts for public work. Penalty.
 180. General penalty.

DEFINITIONS.

Definitions.
 1887, 103, § 5.
 1894, 508, § 57.
 R. L. 106, § 8.
 1909, 514,
 §§ 17, 145.
 1911, 241;
 494, § 1
 1912, 191; 726,
 §§ 5, 8.
 1913, 813,
 §§ 8, 12.
 1916, 95, § 1;
 240, § 1
 1919, 224; 350,
 §§ 56, 69,
 70, 74.
 1925, 151.
 1931, 426,
 § 247
 261 Mass. 226.
 263 Mass. 282.
 [For additional
 definitions
 see § 32.]

SECTION 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

- “Assistant commissioner”, the assistant commissioner of the department of labor and industries. 4
 5
 “Associate commissioners”, the associate commissioners of the department of labor and industries. 6
 7
 “Buildings used for industrial purposes” or “industrial establishments” shall include factories, workshops, bakeries, mechanical establishments, laundries, foundries, tenement house workrooms, all other buildings or parts thereof where manufacturing is carried on, and mercantile establishments as defined in this section. 8
 9
 10
 11
 12
 “Child”, a person under eighteen. 13
 “Commissioner”, the commissioner of labor and industries. 14
 “Co-operative courses”, courses approved as such by the department of education and conducted in public schools where technical or related instruction is given in conjunction with practical experience by employment in co-operating factories, manufacturing, mechanical or mercantile establishments or workshops. 15
 16
 17
 18
 19
 “Department”, the department of labor and industries. 20
 “Employment”, any trade, occupation or branch of industry, any particular method or process used therein, and the service of any particular employer; but it shall not include private domestic service or service as a farm laborer. 21
 22
 23
 24
 “Extraordinary emergency”, danger to property, life, public safety or public health. 25
 26
 “Factory”, any premises where mechanical power is used in aid of any manufacturing process there carried on. 27
 28
 “Industrial disease” or “occupational disease”, any ailment or disease caused by the nature or circumstances of the employment. 29
 30
 “Industrial health inspector”, an inspector qualified by training and experience in matters relating to health and sanitation. 31
 32
 “Inspector”, an inspector of the department of labor and industries, except an inspector of the division of standards. 33
 34

35 "Iron works", a mill, forge or any premises where any process is
 36 carried on for converting iron into malleable iron, steel or tin plate,
 37 or for otherwise making or converting steel.

38 "Manufacturing establishments", any premises, room or place used 3 Op. A. G. 455.
 39 for the purpose of making, altering, repairing, ornamenting, finishing 4 Op. A. G. 137.
 40 or adapting for sale any article or part thereof.

41 "Mechanical establishments", any premises, other than a factory as
 42 above defined, where machinery is employed in connection with any
 43 work or process carried on therein.

44 "Mercantile establishments", any premises used for the purposes of 3 Op. A. G. 455.
 45 trade in the purchase or sale of any goods or merchandise, and any 4 Op. A. G. 137.
 46 premises used for a restaurant or for publicly providing and serving
 47 meals.

48 "Place of employment", every place, whether indoors or out or under-
 49 ground, and the premises appurtenant thereto, into, in or upon which
 50 any employee goes or remains either temporarily or regularly in the
 51 course of his employment.

52 "Print works", any premises where the process of printing figures,
 53 patterns or designs upon yarn or cloth, or upon any woven or felted
 54 fabric not paper, is carried on.

55 "Safe" or "safety", such freedom from danger to life, safety and
 56 health of employees as the nature of the employment will reasonably
 57 permit.

58 "Woman", a female eighteen or over.

59 "Workshop", any premises, room or place, not a factory as above
 60 defined, wherein manual labor is exercised by way of trade or for pur-
 61 poses of gain in or incidental to a process of making, altering, repairing,
 62 ornamenting, finishing or adapting for sale any article or part thereof,
 63 and to which or over which premises, room or place the employer of
 64 the persons working therein has the right of access or control; but the
 65 exercise of such manual labor in a private house or private room by
 66 the family dwelling therein or by any of them, or if a majority of the
 67 persons therein employed are members of such family, shall not of
 68 itself constitute such house or room a workshop.

DUTIES AND POWERS OF DEPARTMENT OF LABOR AND INDUSTRIES.

1 SECTION 2. The department shall, except as otherwise specifically Duties and
 2 provided, enforce the provisions of this chapter, and shall have all neces- powers in
 3 sary powers therefor. general.
1876, 216.

1877, 214, § 7	1884, 52, § 3.	R. L. 108, § 8
1879, 305, § 12.	1887, 218.	1907, 413; 537, § 5
1880, 181	1888, 426, §§ 10, 14.	1912, 726, §§ 4, 5.
1881, 137	1894, 382, § 1;	1914, 474, § 2
P. S. 103, § 10.	481, §§ 2, 35, 55.	1919, 350, § 69.
1882, 266, § 6.		

1 SECTION 3. The inspection and investigation carried on by the Inspection.
 2 department shall be a regular and systematic inspection and investi- 1913, 813, § 4.
 3 gation of all places of employment and the conditions of safety and 1916, 308
 4 health pertaining thereto. 1919, 350, § 69.

1 SECTION 4. The department shall promptly report to the depart- Report of
 2 ment of public health all cases of disease in industrial establishments certain cases
 3 affecting the health of the community. of disease.
1912, 726, § 6.

Investigations and prosecutions.	SECTION 5. The department may investigate conditions existing in any line of industry, and such investigations may be extended outside of the commonwealth to procure information to promote industrial development or to improve industrial conditions. It shall receive all complaints concerning conditions existing in any industry carried on in the commonwealth, or concerning alleged violations of any laws enforced under its direction, and shall thereupon make or direct all needful and appropriate investigations and prosecutions.	1 2 3 4 5 6 7 8
Investigations as to safety and health. Rules, etc.	SECTION 6. It shall investigate from time to time employments and places of employment, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all such employments or places of employment; and also shall determine what suitable devices or other reasonable means or requirements for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments or places of employment; and shall make reasonable rules, regulations and orders applicable to either employers or employees or both for the prevention of accidents and the prevention of industrial or occupational diseases.	1 2 3 4 5 6 7 8 9 10 11
Committees to make investigations and recommend rules.	SECTION 7. The commissioner, assistant commissioner and associate commissioners of the department may appoint committees, on which employers and employees shall be represented, to make such investigations and recommend rules and regulations.	1 2 3 4
	1921, 306, § 5.	
Hearings on proposed rules. Publication and effective date of rules.	SECTION 8. Before adopting any rule or regulation under section six, a public hearing shall be given, and not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in Boston. Such rules or regulations shall, when approved by the associate commissioners and the assistant commissioner, be published in like manner, and, subject to section thirty-seven of chapter thirty, shall take effect thirty days after such publication or at such later time as the associate commissioners and the assistant commissioner may fix. Before adopting any order a hearing shall be given thereon, of which a notice of not less than ten days shall be given to the persons affected thereby.	1 2 3 4 5 6 7 8 9 10 11
Appeals. Amendment, annulment, etc., of rules, etc.	SECTION 9. Any person affected by an order, rule or regulation of the department may appeal to the associate commissioners within such time as they by vote may fix, but not less than ten days after notice of the order or the taking effect of the rules or regulations. The associate commissioners shall thereupon give a hearing, and thereafter may amend, suspend or revoke such order, rule or regulation. Pending the hearing the commissioner may suspend the order, rule or regulation appealed from. Any person aggrieved by an order approved by the associate commissioners may appeal to the superior court within fifteen days after the date of approval. The superior court may annul the order if it is found to exceed the authority of the department, and upon petition of the commissioner may enforce all valid orders issued by the department. This section shall not deprive any person of any other lawful remedy.	1 2 3 4 5 6 7 8 9 10 11 12 13 14

- 1 SECTION 10. In order to make investigations under section six,
 2 members or employees of the department may at any time enter places
 3 of employment when being used for business purposes.
- 1913, 813, § 5. 1916, 308. 1919, 350, § 69.
- Entry into places of employment to make certain investigations.
- 1 SECTION 11. The department may require every physician treating
 2 a patient whom he believes to be suffering from any ailment or disease
 3 contracted as a result of the nature, circumstances or conditions of
 4 the patient's employment to report such information relating thereto
 5 as it may require, within such time as it may fix, and it may issue a list
 6 of such diseases which shall be regularly reported upon by physicians,
 7 and may add to or change such list at any time. Copies of all such
 8 reports and all statistics and data compiled therefrom shall be kept by
 9 it, and shall be furnished on request to the department of industrial
 10 accidents and the department of public health.
- 1913, 813, § 6. 1916, 308. 1919, 350, §§ 68, 69, 96.
- Reports to department by physicians.
- 1 SECTION 12. If any rule or regulation made under authority of
 2 section sixty-four of chapter one hundred and fifty-two conflicts with
 3 or differs from a rule or regulation of the department, its rule or regula-
 4 tion shall prevail.
- 1913, 813, § 10. 1916, 308. 1919, 350, § 69.
- Rules of department as to safety prevail over rules of insurance companies.
- 1 SECTION 13. No person shall violate any reasonable rule, regulation,
 2 order or requirement made by the department under section six or
 3 eleven.
- 1916, 308. 1919, 350, § 69.
- [Penalty, § 180.]
- Violation of rules forbidden.
- 1913, 813, § 13.
- 1 SECTION 14. The commissioner shall make an annual report, in-
 2 cluding the reports required by sections one hundred and sixty and
 3 one hundred and seventy of this chapter, section ten of chapter one
 4 hundred and fifty, section fifteen of chapter one hundred and fifty-
 5 one, and section fifty-seven of chapter ninety-eight. The commissioner
 6 shall also include in his report such data as to the work of the division
 7 on the necessaries of life as he may deem advisable.
- 1918, 189, § 1. 1919, 350, §§ 8, 69. 1930, 410, § 4.
- Annual report.
- 1871, 394, § 6.
 1874, 405.
 1877, 214, § 6.
 1879, 305, § 3.
 P. S. 103, §§ 3, 11.
 1894, 481, § 59.
 R. L. 108, § 2.
 1912, 726, § 14.
 1914, 533.
- 1 SECTION 15. With the approval of the associate commissioners and
 2 the assistant commissioner, the commissioner may divide the common-
 3 wealth into inspection districts, and assign the necessary number of
 4 inspectors thereto.
- 1912, 726, § 9.
 1919, 350, §§ 69, 70.
 1921, 306, § 7.
- Inspection districts.
- 1 SECTION 16. An inspector who directly or indirectly receives a
 2 reward, gift or gratuity on account of his official services shall be
 3 punished by a fine of not more than one hundred dollars or by imprison-
 4 ment for not more than three months, and shall also be discharged from
 5 office.
- 1877, 214, § 10. 1882, 266, § 5. 1912, 726, § 10.
 1879, 305, § 6. 1894, 481, § 56. 133 Mass. 233.
 P. S. 103, § 6; 104, § 24. R. L. 108, § 6.
- Penalty for inspector accepting a reward.
- 1871, 394, §§ 5, 9.
 1873, 15, § 6.
- 1 SECTION 17. For the enforcement of the provisions of this chapter,
 2 the commissioner, the assistant commissioner and the associate com-
 3 missioners, the director of the division of industrial safety and inspectors
 4 may enter all buildings and parts thereof used for industrial purposes
- Entry into buildings for purposes of inspection.
- 1876, 216.
 1877, 214, § 7.
 1879, 305, § 12.

1880, 181. and examine the methods of protection from accident, the means of 5
 P. S. 103, § 10. escape from fire, the sanitary provisions, the lighting and means of 6
 1882, 206, § 6. ventilation, and make investigations as to the employment of women and 7
 1884, 52, § 3. minors and as to compliance with all provisions of this chapter. 8
 1887, 218.
 1888, 426,
 §§ 10, 14.

1894, 481, § 2; 534, § 3. R. L. 106, § 67; 108, § 8. 1912, 726, §§ 6, 11.
 1895, 144, § 3. 1907, 413. 1919, 350, § 75.
 1901, 370, § 2. 1909, 514, §§ 117, 145. 1921, 306, § 8.

Duties of industrial health inspector. 1907, 537, § 3. SECTION 18. Every industrial health inspector shall inform himself 1
 1912, 726, § 6. concerning the health of all minors employed in factories within his 2
 1919, 350, § 69. district; and whenever he may deem it advisable or necessary, he shall 3
 call the ill health or physical unfitness of any minor to the attention of 4
 his parents, guardians or employer and of the department. 5

GENERAL PROVISIONS AS TO EMPLOYMENT.

Interfering with employment forbidden. 1875, 211, § 2. P. S. 74, § 2. SECTION 19. No person shall, by intimidation or force, prevent 1
 or seek to prevent a person from entering into or continuing in the 2
 employment of any person. 3

1894, 508, § 2. 1909, 514, §§ 18, 145. 147 Mass. 212.
 R. L. 106, § 11. 128 Mass. 70. 167 Mass. 92.

[Penalty, § 180.]

Compelling a person not to join a labor organization forbidden. 1892, 330. SECTION 20. No person shall, himself or by his agent, coerce or 1
 compel a person into a written or oral agreement not to join or become 2
 a member of a labor organization as a condition of his securing employ- 3
 ment or continuing in the employment of such person. 4

1894, 437; 508, § 3. 1909, 514, §§ 19, 145. 236 Mass. 504.
 R. L. 106, § 12. 188 Mass. 353.

[Penalty, § 180.]

Fraudulent advertisements concerning employment penalized. 1908, 217. 1909, 514, §§ 27, 145. SECTION 21. Whoever knowingly causes to be printed or published 1
 a false or fraudulent notice or advertisement for help or for obtaining 2
 work or employment shall be punished by a fine of not more than five 3
 hundred dollars or by imprisonment for not more than three months, or 4
 both. 5

Advertising for employees during strike, etc. 1910, 445, § 1. 1914, 347, §§ 1, 6. 216 Mass. 356. SECTION 22. If an employer, during the continuance of a strike, 1
 lockout or other labor trouble among his employees, publicly adver- 2
 tises in newspapers or by posters or otherwise for employees, or by 3
 himself or his agents solicits persons to work for him to fill the places 4
 of strikers, he shall plainly and explicitly mention in such advertise- 5
 ments or oral or written solicitations that a strike, lockout or other labor 6
 trouble exists among his employees. 7

[Duty of board of conciliation under §§ 22 and 23, Chap. 150, § 4.]

Same subject. Penalty. 1910, 445, § 2. 1914, 347, §§ 2-4, 6. 1915, 108. 1916, 143. 1919, 350, § 69. 207 Mass. 394. SECTION 23. No person, during the continuance of a strike, lockout 1
 or other labor trouble among his employees or those of another person, 2
 shall directly or indirectly procure or attempt to procure, or assist in 3
 any way in procuring or attempting to procure, persons to fill the places 4
 of employees involved in such strike, lockout or other labor trouble, if 5
 such persons are or have been solicited by means of advertisements or 6
 oral or written statements in which it has not been plainly and explicitly 7
 mentioned that a strike, lockout or other labor trouble exists in the 8
 establishment where such persons are to be employed. This provision 9

10 shall apply whether such advertisements or oral or written solicitations
 11 were made within or without the commonwealth.

12 After investigation by and upon complaint of the department, any
 13 person violating any provision of this or the preceding section shall
 14 be punished by a fine of not more than one hundred dollars.

1 SECTION 24. No person shall be punished criminally, or held liable
 2 or answerable in any action at law or suit in equity, for persuading or
 3 attempting to persuade, by printing or otherwise, any other person to do
 4 anything, or to pursue any line of conduct not unlawful or actionable
 5 or in violation of any marital or other legal duty, unless such persuasion
 6 or attempt to persuade is accompanied by injury or threat of injury to
 7 the person, property, business or occupation of the person persuaded
 8 or attempted to be persuaded, or by disorder or other unlawful conduct
 9 on the part of the person persuading or attempting to persuade, or is
 10 a part of an unlawful or actionable conspiracy.

Peaceful persuasion not penalized.
 1913, 690
 231 Mass. 220.
 235 Mass. 269.
 236 Mass. 310.
 237 Mass. 537.
 242 Mass. 566.

PUBLIC EMPLOYMENT.

1 SECTION 25. Every employee in public work shall lodge, board and
 2 trade where and with whom he elects; and no person or his agents or
 3 employees under contract with the commonwealth, a county, city or
 4 town, or with a department, board, commission or officer acting there-
 5 for, for the doing of public work shall directly or indirectly require, as
 6 a condition of employment therein, that the employee shall lodge, board
 7 or trade at a particular place or with a particular person. This section
 8 shall be made a part of the contract for such employment.

Public employee may select lodging, etc.
 1900, 469
 R. L. 106, § 13.
 1909, 514,
 §§ 20, 145.

[Penalty, § 180.]

1 SECTION 26. In the employment of mechanics, teamsters and labor-
 2 ers in the construction, addition to and alteration of public works by
 3 the commonwealth, or by a county, town or district, or by persons
 4 contracting therewith for such construction, addition to and alteration
 5 of public works, preference shall first be given to citizens of the common-
 6 wealth who have served in the army or navy of the United States in time
 7 of war and have been honorably discharged therefrom or released from
 8 active duty therein, and who are qualified to perform the work to which
 9 the employment relates; and secondly, to citizens of the commonwealth
 10 generally, and, if they cannot be obtained in sufficient numbers, then to
 11 citizens of the United States, and every contract for such work shall
 12 contain a provision to this effect. The wages for a day's work paid to
 13 mechanics and teamsters employed in the construction, addition to or
 14 alteration of public works as aforesaid shall be not less than the customary
 15 and prevailing rate of wages for a day's work in the same trade or occu-
 16 pation in the locality where such public works are under construction
 17 or being added to or altered; provided, that no town in the construction,
 18 addition to or alteration of public works shall be required to give pref-
 19 erence to veterans, not residents of such town, over citizens thereof.
 20 This section shall also apply to regular employees of the commonwealth
 21 or of a county, town or district when such employees are employed in
 22 the construction, addition to and alteration of public works for which
 23 special appropriations are provided. Any person or contractor who
 24 knowingly and wilfully violates this section shall be punished by a fine
 25 of not more than one hundred dollars.

Preference to veterans and citizens in public work.
 Wages.
 Penalty.
 1896, 494.
 R. L. 106, § 14.
 1904, 311.
 1909, 514,
 §§ 21, 145
 1914, 474, § 1.
 1917, 260.
 1919, 253.
 1931, 377.
 223 Mass. 109.
 4 Op. A. G. 140,
 203, 300.

Dispute as
to wages.
1914, 471, § 2.
1919, 350, § 69.

SECTION 27. In case of any dispute as to such customary and prevailing rate of wages, the department shall investigate the wages paid in the trade or occupation in the locality where such public works are under construction, and decide what rate of wages shall be paid.

1
2
3
4

Actions
against cities
or towns for
labor.
1892, 270.
R. L. 25, § 57.
1909, 514,
§§ 22, 145.
173 Mass. 408.
175 Mass. 201.
225 Mass. 292.

SECTION 28. A person to whom a debt is due for labor performed in constructing a building, sewer or drain, or water works or other public works owned by a town, under a contract with any person having authority from or rightfully acting for such town in furnishing such labor, shall have a right of action against such town to recover such debt if, within thirty days after he ceases to perform such labor, he files in the clerk's office of the town against which he claims such right of action a written statement under oath of the amount of the debt so due to him, and the names of the persons for whom and by whose employment the labor was performed, and if, within sixty days after he ceases to perform such labor, he commences such action. Such right of action shall not be lost by reason of a mistake in stating the amount due; but the claimant shall not recover as damages a larger amount than is named in said statement as due to him, with interest. No person who has contracted to furnish labor other than his own in such construction shall have such right of action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Security for
payment of
labor on pub-
lic works.
1904, 349.
1909, 514,
§§ 23, 145.
1929, 210.
1929, 110.
204 Mass. 494.
206 Mass. 585.
211 Mass. 413.
218 Mass. 535.
225 Mass. 292.
233 Mass. 429.
235 Mass. 263.
236 Mass. 319.
238 Mass. 257.
239 Mass. 216.
241 Mass. 266.

SECTION 29. Officers or agents who contract in behalf of any county, city or town for the construction or repair of public buildings or other public works shall obtain sufficient security, by bond or otherwise, for payment by the contractor and sub-contractors for labor performed or furnished and materials used or employed in such construction or repair; but to obtain the benefit of such security the claimant shall file in the office of the county treasurer or of the city or town clerk a sworn statement of his claim within sixty days after the claimant ceases to perform labor or furnish labor or materials, and shall, within one year after the filing of such claim, file a petition in the superior court for the proper county to enforce his claim or intervene in a petition already filed.

1
2
3
4
5
6
7
8
9
10
11

252 Mass. 571.

255 Mass. 228.

259 Mass. 310.

Eight hour day
and forty-eight
hour week for
certain public
employees.
Exception.
1890, 375.
1891, 350.
1894, 508, § 7.
R. L. 106, § 19.
1906, 517,
§§ 1, 3.
1907, 269, § 1;
570.
1909, 514,
§§ 37, 39, 145.
1911, 194, § 1.
1916, 240,
§§ 1, 3.
1923, 236.
220 Mass. 416
226 Mass. 517.
1 Op. A. G. 10.
2 Op. A. G. 442.
475, 497.
3 Op. A. G. 93,
567.
4 Op. A. G. 20,
443.

SECTION 30. The service of all laborers, workmen and mechanics now or hereafter employed by the commonwealth or any county therein or any town which, by vote of the city council, or of the voters at a town meeting, accepts this section or has accepted section one of chapter two hundred and forty of the General Acts of nineteen hundred and sixteen, or by any contractor or sub-contractor for or upon any public works of the commonwealth or of any county therein or of any such town is hereby restricted to eight hours in any one day and to forty-eight hours in any one week. No officer of the commonwealth, except as provided herein, or of any county or of any such town, no such contractor or sub-contractor or other person whose duty it is to employ, direct or control the service of such laborers, workmen or mechanics shall require or permit any such laborer, workman or mechanic to work more than eight hours in any one day, or more than forty-eight hours in any one week, except in cases of extraordinary emergency. The provisions of this section shall not prohibit the employment by the state department of public works, or by any contractor or sub-contractor for said department, of laborers, workmen and mechanics for more than eight hours in any one day in the construction or reconstruction of highways when,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

20 in the opinion of the commissioner of labor and industries, public neces-
 21 sity so requires.

1 SECTION 31. The service of all laborers, workmen and mechanics
 2 now or hereafter employed by any town which has accepted section
 3 twenty of chapter one hundred and six of the Revised Laws, or section
 4 forty-two of chapter five hundred and fourteen of the acts of nineteen
 5 hundred and nine, or said section forty-two, as affected by chapter four
 6 hundred and ninety-four of the acts of nineteen hundred and eleven,
 7 and which has not accepted section one of chapter two hundred and
 8 forty of the General Acts of nineteen hundred and sixteen, or by any
 9 contractor or sub-contractor for or upon any public works of any such
 10 town, is hereby restricted to eight hours in any one day. No officer of
 11 any such town, no such contractor or sub-contractor or other person
 12 whose duty it is to employ, direct or control the service of such laborers,
 13 workmen or mechanics shall require or permit any such laborer, work-
 14 man or mechanic to work more than eight hours in any one day, except
 15 in cases of extraordinary emergency. But any such town may accept
 16 the preceding section and shall thereupon become subject thereto.

Eight hour day
 for certain em-
 ployees in cer-
 tain cities and
 towns
 1899, 314.
 1900, 357.
 R. L. 106, § 20.
 1906, 517, § 1.
 1909, 514,
 §§ 12, 145.
 1911, 494, § 1.
 208 Mass. 619.
 220 Mass. 416.
 226 Mass. 517.
 2 Op. A. G. 342.
 3 Op. A. G.
 93, 567.
 4 Op. A. G. 413.

1 SECTION 32. In construing sections thirty and thirty-one, engineers
 2 shall be regarded as mechanics, and a threat of loss of employment or a
 3 threat to obstruct or prevent the obtaining of employment or to refrain
 4 from employing in the future shall be considered to be "requiring".

Definitions.
 1907, 269, § 1;
 570.
 1909, 514, § 37.
 1911, 494, § 1.
 1916, 240, § 1.

1 SECTION 33. It shall not be a violation of section thirty or thirty-
 2 one if, in the event of a Saturday half holiday being given to a laborer,
 3 workman or mechanic, his hours of labor upon other working days
 4 are increased sufficiently to make a total of forty-eight hours for his
 5 week's work.

Limitation of
 §§ 30 and 31.
 1906, 517, § 1.
 1907, 269, § 1;
 570.
 1909, 514, § 37.
 1911, 494, § 1.

1916, 240, § 1.

1 SECTION 34. Every contract, except for the purchase of material or
 2 supplies, involving the employment of laborers, workmen or mechanics,
 3 to which the commonwealth or any county or any town, subject to
 4 section thirty, is a party, shall contain a stipulation that no laborer,
 5 workman or mechanic working within the commonwealth, in the employ
 6 of the contractor, sub-contractor or other person doing or contracting
 7 to do the whole or a part of the work contemplated by the contract, shall
 8 be required or permitted to work more than eight hours in any one day
 9 or more than forty-eight hours in any one week, except in cases of extraor-
 10 dinary emergency, or in case any town subject to section thirty-one is
 11 a party to such a contract, more than eight hours in any one day, except
 12 as aforesaid; provided, that in contracts entered into by the depart-
 13 ment of public works for the construction or reconstruction of highways
 14 there may be inserted in said stipulation a provision that said depart-
 15 ment, or any contractor or sub-contractor for said department, may
 16 employ laborers, workmen and mechanics for more than eight hours in
 17 any one day in such construction or reconstruction when, in the opinion
 18 of the commissioner of labor and industries, public necessity so requires.
 19 Every such contract not containing the aforesaid stipulation shall be
 20 null and void.

Contracts for
 public work to
 contain stipula-
 tion as to eight
 hour day, etc.
 Exception.
 Certain con-
 tracts void.
 1893, 106.
 1894, 508, § 8.
 R. L. 106, § 21.
 1906, 517, § 2.
 1907, 269, § 2.
 1909, 514,
 §§ 38, 145.
 1911, 494, § 2.
 1924, 247.
 3 Op. A. G. 73.
 4 Op. A. G. 303.

1 SECTION 35. Any agent or official of the commonwealth or of any
 2 county, city or town, or any contractor or sub-contractor, or any agent

Penalty for
 violating § 30,
 31 or 34.

1906, 517, § 4. or person acting on behalf of any contractor or sub-contractor, who 3
 1907, 269, § 3. violates section thirty, thirty-one or thirty-four shall be punished by a 4
 1909, 514, § 40. fine of not more than one thousand dollars or by imprisonment for six 5
 1911, 494, § 3. months, or both. 6

Eight hour day not applicable in certain cases. 1907, 570. SECTION 36. Sections thirty, thirty-one and thirty-four shall not 1
 1909, 514, § 39. apply to the preparation, printing, shipment and delivery of ballots to 2
 1911, 494, § 4. be used at a caucus, primary, state, city or town election, nor during 3
 1916, 240, § 2. the sessions of the general court to persons employed in legislative 4
 1918, 90, § 2; printing or binding; nor shall they apply to persons employed in any 5
 268. state, county or municipal institution, on a farm, or in the care of the 6
 1919, 350, grounds, in the stable, in the domestic or kitchen and dining room 7
 §§ 34, 99, 101. service or in store rooms or offices, or to persons employed by the com- 8
 missioners of the Massachusetts nautical school, on boats maintained 9
 by the state police for the enforcement of certain laws in the waters of 10
 the commonwealth, or in connection with the care and maintenance 11
 of state armories, or to the purchase, operation or lease of farm ma- 12
 chinery by the department of agriculture. 13

Nine hour day in certain cities and towns. 1890, 375. SECTION 37. In any town not subject to section thirty or thirty-one 1
 1891, 350. nine hours shall constitute a day's work for all laborers, workmen and 2
 mechanics employed by or on behalf of such town. 3
 1894, 508, § 7. R. L. 106, § 19. 1909, 514, §§ 43, 145. 1 Op. A. G. 10.

Vacations for certain public employees. 1919, 152; 350, § 123. SECTION 38. All laborers, workmen and mechanics permanently in 1
 3 Op. A. G. 413. the employ of the commonwealth or the metropolitan district commis- 2
 Op. A. G. sections thirty-two and thirty-six shall be entitled to an annual vacation 3
 (1917) 142. of at least twelve working days with pay. 4
 5

Hours of labor of officers, etc., of state penal institutions. 1908, 547, § 1. SECTION 39. The hours of labor of officers, instructors and such 1
 1909, 514, § 53, 145. other employees of state penal institutions as are described in section 2
 thirty-six shall not exceed sixty in each week, and every such officer, 3
 instructor or employee whose presence is required at the institution 4
 seven days a week shall be given at least two days' vacation in each 5
 month, without loss of pay, in addition to the regular annual vacation. 6
 This section shall not prevent the warden or superintendent from requir- 7
 ing the services of all his officers, instructors and employees to assist 8
 in recapturing an escaped prisoner or in any case of extraordinary 9
 emergency. 10

Hours of labor in county institutions. Penalty. 1900, 425. SECTION 40. Officers, watchmen and matrons employed by counties 1
 R. L. 224, § 20. in penal and reformatory institutions shall be subject to sections thirty, 2
 1905, 231. thirty-two and thirty-three. The hours of labor of such other em- 3
 1909, 514, § 55. ployees of county jails and houses of correction as are described in 4
 1914, 623, § 1. section thirty-six shall not exceed sixty in each week, and every such 5
 employee whose presence is required at such institutions seven days a 6
 week shall be given at least two days of vacation in each month, without 7
 loss of pay in addition to any annual vacation. A county officer requir- 8
 ing an employee to work more than sixty hours in a week shall be 9
 punished by a fine of not less than twenty-five nor more than fifty 10
 dollars. 11

1 SECTION 41. Except as provided in section sixty-five of chapter
 2 ninety-two, all laborers, workmen and mechanics employed by the
 3 commonwealth in any capacity, or by any officer, department or board
 4 on behalf of the commonwealth, who are permanent employees or who
 5 have been certified under the civil service laws, and whose services can
 6 be dispensed with, shall be given a half holiday on every Saturday in
 7 the year without loss of pay.

Laborers, etc.,
 employed by
 the common-
 wealth to be
 given Saturday
 half holiday:
 1914, 688, § 1.
 1915, 288.
 1918, 262,
 §§ 5, 6.

1919, 350, §§ 63, 65.

3 Op. A. G. 61.

1 SECTION 42. So far as possible, all work by laborers, workmen and
 2 mechanics employed by the commonwealth or by any officer, depart-
 3 ment, board or commission on behalf of the commonwealth, shall be
 4 on the day work basis.

Laborers, etc.,
 in employ of
 common-
 wealth to be on
 day work basis
 if possible.

1914, 688, § 2.

1915, 288.

1918, 262, §§ 5, 6.

1 SECTION 43. The application of a citizen of the commonwealth for
 2 employment in any department of the commonwealth or of any political
 3 subdivision thereof or in any department of a street railway company,
 4 operated, owned, controlled or financially aided in any way by the com-
 5 monwealth, or by any political subdivision thereof, shall not be affected
 6 by the applicant's national origin, race or color.

Equal oppor-
 tunity of cer-
 tain employ-
 ment for all
 citizens.
 1920, 376.

1 SECTION 44. No veteran, as defined in section twenty-one of chapter
 2 thirty-one, in the service of the commonwealth or of any county, city or
 3 town therein, or of the metropolitan district commission, except police-
 4 men and firemen and members of the department of public safety doing
 5 police duty, shall be required to perform any service on Memorial Day.
 6 Such veterans, if employed as policemen or firemen by the metropolitan
 7 district commission or by any city or town, may be granted leave of
 8 absence without loss of pay on Memorial Day by the said commission
 9 or by the governing authorities in cities and towns.

Holiday for
 veterans on
 Memorial
 Day.
 1920, 531.

PRIVATE EMPLOYMENT.

1 SECTION 45. Whoever requires an employee to work in any mill or
 2 factory on any legal holiday, except to perform such work as is both
 3 absolutely necessary and can lawfully be performed on Sunday, shall be
 4 punished by a fine of not more than five hundred dollars.

Penalty for re-
 quiring labor
 on holiday.
 1911, 151.
 §§ 1, 2.

1 SECTION 46. No person shall require or request any employee of a
 2 manufacturing or mechanical establishment to work more hours in any
 3 one day than is limited by law, in order to make up time lost by reason
 4 of a legal holiday.

Requiring
 illegal number
 of hours to
 make up for
 holiday for-
 bidden.

1913, 359, § 1.

[Penalty. § 180.]

1 SECTION 47. Whoever, except at the request of the employee, re-
 2 quires an employee engaged in any commercial occupation or in the
 3 work of any industrial process not subject to the following section or in
 4 the work of transportation or communication to do on Sunday the
 5 usual work of his occupation, unless he is allowed during the six days
 6 next ensuing twenty-four consecutive hours without labor, shall be
 7 punished by a fine of not more than fifty dollars; but this and the
 8 following section shall not be construed as allowing any work on Sunday
 9 not otherwise authorized by law.

One day's rest
 in seven.
 Penalty.
 1907, 577.
 1909, 514.
 §§ 52, 145.
 1913, 619,
 §§ 1, 2.

Same subject.
Penalty.
1913, 619,
§§ 1, 6.

SECTION 48. Every employer of labor engaged in carrying on any manufacturing or mercantile establishment in the commonwealth shall allow every person, except those specified in section fifty, employed in such manufacturing or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days. No employer shall operate any such manufacturing or mercantile establishment on Sunday unless he has complied with section fifty-one. Whoever violates this section shall be punished by a fine of fifty dollars.

Limitation of two preceding sections.
1907, 577, § 2.
1909, 514,
§§ 52, 145.
1913, 619, § 5.

SECTION 49. The two preceding sections shall not apply to establishments used for the manufacture or distribution of gas, electricity, milk or water, hotels, restaurants, drug stores, livery stables or garages, nor to the transportation, sale or delivery of food.

Exceptions.
1913, 619, § 2.

SECTION 50. Sections forty-seven and forty-eight shall not apply to (a) janitors; (b) watchmen; (c) employees whose duties include no work on Sunday other than (1) setting sponges in bakeries, (2) caring for live animals, (3) maintaining fires, (4) caring for machinery; (d) employees engaged in the preparation, printing, publication, sale or delivery of newspapers; (e) farm or personal service; (f) any labor called for by an emergency that could not reasonably have been anticipated.

List of persons working on Sunday.
1913, 619, § 3.
1919, 350, § 69.

SECTION 51. Before operating on Sunday, every employer subject to section forty-eight shall post in a conspicuous place on the premises a schedule containing a list of his employees who are required or allowed to work on Sunday and designating the day of rest for each, and shall file a copy of such schedule with the department, and promptly file with it a copy of every change therein. No employee shall be required or allowed to work on the day of rest designated for him.

Time book.
Penalties for violating §§ 51 and 52.
1913, 619,
§§ 4, 6.
1919, 350, § 69.

SECTION 52. Every employer subject to section forty-eight shall keep a time book, open to inspection by the department, showing the names and addresses of all employees and the hours worked by each of them in each day. Whoever violates this or the preceding section shall be punished by a fine of fifty dollars.

WORK BY WOMEN AND CHILDREN.

Heavy boxes, etc., moved by women to be provided with casters, etc.
Penalty.
1913, 426,
§§ 1, 2.
1914, 241.
1915, 27.

SECTION 53. Boxes, baskets and other receptacles weighing with their contents seventy-five pounds or over, which are to be moved by female employees in any manufacturing or mechanical establishment, shall be provided with pulleys or casters connected with such boxes or other receptacles, so as to be moved easily from place to place in such establishments. Whoever violates this section shall be punished by a fine of not more than fifty dollars for every day during which such violation continues.

Investigations of core rooms where women are employed.
Rules.
Penalty.
1912, 653, §§ 1, 3; 726, § 5.
1919, 350, § 69.

SECTION 54. The department shall investigate core rooms where women are employed, and shall make rules regulating the employment of women therein. The rules shall relate to the structure and location of the rooms, the emission of gases and fumes from ovens, and the size and weight which the women shall be allowed to lift or work on. A copy of the rules shall be posted in every core room where women are

7 employed. Whoever violates any such rule shall be punished by a fine
8 of not less than twenty-five nor more than five hundred dollars.

1 SECTION 55. No female person shall knowingly be employed in
2 laboring in a mercantile, manufacturing or mechanical establishment
3 within two weeks before or four weeks after childbirth. The foregoing
4 provision shall be included in the notice with regard to the employment
5 of women required to be posted in such establishments.

Employment of
women shortly
before and after
confinement
forbidden.
1911, 229,
§§ 1, 2.

[Penalty, § 180.]

1 SECTION 56. No child and no woman shall be employed in laboring
2 in any factory or workshop, or in any manufacturing, mercantile, me-
3 chanical establishment, telegraph office or telephone exchange, or by
4 any express or transportation company, or in any laundry, hotel, mani-
5 cing or hair dressing establishment, motion picture theatre, or as an
6 elevator operator, or as a switchboard operator in a private exchange,
7 more than nine hours in any one day except that hotel employees who
8 are not employed in a manufacturing, mercantile or mechanical estab-
9 lishment connected with a hotel may be employed more than nine but
10 not more than ten hours in any one day; and in no case shall the hours
11 of labor exceed forty-eight in a week, except that in manufacturing estab-
12 lishments where the employment is determined by the department to
13 be by seasons, the number of such hours in any week may exceed forty-
14 eight, but not fifty-two, provided that the total number of such hours in
15 any year shall not exceed an average of forty-eight hours a week for the
16 whole year, excluding Sundays and holidays; and if any child or woman
17 shall be employed in more than one such place, the total number of hours
18 of such employment shall not exceed forty-eight hours in any one week.
19 Every employer, except those hereinafter designated, shall post in a
20 conspicuous place in every room where such persons are employed a
21 printed notice stating the number of hours' work required of them on
22 each day of the week, the hours of beginning and stopping work, and the
23 hours when the time allowed for meals begins and ends, or, in case of
24 mercantile establishments and of establishments exempted from sections
25 ninety-nine and one hundred, the time, if any, allowed for meals. The
26 employment of any such person at any time other than as stated in said
27 printed notice shall be deemed a violation of this section unless it appears
28 that such employment was to make up time lost on a previous day of
29 the same week in consequence of the stopping of machinery upon which
30 such person was employed or dependent for employment; but no stop-
31 ping of machinery for less than thirty consecutive minutes shall justify
32 such overtime employment, nor shall such overtime employment be
33 authorized until a written report of the day and hour of its occurrence
34 and its duration is sent to the department, nor shall such overtime em-
35 ployment be authorized because of the stopping of machinery for the
36 celebration of any holiday. Every employer engaged in furnishing
37 public service, or in any other kind of business in respect to which the
38 department shall find that public necessity or convenience requires the
39 employment of children or women by shifts during different periods or
40 parts of the day, shall post in a conspicuous place in every room where
41 such persons are employed a printed notice stating separately the hours
42 of employment for each shift or tour of duty and the amount of time
43 allowed for meals. A list by name of the employees, stating in which
44 shift each is employed, shall be kept on file at each place of employment

Hours of labor
for women and
children
1842, 60, § 3.
G. S. 42, § 3.
1867, 285, § 2.
1871, 221, § 1.
1880, 191, § 1.
P. S. 71, § 1.
1883, 157.
1884, 275,
§§ 1, 3.
1886, 30.
1887, 280, § 1.
1892, 357, § 1.
1894, 508,
§§ 10, 11.
1900, 378,
1901, 113,
R. L. 106,
§§ 23, 24.
1902, 455.
1904, 397.
1908, 645.
1909, 514,
§§ 17, 18, 115.
1911, 313, 484.
1912, 452, 477.
1913, 738, 831,
§ 17.
1915, 57.
1916, 222.
1919, 115;
311, § 1;
350, § 69.
1921, 280.
210 Mass. 387.
223 Mass. 299.
232 U. S. 671
3 Op. A. G. 269
4 Op. A. G. 118.
Op. A. G.
(1917) 42.
Op. A. G.
(1919) 63.
Op. A. G.
(1920) 160.

[Penalty, § 57.]

for inspection by employees and by officers charged with the enforce- 45
 ment of the law. In cases of extraordinary emergency or extraordinary 46
 public requirement, this section shall not apply to employers engaged in 47
 public service or in other kinds of business in which shifts may be required 48
 as hereinbefore stated; but in such cases no employment in excess of 49
 the hours hereby authorized shall be considered as legalized until a 50
 written report of the day and hour of its occurrence and its duration is 51
 sent to the department. 52

Penalty for violation of preceding section.
 1842, 60, § 4.
 G. S. 42, § 3.
 1867, 285, § 3.
 1874, 221, § 2.
 1879, 207.
 1880, 194, § 2.
 P. S. 74, § 5.
 1884, 275, § 2.
 1887, 280, § 1.

SECTION 57. A parent or guardian who permits a child under his 1
 control to be employed in violation of the preceding section, and any 2
 person who, either for himself or as superintendent, overseer or agent 3
 for another, employs any person in violation of said section, or fails 4
 to post the notice required by it, or makes a false report of the stopping 5
 of machinery, shall be punished by a fine of not less than fifty nor more 6
 than one hundred dollars. 7

1894, 508, §§ 59-61. 1909, 514, §§ 49, 145.
 R. L. 106, § 25. 210 Mass. 387.

Women and minors operating elevators.
 1918, 147.

SECTION 58. Any law restricting the hours of women and minors 1
 laboring in factories or workshops, or in mercantile, manufacturing or 2
 mechanical establishments, shall, unless it is otherwise expressly pro- 3
 vided, apply to women and minors operating elevators in such establish- 4
 ments, or in any building occupied in whole or in part by any such 5
 establishment, or in any office building. 6

Night labor for women.
 Penalty.
 1890, 183.
 1892, 83.
 1894, 508,
 §§ 12, 68.
 R. L. 106, § 27.
 1907, 267.
 1909, 514,
 §§ 51, 145.

SECTION 59. No person, and no agent or officer of a person, shall 1
 employ a woman over twenty-one in any capacity for the purpose of 2
 manufacturing before six o'clock in the morning or after ten o'clock 3
 in the evening, or in the manufacture of textile goods after six o'clock 4
 in the evening. Whoever violates any provision of this section shall 5
 be punished by a fine of not less than twenty nor more than fifty dollars. 6

1 Op. A. G. 209.

Employment of children under fourteen.
 1867, 285, § 1.
 1876, 52, § 1.
 P. S. 48, § 1.
 1883, 224.
 1885, 222.
 1888, 348,
 §§ 1, 2.
 1892, 352.
 1894, 508,
 §§ 13, 15.
 1898, 494, § 1.
 R. L. 106, § 28.
 1905, 267, § 1.
 1906, 284, § 2.
 1909, 514,
 §§ 56, 145
 1913, 779, § 14;
 S31, § 1.

SECTION 60. Except as provided in section sixty-nine, no person shall 1
 employ a minor under fourteen or permit him to work in or about or in 2
 connection with any factory, work shop, manufacturing, mechanical or 3
 mercantile establishment, barber shop, bootblack stand or establishment. 4
 public stable, garage, brick or lumber yard, telephone exchange, tele- 5
 graph or messenger office, or in the construction or repair of buildings, 6
 or in any contract or wage earning industry carried on in tenement or 7
 other houses. No such minor shall be employed at work performed for 8
 wage or other compensation, to whomsoever payable, during the hours 9
 when the public schools are in session, nor, except as provided in section 10
 sixty-nine, shall he be employed at work before half past six o'clock in 11
 the morning or after six o'clock in the evening. 12

1921, 410, § 2. 209 Mass. 489. 3 Op. A. G. 177.
 204 Mass. 18. 2 Op. A. G. 616.
 [Penalty, § 78]

Employment of children under sixteen.
 Penalty for violation of certain provisions.

SECTION 61. No person shall employ a minor under sixteen or 1
 permit him to work in operating or assisting in operating any of the 2
 following machines: (1) circular or hand saws, (2) wood shapers, (3) 3
 wood jointers, (4) planers, (5) picker machines or machines used in 4

5 picking wool, cotton, hair or other material, (6) paperlacc machines, 1887, 121, § 1.
 6 (7) leather burnishing machines, (8) job or cylinder printing presses 1894, 508,
 7 operated by power other than foot power, (9) stamping machines used §§ 31, 73.
 8 in sheet metal and tinware or in paper or leather manufacturing or R. L. 106, § 42.
 9 in washer and nut factories, (10) metal or paper cutting machines, (11) 1909, 514,
 10 corner staying machines in paper box factories, (12) corrugating rolls §§ 73, 145.
 11 such as are used in corrugated paper or in roofing, or washboard fac- 1913, 831,
 12 tories, (13) steam boilers, (14) dough brakes or cracker machinery of any § 2, 3.
 13 description, (15) wire or iron straightening or drawing machinery, (16) 1920, 298.
 14 rolling mill machinery, (17) power punches or shears, (18) washing or [General
 15 grinding or mixing machinery, (19) calendar rolls in paper and rubber penalty, § 78.]
 16 manufacturing or other heavy rolls driven by power, (20) laundering
 17 machinery, (21) upon or in connection with any dangerous electrical
 18 machinery or appliances, or in adjusting or assisting in adjusting any
 19 hazardous belt to any machinery, or in oiling or cleaning hazardous
 20 machinery, or in proximity to any hazardous or unguarded belts, ma-
 21 chinery or gearing while such machinery or gearing is in motion; or
 22 in scaffolding; or in heavy work in the building trades; or in stripping,
 23 assorting, manufacturing or packing tobacco; or in any tunnel; or in
 24 a public bowling alley; or in a pool or billiard room. No such minor
 25 shall be employed or permitted to operate, clean or repair a freight
 26 elevator; violation of this provision shall be punished by a fine of not
 27 more than one hundred dollars.

1 SECTION 62. No person shall employ a minor under eighteen or Employment of
 2 permit him to work: (1) in or about blast furnaces; (2) in the operation minors under
 3 or management of hoisting machines; (3) in oiling or cleaning hazardous eighteen
 4 machinery in motion; (4) in the operation or use of any polishing or 1913, 831, § 5,
 5 buffing wheel; (5) at switch tending; (6) at gate tending; (7) at track 267 Mass. 208.
 6 repairing; (8) as a brakeman, fireman, engineer, motorman or con- [Penalty, § 78.]
 7 ductor upon a railroad or railway; (9) as a fireman or engineer upon
 8 any boat or vessel; (10) in operating motor vehicles of any description;
 9 (11) in or about establishments wherein gunpowder, nitroglycerine,
 10 dynamite or other high or dangerous explosive is manufactured or
 11 compounded; (12) in the manufacture of white or yellow phosphorus
 12 or phosphorus matches; (13) in any distillery, brewery, or any other
 13 establishment where malt or alcoholic liquors are manufactured, packed,
 14 wrapped or bottled; (14) in that part of any hotel, theatre, concert hall,
 15 place of amusement or other establishment where intoxicating liquors
 16 are sold. This section shall not prohibit the employment of minors in
 17 drug stores.

1 SECTION 63. The department may, after a hearing duly held, deter- Department
 2 mine whether or not any particular trade, process of manufacture or may determine
 3 occupation, in which the employment of minors under the age of sixteen processes, etc.,
 4 or eighteen is not forbidden by law, or any particular method of carry- injurious to
 5 ing on such trade, process of manufacture or occupation, is sufficiently children
 6 dangerous or is sufficiently injurious to the health or morals of minors Prohibition of employ-
 7 under sixteen or eighteen to justify their exclusion therefrom. No ment therein.
 8 minor under sixteen or eighteen shall be employed or permitted to work 1901, 164.
 9 in any trade, process or occupation thus determined to be dangerous or R. L. 106, § 44.
 10 injurious to such minors, respectively. 1909, 514, § 75.
 1910, 404.
 1913, 831,
 §§ 4, 6.
 1919, 311, § 1;
 350, § 69.
 [Penalty, § 78.]

Employment of persons under twenty-one. 1913, 831, § 7. [Penalty, § 78.]

SECTION 64. No person shall employ a minor or permit him to work in, about or in connection with any saloon or bar room where alcoholic liquors are sold. No person shall knowingly take or send any such minor or cause or permit him to be sent to any disorderly house or house of prostitution or assignation or other immoral place of resort or amusement.

Hours of labor of children under sixteen. 1913, 805, § 1; 831, § 8. 1919, 311, § 1, cl. 5. 1921, 351, § 1; 410, § 3. 4 Op. A. G. 257 [Penalty, § 78.]

SECTION 65. No person shall employ a minor under sixteen or permit him to work in, about or in connection with any establishment or occupation named in section sixty, or for which an employment certificate is required, for more than six days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, or, except as provided in section sixty-nine, before half past six o'clock in the morning, or after six o'clock in the evening. The time spent by such a minor in a continuation school or course of instruction as required by section twenty-two of chapter seventy-one shall be reckoned as a part of the time he is permitted to work.

Hours of labor of boys under eighteen and girls under twenty-one. 1890, 183. 1892, 83. 1894, 508, §§ 12, 68. R. L. 106, § 27. 1907, 267. 1909, 514, §§ 51, 145. 1913, 831, § 9.

SECTION 66. No person shall employ a boy under eighteen or a girl under twenty-one or permit such a boy or girl to work in, about or in connection with any establishment or occupation named in section sixty before five o'clock in the morning or after ten o'clock in the evening, or in the manufacture of textile goods after six o'clock in the evening; provided, that girls under twenty-one may be employed as operators in regular service telephone exchanges until, but not after, eleven o'clock in the evening.

1917, 294. 261 Mass. 226. 1 Op. A. G. 209. 4 Op. A. G. 257. [Penalty, § 78.]

Same subject. 1913, 831, § 9. 1917, 294. 1919, 113. [Penalty, § 78.]

SECTION 67. Except as limited by section fifty-six, no person shall employ a boy under eighteen or a girl under twenty-one or permit such a boy or girl to work in, about or in connection with any establishment or occupation named in section sixty for more than six days in a week, or more than fifty-four hours in a week, or more than ten hours in a day.

Employment of minors as messengers, etc., regulated. 1911, 629, § 1. 1913, 831, § 10. [Penalty, § 78.]

SECTION 68. Except for the delivery of messages directly connected with the business of conducting or publishing a newspaper to a newspaper office or directly between newspaper offices, no person shall employ a minor or permit him to work as messenger for a telegraph, telephone or messenger company in the distribution, transmission or delivery of goods or messages before five o'clock in the morning or after ten o'clock in the evening.

Street trades for children regulated. 1913, 831, § 11. 1921, 410, § 1. [Penalty, § 83.]

SECTION 69. No boy under twelve and no girl under eighteen shall, in any city of over fifty thousand inhabitants, sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place.

A boy over twelve may engage or be employed in any city or town in the sale or delivery of newspapers, magazines or other periodicals in a street or on a newspaper route; provided that no minor under fourteen

9 may so engage or be employed during the hours that the public schools
10 of the city or town in which such minor resides are in session nor before
11 six o'clock in the morning nor after eight o'clock in the evening, nor
12 unless such minor has secured a badge from the officer authorized to
13 issue employment certificates in the city or town where he resides to
14 which badge sections seventy-one and seventy-two shall apply.

1 SECTION 70. No minor under sixteen shall engage or be employed in
2 any of the trades or occupations mentioned in the preceding section
3 unless such minor complies with all the provisions of the three following
4 sections and with all the legal requirements concerning school attendance,
5 and unless a badge has been issued to such minor by the officer author-
6 ized to issue employment certificates in the city or town where such
7 minor resides.

Same subject,
1913, § 31, § 12.
1921, 110, § 4.
[Penalties,
§§ 78, 83.]

1 SECTION 71. Such badge shall not be issued until the officer issuing
2 the same shall have received, examined, approved and filed evidence
3 that such boy is twelve or over, which shall consist of the proof of age
4 required by section eighty-seven for the issuing of an employment certifi-
5 cate. Such officer may refuse to issue such badge to any boy who in
6 his opinion, after due investigation, is found physically or mentally in-
7 competent or unable to do such work in addition to the regular school
8 attendance required by law.

Issue of badges.
1913, § 31, § 13.

1 SECTION 72. The badge shall be worn, conspicuously exposed at all
2 times, by such boy while so working. No boy to whom the said badge
3 has been issued shall transfer the same to any other boy. He shall
4 exhibit the same upon demand at any time to any officer mentioned in
5 section seventy-seven. The school committee of any city may make
6 further regulations and requirements for issuing such badges.

Wearing, etc.,
of badges.
1913, § 31, § 14.
[Penalty, § 83.]

1 SECTION 73. No boy under sixteen shall engage in any of the trades
2 or occupations mentioned in section sixty-nine in any street or public
3 place after nine o'clock in the evening or before five o'clock in the morn-
4 ing, nor, unless provided with an employment certificate, during the
5 hours when the public schools in the city where such boy resides, or
6 the school which such boy attends, are in session.

Hours of street
trades for boys
under sixteen.
1913, § 31, § 15.
[Penalties,
§§ 78, 83.]

1 SECTION 74. Except as provided in section fifty-six, every person
2 employing any minor in any establishment mentioned in section sixty
3 shall keep posted in a conspicuous place in the room where such minor
4 is employed or permitted to work a printed notice stating the number
5 of hours such minor is required or permitted to work on each day of
6 the week, with the total for the week, the hours of commencing and
7 stopping work, and the hours when the time allowed for meals begins
8 and ends for each day of the week.

Lists of hours of
employment of
minors to be
posted
1913, § 31, § 16.
[Penalty, § 78.]

9 The employment of any minor at any time other than as stated in
10 said printed notice shall be deemed a violation of this section. The
11 terms of such notice for any week or part thereof shall not be changed
12 after the beginning of labor on the first day of the week without the
13 written consent of the commissioner.

Forms of lists to be furnished by the department. 1886, 90. 1887, 280, § 1. 1894, 508, § 11.

SECTION 75. The department, after approval by the attorney general, shall, upon application, furnish the printed forms of the lists and notices required by sections fifty-six and seventy-four to all persons required to post the same.

1901, 113. 1909, 514, §§ 47, 48, 145. 1915, 57. R. L. 106, §§ 23, 24. 1911, 484, § 1. 1916, 222. 1902, 435. 1912, 477. 1919, 113; 350, § 69. 1908, 645. 1913, 758; 831, § 18.

Duties of inspectors. 1913, 831, § 18.

SECTION 76. Inspectors shall visit and inspect the places of employment mentioned in sections sixty to sixty-eight, inclusive, and shall ascertain whether any minors are employed therein contrary to said sections. They shall report to the school authorities any cases of children under sixteen discharged for illegal employment. Any person may prosecute violations of sections sixty to seventy-four, inclusive.

Powers of supervisors of attendance. 1913, 831, § 19. 1931, 394, § 149.

SECTION 77. Sections sixty-nine to seventy-three, inclusive, relating to minors engaged in the occupations mentioned in section sixty-nine, shall be enforced by supervisors of attendance, who are hereby vested with full police powers for the purpose, and by police officers. The school committee of each city may appoint or designate one or more special supervisors of attendance to have supervision over minors engaged in such occupations and over the enforcement of said sections.

Penalty for violation of §§ 60-74. 1911, 629, § 2. 1913, 831, § 20. 1931, 394, § 150. 267 Mass. 208.

SECTION 78. Whoever, by himself or for others, or through agents, servants or foremen, employs, induces or permits any minor to work contrary to any provision of sections sixty to seventy-four, inclusive, shall, except as provided in section sixty-one, be punished for a first offence by a fine of not less than ten nor more than fifty dollars or by imprisonment for not more than one month, or both, and for a subsequent offence by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than two months, or both. The employment of any minor in violation of any provision of said sections, after the person employing such minor has been notified thereof in writing by any authorized inspector or supervisor of attendance, shall constitute a separate offence for every day during which the employment continues.

Penalty for hindering inspectors, etc. 1913, 831, § 21. 1931, 394, § 151.

SECTION 79. Any person who hinders or delays any authorized inspector or supervisor of attendance in the performance of his duties, or who refuses to admit to or locks out any such inspector or supervisor from any place which such inspector or supervisor is authorized to inspect, or who refuses to give to such inspector or supervisor such information as may be required for the proper enforcement of sections sixty to seventy-four, inclusive, shall be punished by a fine of not less than twenty-five nor more than two hundred dollars or by imprisonment for not more than two months, or both.

Penalty for furnishing articles to be illegally sold by minors engaged in street trades, or aiding in violation of §§ 69-73. 1913, 831, § 22.

SECTION 80. Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two

8 hundred dollars or by imprisonment for not more than two months,
9 or both.

1 SECTION 81. Any parent, guardian or custodian having a minor
2 under his control who compels or permits such minor to work in viola-
3 tion of any provision of sections sixty to seventy-four, inclusive, or
4 knowingly certifies to any materially false statement for the purpose of
5 obtaining the illegal employment of such minor, shall for a first offence
6 be punished by a fine of not less than two nor more than ten dollars or
7 by imprisonment for not more than five days, or both; and for a subse-
8 quent offence by a fine of not less than five nor more than twenty-five
9 dollars or by imprisonment for not more than ten days, or both.

Penalty on
parent or
guardian, etc.
1913, 831, § 23.

1 SECTION 82. Any inspector, supervisor of attendance, superintendent
2 of schools or other person authorized to issue the badges required by
3 section seventy, or any other person charged with the enforcement of
4 any of the provisions of sections sixty to eighty-three, inclusive, who
5 knowingly violates or fails to comply with any provision of said sections,
6 shall be punished by a fine of not less than ten nor more than two hun-
7 dred dollars or by imprisonment for not more than two months, or both.

Penalty on
officers.
1913, 831, § 21
1931, 394,
§ 152.

1 SECTION 83. Any minor who engages in any of the trades or occu-
2 pations mentioned in section sixty-nine in violation of any provision of
3 sections sixty-nine, seventy or seventy-two to seventy-four, inclusive,
4 shall for the first offence be warned by the supervisors or officers men-
5 tioned in section seventy-seven, and the parent, guardian or custodian
6 shall be notified. In case of a second violation, such minor may be
7 arrested and dealt with as a delinquent child, or, if over seventeen, shall
8 be punished by a fine not exceeding fifteen dollars. Upon the recom-
9 mendation of the principal or chief executive officer of the school which
10 such minor attends, or upon the complaint of any supervisor of attend-
11 ance, police officer or probation officer, the badge of any minor violating
12 any provision of sections seventy to seventy-three, inclusive, or who
13 becomes delinquent or fails to comply with all legal requirements con-
14 cerning school attendance, may be revoked for three months by the
15 officer issuing the same and the badge taken from such minor. If any
16 minor refuses to surrender such badge, or works at any of the occupa-
17 tions mentioned in section sixty-nine after notice of the revocation of
18 such badge, he shall be deemed to have violated section seventy.

Penalty on
minors
1913, 831, § 25.
1931, 394,
§ 153.

1 SECTION 84. A summons or warrant issued by any court or trial
2 justice having jurisdiction of the violation of any provision of sections
3 sixty to eighty-three, inclusive, or sections ninety to ninety-seven,
4 inclusive, may be served at the direction of the court or justice by an
5 inspector or by a school attendance officer or by any officer qualified to
6 serve criminal process.

Service of proc-
ess for violation
of sections re-
lating to em-
ployment of
children.
1906, 499, § 5.
1909, 514,
§§ 65, 145.

1913, 831, § 26.

1 SECTION 85. Sections sixty to eighty-three, inclusive, shall not apply
2 to the juvenile reformatories, other than the Massachusetts reforma-
3 tory, or prevent minors of any age from receiving manual training or
4 industrial education in or in connection with any school which has duly
5 been approved by the school committee or by the department of
6 education.

Limitation of
§§ 60-83.
1913, 831, § 27.
1919, 350, § 56.
Op. A. G.
(1919) 117.

Employment of children under sixteen without employment certificates, etc., forbidden. Penalty
 1836, 245, § 1.
 1849, 220, § 1.
 1855, 379
 1858, 83, § 1.
 G. S. 42, § 1.
 1867, 285, § 1.
 1876, 52, § 2.
 1878, 257, § 1.
 1880, 137, § 1.
 P. S. 48, § 2, 3.
 1888, 348, § 2.
 1892, 352.
 1894, 508, § 14, 69.
 1898, 494, § 2, 6.
 R. L. 106, § 29, 33.
 1906, 499, § 4, 6.
 1909, 514, § 57, 64, 145.
 1913, 779, § 15, 22.
 1916, 95, § 2.
 1919, 292, § 12.
 350, § 56, 69.
 1921, 351, § 2.
 1931, 394, § 154.
 [Further penalty, § 90.]

SECTION 86. No person shall employ a child between fourteen and sixteen or permit him to work in, about or in connection with any factory, workshop, manufacturing, mechanical or mercantile establishment or in any employment as defined in section one, other than street trades as defined in sections sixty-nine to seventy-three, inclusive, unless the person employing him procures and keeps on file, accessible to the supervisors of attendance of the town, to agents of the department of education, and to the department of labor and industries or its authorized agents or inspectors, the employment certificate issued to such child, and keeps a complete list of the names and ages of all such children employed therein conspicuously posted near the principal entrance of the building where they are employed; provided, that pupils in co-operative courses in public schools may be employed by any co-operating factory, manufacturing, mechanical or mercantile establishment or workshop, or any employment as defined in section one, upon securing from the superintendent of schools a special certificate covering this type of employment. Children between fourteen and sixteen employed in private domestic service or service on farms shall be required to secure a special certificate issued by the superintendent of schools covering such employment. On termination of the employment of a child whose employment or special certificate is on file, said certificate shall be returned by the employer within two days after said termination to the office of the superintendent of schools or school committee from which it was issued. Any person who retains an employment certificate contrary to this section shall be punished by a fine of not less than ten nor more than one hundred dollars.

Employment certificates.
 1888, 348, § 5.
 1894, 508, § 19.
 1898, 494, § 3.
 R. L. 106, § 30.
 1905, 267, § 2.
 1909, 514, § 58, 145.
 1910, 257, § 3.
 1911, 269, § 11.
 1913, 779, § 16;
 805, § 5, 7.
 1914, 316.
 1919, 62; 311, § 3 (2), 5.

SECTION 87. An employment certificate shall be issued only by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized in writing by the school committee of the town where the child to whom it is issued resides during his employment, or, if the child resides outside the commonwealth, of the town where the child is to be employed; provided, that no member of a school committee or other person authorized as aforesaid shall have authority to issue such certificate for any child then in or about to enter such person's own employment or the employment of a firm or corporation of which he is a member, officer or employee. If an employment certificate is issued to a child under sixteen authorizing employment in a town other than that of his residence, a duplicate thereof shall be sent forthwith to the superintendent of schools of the town where the employment is authorized.

The person issuing an employment certificate shall, before issuing it, receive, examine, approve and file the following papers, duly executed:

(1) A pledge or promise, signed by the employer or by an authorized manager or superintendent, setting forth the character of the specific employment, the number of hours per day during which the child is to be regularly employed, and the name and address of the employer, in which pledge or promise the employer agrees to employ the child in accordance with this chapter, and to return the employment certificate as provided in the preceding section.

(2) The school record of such child, filled out and signed as provided in the following section, except when such record may be waived thereunder.

28 (3) A certificate, signed by a school or family physician, or by a
29 physician appointed by the school committee, stating that the child
30 has been thoroughly examined by said physician, and in his opinion
31 is in sufficiently sound health and physically able to perform the work
32 which the child intends to do.

33 (4) Evidence of age, showing that the child is fourteen, which shall
34 consist of one of the following proofs of age:

35 (a) A birth certificate, or a duly attested transcript thereof, made
36 by a registrar of vital statistics or other officer charged with the duty
37 of recording births.

38 (b) A baptismal certificate, or a duly attested transcript thereof,
39 showing the age and date of baptism of the child.

40 (c) If none of the aforesaid proofs of age is obtainable, and only in
41 such case, the person issuing employment certificates may accept in
42 lieu thereof a passport or a duly attested immigration record, or tran-
43 script thereof, showing the age of the child, or other official or religious
44 record of the child's age; provided, that it shall appear to the satis-
45 faction of said person that the same is good and sufficient evidence of
46 the child's age.

47 (d) If none of the aforesaid proofs of age is obtainable, and only in
48 such case, the person issuing employment certificates may accept in
49 lieu thereof a record of age as given on the register of the school which
50 the child first attended in the commonwealth; provided, that such
51 record was kept for at least two years during the time when such child
52 attended school.

53 (e) If none of the aforesaid proofs of age is obtainable, and only in
54 such case, the person issuing employment certificates may receive the
55 signed statement of the school physician, or of the physician appointed
56 by the school committee, stating that after examination it is the opinion
57 of such physician that the child is at least fourteen. Such physician's
58 statement shall be accompanied by a statement signed by the child's
59 parent, guardian or custodian, or, if such child has no parent, guardian
60 or custodian, by the signed statement of the next adult friend. Such
61 signed statement shall contain the name, date and place of birth and
62 residence of the child, and shall certify that the parent, guardian, cus-
63 todian or next friend signing it is unable to produce any of the proofs
64 of age specified in this section. Such statement shall be so signed in the
65 presence of the person issuing the employment certificate. The person
66 issuing employment certificates may, before issuing a certificate, re-
67 quire the parent, guardian, custodian, or next adult friend of the child
68 to appear and approve in writing the issuance of said certificate.

69 A certificate relating to the age or place of birth of any child or to
70 any other fact sought to be established in relation to school attendance
71 shall be issued, upon request, by a town clerk, and no fee shall be charged
72 therefor by a town clerk or other official.

73 The superintendent of schools or a person authorized by him in
74 writing may revoke the employment certificate or home permit of any
75 child failing to attend a continuation school or course of instruction
76 when so required by sections twenty-two and twenty-five of chapter
77 seventy-one. Whenever such a certificate authorizing employment of a
78 child elsewhere than in his place of residence is held by him the super-
79 intendent of schools of the town of his employment shall forthwith
80 notify the superintendent of schools issuing the certificate of the child's
81 failure to comply with said section twenty-two.

School record
required for
employment
certificate.
1898, 494, § 4.
R. L. 106, § 31.
1904, 432.
1905, 213.
1907, 224.
1909, 514,
§§ 59, 145.
1913, 779, § 17.
1914, 580.
1916, 66.
1919, 292, § 13.
1925, 47.

SECTION 88. The school record required by the preceding section shall be filled out and signed by the principal or teacher in charge of the school which the child last attended, and shall be furnished only to a child who, after due examination and investigation, is found to be entitled thereto. Said school record shall state the grade last completed by such child and the studies pursued in completion thereof. It shall state the number of days during which such child has attended school during the twelve months next preceding the time of application for said school record. It shall also give the name, date of birth, and the residence of the child as shown on the records of the school and the name of the parent, guardian or custodian. If the school record is not obtainable from the principal or teacher in charge of the school which such child last attended, the requirement of a school record may be waived.

No such school record shall be issued or accepted and no employment certificate granted unless the child possesses the educational qualifications described in section one of chapter seventy-six; provided, that a child over fourteen who does not possess such qualifications may be granted a limited employment certificate good only during hours when school is not in session.

No such school record shall be issued or accepted unless the child has regularly attended the public or other lawfully approved schools for not less than one hundred and thirty days after becoming thirteen; provided, that the school record may be accepted in the case of a person who has been an attendant at a public day or other lawfully approved school for a period of not less than seven years, if in the opinion of the superintendent of schools such person is mentally incapable of acquiring the educational qualifications herein prescribed; and provided, further, that the superintendent may suspend this requirement in any case when in his opinion the interests of the child will best be served thereby.

Contents of
employment
certificate.
1888, 348,
§§ 4, 9.
1890, 299, § 1.
1894, 508,
§§ 17, 18, 62.
1898, 494,
§§ 5, 6.
R. L. 106, § 32.
1909, 514,
§§ 60, 145.
1910, 257, § 4.
1913, 779, § 18.
1914, 316.
1919, 350, § 56.
4 Op. A. G. 102.

SECTION 89. The employment certificate required under this chapter shall state the name, sex, date and place of birth and the place of residence of the child, and describe the color of his hair and eyes and any distinguishing facial marks. It shall certify that the child named in such certificate has personally appeared before the person issuing the certificate and has been examined, and, except in the case of a limited certificate, found to possess the educational qualifications described in section one of chapter seventy-six, and that all the papers required by section eighty-seven have been duly examined, approved and filed and that all the conditions and requirements for issuing an employment certificate have been fulfilled. It shall state the grade last completed by said child. Every such certificate shall be signed in the presence of the person issuing the same by the child in whose name it is issued. It shall state the name of the employer for whom, and the nature of the employment in which, the certificate authorizes the child to be employed. It shall bear a number, show the date of its issue and be signed by the person issuing it. No fee shall be exacted by a town clerk or other official for an employment certificate or for any paper required by sections eighty-seven to ninety-five, inclusive. No duplicate employment certificate shall be issued until it shall appear to the satisfaction of the person authorized to issue certificates that the original has been lost.

22 A record giving all the facts contained on every employment certificate
 23 issued shall be filed in the office issuing the same, together with the
 24 papers required by section eighty-seven. A record shall also be kept of
 25 the names and addresses of all children to whom certificates have been
 26 refused, together with the names of the schools which said children
 27 should attend and the reasons for refusal. All the aforesaid records and
 28 papers shall be preserved until such children, if living, have become
 29 sixteen. Such records and statistics concerning the issuance of employ-
 30 ment certificates as may be prescribed by the department of education
 31 shall be kept, and shall be open to the inspection of said department, its
 32 officers or agents. The blank certificates and other papers required in
 33 connection with the issuing of employment certificates and educational
 34 certificates under this chapter shall be furnished to the local school
 35 committees by the department of labor and industries, by which they
 36 shall be prepared after conference with the department of education
 37 and the approval of the forms thereof by the attorney general. Said
 38 certificates and papers may bear explanatory matter necessary to facili-
 39 tate the enforcement of this chapter or to comply with future legislative
 40 requirements.

1 SECTION 90. Whoever employs a child under sixteen, or whoever
 2 procures, or, having under his control a child under sixteen, permits him
 3 to be employed in violation of section eighty-six, shall be punished by
 4 a fine of not less than ten nor more than fifty dollars or by imprison-
 5 ment for not more than one month; and whoever continues to employ
 6 a child under sixteen in violation of said section, after being notified
 7 thereof by a supervisor of attendance or by an inspector, shall for every
 8 day thereafter while such employment continues be punished by a fine
 9 of not less than fifty nor more than two hundred dollars or by imprison-
 10 ment for not more than two months; and whoever forges, or procures
 11 to be forged, or assists in forging a certificate of birth or other evidence
 12 of the age of such child, and whoever presents or assists in presenting a
 13 forged certificate or evidence of birth to the superintendent of schools
 14 or to a person authorized by law to issue certificates, for the purpose of
 15 fraudulently obtaining the employment certificate required by section
 16 eighty-six, shall be punished by a fine of not less than ten nor more than
 17 five hundred dollars or by imprisonment for not more than one year, or
 18 both. Whoever, being authorized to sign an employment certificate,
 19 knowingly certifies to any materially false statement therein shall be
 20 punished by a fine of not less than ten nor more than two hundred
 21 dollars. Whoever, without authority, alters an employment certificate
 22 after the same is issued shall be punished by a fine of ten dollars.

Penalties for
 illegal employ-
 ment of child-
 ren under
 sixteen, altering
 employment
 certificate, etc.
 1836, 245, § 2.
 1849, 220, § 3.
 1858, 83, § 2.
 G. S. 42, § 2.
 1867, 285, § 3.
 1876, 52,
 §§ 1, 3.
 P. S. 48, §§ 1, 4.
 1883, 224
 1887, 433, § 1.
 1888, 348, § 9.
 1894, 508, § 67.
 1898, 494, § 6
 R. L. 106, § 33.
 1906, 499,
 § 1, 6
 1909, 514,
 §§ 61, 145.
 1910, 249.
 1913, 779, § 19.
 1915, 70
 1931, 394,
 § 155
 209 Mass. 489.

1 SECTION 91. The employer of any minor between fourteen and six-
 2 teen who is required by section twenty-two of chapter seventy-one to
 3 attend a continuation school or course of instruction shall cease forth-
 4 with to employ such minor when notified in writing by the superin-
 5 tendent of schools, or by his representative duly authorized in writing,
 6 having jurisdiction over such minor's attendance, of his non-attendance
 7 in accordance with said section. An employer failing to comply with
 8 this section shall be punished by a fine of not less than ten nor more
 9 than one hundred dollars.

Employer to
 discharge child
 who does not
 attend a con-
 tinuation
 school if re-
 quired to do so
 Penalty.
 1913, 805, § 6.
 1919, 311, § 4.

Duties of supervisors of attendance and inspectors and inspectors in regard to illegal employment of children.
 1878, 257, § 3.
 P. S. 48, § 6.
 1888, 348, § 8.
 1894, 508, § 23.
 1898, 494, § 8.
 R. L. 106, §§ 33, 34.
 1906, 499, § 2.
 1909, 514, § 64, 145.
 §§ 62, 145.
 1913, 779, § 20.
 1919, 350, § 69.
 1931, 394, § 156.

[Penalty, § 180]

SECTION 92. Supervisors of attendance may visit the factories, workshops, manufacturing, mechanical and mercantile establishments, theatres, and places of public exhibition in their several towns, and ascertain whether any children are employed therein contrary to this chapter, and shall report in writing any cases of such illegal employment to the superintendent of schools or the school committee and to the department or its authorized officers or agents. Inspectors shall visit all factories, workshops, manufacturing, mechanical and mercantile establishments within their respective districts, and ascertain whether any children are employed therein contrary to this chapter, and shall enter complaint against whomever is found to have violated any of its provisions. No inspector shall knowingly or wilfully violate any provision of this section.

1
2
3
4
5
6
7
8
9
10
11
12
13

Further duties of supervisors of attendance.
 1906, 499, § 3.
 1909, 514, § 63, 145.
 1913, 779, § 21.
 1931, 394, § 157.

[Penalty, § 180.]

SECTION 93. A supervisor of attendance shall apprehend and take to school, without a warrant, any minor employed in any factory, workshop, manufacturing, mechanical or mercantile establishment, or in any theatre or place of public exhibition contrary to this chapter; and such supervisor of attendance shall forthwith report to the district court or trial justice within whose judicial district the illegal employment occurs the evidence in his possession relating to the illegal employment of any minor so apprehended, and shall make complaint against whomever the court or trial justice may direct. No supervisor of attendance shall knowingly and wilfully violate any provision of this section.

1
2
3
4
5
6
7
8
9
10

Educational certificates, etc., to be shown on request of officials.
 1878, 257, § 3.
 P. S. 48, § 6.
 1888, 348, § 8, 9.
 1894, 508, § 23, 67.

SECTION 94. Inspectors, agents of the department of education and supervisors of attendance may require that the employment or educational certificates and lists of minors employed in any establishment or occupation for which employment or educational certificates are required shall be produced for their inspection. A failure so to do upon request shall be prima facie evidence of the illegal employment of any minor whose certificate is not produced or whose name is not so listed.

1
2
3
4
5
6
7

1898, 494, §§ 6, 8.	1909, 514, §§ 64, 145.	1921, 351, § 3
R. L. 106, §§ 33, 34.	1913, 779, § 22.	1931, 394, § 158.
1906, 499, §§ 4, 6.	1919, 350, § 56.	

Educational certificates for minors between sixteen and twenty-one. Penalty.
 1887, 433, § 2.
 1888, 348, § 9.
 1889, 135.
 1891, 317.
 1894, 508, § 24, 67.
 1898, 494, § 6, 7.
 R. L. 106, §§ 33, 35.
 1902, 183.
 1906, 499, § 4, 6.
 1909, 514, § 64, 66, 145.
 1913, 779, § 22, 23.
 1916, 95, § 3.
 1921, 341.
 1926, 188, § 3.

[Further penalty, § 97.]

SECTION 95. No minor over sixteen and under twenty-one shall be employed in a factory, workshop, manufacturing, mechanical or mercantile establishment, or in a public or private bowling alley, pool or billiard room, bootblack stand or establishment, barber shop, or in the construction or repair of buildings, or by an express or transportation company, except as provided for pupils in co-operative courses, unless his employer procures and keeps on file an educational certificate showing the age of the minor and whether or not he meets the requirements for the completion of the sixth grade of the public schools of the town where he resides. Such certificates shall be issued by the person authorized by section eighty-seven to issue employment certificates. The person authorized to issue such educational certificates shall, so far as practicable, require the proof of age stated in said section. He shall examine the minor and certify whether or not he meets the requirements for the completion of the sixth grade as aforesaid. Every such certificate shall be signed, in the presence of the person issuing it, by the minor in whose name it is issued.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Every employer of such minors shall keep their educational certificates accessible to any officer mentioned in section ninety-two and shall return

18
19

20 said certificates to the office from which they were issued within two
 21 days after the date of the termination of the employment of said minors.
 22 If the educational certificate of any minor over sixteen and under twenty-
 23 one fails to show that said minor meets the requirements for the com-
 24 pletion of the sixth grade as aforesaid, no person shall employ such
 25 minor while a public evening school is maintained in the town where the
 26 minor resides or in the town of employment if he is authorized to attend
 27 a public evening school therein, unless such minor is a regular attend-
 28 ant at such evening school or at a day school and presents to his em-
 29 ployer each week a school record of such attendance. When such record
 30 shows unexcused absences, such attendance shall be deemed to be ir-
 31 regular and insufficient. The person authorized to issue educational
 32 certificates, or teachers acting under his authority, may, however, excuse
 33 justifiable absence or waive the school attendance requirements of this
 34 section if in the opinion of the school physician the physical or mental
 35 condition of a minor is such as to render attendance harmful or im-
 36 practicable. Whoever retains an educational certificate contrary to this
 37 section or fraudulently secures or alters such certificate shall be punished
 38 by a fine of not less than ten nor more than one hundred dollars.

1 SECTION 96. Sections eighty-six to ninety-five, inclusive, shall not
 2 prevent children of any age from receiving manual training or indus-
 3 trial education in or in connection with any school in the common-
 4 wealth duly approved by the local school committee or by the depart-
 5 ment of education.

Limitation of
 §§ 86-95
 1913, 779, § 24.
 1919, 350, § 56.

1 SECTION 97. Whoever employs a minor in violation of section
 2 ninety-five shall be punished by a fine of not more than one hundred
 3 dollars.

Penalty for
 employment
 of minor in
 violation
 of § 95.

1887, 433, § 2.	1894, 508, § 70.	1902, 183.
1889, 135.	1898, 494, § 7.	1909, 514, §§ 66, 145.
1891, 317.	R. L. 106, § 35.	1913, 779, § 23.

1 SECTION 98. A parent, guardian or custodian who permits a minor
 2 to be employed in violation of section ninety-five shall be punished
 3 by a fine of not more than twenty dollars. Fines imposed under this
 4 and the preceding section shall enure to the use of the evening schools
 5 of the town where the violation occurs.

Penalty on
 parent, etc.,
 allowing minor
 to be employed
 in violation
 of § 95.
 1887, 433, § 2

1889, 135.	1894, 508, § 70.	R. L. 106, § 35.	1909, 514, §§ 66, 145.
1891, 317.	1898, 494, § 7.	1902, 183.	1913, 779, § 23.

1 SECTION 99. Women and children, five or more in number, who are
 2 employed in the same factory shall be allowed their mealtimes at the
 3 same hour, except that any such persons who begin work in such factory
 4 at a later hour in the morning than other such persons employed therein
 5 may be allowed their mealtimes at a different hour; but no such persons
 6 shall be employed during the regular meal hour in tending the machines
 7 or doing the work of any other women or children in addition to their
 8 own.

Hours for
 meals for
 women and
 children
 1887, 215, § 1.
 1894, 508, § 26.
 R. L. 106, § 36.
 1909, 514,
 §§ 67, 145
 210 Mass 387.
 [Penalty, § 100.]

1 SECTION 100. No child or woman shall be employed for more than
 2 six hours at one time in a factory or workshop in which five or more
 3 such persons are employed without an interval of at least forty-five
 4 minutes for a meal; but such child or woman may be so employed for
 5 not more than six and one half hours at one time if such employment

Same subject.
 Penalty for
 violation of
 § 99 or 100.
 1887, 215,
 §§ 2, 5.
 1894, 508,
 §§ 27, 71.

R. L. 106,
 §§ 37, 40,
 1909, 514,
 §§ 68, 71, 145,
 1917, 110.

ends not later than one o'clock in the afternoon and if he or she is then 6
 dismissed from the factory or workshop for the remainder of the day; or 7
 for not more than seven and one half hours at one time if he or she is 8
 allowed sufficient opportunity for eating a lunch during the continuance 9
 of such employment, and if such employment ends not later than two 10
 o'clock in the afternoon, and he or she is then dismissed from the factory 11
 or workshop for the remainder of the day. An employer, superintendent, 12
 overseer or agent who violates any provision of this or the preceding 13
 section shall be punished by a fine of not less than fifty nor more than 14
 one hundred dollars. 15

Limitation of
 §§ 99 and 100,
 1887, 215, § 3,
 1894, 508, § 28,
 R. L. 106, § 38,
 1909, 514,
 §§ 69, 145,
 1912, 726, § 5,
 1919, 350, § 69.

SECTION 101. The two preceding sections shall not apply to iron 1
 works, glass works, paper mills, letterpress establishments, print works, 2
 bleaching works or dyeing works; and the department, if it is proved to 3
 its satisfaction that in any other class of factories or workshops it is 4
 necessary, by reason of the continuous nature of the processes or of 5
 special circumstances affecting such class, to exempt it from the two 6
 preceding sections and that such exemption can be made without injury 7
 to the health of the women or children affected thereby, may, with the 8
 approval of the governor, issue a certificate granting such exemption, 9
 public notice whereof shall, without expense to the commonwealth, 10
 be given in the manner directed by said department. 11

Working during
 mealtime
 without knowl-
 edge of super-
 intendent; etc.
 1887, 215, § 5;
 280, § 1; 330,
 1894, 508,
 §§ 11, 29,
 R. L. 106, § 39,
 1909, 514,
 §§ 70, 145.

SECTION 102. If a minor or a woman shall, without the orders, 1
 consent or knowledge of the employer or of the superintendent, over- 2
 seer or other agent of the employer, labor in a manufacturing or me- 3
 chanical establishment, factory or workshop during a part of any time 4
 allowed for meals in such establishment, factory or workshop, according 5
 to the notice required by section fifty-six, and if a copy of such notice 6
 was posted in a conspicuous place in the room where such labor was 7
 performed, with a rule of the establishment, factory or workshop for- 8
 bidding such minor or woman to labor during such time, neither the 9
 employer nor a superintendent, overseer or other agent of the employer 10
 shall be held responsible for such labor. 11

Seats for
 women and
 children.
 Penalty.
 1882, 150, § 1.
 1894, 508,
 §§ 30, 72,
 R. L. 106, § 41,
 1909, 514,
 §§ 72, 145,
 1912, 96.

SECTION 103. Whoever employs women or children in any manu- 1
 facturing, mechanical or mercantile establishment shall provide for 2
 their use and permit them to use suitable seats whenever they are not 3
 necessarily engaged in the active duties of their employment, and shall 4
 also provide for their use and permit them to use suitable seats while 5
 at work, except when the work cannot properly be performed in a sitting 6
 position. Whoever violates this section shall be punished by a fine of 7
 not less than ten nor more than thirty dollars. 8

Employment,
 etc., of chil-
 dren under
 fifteen in
 theatrical exhi-
 bitions, etc.,
 penalized.
 1877, 172.
 P. S. 48, § 8.
 1894, 508,
 §§ 49, 64,
 1898, 394,
 R. L. 106, § 45,
 1909, 514,
 §§ 76, 145,
 204 Mass. 18.

SECTION 104. No person shall employ, exhibit or sell, apprentice or 1
 give away, a child under fifteen for the purpose of employing or ex- 2
 hibiting him in dancing on the stage, playing on musical instruments, 3
 singing, walking on a wire or rope, or riding or performing as a gymnast, 4
 contortionist or acrobat in a circus, theatrical exhibition or in any public 5
 place, or cause, procure or encourage such child to engage therein; but 6
 this section shall not prevent the education of children in vocal and 7
 instrumental music or dancing or their employment as musicians in a 8
 church, chapel, school or school exhibition, or prevent their taking part 9
 in any festival, concert or musical exhibition upon the special written 10

11 permission of the aldermen or selectmen. Whoever violates this section
 12 shall be punished by a fine of not more than two hundred dollars or by
 13 imprisonment for not more than six months.

1 SECTION 105. A license shall not be granted for a theatrical exhibi-
 2 tion or public show in which children under fifteen are employed as
 3 acrobats or contortionists or in any feats of gymnastics or equestrianism,
 4 or in which such children attending the public schools are employed or
 5 allowed to take part as performers on the stage in any capacity, or if,
 6 in the opinion of the board authorized to grant licenses, such children
 7 are employed in such a manner as to corrupt their morals or impair
 8 their health; but this section shall not prevent granting the special per-
 9 mission authorized by the preceding section.

License not to
 be granted for
 exhibitions in
 which such
 children
 take part.
 1874, 279.
 1880, 88.
 P. S. 48, § 9.
 1894, 508, § 50.
 R. L. 106, § 46.
 1909, 514,
 §§ 77, 145.

PROVISIONS AS TO HEALTH AND SAFETY.

1 SECTION 106. All industrial establishments shall provide fresh and
 2 pure drinking water to which their employees shall have access during
 3 working hours. Any person owning, in whole or in part, managing,
 4 controlling or superintending any industrial establishment in which this
 5 section is violated shall, on the complaint of the local board of health,
 6 the selectmen of a town or an inspector, be punished by a fine of one
 7 hundred dollars.

Drinking water
 to be provided.
 Penalty.
 1902, 322.
 1907, 537, § 5.
 1909, 514,
 §§ 78, 145.
 1915, 117.

1 SECTION 107. The water used for humidifying purposes by any
 2 person operating a factory or workshop shall be of such a degree of
 3 purity as not to give rise to any impure or foul odors, and shall be so
 4 used as not to be injurious to the health of persons employed in such
 5 factories or workshops. Whoever violates this section shall be punished
 6 by a fine of not less than ten nor more than one thousand dollars.

Water for
 humidifying.
 Penalty.
 1908, 325,
 §§ 1, 2.

1 SECTION 108. In every weaving and spinning department in a textile
 2 factory wherein water is introduced for humidifying purposes there
 3 shall be provided, maintained and kept in correct working order, for
 4 the purpose of recording and regulating the humidity of the atmosphere
 5 and the temperature, at least one set of standardized wet and dry bulb
 6 thermometers, and, if required by an inspector, two sets of such ther-
 7 mometers, and the following regulations shall be observed in their use:
 8 (a) The thermometers shall be placed as directed or sanctioned by an
 9 inspector, and be plainly visible to the workers. (b) The occupier or
 10 manager or person for the time being in charge of the weaving or spin-
 11 ning department shall read the thermometers thrice in the day, namely,
 12 between seven and eight o'clock in the forenoon, between ten and eleven
 13 o'clock in the forenoon and between three and four o'clock, except in
 14 rooms lighted by gas, and then between four and five o'clock, in the
 15 afternoon of every day when persons are employed in any weaving
 16 or spinning department, and he shall record the readings of each ther-
 17 mometer in such department at each of the said times upon a form
 18 provided therefor, which, together with the regulations relating thereto,
 19 shall be furnished by the department of labor and industries. The
 20 records of the readings shall not be destroyed until the inspector in
 21 whose district the factory is situated has examined them and given his
 22 consent to their destruction.

Thermometers
 for testing
 humidity.
 1910, 543, § 1.
 1912, 726, § 5.
 1919, 350, § 69.
 (Penalty, § 112.)

Section 108 not applicable to textile factories equipped with other approved testing devices. 1910, 543, §§ 2, 3. 1912, 726, § 5. 1919, 350, § 69.

SECTION 109. The preceding section shall not apply to textile factories equipped with such a number and type of standardized self-registering hygrometers, or psychrometers, or such a hygrometric system as the department approves, or using the sling hygrometer frequently to determine the actual moisture and temperature of the weaving or spinning department; provided, that the manner of using all such instruments or such system is approved by the industrial health inspector in whose district the factory is situated, and that the records of the readings from said instruments or system are not destroyed without the knowledge and consent of such inspector.

Limits of humidity. 1910, 543, § 4. [Penalty, § 112.]

SECTION 110. No owner, occupier or manager or person for the time being in charge of a textile factory shall permit the relative humidity in a weaving or spinning department in the textile factory under his control to exceed the following limits:

I.	II.	III.	I.	II.	III.
Dry Bulb Thermometer Readings. Degrees Fahr.	Wet Bulb Thermometer Readings. Degrees Fahr.	Percentage of Humidity.	Dry Bulb Thermometer Readings. Degrees Fahr.	Wet Bulb Thermometer Readings. Degrees Fahr.	Percentage of Humidity.
60	58	88	78	73 5	77
61	59	88	79	74 5	77 5
62	60	88	80	75 5	77 5
63	61	88	81	76	76
64	62	88	82	76 5	74
65	63	88	83	77 5	74
66	64	88	84	78	72
67	65	88	85	79	72
68	66	88	86	80	72
69	67	88	87	80 5	71
70	68	88	88	81 5	71
71	68 5	85 5	89	82 5	71
72	69	84	90	83	69
73	70	84	91	83 5	68
74	70 5	81 5	92	84 5	68
75	71 5	81 5	93	85 5	68
76	72	79	94	86	66
77	73	79	95	87	66

Sources of water for humidifying. 1910, 543, § 5. 1912, 726, § 5. 1919, 350, § 69. [Penalty, § 112.]

SECTION 111. Water used for humidifying purposes in a textile factory shall be taken either from a public supply of drinking water, or from some other source of pure water, or from a supply of water which, although in the opinion of the department not suitable for drinking purposes, is sufficiently free from impurities to be not dangerous to the health of employees when used for humidifying purposes; and all ducts for the introduction or distribution of humidified air shall be kept clean.

Penalty for violation of §§ 108-111. 1910, 543, § 6. 1912, 726, § 5.

SECTION 112. Whoever fails to comply with any provision of sections one hundred and eight to one hundred and eleven, inclusive, after being requested so to do by an inspector, shall be punished by a fine of not more than fifty dollars.

Factories, etc., to be properly lighted, ventilated and kept clean. 1877, 214, § 1. P. S. 104, § 13.

SECTION 113. Every factory, workshop, manufacturing, mechanical and mercantile establishment shall be well lighted, well ventilated and kept clean and free from unsanitary conditions, according to reasonable rules and regulations adopted by the department with reference thereto.

1894, 481, § 23. 1907, 503, § 2. 1912, 318.
R. L. 104, § 41. 1909, 514, §§ 94, 145. 1914, 328, § 2.

1 SECTION 114. The industrial health inspectors shall, when obtaining
 2 information concerning the proper lighting of industrial establishments,
 3 make such investigation concerning the eye and vision in their relation
 4 to occupational diseases, including injuries to the eyes of employees
 5 and to the pathological effects produced or promoted by the circum-
 6 stances under which the various occupations are carried on, as in the
 7 opinion of the department is practicable, and it shall from time to time
 8 issue such printed matter containing suggestions to employers and
 9 employees for the protection of the eyes of the employees as it may
 10 deem advisable.

Investigations
 by industrial
 health inspec-
 tors as to effect
 of industries on
 eyesight.
 1911, 603, § 1.
 1912, 726, § 5.
 1919, 350, § 69.

1 SECTION 115. If it appears to an inspector that in any industrial
 2 establishment, from the nature of the work or the machinery used in
 3 connection therewith, or from other circumstances, there is danger of
 4 injury to the eyes of employees engaged in such work, and that the
 5 danger of injury may be decreased or prevented by any mechanical
 6 device or other practicable means, he shall, if the department so directs,
 7 order in writing that such device or other means shall be provided
 8 therein; and the proprietors and managers of the industrial establish-
 9 ment shall comply with the order. Violations of this section shall be pun-
 10 ished by a fine of not less than five nor more than two hundred dollars
 11 for each week during which the violation continues, but a criminal
 12 prosecution for such violation shall not be begun unless a person has for
 13 four weeks after the receipt of a written order from an inspector neglected
 14 to comply therewith.

Devices for
 preventing in-
 jury to eyes,
 when to be
 provided.
 Penalty.
 1911, 603,
 §§ 2, 3.
 1912, 726,
 §§ 5, 8.
 1919, 350, § 69

1 SECTION 116. Upon the request of any inspector of the division of
 2 inspection of the department of public safety or upon the request of
 3 any five employees in a factory or workshop, the department shall
 4 investigate and ascertain whether or not such factory or workshop is
 5 adequately lighted. If the department is of opinion, after such investi-
 6 gation, that the factory or workshop is not properly lighted, it shall
 7 notify the owner or person in charge, and shall specify what changes
 8 should be made in order to light it properly, and the owner or lessee
 9 thereof shall make the changes so specified as soon as it can be done
 10 with reasonable diligence. If such owner or lessee fails to comply with
 11 any such order he shall be punished by a fine of not more than five hun-
 12 dred dollars, provided such failure is not the result of causes beyond
 13 his control.

Investigation
 as to lighting
 of factory, etc.
 Order.
 Penalty.
 1913, 766,
 §§ 1, 2.
 1919, 350,
 § § 99, 101.

1 SECTION 117. A factory where five or more persons and a workshop
 2 where five or more women or children are employed shall, while work is
 3 carried on therein, be so ventilated that the air shall not become so
 4 impure as to be injurious to the health of the persons employed therein.
 5 A factory or workshop where more than one person is employed shall
 6 be so ventilated that all gases, vapors, dust or other impurities injurious
 7 to health, generated in the course of the manufacturing process or
 8 handicraft carried on therein, shall so far as practicable be rendered
 9 harmless.

Ventilation
 of factories.
 1887, 173, § 1.
 1894, 508, § 37.
 R. L. 106, § 51.
 1909, 514,
 §§ 83, 145.
 1926, 159.
 [Penalty, § 122]

1 SECTION 118. If, in such a workshop or factory, any process is car-
 2 ried on by which dust is caused which may be inhaled to an injurious
 3 extent by the persons employed therein, and it appears to an inspector

Devices for
 removal of
 dust.
 1887, 173, § 2.
 1894, 508, § 38.

R. L. 106, § 52. that such inhalation would be substantially diminished without unrea- 4
 1909, 514. sonable expense by the use of a fan or by other mechanical means, such 5
 §§ 84, 145. fan or other mechanical means, if he so directs, shall be provided, 6
 [Penalty, § 122.] maintained and used. 7

Emery wheels, SECTION 119. Any person operating a factory or workshop where 1
 etc., to be pro- emery wheels or belts or buffing wheels or belts injurious to the health 2
 vided with devices for removing dust. of employees are used shall provide such wheels and belts with a hood 3
 1903, 475, § 1. or hopper connected with suction pipes, and with fans or blowers, in 4
 1909, 514, accordance with the following section, which apparatus shall be so 5
 §§ 86, 145. placed and operated as to protect any person using such wheel or belt 6
 [Penalty, § 122.] from the particles or dust produced by its operation, and to convey 7
 the particles or dust either outside of the building or to some receptacle 8
 so placed as to receive and confine them. 9

Same subject. SECTION 120. Every such wheel shall be fitted with a hood or hopper 1
 1903, 475, of such form and so placed that the particles or dust produced by the 2
 §§ 2, 3. operation of the wheel or of any belt connected therewith shall fall or 3
 1909, 514, will be thrown into such hood or hopper by centrifugal force; and the 4
 §§ 87, 145. fans or blowers shall be of such size and shall be run at such speed as 5
 1921, 50. will produce a volume and velocity of air in the suction and discharge 6
 [Penalty, § 122.] pipes sufficient to convey all particles or dust from the hood or hopper 7
 through the suction pipes and so outside of the building or to a receptacle 8
 as aforesaid. The hoods or hoppers shall be so constructed and the 9
 suction pipes and connections shall be suitable and efficacious and such 10
 as shall be approved by the department. 11

Limitation of §§ 119 and 120. SECTION 121. The two preceding sections shall not apply to grind- 1
 1903, 475, § 4. ing machines upon which water is used at the point of grinding con- 2
 1909, 514, tact, nor to solid emery wheels used in sawmills or in planing mills 3
 §§ 88, 145. or in other woodworking establishments, nor to any emery wheel six 4
 inches or less in diameter used in establishments where the principal 5
 business is not emery wheel grinding. 6

Penalty for violation of §§ 117-121. SECTION 122. Violations of sections one hundred and seventeen to 1
 1887, 173, § 3. one hundred and twenty-one, inclusive, shall be punished for the first 2
 1894, 508, § 39. offence by a fine of not less than twenty-five nor more than one hundred 3
 R. L. 106, § 53. dollars, and for a subsequent offence by the fine aforesaid or by im- 4
 1903, 475, § 6. prisonment in jail for not more than two months, or both. A criminal 5
 1909, 514, § 85, 90, 145. prosecution for the violation of section one hundred and seventeen or 6
 1912, 726, § 5, 8. one hundred and eighteen shall not be begun unless an employer has 7
 1915, 69. for four weeks after the receipt of a written order from an inspector 8
 neglected to comply therewith. 9

Inspection of factories, etc., not equipped with dust removers. Complaint Prosecution. SECTION 123. Inspectors, upon receipt of a notice signed by any 1
 1903, 475, § 5. person having knowledge of the facts that any factory or workshop 2
 1909, 514, subject to sections one hundred and nineteen and one hundred and 3
 §§ 89, 145. twenty is not provided with the apparatus prescribed thereby, shall 4
 1915, 116. visit and inspect such factory or workshop, and for that purpose may 5
 enter therein during working hours; and if they ascertain that the 6
 owner, proprietor or manager thereof has failed to comply with said 7
 sections, they shall make complaint to a court or trial justice having 8
 jurisdiction, and cause such owner, proprietor or manager to be 9
 prosecuted. 10

1 SECTION 124. In every manufacturing establishment where the
 2 machinery is operated by steam, communication shall be provided
 3 between each room where such machinery is placed and the room where
 4 the engineer is stationed by means of speaking tubes, electric bells or
 5 appliances to control the motive power, or such other means as shall
 6 be satisfactory to an inspector, if in his opinion such communication
 7 is necessary.

Communication with engine room.
 1886, 173, § 1.
 1890, 179.
 1894, 481, § 51.
 R. L. 104, § 38.
 1909, 514, § 91, 145.

1 SECTION 125. An occupant or manager of a manufacturing establish-
 2 ment who violates the preceding section shall forfeit to the common-
 3 wealth not less than twenty-five nor more than one hundred dollars.
 4 No prosecution for such violation shall be begun unless a person has
 5 for four weeks after the receipt of a written order from an inspector
 6 neglected to comply therewith.

Penalty for violation of preceding section.
 1886, 173.
 1890, 179.
 1894, 481, § 52, 59.

R. L. 104, §§ 38, 39.

1909, 514, §§ 91, 92, 145.

1 SECTION 126. No outside or inside doors of any building where
 2 operatives are employed shall be so locked, bolted or otherwise fastened
 3 during the hours of labor as to prevent free egress. Any person having
 4 charge of a building or room therein any exit door of which shall be
 5 found locked, bolted or otherwise fastened contrary to this section
 6 shall be punished by a fine of not less than twenty-five nor more than
 7 five hundred dollars or by imprisonment for not more than one year,
 8 or both.

Doors not to be locked during working hours.
 Penalty.
 1884, 52, §§ 1, 2.
 1894, 481, §§ 53, 54.
 R. L. 104, § 40.
 1909, 514, §§ 93, 145.

1914, 566.

1 SECTION 127. The belting, shafting, gearing, drums and all ma-
 2 chinery having movable parts in all factories, workshops, mechanical
 3 and mercantile establishments, if so placed as, in the opinion of the
 4 department, to be dangerous to employees while engaged in their ordi-
 5 nary duties, shall be securely guarded so far as practicable. No ma-
 6 chinery except steam engines in a factory, workshop, mechanical or
 7 mercantile establishment shall be cleaned while running if written ob-
 8 jection is made by an inspector.

Guards for gears, etc.
 1877, 214, § 1.
 P. S. 104, § 13.
 1894, 481, § 23.
 R. L. 104, § 41.
 1907, 503, § 2; 537, § 5.
 1909, 514, §§ 94, 145.
 1912, 318.
 1914, 328, § 2.

1919, 350, § 69.

[Penalty, § 180]

1 SECTION 128. The owner of a cotton factory erected after May
 2 twenty-eighth, eighteen hundred and ninety-six, in which there is any
 3 traversing carriage of a self-acting mule installed, or of any cotton fac-
 4 tory erected previously to such date in which thereafter such traversing
 5 carriage is installed, who permits such carriage to travel within twelve
 6 inches of any pillar, column, pier or fixed structure, shall be punished
 7 by a fine of not less than twenty nor more than fifty dollars.

Wrongful operation of traversing carriages of certain machines penalized.
 1896, 343.
 R. L. 104, § 42.
 1909, 514, § 95.

1 SECTION 129. The openings of hoistways, hatchways and well
 2 holes upon every floor of a factory or mercantile building shall be pro-
 3 tected by sufficient trapdoors or self-closing hatches, or such other
 4 safeguards as an inspector directs; and due diligence shall be used to
 5 keep such trapdoors closed at all times except when in actual use by
 6 the occupant of the building having the use and control of the same.

Openings of hoistways, etc., to be guarded.
 1877, 214, § 2.
 P. S. 104, § 14.
 1882, 208.
 1894, 481, § 41.
 R. L. 104, § 43.
 1909, 514, § 96.
 1913, 506, § 13.

202 Mass. 82.

213 Mass. 573.

237 Mass. 556.

[Penalty, § 180]

Storage of explosives. 1881, 137, § 1. P. S. 104, § 21. 1894, 481, § 46.

SECTION 130. Explosive or inflammable compounds shall not be so stored or used in any factory as to obstruct or render hazardous the egress of operatives in case of fire.

R. L. 104, § 47.

1909, 514, §§ 100, 145.

[Penalty, § 180.]

Guards for shuttles. Penalty. 1904, 347. 1909, 514, §§ 101, 145. 1919, 350, § 69.

SECTION 131. Any person owning, managing or operating a factory where looms are used shall equip them with such guards or other devices as will prevent injury to employees from shuttles falling or being thrown from the looms. Such guards or devices shall be made of such material and be placed in such manner as shall be approved by the department. Whoever violates this section shall be punished by a fine of not more than one hundred dollars for every week during which the violation continues.

Use of suction shuttles penalized. 1911, 281, §§ 1, 2.

SECTION 132. No proprietor of a factory nor any officer or agent or other person shall require or permit the use of suction shuttles, or any form of shuttle in the use of which any part of the shuttle or any thread is put in the mouth or touched by the lips of the operator. Whoever violates this section shall be punished by a fine of not less than fifty dollars.

Toilet facilities. 1887, 103, §§ 1, 2. 1888, 305. 1894, 508, § 33. R. L. 106, § 47. 1909, 514, §§ 79, 145. 1914, 328, § 1; 726. 1919, 350, § 69. [Penalty, § 180.]

SECTION 133. In every industrial establishment there shall be provided suitable, adequate and convenient water closets and washing facilities, separate for each sex and plainly so designated, of such number, in such location, and so constructed, lighted, ventilated, arranged and maintained as may be determined by such reasonable rules and regulations as the department may adopt. No person shall be allowed to use a closet or privy provided for the use of persons of the opposite sex. If any such establishment is so located that a connection with a sewer system is, in the opinion of the department, impossible or impracticable, it shall provide such suitable toilet and washing facilities as the department may require.

Apportionment of expense of changing toilet facilities. 1888, 305. 1894, 508, § 34. R. L. 106, § 48. 1909, 514, §§ 80, 145. 1910, 259, § 1.

SECTION 134. The owner, lessee or occupant of every such establishment shall make the changes necessary to conform thereto. If such changes are made upon the order of an inspector by the occupant or lessee, he may, within thirty days after completion, bring an action against any other person having an interest in such premises, and may recover such proportion of the expense of making such changes as the court adjudges should justly and equitably be borne by the defendant.

Prosecutions for violation of two preceding sections. 1887, 103, § 4. 1894, 508, § 36. R. L. 106, § 50. 1909, 514, §§ 82, 145. 1910, 259, § 2.

SECTION 135. A criminal prosecution shall not be begun against a person for a violation of any provision of the two preceding sections unless he has, for four weeks after the receipt of a written notice from an inspector of the changes necessary to comply with said sections, neglected to make such changes. A notice shall be sufficient under this section if given to one member of a firm, or to the clerk, cashier, secretary, agent or any other officer having charge of the business of a corporation, or to its attorney, or, in case of a foreign corporation, to the officer having charge of such factory or workshop; and such officer shall be personally liable for the amount of any fine if a judgment against the corporation is unsatisfied.

1 SECTION 136. If it appears to an inspector that any act, neglect or
 2 fault in relation to any drain, water closet, earth closet, privy, ash pit,
 3 water supply, nuisance or other matter in any industrial establishment
 4 is punishable or remediable under any law relative to the preservation
 5 of the public health, but not under this chapter, he shall give written
 6 notice thereof to the board of health of the town where such establish-
 7 ment is situated, and such board of health shall thereupon inquire into
 8 the subject of the notice and enforce the laws relative thereto.

Notice to de-
 partment of
 public health
 of unsanitary
 conditions.
 1887, 103, § 3.
 1894, 508, § 3.5.
 R. L. 106, § 49.
 1909, 514,
 §§ 81, 145.

1 SECTION 137. The proprietor of every foundry engaged in the casting
 2 of iron, brass, steel or other metal, and employing ten or more men,
 3 shall establish and maintain, except in towns where it would be imprac-
 4 ticable by reason of the absence of public or private sewerage or of any
 5 running water system, a toilet room of suitable size and condition for
 6 the men to change their clothes therein, and provided with wash bowls,
 7 sinks or other suitable set appliances connected with running hot and
 8 cold water, and also a water closet connected with running water and
 9 separated from the said toilet room. The said water closet and toilet
 10 room shall be connected directly with the foundry building, properly
 11 heated, ventilated and protected, so far as may be reasonably practi-
 12 cable, from the dust of the foundry. Whoever fails to comply with this
 13 section after being requested so to do by an inspector shall be punished
 14 by a fine of not more than fifty dollars.

Toilet rooms,
 etc., in
 foundries.
 Penalty.
 1906, 250.
 1909, 514,
 §§ 102, 145.

1 SECTION 138. Whoever wilfully destroys, defaces, injures or defiles
 2 any toilet appliances provided in any place of employment shall be
 3 punished by a fine of not more than fifty dollars.

Penalty for
 injuring toilet
 appliances.

1914, 164

1 SECTION 139. In any mercantile or manufacturing establishment or
 2 hotel where the nature of the work renders it necessary for any or all
 3 employees, before beginning work, to make a substantially complete
 4 change of clothing, exclusive of underclothing, separate lockers, closets
 5 or other receptacles, each with a lock and key, shall be provided for the
 6 use of such employees. Whoever violates this section shall be punished
 7 by a fine of not less than five nor more than twenty dollars.

Lockers for
 clothes, when
 required.
 Penalty.
 1916, 115,
 §§ 1, 3.
 1917, 72.

1 SECTION 140. Suitable receptacles for expectoration shall be pro-
 2 vided in all factories and workshops by the proprietors thereof, the
 3 same to be of such form, construction and number as shall be satisfac-
 4 tory to the board of health of the town where the factory or workshop
 5 is situated.

Spittoons
 1907, 503, § 2.
 1909, 514,
 §§ 103, 145.
 [Penalty, § 180]

1 SECTION 141. Every person operating a factory, shop or mechanical
 2 establishment where machinery is used for any manufacturing or other
 3 purpose except for elevators, or for heating or hoisting apparatus, shall
 4 keep and maintain, free of expense to the employees, such medical or
 5 surgical chest, or both, as shall be required by the department, contain-
 6 ing plasters, bandages, absorbent cotton, gauze, and all other necessary
 7 medicines, instruments and appliances for the treatment of persons
 8 injured or taken ill upon the premises. Every such person employing
 9 one hundred or more persons shall, if so required by the department,
 10 provide accommodations satisfactory to it for the treatment of persons
 11 injured or taken ill upon the premises, and also suitable and sanitary

Medical appli-
 cances, etc.,
 when to be
 provided.
 Penalty.
 1907, 164.
 1909, 514,
 §§ 104, 145.
 1914, 557.
 1915, 216.
 1918, 110.
 1919, 359, § 69.
 1921, 53.

facilities for heating or warming food to be consumed by those employees of the factory, shop or mechanical establishment who so desire. Every person carrying on a mercantile establishment where twenty or more women or children are employed shall in the manner aforesaid provide such medical and surgical chest as the department may require. Whoever violates any provision hereof shall be punished by a fine of not less than five nor more than five hundred dollars for every week during which such violation continues.

Cloths for cleaning printing presses.

SECTION 142. All publishers and printers shall use a sanitary cloth or other sanitary material in cleaning their presses.

1913, 472.

[Penalty, § 180.]

MANUFACTURE OF CLOTHING IN TENEMENT HOUSES.

License.
 1891, 357, 1
 1892, 296, 1.
 1893, 246, 1.
 1894, 508, 44.
 1898, 150, 1.
 R. L. 106, 56.
 1905, 238.
 1907, 537, § 5.
 1909, 514.
 §§ 106, 145.
 1912, 726, 5.
 1919, 350, 69.
 [Penalty, § 146]

SECTION 143. A room or apartment in a tenement or dwelling house shall not be used for the purpose of making, altering, repairing or finishing therein wearing apparel of any description, except by the members of the family dwelling therein; and a family desiring to make, alter, repair or finish wearing apparel of any description in a room or apartment in a tenement or dwelling house shall first procure a license therefor from the department. A license may be applied for by and issued to any member of a family desiring to do such work. No person shall hire, employ or contract with a member of a family which does not hold a license therefor to make, alter, repair or finish such wearing apparel in any room or apartment in a tenement or dwelling house as aforesaid. Every room or apartment where such wearing apparel is made, altered, repaired or finished shall be kept in a cleanly condition and be subject to the inspection and examination of the department to ascertain whether said room or apartment or such wearing apparel or any parts thereof are clean and free from vermin and from infectious or contagious matter. A room or apartment in a tenement or dwelling house, which is not used for living or sleeping purposes and is not connected with a room or apartment used for living or sleeping purposes and has a separate and distinct entrance from the outside shall not be subject to this section, nor shall this section prevent the employment of a tailor or seamstress by any person or family for the making of wearing apparel for the use of such person or family. Every person hiring, employing or contracting with a member of a family holding a license hereunder for making, altering, repairing or finishing wearing apparel to be done outside the premises of such person shall keep a register of the names and addresses plainly written in English of the persons so hired, employed or contracted with, and shall forward a copy of such register once a month to the department.

Notice to and examination by local boards of health.
 1891, 357, 2.
 1893, 246, 2.
 1894, 508, 45.
 1898, 150, 2.
 R. L. 106, 57.
 1907, 537, 5.
 1909, 514.
 §§ 107, 145.
 1912, 726, 5.
 1919, 350, 69.

SECTION 144. If an inspector finds evidence of infectious or contagious disease or of vermin present in a workshop, or in a room or apartment in a tenement or dwelling house where wearing apparel is made, altered or repaired, or in goods manufactured or in process of manufacture therein, he shall report the same to the department, which shall notify the local board of health to examine said workshop, room or apartment and the materials used therein; and if the board of health finds that said workshop, tenement or dwelling house is in an unhealthy

9 condition, and that the clothing and materials used therein are unfit
10 for use, it shall issue such orders as public safety may require.

1 SECTION 145. Whoever sells or exposes for sale wearing apparel of
2 any description made in a tenement or dwelling house for which the
3 family dwelling therein has not procured the license required by section
4 one hundred and forty-three shall have affixed to each article of wearing
5 apparel a tag or label not less than two inches in length and one inch
6 in width, upon which shall legibly be printed or written the words "tenement
7 made" and the name of the state and town where such article
8 was made.

Tags for clothing made in unlicensed tenement houses.
1891, 357, § 4.
1892, 296, § 3.
1893, 246, § 1.
1894, 508, § 47.
1898, 150, § 3.
R. L. 106, § 58.
1909, 514, § 108, 145.

[Penalty, § 146.]

1 SECTION 146. No person shall sell or expose for sale any such article
2 of wearing apparel without a tag or label as aforesaid affixed thereto,
3 or wilfully remove, alter or destroy such tag or label upon any such
4 article when exposed for sale, or sell or expose for sale any such article
5 with a false or fraudulent label affixed thereto. Whoever violates any
6 provision of this section or section one hundred and forty-three or one
7 hundred and forty-five shall be punished by a fine of not less than fifty
8 nor more than five hundred dollars.

Penalties.
1891, 357, § 5, 7.
1893, 246, § 5, 6.
1894, 508, § 48, 63, 76.
R. L. 106, § 59, 61.
1909, 514, § 109, 111, 145.

1 SECTION 147. If it is reported to an inspector or to the department
2 that ready made articles of wearing apparel of any description are
3 being shipped to this commonwealth, having been manufactured under
4 unhealthy conditions, said inspector shall examine said goods and the
5 condition of their manufacture; and if they contain vermin or have
6 been made in improper places or under unhealthy conditions, he shall
7 so report to the department, which shall thereupon notify the department
8 of public health, which shall make such orders as are necessary
9 to protect the public health.

Clothing made outside commonwealth. Examination. Report to department of public health.
1891, 357, § 3.
1892, 296, § 2.
1893, 246, § 3.
1894, 508, § 46.
R. L. 106, § 5.
1907, 537, § 5.
1909, 514, § 110, 145.

1912, 726, § 5.

1919, 350, § 69.

WEEKLY PAYMENT OF WAGES.

1 SECTION 148. Every person engaged in carrying on in a city a hotel
2 or club, and every person engaged in carrying on within the commonwealth
3 a theater, moving picture house, dance hall, factory, workshop,
4 manufacturing, mechanical or mercantile establishment, mine, quarry,
5 railroad or street railway, or telephone, telegraph, express, transportation
6 or water company, or in the erection, alteration, repair or removal
7 of any building or structure, or the construction or repair of any railroad,
8 street railway, road, bridge, sewer, gas, water or electric light works,
9 pipes or lines, and every contractor engaged in the business of grading,
10 laying out or caring for the grounds surrounding any building or structure,
11 shall pay weekly each employee engaged in his business, and every
12 person employing musicians, janitors, porters or watchmen shall pay
13 weekly each such employee, the wages earned by him to within six days
14 of the date of said payment if employed for six days in a week or to
15 within seven days of the date of said payment if employed seven days
16 in the week, or, in the case of an employee who has worked for a period
17 of less than six days, hereinafter called a casual employee, shall, within
18 seven days after the termination of such period, pay the wages earned
19 by such casual employee during such period; but any employee leaving
20 his employment shall be paid in full on the following regular pay day;

Weekly payment of wages. Penalty.
1879, 128.
P. S. 28, § 12.
1886, 87, § 1, 2.
1887, 390, § 1.
1891, 239, § 1.
1894, 508, § 51, 65.
1895, 438.
1896, 241, § 334.
1898, 481.
1899, 247.
1900, 470.
R. L. 106, § 62.
1902, 450.
1906, 427.
1907, 193.
1908, 650.
1909, 514, § 112, 145.
1910, 350.
1911, 208.
1914, 247.
1915, 75.
1916, 229.
1918, 87.
1919, 350, § 117.
1921, 51.
1923, 136.
1924, 145.
1925, 165.
1929, 117.
163 Mass. 589.

170 Mass. 140.
172 Mass. 230.
193 Mass. 537.
195 Mass. 548.

and any employee discharged from such employment shall be paid in 21
full on the day of his discharge, or in Boston as soon as the laws requiring 22
pay rolls, bills and accounts to be certified shall have been complied 23
with; and the commonwealth, its departments, officers, boards and 24
commissions shall so pay every mechanic, workman and laborer em- 25
ployed by it or them, and every person employed by it or them in any 26
penal or charitable institution, and every county and city shall so pay 27
every employee engaged in its business the wages or salary earned by 28
him, unless such mechanic, workman, laborer or employee requests in 29
writing to be paid in a different manner; and every town shall so pay 30
each employee in its business if so required by him; but an employee 31
absent from his regular place of labor at a time fixed for payment shall 32
be paid thereafter on demand. This section shall not apply to an em- 33
ployee of a co-operative corporation or association if he is a stockholder 34
therein unless he requests such corporation to pay him weekly, nor to 35
casual employees as hereinbefore defined employed by the common- 36
wealth or by a county, city or town. The department of public utilities, 37
after hearing, may exempt any railroad corporation from paying weekly 38
any of its employees if it appears that such employees prefer less frequent 39
payments, and that their interests and the interests of the public will not 40
suffer thereby. No person shall by a special contract with an employee 41
or by any other means exempt himself from this section or section one 42
hundred and fifty. Whoever violates this section shall be punished by 43
a fine of not less than ten nor more than fifty dollars or by imprisonment 44
in the house of correction for not more than two months, or both. 45

Summons and
warrant for
violation of
preceding
section.
1913, 214.

SECTION 149. A justice or clerk of a district court, or a trial justice, 1
may upon the application of any employee issue a summons to an em- 2
ployer to appear and show cause why a warrant should not issue against 3
him for a violation of the preceding section. Upon the return of such 4
summons and after a hearing the justice may issue a warrant upon the 5
complaint of any such employee. 6

Complaint for
violation of
§ 148. Pro-
cedure upon
trial.
1886, 87,
§§ 2-4
1887, 399, § 2.
1891, 239.
1894, 508,
§§ 52-54.
1895, 438.
R. L. 106, § 63.
1909, 511,
§§ 113, 145.
1916, 14
1919, 350, § 69.
206 Mass. 417.

SECTION 150. The department may make complaint against any 1
person for a violation of section one hundred and forty-eight within 2
three months after the date thereof. On the trial no defence for failure 3
to pay as required, other than the attachment of such wages by trustee 4
process or a valid assignment thereof or a valid set-off against the same, 5
or the absence of the employee from his regular place of labor at the 6
time of payment, or an actual tender to such employee at the time of 7
payment of the wages so earned by him, shall be valid. The defendant 8
shall not set up as a defence a payment of wages after the bringing 9
of the complaint. An assignment of future wages payable weekly under 10
section one hundred and forty-eight shall not be valid if made to the 11
person from whom such wages are to become due or to any person on 12
his behalf, or if made or procured to be made to another person for the 13
purpose of relieving the employer from the obligation to pay weekly. 14

Payment in
factories when
over one
hundred
employed.
1911, 249, § 1.
[Penalty, § 152.]

SECTION 151. Persons carrying on any manufacturing business em- 1
ploying one hundred or more persons shall, on the day chosen as pay 2
day, pay such of their employees as are on that day working in the 3
manufacturing establishment, before the close of the regular working 4
hours. 5

1 SECTION 152. There shall not be deducted from the wages of an
 2 employee in any factory, workshop, manufacturing, mechanical or mer-
 3 cantile establishment, or from the wages of a mechanic, workman or
 4 laborer, on account of the employee's coming late to work, a sum in
 5 excess of the proportionate wage which would have been earned during
 6 the time actually lost. Whoever violates this or the preceding section
 7 shall be punished by a fine of not more than fifty dollars.

Deductions for
 tardiness
 regulated.
 Penalty.
 1911, 249, § 2
 1918, 192,
 §§ 1, 2.

1 SECTION 153. No system used by manufacturers for grading the
 2 work of a weaver shall affect or lessen the wages of the weaver except
 3 for imperfections in his own work; and in no case shall the wages of
 4 those engaged in weaving be affected by fines or otherwise unless the
 5 imperfections complained of are first exhibited and pointed out to the
 6 person whose wages are to be affected; and a fine shall not be imposed
 7 upon any person for imperfect weaving unless this section is first com-
 8 plied with and the amount of the fines is agreed upon by both parties.

Weavers' fines
 regulated
 1887, 361, § 1.
 1891, 125, § 1.
 1892, 410, § 1.
 1894, 508, § 55
 R. L. 106, § 64.
 1909, 514,
 §§ 114, 115
 212 Mass. 315.
 [Penalty, § 154.]

1 SECTION 154. No employer shall impose a fine upon an employee
 2 engaged at weaving for imperfections arising during the process of
 3 weaving. Whoever violates this or the preceding section shall for the
 4 first offence be punished by a fine of not more than one hundred dollars
 5 and for a subsequent offence by a fine of not more than three hundred
 6 dollars.

Same subject.
 Penalty.
 1891, 125, § 2.
 1892, 410, § 2.
 1894, 508, § 66.
 R. L. 106, § 64.
 1909, 514,
 §§ 114, 115.
 1911, 584,
 §§ 1, 2.

155 Mass. 117.

172 Mass. 230.

212 Mass. 315.

1 SECTION 155. The occupier or manager of every cotton factory shall
 2 supply to each person engaged as a weaver in said factory and paid by
 3 the piece, cut or yard a printed or written ticket with each warp which
 4 shall contain the following specifications as to the work to be done and
 5 wages paid: the number of cuts, the number of yards per cut or piece,
 6 the price per yard, cut or piece, the number of picks per inch and the
 7 number of reeds to the inch. Said occupier or manager shall also supply
 8 to each person engaged as a frame tender a specification of the number
 9 of roving and price per hank, and to each person engaged as a warper
 10 or web drawer a specification of the number of threads in the warp and
 11 the rate of compensation, and to each operative paid by the pound a
 12 specification of the price to be paid per pound; said specification shall
 13 be furnished in each case on a printed or written ticket within three
 14 days after said operative begins work.

Specifications
 for weavers.
 1894, 534, § 1.
 R. L. 106, § 65.
 1905, 304, § 1.
 1909, 514,
 §§ 115, 115.
 [Penalties,
 § 157.]

1 SECTION 156. The occupier or manager of every textile factory
 2 shall post in every room where any employees work by the job, in
 3 legible writing or printing, and in sufficient numbers to be easily acces-
 4 sible to such employees, specifications of the character of each kind of
 5 work to be done by them, and the rate of compensation. Such specifi-
 6 cations in the case of weaving rooms shall state the intended and maxi-
 7 mum length of a cut or piece, the count per inch of reed, and the
 8 number of picks per inch, width of loom, width of cloth woven in the
 9 loom, and the price per cut or piece, or per pound; or, if payment is
 10 made per pick or per yard, the price per pick or per yard; and each
 11 warp shall bear a designating ticket or mark of identification. In roving
 12 or spinning rooms, the number of roving or yarn and the price per hank
 13 for each size machine shall be stated; and each machine shall bear a
 14 ticket stating the number of the roving or yarn made upon it. In spooling

Same subject.
 Penalty.
 1895, 144,
 §§ 1, 2
 1901, 370, § 1.
 R. L. 106,
 §§ 66, 68
 1905, 304, § 2.
 1909, 514,
 §§ 116, 118,
 145.
 1911, 263,
 1919, 193,
 §§ 1, 2
 1920, 417.
 [Additional
 penalty, § 157.]

rooms the boxes shall bear a ticket stating the number of pounds the box 15
contains and the price per pound. The maximum length of a cut or 16
piece shall not exceed its intended length by more than three per cent; 17
but if it appears that a variation in excess of the amount hereinbefore 18
set forth has been caused in whole or in part by any weaver in the em- 19
ploy of any person charged with the violation of this section, it shall be 20
deemed a sufficient defence to a prosecution. The said specifications 21
shall also contain a detailed schedule of the method of computation of 22
the price of cotton or silk or mixed cotton and silk weaving to be paid 23
by the said occupier or manager, and no particular in the specifications 24
shall be expressed by means of symbols, but every particular shall be 25
sufficiently clear and complete to enable the operative to determine 26
readily the price payable for the cut or piece. Violation of any provision 27
of this section shall for the first offence be punished by a fine of one 28
hundred dollars, for the second offence by a fine of two hundred dollars, 29
and for a subsequent offence by a fine of five hundred dollars or by im- 30
prisonment for not more than one month, or both. 31

Penalty for vio-
lation of § 155
and for
interference
with inspector.
1894, 534, § 2.
1901, 370, § 2.
R. L. 106, § 68.
1905, 304, § 3.
1909, 514,
§§ 118, 145.

SECTION 157. Violation of any provision of section one hundred 1
and fifty-five shall for the first offence be punished by a fine of not 2
less than twenty-five nor more than fifty dollars, and for a subsequent 3
offence by a fine of not less than fifty nor more than one hundred 4
dollars. Whoever interferes with an inspector in the discharge of his 5
duties in connection with the two preceding sections shall be punished 6
as provided in this section. 7

Deduction
from wages of
women or chil-
dren for stop-
ping machinery
regulated.
Penalty.
1898, 505.
R. L. 106, § 69.
1909, 514,
§§ 119, 145.

SECTION 158. Deductions shall not be made from the wages of 1
women or children paid by the day or hour, and employed in manu- 2
facturing or mechanical establishments, while machinery is stopped, 3
if said women or children are refused the privilege of leaving the mill 4
while the damage to said machinery is being repaired; and if they are 5
detained in their workrooms during such time they shall not be com- 6
pelled to make up time lost by such stopping unless compensated there- 7
for at their regular rates of wages. Whoever violates this section shall 8
be punished by a fine of not more than twenty dollars. 9

Unpaid proba-
tionary
employment
of woman
or minor
penalized.
1931, 304.

SECTION 158A. Whoever requires or permits a woman or a minor, 1
as a condition of securing employment, to work in any factory, workshop, 2
manufacturing, mechanical or mercantile establishment without mone- 3
tary compensation shall be punished by a fine of not more than fifty 4
dollars. 5

Notice of
discharge,
when required.
1875, 211, § 1.
P. S. 74, § 1.
1894, 508, § 1.
1895, 129.
R. L. 106, § 10.
1909, 514,
§§ 120, 145.

SECTION 159. A person engaged in manufacturing who requires 1
from his employees, under penalty or forfeiture of a part of the wages 2
earned by them, a notice of intention to leave such employ shall be 3
liable to a like forfeiture, if, without similar notice, he discharges an 4
employee. 5

FREE EMPLOYMENT OFFICES.

Free employ-
ment offices.
Annual
report
1906, 435, § 1.

SECTION 160. The department may establish and maintain in such 1
cities as may be selected by it after investigation, with the approval of 2
the governor and council, employment offices for the purpose of bring- 3

4 ing together those seeking employment and those desiring to employ, 1908, 462, § 5;
 5 and may maintain such offices now established. The commissioner 485, § 7
 6 shall make an annual report as to free employment offices. 1909, 371, § 3;
 514, §§ 1, 145.
 1919, 350, § 69.

1 SECTION 161. The commissioner shall appoint for each of the offices Superintend-
 2 provided for in the preceding section a superintendent who shall, under ents and clerks.
 3 the direction of the commissioner, perform the duties hereinafter set Sign.
 4 forth or such as he may require. The commissioner may also appoint 1906, 435,
 5 an assistant superintendent and such clerks as he may deem necessary § 2, 3.
 6 for the proper conduct of the business of said employment offices. The 1908, 485, § 1.
 7 location of each office established under the preceding section shall be 1909, 514,
 8 plainly indicated by a proper sign. §§ 2, 145.
 1919, 350, § 74.

1 SECTION 162. The superintendents of said employment offices shall Registration,
 2 receive applications from those seeking employment and from those etc., of ap-
 3 desiring to employ, and shall register them in such manner as may be plicants for
 4 prescribed by the commissioner, and shall take such other action as employment.
 5 the commissioner may deem best to promote the purposes of said offices. Procedure in
 6 Said superintendents shall also receive applications from alien immi- case of strike,
 7 grants seeking employment in agricultural labor and from those de- 1906, 435, § 3
 8 siring to employ immigrants in agricultural labor, and shall take such 1908, 485, § 2.
 9 other action as the commissioner may deem best to promote a more 1909, 514,
 10 general distribution of alien immigrants throughout the agricultural §§ 3, 145.
 11 tions of the commonwealth. In directing applicants for employment to 1911, 158.
 12 an employer in whose establishment a strike is in progress, the com- 1920, 412.
 13 missioner, superintendents or other departmental employees shall inform
 14 the applicant of the strike.

1 SECTION 163. No fees shall in any case be taken from those seeking Fees pro-
 2 the benefits of said employment offices. Any superintendent or clerk hibited.
 3 who directly or indirectly charges or receives any fee in the performance Penalty.
 4 of his duties shall be punished by a fine of not more than one hundred 1906, 435,
 5 dollars or by imprisonment in jail for not more than one month, and § 4, 7.
 6 shall be disqualified from holding further connection with said office. 1908, 485, § 3.
 1909, 514,
 §§ 1, 145.

1 SECTION 164. In registering applications for employment and for Preference to
 2 employees wanted, preference shall be given to residents of the com- residents.
 3 monwealth. 1906, 435, § 5.

1908, 485, § 4.

1909, 514, §§ 5, 145.

2 Op A G 175.

1 SECTION 165. Each superintendent shall make to the commissioner Reports,
 2 such reports of applications for labor or employment and of other details 1906, 435, § 6.
 3 of the work of his office as the commissioner may require. The com- 1908, 485, § 5.
 4 missioner shall cause reports showing the business of the several offices 1909, 514,
 5 to be prepared at regular intervals and to be exchanged among the §§ 6, 145.
 6 said offices, and shall supply them to the newspapers and to citizens 1919, 350,
 7 upon request; and the several superintendents shall post such reports §§ 69, 70.
 8 in a conspicuous place in their offices so that they may be open to public
 9 inspection.

1 SECTION 166. There shall be allowed and paid, upon the approval Appropriation
 2 of the commissioner, for salaries and for contingent expenses in con- for expenses.
 3 nection with the establishment and maintenance of free employment 1906, 435, § 8.
 4 offices, such sum as the general court may annually appropriate therefor. 1907, 135,
 §§ 1, 2
 1908, 485, § 6.
 1909, 514,
 §§ 7, 145.

Bulletins as to demand for employment, weekly distribution to city, etc., clerks.
1908, 306, § 1.
1909, 514, §§ 8, 145.
1919, 350, §§ 69, 70.

SECTION 167. The commissioner may furnish weekly to the clerks of all towns in the commonwealth printed bulletins showing the demand for employment, classified by occupations to such extent as may be practicable and indicating the town where the employees are wanted. Such information shall be based upon the applications for employees under this chapter.

Bulletins to be posted. Penalty.
1908, 306, §§ 2, 3.
1909, 514, §§ 9, 145.

SECTION 168. Every town clerk shall post the lists received as aforesaid in one or more conspicuous places in the town. A town clerk who fails to comply with this section shall be punished by a fine of not more than ten dollars.

STATISTICS OF LABOR AND MANUFACTURES.

Commissioner, etc., may require attendance of witnesses, etc.
1869, Res. 102, P. S. 31, § 14.
R. L. 107, § 2.
1908, 462, § 1.
1909, 371, §§ 2, 10.

SECTION 169. For the purpose of compiling statistics as required by the following section, the commissioner or a person in the department designated by him may require the attendance of witnesses and the production of books and documents, and may examine witnesses on oath; and such witnesses shall be examined in the same manner and paid the same fees as in the superior court.

1912, 560, § 1.

1919, 350, § 69.

Statistics of labor and manufactures.
1869, Res. 102, 1876, 178, 1877, 248, § 1.
1878, 264, § 1.
1880, 193, § 1.
1881, 293, § 1.
P. S. 4, § 7; 31, § 13.
1882, 6, § 1.
1885, 369.
1886, 174.
1888, 23.
1889, 124; 440, § 7.
1890, 97.
1894, 393, § 7.

SECTION 170. The commissioner shall make an annual report of the acts of the department relative to statistics. He shall prepare annually for distribution as public documents a report on the statistics of labor which shall embody statistical and other information relating especially to labor affairs in the commonwealth, and a report on the statistics of manufactures to be gathered as provided in the following section. The state secretary shall print for the use of the department and other purposes such numbers of these reports as the division of personnel and standardization may designate. The commissioner may publish, at such intervals as he deems expedient, bulletins or special reports relative to industrial or economic matters.

1900, 225.
R. L. 9, § 7; 107, § 2.
1908, 462, §§ 1, 2.
1909, 371, §§ 3, 10.

1910, 83.
1913, 358.
1918, 189, §§ 1, 2; 257, § 9.

1919, 5; 350, §§ 69, 70.
1920, 2.
1931, 426, § 248.

Schedules for collecting statistics.
1886, 174, § 1.
R. L. 107, § 5.
1909, 371, §§ 4, 10.
1919, 350, §§ 69, 70.
1931, 426, § 249.

SECTION 171. The commissioner shall prepare a schedule for the collection of such data as may, in his judgment, be desirable for the proper presentation of statistics of manufactures and the promotion of the industrial welfare of the commonwealth; and the said schedule, unless modified by the commissioner, shall embody inquiries as to —

- (1) Name of person, partnership or corporation.
- (2) Kind of goods manufactured or business done.
- (3) Number of partners or stockholders.
- (4) Capital invested.
- (5) Principal stock or raw material used, and total value thereof.
- (6) Gross quantity and value of articles manufactured.
- (7) Average number of persons employed, distinguishing as to sex, adults and children.
- (8) Smallest number of persons employed and in what month.
- (9) Largest number of persons employed and in what month.
- (10) Total wages, not including salaries of managers, paid during the year, distinguishing as to sex, adults and children.

18 (11) Proportion that the business of the year bore to the greatest
19 capacity for production of the establishment.

20 (12) Number of weeks in operation during the year, part time being
21 reduced to full time.

22 The said schedule shall be sent by mail annually, on or before Decem-
23 ber fifteenth, to the owner, operator or manager of every manufactur-
24 ing establishment in the commonwealth; and such owner, operator or
25 manager, or any other person to whom the schedule is sent, shall answer
26 the inquiries thereon and return the same to the department, properly
27 certified as to its accuracy, not later than January twentieth following,
28 but the commissioner may extend the time. The commissioner may
29 suspend the operation of this section, in years when the United States
30 takes a census of manufactures in Massachusetts, to such degree as may
31 be necessary in order to facilitate co-operation between said department
32 and the federal census authorities in the collection and compilation of
33 the statistics of Massachusetts manufactures in such census years, and
34 the avoidance of needless duplication of labor and expense.

1 SECTION 172. Information so collected shall not be used by the
2 department, either by publication or in any other manner, so as to dis-
3 close the private affairs of any person, and the department shall hold
4 all such information to be strictly confidential. Any officer, agent or
5 employee of said department who violates this provision shall be pun-
6 ished by a fine of not more than five hundred dollars or by imprison-
7 ment for not more than one year; but this section shall not be construed
8 as prohibiting said department from tabulating and publishing such
9 information relative to manufacturing corporations as may be required
10 by law to be filed with other state departments.

Information collected not to be so published as to disclose private affairs. Penalty. 1886, 174, § 4. R. L. 107, § 8. 1909, 371, §§ 5, 10. 1919, 350, § 69.

1 SECTION 173. The commissioner, having first obtained authority
2 from the governor and council, may destroy or sell all such records,
3 papers and schedules accumulated in the department as in his judgment
4 are of no value.

Distribution or sale of old papers. 1887, 43. R. L. 107, § 4.

1909, 371, §§ 9, 10.

1919, 350, §§ 69, 70.

1931, 426, § 250.

COMMISSION ON FOREIGN AND DOMESTIC COMMERCE.

1 SECTION 174. [REPEALED, 1929, 357, § 2.]

MISCELLANEOUS PROVISIONS.

1 SECTION 175. Manufacturers and others employing workmen may,
2 for the purpose of giving notice to them, ring bells and use whistles
3 and gongs of such size and weight and in such manner and at such
4 hours as the aldermen or selectmen may designate in writing.

Use of bells, etc. 1883, 84. R. L. 106, § 9. 1909, 514, §§ 33, 145.

133 Mass. 289.

136 Mass. 239.

1 SECTION 176. If, in an emergency, special police officers are ap-
2 pointed, under the name of police officers or any other name, to act as
3 police officers for quelling a riot or disturbance or for protecting
4 property, no non-resident of the commonwealth shall be so appointed
5 unless he is a regular employee of the person whose property he is so
6 appointed to protect.

Emergency police officer. 1892, 413, § 1. R. L. 108, § 11. 1909, 514, §§ 34, 145.

Assistance of
police officers
to protect
property.
Penalty.
1892, 413, § 2.
R. L. 108, § 12.
1909, 514,
§§ 35, 145.

SECTION 177. A person may, if his property is in danger, call upon the regular police authorities in the commonwealth for assistance in its protection, and this and the preceding section shall not limit or diminish such right; but no person shall request or authorize any person or body of persons not residents of the commonwealth, except regular employees, to assist such person with arms in the defence of his property, and no such request or authority shall justify an assault or attack with arms by a non-resident. Whoever, being an employer of labor, requests or authorizes assistance in violation of this section, and whoever renders such assistance with arms, shall be severally liable in damages to each person injured in person or property thereby.

Contracts by
employers
exempting
themselves
from liability
for certain
injuries to
employees
forbidden.

SECTION 177A. No person shall, by a special contract with his employees, exempt himself from liability which he may be under to them for injuries suffered by them in their employment and resulting from the negligence of the employer or of a person in his employ.

1922, 215.

[Penalty, § 180.]

Voting of
employees.
1887, 272, § 1.
1890, 423,
§§ 143, 144.
1893, 417,
§§ 7, 336.
1894, 508,
§§ 4, 78.
1898, 548,
§§ 5, 409.

SECTION 178. No owner, superintendent or overseer in any manufacturing, mechanical or mercantile establishment shall employ or permit to be employed therein any person entitled to vote at an election, during the period of two hours after the opening of the polls in the voting precinct, ward or town in which such person is entitled to vote, if he shall make application for leave of absence during such period.

R. L. 11, §§ 35, 413.
1902, 384

1904, 334

1907, 560, §§ 5, 447, 456.

1909, 514, § 45

1913, 835, §§ 5, 488, 503.

[Penalty, § 180.]

Posting notices.
1914, 263, § 1.
1919, 350, § 69.

SECTION 179. The department may require employers to post in conspicuous positions in any place of employment such placards, posters or signs for the information of employees as it may issue.

Preference to
citizens in
awarding con-
tracts for
public work.
Penalty.
1922, 517.

SECTION 179A. In the awarding of contracts for public work by the commonwealth or by a county, city or town or by persons contracting therewith to do such work, preference shall be given to persons who are citizens of the United States and to partnerships all of whose members are such citizens. Any person who knowingly and wilfully violates this section shall be punished by a fine of not more than two hundred dollars. Nothing in this section shall require the acceptance of a higher bid in preference to a lower bid.

General
penalty.
1890, 423,
§ 144.
1892, 410, § 2.

SECTION 180. Whoever violates a provision of this chapter for which no specific penalty is provided shall be punished by a fine of not more than one hundred dollars.

1893, 417, § 336.

1894, 508, § 78.

1898, 548, § 409.

1900, 469.

R. L. 11, § 413; 106,

§§ 13, 70.

1906, 499, §§ 2, 3

1907, 560, §§ 447, 456.

1909, 514, §§ 20, 36, 45, 62, 63, 145.

1911, 229, § 3

1913, 359, § 2; 779, §§ 20,

21; 813, § 13; 835, § 488.

CHAPTER 150.

CONCILIATION AND ARBITRATION OF INDUSTRIAL DISPUTES.

<p>SECT.</p> <p>1. Duties of board of conciliation and arbitration.</p> <p>2. Rules of procedure.</p> <p>3. Conciliation.</p> <p>4. Advertising during strikes.</p> <p>5. Arbitration.</p>		<p>SECT.</p> <p>6. Application for arbitration.</p> <p>7. Expert assistants.</p> <p>8. Witnesses.</p> <p>9. Local boards.</p> <p>10. Report.</p>
--	--	--

1 SECTION 1. The board of conciliation and arbitration of the depart- Duties of
 2 ment of labor and industries, in this chapter called the board, shall per- board of con-
 3 form the duties required by this chapter. conciliation and
1919, 350, § 72.

1 SECTION 2. The department of labor and industries shall from time Rules of
 2 to time establish rules of procedure for the board. procedure.
1886, 263, § 2. R. L. 106, § 1. 1909, 514, § 10. 1919, 350, §§ 71, 72.

1 SECTION 3. The mayor of a city or the selectmen of a town, having Conciliation.
 2 knowledge that a strike or lockout is seriously threatened or has actually 1887, 269,
 3 occurred therein, shall at once give notice to the board. Notice may be §§ 4, 5.
 4 given by the employer or by the employees concerned in the controversy, R. L. 106, § 2.
 5 strike or lockout. When the board has knowledge that a strike or lock- 1902, 446.
 6 out, which involves an employer and his present or former employees, 1904, 313, § 1.
 7 is seriously threatened or has actually occurred, and such employer at 1909, 514, § 11.
 8 that time is employing, or upon the occurrence of the strike or lockout 1914, 681, § 1.
 9 was employing, not less than twenty-five persons in the same general line 1919, 350, § 72.
 10 of business in any town in the commonwealth, the board shall, as soon as 239 Mass. 434.
 11 may be, communicate with such employer and employees and endeavor
 12 by mediation to obtain an amicable settlement, or endeavor to persuade
 13 them to submit the controversy to a local board of conciliation and arbi-
 14 tration established under section nine or to the board. If a settlement
 15 is not agreed upon and the parties refuse to submit the matter in dispute
 16 to arbitration, the board shall investigate the cause of such controversy
 17 and ascertain which of the parties thereto is mainly responsible or
 18 blameworthy for the existence or continuance of the same, and shall,
 19 unless a settlement of the controversy is reached, make and publish a
 20 report finding such cause and assigning such responsibility or blame.
 21 The board may employ agents to assist in said investigation. It shall,
 22 upon the request of the governor, investigate and report upon a con-
 23 troversy if in his opinion it seriously affects or threatens seriously to
 24 affect the public welfare. The board shall have the same powers for
 25 the foregoing purpose as are given to it by sections five to eight, inclu-
 26 sive. The board shall by publication or otherwise inform employers and
 27 employees of their duty to give notice to the board before resorting to
 28 a strike or lockout and of the provisions of this chapter affecting the
 29 rights of employers and employees relative to industrial disputes.

1 SECTION 4. The provisions of sections twenty-two and twenty-three Advertising
 2 of chapter one hundred and forty-nine relative to advertising during during strikes.
1912, 543.

1914, 347.
 §§ 5, 6.
 1916, 89.
 1918, 251.
 216 Mass. 356.
 243 Mass. 554.

strikes shall cease to be operative when the board shall determine that 3
 the business of the employer, in respect to which the strike or other 4
 labor trouble occurred, is being carried on in the normal and usual man- 5
 ner and to the normal and usual extent. Upon the application of the 6
 employer, this question shall be determined by said board, but only 7
 after a full hearing at which all persons involved shall be entitled to be 8
 heard and represented by counsel. The board shall give at least three 9
 days' notice of the hearing to the strikers and employees by publication 10
 in at least three daily newspapers published in the commonwealth, and 11
 by mailing a copy of said notice, postage prepaid, to the employers and 12
 to the accredited representatives of the strikers or workmen interested, 13
 when their addresses are known; and in every case the board shall 14
 make every reasonable and diligent effort to give notice to said strikers 15
 or interested workmen. 16

Arbitration.
 1886, 263.
 §§ 3, 5, 6.
 1887, 269, § 2.
 R. L. 106, § 3.
 1904, 313, § 2.
 1909, 514, § 12.
 Op. A. G.
 (1918) 15.

SECTION 5. If a controversy not involving questions which may be 1
 the subject of an action at law or suit in equity exists between a person 2
 employing not less than twenty-five persons in the same general line of 3
 business and his employees, the board shall, upon application as pro- 4
 vided in the following section, as soon as practicable visit the place 5
 where the controversy exists and make careful inquiry into its cause, and 6
 may, with the consent of the governor, conduct such inquiry outside the 7
 commonwealth. The board shall hear all persons interested who come 8
 before it, advise the respective parties what ought to be done or sub- 9
 mitted to by either or both to adjust said controversy, and make a 10
 written decision thereof which shall at once be made public, shall be 11
 open to public inspection and shall be recorded by the board. A short 12
 statement thereof may, in the discretion of the board, be published in 13
 the annual report, and the board shall cause a copy thereof to be filed 14
 with the clerk of the town in which said business is carried on. Said 15
 decision shall for six months be binding upon the parties who join in 16
 said application, or until the expiration of sixty days after either party 17
 has given notice in writing to the other party and to the board of his 18
 intention not to be bound thereby. Such notice may be given to said 19
 employees by posting it in three conspicuous places in the shop or 20
 factory where they work. 21

Application for
 arbitration.
 1886, 263, § 4.
 1887, 269, § 3.
 1890, 385, § 1.
 R. L. 106, § 4.
 1904, 313, § 3.
 1909, 514, § 13.

SECTION 6. The application shall be signed by the employer or by a 1
 majority of his employees in the department of the business in which 2
 the controversy exists, or by their duly authorized agent, or by both 3
 parties, and if signed by an agent claiming to represent a majority of 4
 the employees, the board shall satisfy itself that he is duly authorized 5
 so to do; but the names of the employees giving the authority shall be 6
 kept secret. The application shall contain a concise statement of the 7
 existing controversy and a promise to continue in business or at work 8
 without any lockout or strike until the decision of the board, if made 9
 within three weeks after the date of filing the application. The board 10
 shall forthwith, after such filing, cause public notice to be given of the 11
 time and place for a hearing on the application, unless both parties join 12
 in the application and present therewith a written request that no public 13
 notice be given. If such request is made, notice of the hearings shall be 14
 given to the parties in such manner as the board may order, and the 15
 board may give public notice thereof, notwithstanding such request. 16
 If the petitioner or petitioners fail to perform the promise made in the 17

18 application, the board shall proceed no further thereon without the
19 written consent of the adverse party.

1 SECTION 7. In all controversies in which application is made under
2 the preceding section, each party may, in writing, nominate fit persons
3 to act in the case as expert assistants to the board, and the board may
4 appoint one from among the persons so nominated by each party. Said
5 experts shall be skilled in and conversant with the business or trade con-
6 cerning which the controversy exists; they shall be sworn by a member
7 of the board to the faithful performance of their official duties, and a
8 record of their oath shall be made in the case. Said experts shall, if
9 required, attend the sessions of the board, and under its direction shall
10 obtain and report information concerning the wages paid and the
11 methods and grades of work prevailing in establishments within the
12 commonwealth similar to that in which the controversy exists, and they
13 may submit to the board at any time before a final decision any facts,
14 advice, arguments or suggestions which they may consider applicable
15 to the case. No decision of said board shall be announced in a case in
16 which said experts have acted without notice to them of a time and place
17 for a final conference on the matters included in the proposed decision.
18 Such experts shall receive from the commonwealth a sum not exceeding
19 ten dollars each for every day of actual service and their necessary travel-
20 ing expenses. The board may appoint such additional experts as it
21 considers necessary, who shall be qualified in like manner and, under the
22 direction of the board, shall perform like duties and be paid the same
23 fees as the experts who are nominated by the parties.

Expert
assistants.
1890, 385, § 1.
1892, 382, § 1.
R. L. 106, § 5.
1904, 313, § 4.
1909, 514, § 14.
1919, 350, § 72.
1920, 361.

1 SECTION 8. In all investigations, and inquiries or proceedings con-
2 ducted by the board, any member thereof may summon witnesses, may
3 administer oaths, take testimony, and require the production of books
4 and documents. Each witness shall certify in writing the amount of his
5 travel and attendance, and the amount due to him shall be paid forth-
6 with by the board.

Witnesses.
1887, 269,
§§ 3, 5.
1890, 385.
R. L. 106, § 6.
1909, 514, § 15.
1913, 444
1919, 350, § 72.

1 SECTION 9. The parties to any controversy described in section five
2 may submit it in writing to a local board of conciliation and arbitration,
3 which may be composed either of three members mutually agreed upon,
4 or of a member chosen by the employer, a member chosen by the em-
5 ployees or their authorized representative, and a third, who shall be
6 chairman, chosen by the other two. Such local board shall have and
7 exercise, relative to matters referred to it, all the powers of the state
8 board, and its decision shall have such binding effect as may be agreed
9 upon in the written submission. Such local board shall have exclusive
10 jurisdiction of the controversy submitted to it, but it may ask the advice
11 and assistance of the state board. The decision of such local board
12 shall be rendered within ten days after the close of any hearing held by
13 it, and shall forthwith be filed with the clerk of the city or town where
14 the controversy arose, and a copy thereof shall be forwarded by said
15 clerk to the state board. Each of such arbitrators shall be entitled to
16 receive from the treasury of the city or town where the controversy
17 arose, with the approval in writing of the mayor of the city or the select-
18 men of the town, the sum of three dollars for each day of actual service,
19 not exceeding ten dollars for any one arbitration.

Local boards.
1886, 263, § 7.
1887, 269, § 4.
R. L. 106, § 7.
1909, 514, § 16.
1914, 681, § 2.

Report.
1886, 263, § 5.
R. L. 106, § 1.
1909, 514, § 10.
1918, 257, § 476.

SECTION 10. The commissioner of labor and industries shall make an annual report of the acts of the board in performing the duties required by this chapter.

1919, 5; 350, §§ 8, 72.

1920, 2.

CHAPTER 151.

THE MINIMUM WAGE.

SECT.

1. Certain duties of the board of conciliation and arbitration relative to wages paid to females.
2. Wage boards.
3. Duties of wage boards.
4. Review of report of wage boards. Appeal to court. Publication of findings, etc.
5. Powers as to rates of wages.
6. Special license.
7. Wages of minors.

SECT.

8. Register of women and minors.
9. Certain statistics to be furnished to the commission.
10. Penalty for discrimination.
11. Names of certain employers to be published.
12. Penalty for refusal to publish findings.
13. No liability for publication except for wilful misrepresentation.
14. Posting notices.
15. Annual report.

Certain duties of the board of conciliation and arbitration relative to wages paid to females.
1912, 706, § 3.
1919, 350, § 72.
231 Mass. 99.

SECTION 1. The board of conciliation and arbitration of the department of labor and industries in performing the duties required by this chapter shall be known as the minimum wage commission, in this chapter called the commission. It shall investigate the wages paid to female employees in any occupation if it has reason to believe that the wages paid to a substantial number of such employees are inadequate to supply the necessary cost of living and to maintain the worker in health.

Wage boards.
1912, 706, § 4.
1914, 368, § 1.
1919, 72,
350, § 71.
1920, 48.
4 Op. A. G.
447, 494.

SECTION 2. If after such investigation the commission is of the opinion that in the occupation in question the wages paid to a substantial number of female employees are inadequate to supply the necessary cost of living and to maintain the worker in health, it shall establish a wage board consisting of an equal number of representatives of employers in the occupation in question, and of persons to represent the female employees in said occupation, and of one or more disinterested persons appointed by it to represent the public; but the representatives of the public shall not exceed one half of the number of representatives of either of the other parties. The commission shall give notice to employers and employees in said occupation by publication or otherwise of its determination to establish a wage board and of the number of representatives of employers and of employees to be chosen therefor, and shall request that said employers and employees, respectively, nominate such representatives by furnishing names to it.

The representatives of employers and employees shall be selected by the commission from names furnished by the employers and by the employees, respectively; provided, that the same are furnished within ten days after such request; and provided, further, that at least twice as many names, respectively, are furnished as are required. If less than this number of names are furnished for representatives, either of employers or of employees, at least one half the names so furnished shall be

23 selected, and the remaining places necessary may be filled by the com-
 24 mission by appointments made directly from employers, including officers
 25 of corporations, associations and partnerships, or from employees in the
 26 occupation, as the case may be. The commission shall designate as
 27 chairman one of the representatives of the public, and shall make rules
 28 and regulations governing the selection of members and the modes of
 29 procedure of the wage boards, and shall exercise exclusive jurisdiction
 30 over all questions arising with reference to the validity of the procedure
 31 and of the determinations of the wage boards. The members of wage
 32 boards shall be compensated at the same rate as jurors, and they shall
 33 be allowed the necessary traveling and clerical expenses incurred in the
 34 performance of their duties, these payments to be made from the appro-
 35 priation for the expenses of the commission. The commission may fill
 36 vacancies arising in a duly constituted wage board by appointing a suffi-
 37 cient number of suitable persons to complete the representation of the
 38 employers, employees or public, as the case may be.

1 SECTION 3. The commission may transmit to each wage board all
 2 pertinent information in its possession relative to the wages paid in the
 3 occupation in question. Each wage board shall take into consideration
 4 the needs of the employees, the financial condition of the occupation
 5 and the probable effect thereon of any increase in the minimum wages
 6 paid, and shall endeavor to determine the minimum wage, whether by
 7 time rate or piece rate, suitable for a female employee of ordinary ability
 8 in the occupation in question, or for any or all of the branches thereof,
 9 and also suitable minimum wages for learners and apprentices and for
 10 minors under eighteen. When a majority of the members of a wage
 11 board shall agree upon minimum wage determination, they shall report
 12 such determination to the commission, together with the reasons therefor
 13 and the facts relating thereto.

Duties of
 wage boards
 1912, 706, § 5
 1913, 673, § 1.
 4 Op. A. G.
 494.

1 SECTION 4. Upon receipt of a report from a wage board, the com-
 2 mission shall review the same, and may approve or disapprove any or
 3 all of the determinations recommended, or may recommit the subject to
 4 the same wage board or to a new one. If the commission approves any
 5 or all of the determinations of the wage board it shall, after not less than
 6 fourteen days' notice to employers paying a wage less than the mini-
 7 mum wage approved, give a public hearing to such employers, and if,
 8 after such public hearing, the commission finally approves the de-
 9 termination, it shall enter a decree of its findings and note thereon the
 10 names of employers, so far as they may be known to it, who fail or refuse
 11 to accept such minimum wage and agree to abide by it. The commis-
 12 sion shall thereafter publish at such times and in such manner as it may
 13 deem advisable a summary of its findings and of its recommendations.
 14 It shall also at such times and in such manner as it shall deem advisable
 15 publish the facts, as it may find them to be, as to the acceptance of its
 16 recommendations by the employers engaged in the industry to which any
 17 of its recommendations relate, and may publish the names of employers
 18 whom it finds to be following or refusing to follow such recommenda-
 19 tions. An employer who files a declaration under oath in the supreme
 20 judicial or superior court to the effect that compliance with the recom-
 21 mendation of the commission would render it impossible for him to con-
 22 duct his business at a reasonable profit shall be entitled to a review of
 23 said recommendation by the court under the rules of equity procedure.

Review of
 report of
 wage boards.
 Appeal to
 court.
 Publication of
 findings, etc.
 1912, 706, § 6
 1913, 673, § 2.
 1914, 368, § 2.
 Op. A. G.
 (1919) 6.

The burden of proving the averments of said declaration shall be upon 24
 the complainant. If, after such review, the court finds the averments of 25
 the declaration to be sustained, it may issue an order restraining the com- 26
 mission from publishing the name of the complainant as one who refuses 27
 to comply with its recommendations. But such review, or any order 28
 issued by the court thereupon, shall not be an adjudication affecting the 29
 commission as to any employer other than the complainant, and shall in 30
 no way affect its right to publish the names of those employers who 31
 comply with its recommendations. The type in which the employers' 32
 names shall be printed shall not be smaller than that in which the news 33
 matter of the newspaper is printed. The publication shall be attested 34
 by the signatures of at least a majority of the commission. 35

Powers as to
 rates of wages.
 1912, 706, § 8.
 1920, 357.

SECTION 5. Whenever a minimum wage rate has been established 1
 in any occupation, the commission may, upon petition of either em- 2
 ployers or employees, or if in its opinion such action is necessary to meet 3
 changes in the cost of living may without such petition, reconvene the 4
 wage board or establish a new one, and any recommendation made by 5
 such wage board shall be dealt with in the same manner as the original 6
 recommendation of a wage board. 7

Special license.
 1912, 706, § 9.
 1919, 350, § 72.
 Op. A. G.
 (1918) 7.

SECTION 6. For any occupation in which a minimum time rate only 1
 has been established, the commission may issue to any woman physically 2
 defective a special license authorizing the employment of the licensee for 3
 a wage less than the legal minimum wage; provided, that it is not less 4
 than the special minimum wage fixed for that person. 5

Wages of
 minors.
 1912, 706, § 10.

SECTION 7. The commission may at any time inquire into the wages 1
 paid to minors in any occupation in which the majority of employees are 2
 minors, and may, after giving public hearings, determine minimum wages 3
 suitable therefor. When the commission has made such a determination, 4
 it may proceed in the same manner as if the determination had been 5
 recommended to it by a wage board. 6

Register of
 women and
 minors.
 1912, 706, § 11.
 1913, 330.
 1914, 368, § 4.
 1919, 76, 350,
 § 72.

SECTION 8. Every employer of women and minors shall keep a reg- 1
 ister of the names, addresses and occupations of all women and minors 2
 employed by him, together with a record of the amount paid each week 3
 to each woman and minor, and if the commission shall so require, shall 4
 also keep for a specified period, not exceeding six months, a record of the 5
 hours worked by such employees, and shall, on request of the commis- 6
 sion or of the department of labor and industries, permit the commission 7
 or any of its members or agents, or the department or any duly accredited 8
 agent thereof, to inspect the said register and to examine such parts of 9
 the books and records of employers as relate to the wages paid to women 10
 and minors, and the hours worked by such employees. Any employer 11
 failing to keep a register or records as herein provided, or refusing to 12
 permit their inspection or examination, shall be punished by a fine of not 13
 less than five nor more than fifty dollars. The commission may also sub- 14
 pœna witnesses, administer oaths and take testimony, and require the 15
 production of books and documents. Such witnesses shall be summoned 16
 in the same manner and be paid by the commonwealth the same fees 17
 as witnesses before the superior court. 18

1 SECTION 9. Upon request of the commission, the department of labor
 2 and industries shall cause to be gathered such statistics and other data
 3 as the commission may require, and the cost thereof shall be paid out of
 4 the appropriation made for the expenses of the commission in reference to
 5 the minimum wage.

Certain statistics to be furnished to the commission
 1912, 706, § 12.
 1919, 350, § 69.

1 SECTION 10. No employer shall discharge or in any other manner
 2 discriminate against any employee because such employee has testified,
 3 or is about to testify, or has served or is about to serve upon a wage
 4 board, or is or has been active in the formation thereof, or has given or
 5 is about to give information concerning the conditions of such employee's
 6 employment, or because the employer believes that the employee may
 7 testify, or may serve upon a wage board, or may give information con-
 8 cerning the conditions of the employee's employment, in any investiga-
 9 tion or proceeding relative to the enforcement of this chapter. Whoever
 10 violates this section shall be punished by a fine of not less than two hun-
 11 dred nor more than one thousand dollars.

Penalty for discrimination
 1912, 706, § 13
 1913, 673, § 3
 1914, 368, § 5

1 SECTION 11. The commission shall from time to time determine
 2 whether employers in each occupation investigated are obeying its de-
 3 crees, and shall publish, in the manner provided in section four, the name
 4 of any employer whom it finds to be violating any such decree.

Names of certain employers to be published
 1912, 706, § 14
 231 Mass. 99

1 SECTION 12. Any newspaper refusing or neglecting to publish the
 2 findings, decrees or notices of the commission at its regular rates for the
 3 space taken shall be punished by a fine of not less than one hundred
 4 dollars.

Penalty for refusal to publish findings
 1912, 706, § 15
 231 Mass. 99

1 SECTION 13. No member of the commission, and no newspaper
 2 publisher, proprietor, editor or employee thereof, shall be liable to an
 3 action for damages for publishing the name of any employer as pro-
 4 vided for in this chapter, unless such publication contains some wilful
 5 misrepresentation.

No liability for publication except for wilful misrepresentation
 1912, 706, § 16
 231 Mass. 99

1 SECTION 14. The commission may require employers in any occupa-
 2 tion to post notices of its hearings or of nominations for wage boards, or
 3 of decrees that apply to their employees, in such reasonable way and
 4 for such length of time as it may direct. Whoever refuses or fails to post
 5 such notices or decrees, when so required, shall be punished by a fine of
 6 not less than five nor more than fifty dollars. The department of labor
 7 and industries shall enforce this section.

Posting notices
 1915, 65
 1919, 77, § 2;
 350, § 69.

1 SECTION 15. The commissioner of labor and industries shall make
 2 an annual report of the acts of the commission in performing the duties
 3 required by this chapter.

Annual report
 1912, 706, § 17
 1919, 350, § 8, 71.

CHAPTER 152.

WORKMEN'S COMPENSATION.

- | | |
|---|--|
| <p>SECT.</p> <ol style="list-style-type: none"> 1. Definitions. 2. Powers and duties of department. 3. [Repealed.] 4. Annual report. <p style="text-align: center;">PROCEDURE.</p> <ol style="list-style-type: none"> 5. Rules; process, witnesses. 6. Agreement for compensation. 7. Hearing by one member. 8. Investigation by the member. 8A. Petition to superior court in case of failure to claim review within time limited. 9. Examination by impartial physician. Fee, report. 9A. Fees for certain physicians appearing before department in behalf of injured employees. 10. Hearing by reviewing board. Payment by insurers of certain expenses of reviews, when. 11. Powers of superior court. 12. Weekly payments may be changed. Certain findings that incapacity has ceased not final, etc. 13. Amount of fees of attorneys, physicians, etc. 14. Frivolous proceedings. Costs. 15. Legal liability for injuries. Election, etc. 15A. Payment of compensation in certain cases in anticipation of settlement of controversy as to which of two or more insurers is liable. 16. Decision of department. Enforcement. 17. Decision of department, etc., not suspended by appeal. 18. Independent contractor, etc. 19. Notice of injuries to be given to department. 20. Hospital records admissible as evidence. Records open to inspection of department. 21. Notice to employees. 22. Same subject. 23. Acceptance of payment, etc., by employee releases employer from liability, etc. 24. Notice by employee to retain rights at common law. 25. Payment of judgment by insured. <p style="text-align: center;">PAYMENTS.</p> <ol style="list-style-type: none"> 26. Payments. Presumption of employment. Extraterritoriality. | <p>SECT.</p> <ol style="list-style-type: none"> 27. Wilful misconduct by employee bars compensation. 28. Wilful misconduct by employer. Double compensation. 29. Waiting period. 30. Medical services, etc. 31. Death payments. 32. Dependents. 33. Funeral expenses. 34. Total incapacity. 35. Partial incapacity. 36. Payments for certain specific injuries. 37. Method of payment for certain injuries. 38. Savings, etc., not to be deducted. 39. Payments in case of death. 40. Guardian, etc., may claim rights. 41. Notice and claim. 42. Form of notice. 43. Service of notice. 44. Notice not invalid for inaccuracy, etc. 45. Examination by insurer's physician. 46. Waiver of rights to compensation regulated. 47. Payment not assignable. 48. Lump sums in lieu of weekly payments. 49. Claim. 50. Interest in appealed cases. 51. Compensation of young employee. <p style="text-align: center;">INSURANCE COMPANIES.</p> <ol style="list-style-type: none"> 52. Insurance companies. 53. Mutual companies. 54. [Repealed.] 55. Approval by commissioner of insurance. Effect of policy issued without such approval. 56. Joint and several policies. 57. Deposit by domestic insurance company of value of certain outstanding claims. 58. Commissioner to compute value. 59. Duties of state treasurer as to such deposits. 60. Appointment of receiver, effect; duties as to deposit. 60A. Review by supreme judicial court. 60B. Expenses of custody of deposit. 60C. Penalty for failure to comply with order of commissioner under § 57. 60D. Additional penalties for violations of § 57, etc. Jurisdiction of supreme judicial court. 61. Bond of foreign company. 62. Foreign companies ceasing to do business. |
|---|--|

<p>SECT. 63. Information by insurance companies on request of the department. 64. Rules by insurer. 65. Special fund for certain payments.</p> <p>MISCELLANEOUS PROVISIONS. 66. Modification of liability. 67. Application of the preceding section. 68. Application of certain other laws.</p>	<p>SECT. 69. Compensation by the commonwealth, etc. Definition of certain terms in §§ 68-75. 70. Procedure. 71. Other remedies excluded. 72. Waiver of rights by employee. 73. Election between compensation and pension. 74. Application of §§ 69-75. 75. Agents for enforcing §§ 69-75.</p>
---	---

1 SECTION 1. The following words as used in this chapter shall, unless Definitions.
2 a different meaning is plainly required by the context or specifically pre- 1911, 751,
3 scribed, have the following meanings: V, § 2.

1913, 568.	1931, 426, §§ 251, 252.	252 Mass. 426.
1914, 708, § 13.	238 Mass. 93.	238 Mass. 470.

4 (1) "Average weekly wages", the earnings of the injured employee 215 Mass. 96.
5 during the period of twelve calendar months immediately preceding the 223 Mass. 187.
6 date of injury, divided by fifty-two; but if the injured employee lost 225 Mass. 349.
7 more than two weeks' time during such period, the earnings for the re- 227 Mass. 456.
8 mainder of such twelve calendar months shall be divided by the number 228 Mass. 334.
9 of weeks remaining after the time so lost has been deducted. Where, by 229 Mass. 325.
10 reason of the shortness of the time during which the employee has been 234 Mass. 137,
11 in the employment of his employer or the nature or terms of the employ- 145
12 ment, it is impracticable to compute the average weekly wages, as above 247 Mass. 80.
13 defined, regard may be had to the average weekly amount which, during 259 Mass. 376.
14 the twelve months previous to the injury, was being earned by a person 270 Mass. 326.
15 in the same grade employed at the same work by the same employer,
16 or, if there is no person so employed, by a person in the same grade em-
17 ployed in the same class of employment and in the same district.

18 (2) "Department", the department of industrial accidents.

19 (3) "Dependents", members of the employee's family or next of kin 222 Mass. 401,
20 who were wholly or partly dependent upon the earnings of the employee 538, 563.
21 for support at the time of the injury. 223 Mass. 378.

224 Mass. 86.	231 Mass. 261.	243 Mass. 528.
225 Mass. 66.	233 Mass. 287.	269 Mass. 267, 583.
228 Mass. 555.	236 Mass. 204.	270 Mass. 309.
229 Mass. 435.		

22 (4) "Employee", every person in the service of another under any 216 Mass. 51.
23 contract of hire, express or implied, oral or written, except masters of and 217 Mass. 86.
24 seamen on vessels engaged in interstate or foreign commerce, and except 218 Mass. 404.
25 one whose employment is not in the usual course of the trade, business, 219 Mass. 244.
26 profession or occupation of his employer. Any reference to an employee 560
27 who has been injured shall, when the employee is dead, also include his 220 Mass. 290.
28 legal representatives, dependents and other persons to whom compensa- 222 Mass. 487.
29 tion may be payable. 227 Mass. 166,
237
228 Mass. 316.
230 Mass. 600.
231 Mass. 313.

233 Mass. 570.	256 Mass. 466.	267 Mass. 319.
244 Mass. 47.	260 Mass. 421.	268 Mass. 221, 491.
252 Mass. 108.	265 Mass. 116.	271 Mass. 46.
253 Mass. 420.		

30 (5) "Employer" includes the legal representative of a deceased 232 Mass. 487.
31 employer.

32 (6) "Insured" or "insured person", an employer who has provided 237 Mass. 130.
33 by insurance for the payment to his employees by an insurer of the
34 compensation provided for by this chapter.

35 (7) "Insurer", any insurance company authorized so to do which
36 has contracted with an employer to pay the compensation provided for
37 by this chapter.

1917, 297, § 1. (S) "Reviewing board", the reviewing board designated under section 38
three of chapter twenty-four. 39

Powers and duties of department. 1913, § 4. SECTION 2. The department shall make all necessary inspections and investigations relating to causes of injuries for which compensation may be claimed, and for this purpose any member or employee thereof may at any time enter places of employment when being used for business purposes. It shall also have the powers and duties set forth in this chapter. 1 2 3 4 5 6

SECTION 3. [REPEALED, 1921, 462, § 8.] 1

Annual report. 1914, 656, § 1. SECTION 4. The department shall make an annual report. 1
1918, 231, § 1. 1921, 462, § 7.

PROCEDURE.

Rules, process, witnesses. 1911, 751, III, § 3. 1912, 571, § 8. 1915, 123; 275. 219 Mass. 58. 228 Mass. 213. 229 Mass. 435. 233 Mass. 297. Op. A G (1917) 77. SECTION 5. The department may make rules consistent with this chapter for carrying out its provisions. Process and procedure shall be as simple and summary as reasonably may be. The department or any member thereof may subpoena witnesses, administer oaths, and examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Upon the written request of the department or of any member thereof, together with interrogatories and cross-interrogatories, if any there be, filed with the clerk of the superior court for any county, commissions to take depositions of persons or witnesses residing without the commonwealth, or in foreign countries, or letters rogatory to a court in another state or to a court in a foreign country, shall forthwith issue from the said superior court, as in cases pending therein; and upon the return of the said depositions or answers to letters rogatory the same shall be opened by the clerk of the court issuing the commissions or letters, and the said clerk shall endorse thereon the date when a deposition or answer to letters rogatory was received, and the same shall forthwith be delivered to the department. No entry fee shall be charged in such cases. The fee for attending as a witness before the department shall be one dollar and fifty cents a day; for attending before a member of the department, fifty cents a day; in both cases, five cents a mile for travel out and home. The superior court may enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

Agreement for compensation. 1911, 751, III, § 4. 1912, 571, § 9. 230 Mass. 583. 231 Mass. 469. 233 Mass. 485. 234 Mass. 5. 250 Mass. 220. SECTION 6. If the insurer and the injured employee reach an agreement in regard to compensation, a memorandum thereof shall be filed with the department, and, if approved by it, the memorandum shall for all purposes be enforceable under section eleven. Such agreements shall be approved by said department only when the terms conform to this chapter. 1 2 3 4 5 6

254 Mass. 359. 258 Mass. 205. 264 Mass. 7.

Hearing by one member. 1911, 751, III, § 5. 1912, 571, § 10. 1914, 708, § 9. 1917, 297, § 2. SECTION 7. If the insurer and the injured employee fail to reach an agreement in regard to compensation, or if they have reached such an agreement, which has been signed and filed in accordance with this chapter, and compensation has been paid or is due in accordance there- 1 2 3 4

5 with, and the parties thereto then disagree as to the continuance of any
 6 weekly payments under such agreement, either party may notify the
 7 department, which shall thereupon assign the case for hearing by a
 8 member thereof.

250 Mass. 220.

254 Mass. 359.

258 Mass. 205.

1 SECTION 8. Such member shall make such inquiries and investiga-
 2 tions as shall be deemed necessary. The hearing shall be held in the town
 3 where the accident occurred or in such other place as the department
 4 may designate; and the decision of the member, together with a state-
 5 ment of the evidence, his findings of fact, rulings of law, and other matters
 6 pertinent to questions arising before him, shall be filed with the depart-
 7 ment. Unless a claim for review is filed by either party within seven
 8 days, the decision shall be enforceable under section eleven.

Investigation
 by the member.
 1911, 751,
 III, § 7.
 1912, 571, § 12.
 1917, 297, § 4.
 215 Mass. 180.
 216 Mass. 51
 220 Mass. 17
 222 Mass. 487
 227 Mass. 470,
 558
 232 Mass. 487,
 235 Mass. 387.

236 Mass. 588
240 Mass. 178.

246 Mass. 513.
250 Mass. 220.

254 Mass. 359.
258 Mass. 205.

1 SECTION 8A. A party who has by accident, mistake or through other
 2 reasonable cause, omitted to claim a review from a decision rendered
 3 under section eight within the time limited therein, may, within two
 4 years from the filing of such decision with the department, petition the
 5 superior court for the county in which the injury occurred, or for the
 6 county of Suffolk, for leave to claim such review, and the court may
 7 grant such petition and permit such claim to be filed if it finds that
 8 justice and equity require it, notwithstanding that a decree has previ-
 9 ously been rendered on such decision as provided in section eleven.

Petition to su-
 perior court in
 case of failure
 to claim re-
 view within
 time limited
 1930, 320, § 1.

1 SECTION 9. The department or any member thereof may appoint a
 2 duly qualified impartial physician to examine the injured employee and
 3 to report. The fee for this service shall be five dollars and traveling ex-
 4 penses, but the department may allow additional reasonable amounts in
 5 extraordinary cases, and the insurer shall reimburse the department for
 6 the amount so paid. The report of the physician shall be admissible as
 7 evidence in any proceeding before the department or a member thereof;
 8 provided, that the employee and the insurer have seasonably been fur-
 9 nished with copies thereof.

Examination
 by impartial
 physician.
 Fee, report.
 1911, 751,
 III, § 8.
 1914, 708, § 10.
 1916, 72.
 219 Mass. 189
 242 Mass. 408
 250 Mass. 220.
 258 Mass. 205.
 262 Mass. 266.

1 SECTION 9A. Whenever a medical question is in dispute in any case,
 2 and an impartial physician has not, prior to seven days before the date
 3 assigned for each hearing thereon, been appointed by the department
 4 or a member thereof, the employee may engage his own physician to
 5 appear and testify in his behalf and, if the decision of the single mem-
 6 ber or of the department is in favor of the employee, a reasonable fee
 7 shall be allowed by the member or by the department for such physi-
 8 cian's services and shall be added to the amount awarded to the employee
 9 and be paid by the insurer under the provisions of this chapter.

Fees for
 certain
 physicians
 appearing
 before depart-
 ment in
 behalf of
 injured em-
 ployees.
 1929, 242.
 1930, 330.

1 SECTION 10. If a claim for a review is filed under section eight, the
 2 reviewing board shall hear the parties, and may hear evidence in regard
 3 to pertinent matters and may revise the decision in whole or in part, or
 4 may refer the matter back to the member for further findings of fact,
 5 and shall file its decision with the records of the proceedings and notify
 6 the parties. If a claim for a review is so filed by the insurer in any case

Hearing by
 reviewing
 board. Pay-
 ment by
 insurers of
 certain ex-
 penses of re-
 views, when.
 1911, 751,
 III, § 10.

1912, 571, § 13. and the board by its decision orders the insurer to make, or to continue, 7
 1917, 297. payments to the injured employee, the cost to the injured employee of 8
 §§ 1, 6. such review, including therein reasonable counsel fees, shall be deter- 9
 1930, 208. mined by the board and shall be paid by the insurer. No party shall as 10
 219 Mass. 189. of right be entitled to a second hearing upon questions of fact. 11
 222 Mass. 98.
 223 Mass. 378.
 227 Mass. 269.
 456.

242 Mass. 408. 250 Mass. 220. 253 Mass. 209.
 246 Mass. 513. 253 Mass. 52. 269 Mass. 102.

Powers of superior court
 1911, 751, III, § 11
 1912, 571, § 14
 1917, 297, § 1, 7.
 215 Mass. 480, 497
 216 Mass. 51, 586
 217 Mass. 36, 76
 219 Mass. 430.
 222 Mass. 1
 226 Mass. 143.
 228 Mass. 31.
 230 Mass. 583
 231 Mass. 297, 402.
 232 Mass. 487
 233 Mass. 485
 236 Mass. 407
 238 Mass. 46, 308, 412.
 242 Mass. 489
 247 Mass. 570.
 250 Mass. 220.
 251 Mass. 569
 255 Mass. 205.
 269 Mass. 102.

SECTION 11. Any party in interest may present certified copies of 1
 an order or decision of the reviewing board, a decision of a member from 2
 which no claim for review has been filed within the time allowed therefor, 3
 or a memorandum of agreement approved by the department, and all 4
 papers in connection therewith, to the superior court for the county in 5
 which the injury occurred or for the county of Suffolk, whereupon said 6
 court shall render a decree in accordance therewith and notify the parties. 7
 Such decree shall have the same effect, and all proceedings in relation 8
 thereto shall thereafter be the same, as though rendered in a suit duly 9
 heard and determined by said court, except that there shall be no appeal 10
 therefrom upon questions of fact or where the decree is based upon a 11
 decision of a member or a memorandum of agreement, and except that 12
 there shall be no appeal from a decree based upon an order or decision 13
 of the reviewing board which has not been presented to the court within 14
 ten days after the notice of the filing thereof by said board. Upon the 15
 presentation to it of a certified copy of a decision ending, diminishing 16
 or increasing a weekly payment under the following section, the court 17
 shall revoke or modify the decree to conform to such decision. 18

Weekly payments may be changed
 Certain findings that incapacity has ceased not final, etc.
 1911, 751, III, § 12
 1914, 708, § 11
 1917, 297, § 8.
 1929, 246.
 225 Mass. 349.
 235 Mass. 387.
 237 Mass. 460.
 249 Mass. 477.
 250 Mass. 220.
 251 Mass. 414.
 269 Mass. 102.

SECTION 12. Questions as to a weekly payment may be heard and 1
 decided by the reviewing board or any member of the department, and 2
 the reviewing board or such member may, in accordance with the evidence 3
 and subject to this chapter, issue any order deemed advisable. If the 4
 case is heard and decided by a member, his decision may be reviewed 5
 under sections eight and ten. 6

When in any case before the board there appears of record a finding 7
 that the employee is entitled to compensation, no subsequent finding by 8
 the board or by a member thereof discontinuing compensation on the 9
 ground that the employee's incapacity has ceased shall be considered 10
 final as a matter of fact or res judicata as a matter of law, and such em- 11
 ployee or his dependents, in the event of his death, may have further 12
 hearings as to whether his incapacity or death is or was the result of the 13
 injuries for which he received compensation; provided, that if the 14
 board shall determine that the petition for such a rehearing is without 15
 merit and frivolous, the employee or his dependents shall not thereafter 16
 be entitled to file any subsequent petition therefor except for cause 17
 shown and in the discretion of the member to whom such subsequent 18
 petition may be referred, and that, in the event of the death of the 19
 employee, such a petition for a rehearing shall be filed within three 20
 months from the time of his decease and within one year from the date 21
 of the finding terminating his compensation. 22

Amount of fees of attorneys, physicians, etc.
 1911, 751, III, § 13
 1914, 708, § 12

SECTION 13. Fees of attorneys and physicians and charges of hospitals 1
 for services under this chapter shall be subject to the approval of the 2
 department. If the insurer and any physician or hospital, or the em- 3
 ployee and any attorney, fail to agree as to the amount to be paid for 4

5 such services, either party may notify the department, which may there- 1917, 297, § 9.
 6 upon assign the case for hearing by a member thereof. The member 226 Mass. 292.
 7 shall report the facts to the department for decision, and the decision 228 Mass. 142.
 8 shall be enforceable under section eleven. 240 Mass. 175.
 241 Mass. 525.

249 Mass. 477.

251 Mass. 569.

257 Mass. 267.

1 SECTION 14. If the reviewing board, any member of the department Frivolous
 2 or any court before which proceedings under this chapter are brought proceedings.
 3 determines that such proceedings have been brought, prosecuted or Costs.
 4 defended without reasonable ground, the whole cost of the proceedings 1911, 751.
 5 shall be assessed upon the party who has so brought, prosecuted or de- 111, § 14.
 6 fended them. 1917, 297, § 10.
 215 Mass. 480.
 219 Mass. 136.
 242 Mass. 489.

252 Mass. 191.

258 Mass. 475.

1 SECTION 15. Where the injury for which compensation is payable Legal lia-
 2 was caused under circumstances creating a legal liability in some person bility for
 3 other than the insured to pay damages in respect thereof, the employee injuries.
 4 may at his option proceed either at law against that person to recover Election, etc.
 5 damages or against the insurer for compensation under this chapter, but 1911, 751.
 6 not against both. If compensation be paid under this chapter, the 111, § 15.
 7 insurer may enforce, in the name of the employee or in its own name and 1913, 148.
 8 for its own benefit, the liability of such other person; and in case the 1929, 326, § 1.
 9 insurer recovers a sum greater than that paid by it to the employee, four 216 Mass. 586.
 10 fifths of the excess shall be paid to the employee; but the insurer shall 219 Mass. 420.
 11 not make any settlement with such other person without 560.
 12 the approval of the industrial accident board. An employee shall not 222 Mass. 366.
 13 be held to have exercised his option under this section to proceed at 225 Mass. 151.
 14 law if, at any time prior to trial of an action at law brought by him 229 Mass. 335.
 15 against such other person, he shall, after notice to the insurer, discon- 231 Mass. 170.
 16 tinue such action, provided that upon payment of compensation follow- 242 Mass. 156.
 17 ing such discontinuance the insurer shall not have lost its right to en- 547.
 18 force the liability of such other person as hereinbefore provided. 243 Mass. 565.
 572.
 244 Mass. 195.
 317.
 254 Mass. 359.
 255 Mass. 605.
 262 Mass. 383.
 531.
 269 Mass. 221.
 272 Mass. 418.

1 SECTION 15A. If one or more claims are filed for an injury and two Payment of
 2 or more insurers, any one of which may be held to be liable to pay com- compensation
 3 pensation therefor, agree that the injured employee would be entitled in certain
 4 to receive such compensation but for the existence of a controversy as cases in antici-
 5 to which of said insurers is liable to pay the same, such one of said in- pation of
 6 surers as they may mutually agree upon or as may be selected by a single settlement of
 7 member of the board shall pay to the injured employee the compensation controversy as
 8 aforesaid, pending a final decision of the board as to the matter in con- to which of
 9 troversy, and such decision shall require that the amount of compen- two or more
 10 sation so paid shall be deducted from the award if made against another insurers is
 11 insurer and be paid by said other insurer to the insurer agreed upon or liable
 12 selected by the single member as aforesaid. 1931, 143.

1 SECTION 16. Questions arising under this chapter, if not settled by Decision of
 2 agreement by the parties interested therein, shall, except as otherwise department
 3 provided in this chapter, be determined by the department. The de- Enforcement.
 4 cisions of the department shall for all purposes be enforceable under 1911, 751.
 5 section eleven. 111, § 16.
 1912, 571, § 15.
 231 Mass. 142.

1 SECTION 17. Orders or decisions of the reviewing board or depart- Decision of
 2 ment, decrees of the superior court upon such orders, decisions of a department,
 3 member of the department from which no claim for review has been etc., not
 suspended
 by appeal.

1915, 132.
225 Mass. 30.
230 Mass. 583.

filed within the time allowed therefor, or memoranda of agreements 4
approved by the department shall have effect, notwithstanding an 5
appeal, until it is otherwise ordered by a justice of the supreme judicial 6
court, who may in any county suspend or modify such decree, order or 7
decision, during the pendency of the appeal. 8

Independent contractor,
etc.
1911, 751,
HI, § 17.
218 Mass. 1.
224 Mass. 571.
225 Mass. 1
226 Mass. 1.
228 Mass. 316.
229 Mass. 193,
573.
232 Mass. 456,
458.
233 Mass. 577.
234 Mass. 330.
242 Mass. 290.
244 Mass. 195.
248 Mass. 31.
262 Mass. 133.
270 Mass. 162.

SECTION 18. If an insured person enters into a contract, written or 1
oral, with an independent contractor to do such person's work, or if 2
such a contractor enters into a contract with a sub-contractor to do all 3
or any part of the work comprised in such contract with the insured, and 4
the insurer would, if such work were executed by employees immediately 5
employed by the insured, be liable to pay compensation under this 6
chapter to those employees, the insurer shall pay to such employees 7
any compensation which would be payable to them under this chapter 8
if the independent or sub-contractors were insured persons. The insurer, 9
however, shall be entitled to recover indemnity from any other person 10
who would have been liable to such employees independently of this 11
section; and if the insurer has paid compensation under this section, it 12
may enforce, in the name of the employee or in its own name and for its 13
benefit, the liability of such other person. This section shall not apply 14
to any contract of an independent or sub-contractor which is merely 15
ancillary and incidental to, and is no part of or process in, the trade or 16
business carried on by the insured, nor to any case where the injury 17
occurred elsewhere than on, in or about the premises on which the con- 18
tractor has undertaken to execute the work for the insured or which are 19
under the control or management of the insured. 20

Notice of injuries to be given to department.
1911, 751,
HI, § 18.
1913, 746, § 1
217 Mass. 223.
228 Mass. 31
231 Mass. 529.
248 Mass. 559.

SECTION 19. Every employer shall hereafter keep a record of all 1
injuries, fatal or otherwise, received by his employees in the course of 2
their employment. Within forty-eight hours, not counting Sundays and 3
legal holidays, after the occurrence of an injury, a written report thereof 4
shall be made to the department on blanks to be procured from it. Upon 5
the termination of the disability of the injured employee, the employer 6
shall make a supplemental report upon blanks to be procured from it. 7
If the disability extends beyond a period of sixty days, the employer 8
shall report to the department at the end of such period that the injured 9
employee is still disabled, and upon the termination of the disability 10
shall file a final supplemental report as provided above. 11

The said reports shall contain the name and nature of the business of 12
the employer, the situation of the establishment, the name, age, sex 13
and occupation of the injured employee, and shall state the date and 14
hour of any accident causing the injury, the nature and cause of the 15
injury, and other information required by the department. 16

Employers refusing or neglecting to make the report required by this 17
section shall be punished by a fine of not more than fifty dollars. 18

Copies of reports of injuries filed by employers with the department 19
and statistics and data compiled therefrom shall be kept available by it, 20
and shall be furnished on request to the department of labor and indus- 21
tries for its own use. 22

Within sixty days after the termination of the disability of the injured 23
employee, the insurer shall file with the department a statement showing 24
the total payments made or to be made for compensation and for medical 25
services for such injured employee. 26

1 SECTION 20. Copies of hospital records kept in accordance with sec-
 2 tion seventy of chapter one hundred and eleven, certified by the persons
 3 in custody thereof to be true and complete, shall be admissible in evi-
 4 dence in proceedings before the department or any member thereof.
 5 The department or any member, before admitting any such copy in
 6 evidence, may require the party offering the same to produce the orig-
 7 inal record. All medical records and reports of hospitals, clinics and
 8 physicians of the insurer or of the employee shall be open to the inspec-
 9 tion of the department so far as relevant to any matter before it.

Hospital records admissible as evidence. Records open to inspection of department 1919, 198. 1927, 309, § 1

1 SECTION 21. Every insured person shall, as soon as he secures a
 2 policy, give written or printed notice to all persons under contract of
 3 hire with him that he has provided for payment to injured employees by
 4 the insurer.

Notice to employees. 1911, 751, IV, § 20 225 Mass. 229.

233 Mass. 570.

214 Mass. 47.

258 Mass. 470.

1 SECTION 22. Every insured person shall give written or printed notice
 2 to every person with whom he is about to enter into a contract of hire
 3 that he has provided for payment to injured employees by the insurer.
 4 An employer ceasing to be insured shall, on or before the day on which
 5 his policy expires, give written or printed notice thereof to all persons
 6 under contract with him. In case of the renewal of the policy no notice
 7 shall be required. He shall file a copy of said notice with the depart-
 8 ment. The notices required by this and the preceding section may be
 9 given in the manner therein provided or in such other manner as may
 10 be approved by the department.

Same subject. 1911, 751, IV, § 21 1912, 571, § 16 218 Mass. 346 225 Mass. 229 232 Mass. 181 233 Mass. 570 244 Mass. 47 258 Mass. 470.

1 SECTION 23. If an employee of an insured person files any claim
 2 with or accepts payment from the insurer on account of personal injury,
 3 or makes any agreement, or submits to a hearing before a member of the
 4 department under section eight, such action shall constitute a release to
 5 the insured of all claims or demands at law, if any, arising from the injury.

Acceptance of payment, etc. by employee releases employer from liability, etc. 1911, 751, V, § 1.

244 Mass. 47.

262 Mass. 383.

1 SECTION 24. An employee of an insured person shall be held to have
 2 waived his right of action at common law or under the law of any other
 3 jurisdiction in respect to an injury therein occurring, to recover damages
 4 for personal injuries if he shall not have given his employer, at the time
 5 of his contract of hire, written notice that he claimed such right, or, if
 6 the contract of hire was made before the employer became an insured
 7 person, if the employee shall not have given the said notice within
 8 thirty days of notice of such insurance. An employee who has given
 9 notice to his employer that he claimed his right of action as aforesaid
 10 may waive such claim by a written notice, which shall take effect five
 11 days after it is delivered to the employer or his agent. The notices
 12 required by this section shall be given in such manner as the department
 13 may approve.

Notice by employee to retain rights at common law 1911, 751, I, § 5 1912, 666, § 2 1927, 309, § 2 209 Mass. 607 218 Mass. 346 219 Mass. 420 222 Mass. 366 225 Mass. 220 226 Mass. 1 231 Mass. 313 233 Mass. 570 236 Mass. 28 239 Mass. 1 240 Mass. 421 243 Mass. 94 244 Mass. 47.

256 Mass. 466.

258 Mass. 470.

262 Mass. 133.

267 Mass. 208.

1 SECTION 25. If an insured person who has complied with the rules,
 2 regulations and demands of the insurer is required by a judgment of a
 3 court to pay to an employee any damages on account of personal injury
 4 sustained by such employee during the period covered by insurance, the
 5 insurer shall pay to the insured the full amount of such judgment and the

Payment of judgment by insured 1911, 751, IV, § 22 218 Mass. 346

cost assessed therewith if the insured shall have given the insurer written notice of the bringing of the action in which the judgment was recovered and an opportunity to appear and defend the same.

PAYMENTS.

Payments.
Presumption
of employment.
Extrater-
ritoriality.
1911, 751,
11, § 1.
1927, 309, § 3.
1930, 205.
1931, 170.
215 Mass. 497.
216 Mass. 51,
203.
217 Mass. 36,
76, 223, 388.
218 Mass. 1
219 Mass. 488.
220 Mass. 17,
526, 581.
222 Mass. 1,
98, 163, 487.
223 Mass. 56,
139
224 Mass. 554,
558.
225 Mass. 174,
220.
226 Mass. 591.
227 Mass. 341,
452.
228 Mass. 57.
229 Mass. 165,
193, 407.
230 Mass. 99,
326, 429
235 Mass. 309,
598.
236 Mass. 241,
342, 473, 542
258 Mass. 470.
265 Mass. 497.

SECTION 26. If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, is ordered by an insured person, or by a person exercising superintendence on behalf of such insured person, to perform work which is not in the usual course of such trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee.

269 Mass. 399, 401, 490, 550.

270 Mass. 276.

Wilful mis-
conduct by
employee bars
compensation.

SECTION 27. If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

1911, 751, 11, § 2.

218 Mass. 158.

223 Mass. 139.

260 Mass. 222.

Wilful mis-
conduct by
employer.
Double com-
pensation.
1911, 751,
11, § 3.
1912, 571, § 1.
218 Mass. 8.
227 Mass. 55.
230 Mass. 272.
231 Mass. 132.
236 Mass. 407.

SECTION 28. If the employee is injured by reason of the serious and wilful misconduct of an insured person or of any person regularly intrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the insured shall repay to the insurer the extra compensation paid to the employee. If a claim is made under this section the insured may appear and defend against such claim only.

247 Mass. 245.

251 Mass. 427.

260 Mass. 222.

Waiting period.
1911, 751,
11, § 4.
1916, 90.
1923, 163.
1924, 207.
1927, 309, § 4.
247 Mass. 427.

SECTION 29. No compensation shall be paid for any injury which does not incapacitate the employee for a period of at least seven days from earning full wages, but if incapacity extends beyond such period, compensation shall begin on the eighth day after the injury, and if incapacity extends beyond a period of four weeks, compensation shall be paid from the day of injury, but except under section thirty-five no compensation shall be paid for any period for which any wages were earned. When compensation shall have begun it shall not be discontinued except with the written assent of the employee or the approval of the department or a member thereof; provided, that such compen-

11 sation shall be paid in accordance with section thirty-five if the employee
 12 in fact earns wages after the original agreement is filed.

1 SECTION 30. During the first two weeks after the injury, and, if
 2 the employee is not immediately incapacitated thereby from earning full
 3 wages, then from the time of such incapacity, and in unusual cases, or
 4 cases requiring specialized or surgical treatment, in the discretion of
 5 the department, for a longer period, the insurer shall furnish adequate
 6 and reasonable medical and hospital services, and medicines if needed,
 7 together with the expenses necessarily incidental to such services. The
 8 employee may select a physician other than the one provided by the
 9 insurer; and in case he shall be treated by a physician of his own selec-
 10 tion, or where, in case of emergency or for other justifiable cause, a
 11 physician other than the one provided by the insurer is called in to treat
 12 the injured employee, the reasonable cost of his services shall be paid
 13 by the insurer, subject to the approval of the department. Such ap-
 14 proval shall be granted only if the department finds that the employee
 15 was so treated by such physician or that there was such emergency or
 16 justifiable cause, and in all cases that the services were adequate and
 17 reasonable and the charges reasonable. In any case where the depart-
 18 ment is of opinion that the fitting of the employee with an artificial eye
 19 or limb, or other mechanical appliance, will promote his restoration to
 20 industry, it may order that he be provided with such an artificial eye,
 21 limb or appliance, at the expense of the insurer.

Medical
 services, etc.
 1911, 751.
 11, § 5.
 1914, 708, § 1.
 1917, 198.
 1920, 324.
 1927, 309, § 5.
 217 Mass. 589.
 219 Mass. 420.
 223 Mass. 546.
 226 Mass. 292.
 228 Mass. 257.
 229 Mass. 302.
 335.
 240 Mass. 178.
 243 Mass. 230.
 245 Mass. 244.
 255 Mass. 533.
 257 Mass. 267.
 258 Mass. 515.
 262 Mass. 51.
 95.
 265 Mass. 449.
 490.
 269 Mass. 441.
 270 Mass. 29.

1 SECTION 31. If death results from the injury, the insurer shall pay
 2 the following dependents of the employee, including his children by a
 3 former wife, wholly dependent upon his earnings for support at the time
 4 of his injury, compensation as follows, payable, except as hereinafter
 5 provided, in the manner set forth in section thirty-two:
 6 To the widow, so long as she remains unmarried, ten dollars a week
 7 if and so long as there is no child of the employee, who is under the age
 8 of eighteen, or over said age and physically or mentally incapacitated
 9 from earning; to or for the use of the widow and for the benefit of all
 10 children of the employee, twelve dollars a week if and so long as there
 11 is one such child, and two dollars more a week for each such additional
 12 child; provided, that in case any such child is a child by a former wife,
 13 the death benefit shall be divided between the surviving wife and all
 14 living children of the deceased employee in equal shares, the surviving
 15 wife taking the same share as a child. If the widow dies, such amount
 16 or amounts as would have been payable to or for her own use and for
 17 the benefit of all children of the employee shall be paid in equal shares to
 18 all the surviving children of the employee. If the widow remarries, all
 19 payments under the foregoing provisions shall terminate and the insurer
 20 shall pay each week to each of the children of the employee, if and so
 21 long as there are more than five, his or her proportionate share of eighteen
 22 dollars and shall pay each of such children, if and so long as there are
 23 five or less, three dollars a week. The total amount of payments under
 24 this section shall not be more than sixty-four hundred dollars and said
 25 payments shall not continue more than four hundred weeks. When
 26 weekly payments have been made to an injured employee before his
 27 death, compensation under the foregoing provisions of this section shall
 28 begin from the date of the death of the employee, but shall not amount
 29 to a total of more than sixty-four hundred dollars, including such pay-

Death
 payments.
 1911, 751.
 11, § 6.
 1914, 708, § 2.
 1922, 402.
 1927, 309, § 6.
 1930, 293.
 216 Mass. 586.
 217 Mass. 3.
 192.
 218 Mass. 278.
 219 Mass. 498.
 230 Mass. 526.
 232 Mass. 401.
 233 Mass. 187.
 225 Mass. 349.
 229 Mass. 48.
 435.
 250 Mass. 152.
 326.
 251 Mass. 261.
 254 Mass. 5.
 240 Mass. 355.
 247 Mass. 89.
 248 Mass. 414.
 259 Mass. 209.
 265 Mass. 12.
 269 Mass. 583.

ments as were made to the injured employee before his death, and shall not continue for more than four hundred weeks, including weeks during which payments were made to the injured employee before his death.

In all other cases of total dependency, the insurer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of the injury a weekly payment equal to two thirds of his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of five hundred weeks; but in no case shall the amount be more than four thousand dollars. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the insurer shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation under this paragraph to dependents shall begin from the date of the death of the employee, but shall not continue for more than five hundred weeks.

Dependents.
1911, 751,
II, § 7.
1914, 708, § 3.

SECTION 32. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

- | | | |
|------------|----------------|----------------|
| 1919, 204. | 240 Mass. 136. | 254 Mass. 460. |
| 1926, 190. | 243 Mass. 528. | 269 Mass. 267. |

215 Mass. 497.
216 Mass. 71.
217 Mass. 79,
467.
219 Mass. 140.
222 Mass. 563.
223 Mass. 378.
224 Mass. 86,
592.

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, the department shall find the wife was living apart for justifiable cause or because he had deserted her. The findings of the department upon the questions of such justifiable cause and desertion shall be final.

- | | | |
|---------------------|----------------|----------------|
| 227 Mass. 456. | 230 Mass. 152. | 269 Mass. 583. |
| 229 Mass. 454, 521. | 240 Mass. 449. | |

(b) A husband upon a wife with whom he lives at the time of her death.

216 Mass. 71.
217 Mass. 79,
192.
221 Mass. 105.
225 Mass. 349.
231 Mass. 144.
232 Mass. 212.
234 Mass. 5,
152.
236 Mass. 204.
244 Mass. 47.
247 Mass. 510.
269 Mass. 267.

(c) Children under the age of eighteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom they are living at the time of the death of such parent, there being no surviving dependent parent; provided, that in case of the death of an employee who has at the time of his death living children by a former wife or husband, under the age of eighteen years (or over said age, if physically or mentally incapacitated from earning), said children shall be conclusively presumed to be wholly dependent for support upon such deceased employee, and the death benefit shall be divided between the surviving wife or husband and all the children of the deceased employee in equal shares, the surviving wife or husband taking the same share as a child. The total sum due the surviving wife or husband and her or his own children shall be paid directly to the wife or husband for her or his own use and for the benefit of her or his own children, and the sums due to the children by the former wife or husband of the deceased employee shall be paid to their guardians or legal representatives for the benefit of such children.

234 Mass. 152.
243 Mass. 5
244 Mass. 281.
257 Mass. 3.
259 Mass. 222.

(d) Children under the age of sixteen years (or over said age but physically or mentally incapacitated from earning) upon a parent who was at the time of his death legally bound to support although living apart from such child or children.

31 (c) A parent upon an unmarried child under the age of eighteen 217 Mass. 467.
 32 years; provided, that such child was living with the parent at the time 218 Mass. 354.
 33 of the injury resulting in death. 219 Mass. 140.
 222 Mass. 401.
 563.

34 In all other cases questions of dependency, in whole or in part, shall 223 Mass. 378.
 35 be determined in accordance with the fact as the fact may be at the 227 Mass. 456
 36 time of the injury; and in such other cases, if there is more than one 229 Mass. 407.
 37 person wholly dependent the death benefit shall be divided equally 454, 521
 38 among them, and persons partly dependent, if any, shall receive no part 230 Mass. 9
 39 thereof, and if there is no one wholly dependent and more than one per- 231 Mass. 261.
 40 son partly dependent, the death benefit shall be divided among them 267 Mass. 298.
 41 according to the relative extent of their dependency.

1 SECTION 33. In all cases the insurer shall pay the reasonable expense Funeral
 2 of burial, not exceeding one hundred and fifty dollars. If the employee expenses.
 3 leaves dependents, such sum shall be a part of the compensation pay- 1911, 751,
 4 able, and shall to that extent shorten the period of payment. II, § 8.
 1917, 269.

1922, 368.

215 Mass. 497.

1 SECTION 34. While the incapacity for work resulting from the injury Total in-
 2 is total, the insurer shall pay the injured employee a weekly compensa- capacity
 3 tion equal to two thirds of his average weekly wages, but not more than 1911, 751,
 4 eighteen dollars nor less than nine dollars a week, except that the weekly II, § 9
 5 compensation of the injured employee shall be equal to his average 1914, 708, § 4.
 6 weekly wages in case such wages are less than nine dollars; and the 1917, 249, § 1.
 7 period covered by such compensation shall not be greater than five hun- 1918, 113.
 8 dred weeks nor the amount more than forty-five hundred dollars. 1919, 197.
 1927, 309, § 7.
 215 Mass. 96.
 217 Mass. 3.
 218 Mass. 8,
 141.

219 Mass. 189, 430
 223 Mass. 273, 288.
 227 Mass. 55.

228 Mass. 334.
 229 Mass. 325
 244 Mass. 346.

248 Mass. 60, 414.
 266 Mass. 323.
 270 Mass. 29.

1 SECTION 35. While the incapacity for work resulting from the injury Partial in-
 2 is partial, the insurer shall pay the injured employee a weekly com- capacity.
 3 pensation equal to two thirds of the difference between his average 1911, 751,
 4 weekly wages before the injury and the average weekly wages which II, § 10.
 5 he is able to earn thereafter, but not more than eighteen dollars a week; 1914, 708, § 5.
 6 and the amount of such compensation shall not be more than forty-five 1919, 205.
 7 hundred dollars. 1927, 309, § 8.
 217 Mass. 3.
 218 Mass. 8.
 219 Mass. 430.

220 Mass. 351.
 222 Mass. 461.
 229 Mass. 325.
 235 Mass. 408.
 239 Mass. 331.

242 Mass. 489
 243 Mass. 236, 371.
 244 Mass. 346.
 247 Mass. 157, 233.

248 Mass. 60.
 264 Mass. 7.
 266 Mass. 323.
 268 Mass. 35, 50.

1 SECTION 36. In case of the following specified injuries the amounts Payments for
 2 hereinafter named shall be paid in addition to all other compensation: certain specific
 injuries.

1911, 751, II, § 11.
 1912, 571, § 2.
 1913, 445; 696.

1914, 708, § 6.
 1928, 356.
 1930, 336.

218 Mass. 8.
 240 Mass. 492.
 248 Mass. 60.

3 (a) For the loss by severance of both hands at or above the wrist,
 4 two thirds of the average weekly wages of the injured person, but not
 5 more than ten dollars nor less than four dollars a week for a period of
 6 one hundred and seventy-five weeks.

7 (b) For the reduction to twenty seventieths of normal vision in both
 8 eyes, with glasses, two thirds of the average weekly wages of the injured
 9 person, but not more than ten dollars nor less than four dollars a week
 10 for a period of one hundred and fifty weeks.

11 (c) For the loss by severance of both feet at or above the ankle, two 215 Mass. 8.
 12 thirds of the average weekly wages of the injured person, but not more

than ten dollars nor less than four dollars a week for a period of one hundred weeks.

(d) For the loss by severance of the right or major hand at or above the wrist, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of seventy-five weeks.

251 Mass. 397. (e) For the loss by severance of the left or minor hand at or above the wrist, or of either foot at or above the ankle, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of fifty weeks.

226 Mass. 131.
228 Mass. 211. (f) For the reduction to twenty seventieths of normal vision in either eye, with glasses, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of fifty weeks.

(g) For the loss by severance at or above the second joint of the thumb of the right or major hand, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of forty weeks.

217 Mass. 3. (h) For the loss by severance at or above the second joint of the index finger of the right or major hand, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of twenty weeks.

(i) For the loss by severance of one phalange of the thumb of the right or major hand, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of twenty weeks.

(j) For the loss by severance at or above the second joint of two or more fingers of the same hand which, in the case of the left or minor hand, may include the thumb, or of two or more toes of the same foot, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of twenty-five weeks, for each hand or foot so injured, but no compensation shall be payable under this paragraph on account of injury to the right or major hand in case one or more phalanges of the thumb of that hand or two or more phalanges of the index finger of that hand are lost by severance.

217 Mass. 511. (k) For the loss by severance of the terminal phalange or phalanges of any finger or fingers, not exceeding three on the same hand, which for the purposes hereof may include the thumb of the left or minor hand but not of the right or major hand, two thirds of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week for a period of twelve weeks in case of the loss by severance of one such terminal phalange, or for a period of twenty-two weeks in case of the loss as aforesaid of two such terminal phalanges on the same hand, or for a period of thirty weeks in case of the loss as aforesaid of three or more such terminal phalanges on the same hand; provided, that no compensation shall be payable under this paragraph for the loss by severance of any phalange for the loss of which compensation is payable under any other paragraph of this section, and provided, further, that compensation shall be payable under this paragraph on account of injury to one hand only for such number of weeks as, together with the number of weeks during which compensation is payable under any other paragraph of this section for injury to the same hand, will

66 not exceed forty-seven in the case of the left or minor hand or seventy-
67 two in the case of the right or major hand.

68 (*k*¹⁻²) For the loss by severance of at least one phalange of any toe,
69 two thirds of the average weekly wages of the injured person, but not
70 more than ten dollars nor less than four dollars a week for a period of
71 twelve weeks, for each foot so injured.

72 (*l*) The additional amounts provided for in this section in case of the
73 loss of a particular hand, foot, thumb, finger, toe or phalange shall also
74 be paid for the number of weeks above specified if the injury is such
75 that that hand, foot, thumb, finger, toe or phalange is not lost but so
76 injured as to be permanently incapable of use.

217 Mass. 511.
219 Mass. 136.
221 Mass. 54.
223 Mass. 346.
227 Mass. 269.
251 Mass. 397.

1 SECTION 37. Whenever an employee who has previously suffered a
2 personal injury resulting in the loss by severance, or the permanent
3 incapacity, of one hand at or above the wrist or one foot at or above the
4 ankle, or the reduction to twenty seventieths of normal vision of one
5 eye with glasses, incurs further disability by the loss or permanent
6 incapacity of a hand or foot or the reduction to twenty seventieths of
7 normal vision in an eye, by reason of a personal injury for which com-
8 pensation is required by this chapter, he, or his dependent, if death results
9 from the injury, shall be paid the compensation provided for by sections
10 thirty-one, thirty-two, thirty-four or thirty-five, in the following manner:
11 One half of such compensation shall be paid by the state treasurer
12 from the fund established by section sixty-five, and the other half by
13 the insurer, but the additional compensation required by section thirty-
14 six shall be paid by the insurer.

Method of
payment for
certain in-
juries
1919, 272, § 2.
1931, 426,
§ 253
247 Mass. 427.

1 SECTION 38. No savings or insurance of the injured employee inde-
2 pendent of this chapter shall be considered in determining the com-
3 pensation payable thereunder, nor shall benefits derived from any other
4 source than the insurer be considered in such determination.

Savings, etc.,
not to be
deducted.
1911, 751,
II, § 12
229 Mass. 435.

247 Mass. 233.

1 SECTION 39. The compensation payable in case of the death of the
2 injured employee shall be paid to his legal representative; or, if he has
3 no legal representative, to his dependents; or, if he leaves no depend-
4 ents, to the persons to whom payment of the expenses for the last sick-
5 ness and burial is due. If payment is made to the legal representative
6 of the deceased employee, it shall be paid by him to the dependents or
7 other persons entitled thereto under this chapter. When the appoint-
8 ment of a legal representative of a deceased employee, not otherwise
9 necessary, is required to comply with this chapter, the insurer shall fur-
10 nish or pay for legal services rendered in connection with the appoint-
11 ment of such representative, or in connection with his duties, and shall
12 pay the necessary disbursements for such appointment, the necessary
13 expenses of such representative and reasonable compensation to him for
14 time necessarily spent in complying therewith. Said payments shall be
15 in addition to sums paid for compensation.

Payments in
case of death.
1911, 751,
II, § 13.
1914, 708, § 7.
216 Mass. 586.
219 Mass. 560.
231 Mass. 399.
254 Mass. 359.

1 SECTION 40. If an injured employee is mentally incompetent or is a
2 minor when any right or privilege accrues to him, his guardian or next
3 friend may in his behalf claim and exercise such right or privilege.

Guardian,
etc., may
claim rights.
1911, 751,
II, § 14.

233 Mass. 570.

Notice and claim
1911, 751,
II, § 15
1929, 326, § 2
217 Mass. 223.
222 Mass. 434.
223 Mass. 346,
378.
225 Mass. 203.
226 Mass. 131.
227 Mass. 456,
470.
228 Mass. 31,
213.
231 Mass. 225,
469.

SECTION 41. No proceedings for compensation for an injury shall be maintained unless a notice thereof shall have been given to the insurer or insured as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury has been made within six months after its occurrence, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such incapacity, or, in case an action against a third person is discontinued as provided in section fifteen, within thirty days after such discontinuance.

243 Mass. 166, 366.
244 Mass. 346.

249 Mass. 173.
259 Mass. 350.

269 Mass. 102.
273 Mass. 453.

Form of notice.
1911, 751,
II, § 16
1912, 172;
571, § 3.
217 Mass. 223.
222 Mass. 434.
226 Mass. 60.
231 Mass. 225.
243 Mass. 166.
244 Mass. 346.
259 Mass. 350.
269 Mass. 102.

SECTION 42. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or, in case of his death, by his legal representative, or by a person to whom payments may be due under this chapter, or by a person in behalf of any one of them. Any form of written communication signed by a person who may give the notice as above provided, containing the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

Service of notice.
1911, 751,
II, § 17.
217 Mass. 223.
222 Mass. 434.
244 Mass. 346.
259 Mass. 350.
269 Mass. 102.

SECTION 43. The notice shall be served upon the insurer or an officer or agent thereof, or upon the insured, or upon one insured person if there is more than one, or upon any officer or agent of a corporation if the insured is a corporation, by delivering it to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person on whom it is to be served, at his last known residence or place of business.

Notice not invalid for inaccuracy, etc.
1911, 751,
II, § 18.
1920, 223, § 1.
217 Mass. 223.
222 Mass. 434.
223 Mass. 342.
226 Mass. 60.
227 Mass. 470.
228 Mass. 31.
232 Mass. 181.

SECTION 44. Such notice shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury unless it is shown that it was the intention to mislead and that the insurer was in fact misled thereby. Want of notice shall not bar proceedings, if it be shown that the insurer, insured or agent had knowledge of the injury, or if it is found that the insurer was not prejudiced by such want of notice.

237 Mass. 115, 340.
241 Mass. 36.

243 Mass. 166, 366, 371.
244 Mass. 346.

259 Mass. 350.
266 Mass. 153.

Examination by insurer's physician.
1911, 751,
II, § 19
1912, 571, § 4.
1921, 310.
215 Mass. 480.
244 Mass. 346.
270 Mass. 368.

SECTION 45. After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if requested by the insurer or insured, submit to an examination by a registered physician, furnished and paid for by the insurer or the insured. The employee may have a physician provided and paid for by himself present at the examination. If a physician provided by the employee is not present at the examination, it shall be the duty of the insurer to file with the department a copy of the report of its examining physician or physicians if and when such report is to be used as the basis of any order by the department. If the employee refuses to submit to the examination or in any way obstructs it, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

1 SECTION 46. No agreement by any employee to waive his rights to
 2 compensation shall be valid, but an employee who is for any reason
 3 peculiarly susceptible to injury or who is peculiarly likely to become
 4 permanently or totally incapacitated by an injury may, at the discretion
 5 of the department and with its written approval within one month of
 6 the beginning of his employment, waive his rights to compensation
 7 under sections thirty-four, thirty-five and thirty-six, or any of them.

Waiver of
rights to
compensation
regulated.
1911, 751,
II, § 20.
1927, 309, § 9.
215 Mass. 480.

1 SECTION 47. No payment shall be assignable or subject to attach-
 2 ment, or be liable in any way for debts.

Payment not
assignable.

1911, 751, II, § 21.

1 SECTION 48. Whenever the department deems it to be for the best
 2 interests of the employee or his dependents, and the parties agree, the
 3 liability for compensation may be redeemed by the payment in whole
 4 or in part by the insurer of a lump sum of an amount to be fixed by the
 5 department, not exceeding the amount provided by this chapter. The
 6 department, in the case of a minor who has received permanently dis-
 7 abling injuries, either partial or total, may, at any time before or after
 8 he attains his majority, provide that he be compensated in whole or in
 9 part by the payment of a lump sum, of an amount to be fixed by the
 10 department, not exceeding the amount provided by this chapter.

Lump sums in
lieu of weekly
payments.
1911, 751,
II, § 22.
1914, 708, § 8.
1927, 309, § 10.
1930, 181.
226 Mass. 444.
230 Mass. 500.
238 Mass. 308.
257 Mass. 532.
267 Mass. 322.

1 SECTION 49. The claim for compensation shall be in writing, and
 2 shall state the time, place, cause and nature of the injury. It shall be
 3 signed by the person injured, or, in the event of his death, by his legal
 4 representative, or by a person to whom payments may be due, or by a
 5 person in behalf of any of them, and shall be filed with the department.
 6 A claim for compensation shall not be held invalid or insufficient by
 7 reason of any inaccuracy in stating the time, place, cause or nature of
 8 the injury unless it is shown that it was the intention to mislead and
 9 that the insurer was in fact misled thereby. Failure to make a claim
 10 within the time fixed by section forty-one shall not bar proceedings under
 11 this chapter if it is found that it was occasioned by mistake or other
 12 reasonable cause, or if it is found that the insurer was not prejudiced
 13 by the delay. In no case shall failure to make a claim bar proceedings
 14 if the insurer has executed an agreement in regard to compensation
 15 with the employee or made any payment for compensation under this
 16 chapter.

Claim.
1912, 571, § 5.
1918, 119.
1920, 223, § 2.
1923, 125.
223 Mass. 342.
346, 378.
225 Mass. 203.
226 Mass. 131,
380.
227 Mass. 456.
228 Mass. 213.
230 Mass. 9.
231 Mass. 469.
240 Mass. 409.
243 Mass. 371.
249 Mass. 173.
254 Mass. 460.
273 Mass. 453.

1 SECTION 50. Whenever any question involving the compensation of
 2 an injured employee or his dependents is appealed to the supreme judi-
 3 cial court, and the decision is in favor of the employee or his depend-
 4 ents, interest to the date of payment shall be paid by the insurer on all
 5 sums due as compensation to such employee or dependents.

Interest in
appealed
cases.
1914, 708, § 14.

1 SECTION 51. Whenever an employee is injured under circumstances
 2 entitling him to compensation, if it be established that the injured em-
 3 ployee was of such age and experience when injured that, under natural
 4 conditions, his wages would be expected to increase, that fact may be con-
 5 sidered in determining his weekly wages.

Compensation
of young
employee.
1915, 236.
228 Mass. 334.
229 Mass. 325.
230 Mass. 500.

INSURANCE COMPANIES.

Insurance companies. 1911, 751, V, § 3. 1912, 571, § 17; 666, § 1. 1925, 267, § 14. 1927, 284, § 15; 309, § 11. 218 Mass. 1. 231 Mass. 313. 4 Op. A. G. 29.

SECTION 52. Any insurance company authorized to transact business in this commonwealth under subdivision (b) or (c) of the sixth clause of section forty-seven of chapter one hundred and seventy-five may, except as provided in clause (c) of section fifty-four of said chapter, insure the payment of the compensation provided for by this chapter, and when any such company insures the payment of such compensation it shall file with the commissioner of insurance its classifications of risks and premiums relating thereto and subsequent proposed classifications or premiums, which shall not take effect until approved by the commissioner of insurance as adequate and reasonable for the risks to which they respectively apply; provided, that upon petition of the company or of any other party aggrieved the opinion of the commissioner shall be subject to review by the supreme judicial court. The commissioner may withdraw his approval.

Mutual companies. 1911, 751, IV, §§ 13, 16, 17. 1916, 200, § 1.

SECTION 53. Any mutual liability insurance company authorized to do business in this commonwealth may with the approval of the commissioner of insurance distribute its risks into groups in accordance with the nature of the business and the degree of the liability of injury and with like approval fix by and for such groups in accordance with the experience of each group all premiums, assessments and dividends; but all the funds of the company both actual and contingent shall be available for the payment of any claim against the company.

SECTION 54. [REPEALED, 1923, 139, § 1.]

Approval by commissioner of insurance. Effect of policy issued without such approval. 1907, 576, § 29. 1915, 287, § 2. 1920, 150. 1923, 139, § 2.

SECTION 55. No policy of workmen's compensation insurance shall be issued or delivered until a copy thereof has been filed with the commissioner of insurance at least thirty days prior to such issue or delivery, unless before the expiration of the thirty days the said commissioner shall have approved the form of the policy in writing, nor if the commissioner notifies the company in writing that in his opinion the form of said policy does not comply with the laws of the commonwealth, specifying the reasons for his opinion; provided, that upon petition of the company the opinion of the commissioner shall be subject to review by the supreme judicial court.

Any policy of insurance issued in violation of this section or of section fifty-six or sixty shall be valid and binding upon the company issuing it, and the rights, duties and obligations of the parties thereto shall be determined by this chapter and chapter one hundred and seventy-five.

Joint and several policies. 1918, 216.

SECTION 56. Two or more insurance companies authorized to issue such insurance policies in the commonwealth may unite in issuing joint and several workmen's compensation policies which may be headed by the names of all such companies. Such policies shall be subject to approval by the commissioner of insurance.

Deposit by domestic insurance

SECTION 57. The commissioner of insurance may, whenever he deems it expedient, by a written order in such form as he may prescribe, require

3 a domestic insurance company to deposit with the state treasurer the
 4 present value, as computed by him under section fifty-eight, of all or any
 5 part of its outstanding claims incurred under its contracts or policies
 6 providing for the payment of benefits under this chapter, in cash or in
 7 securities approved by the said commissioner, and he may, whenever he
 8 deems it expedient, require the company, as aforesaid, to make an addi-
 9 tional deposit. The order shall specify the amount to be deposited and
 10 the time within which the deposit shall be made, which shall be not less
 11 than three days from the date on which the company receives the said
 12 order. A duplicate or copy of any such order shall be forthwith filed
 13 by the said commissioner with the state treasurer and the department,
 14 and the state treasurer, upon the expiration of the time specified in said
 15 order, shall forthwith notify the commissioner in writing whether or not
 16 the company has made the deposit in accordance therewith.
 17 Nothing in this section shall affect the powers conferred on the com-
 18 missioner of insurance by section six of chapter one hundred and seventy-
 19 five.

company of
 value of cer-
 tain outstand-
 ing claims.
 1919, 226, § 1.
 1930, 129, § 1.

Proviso.

1 SECTION 58. The commissioner of insurance shall compute the pres-
 2 ent value of outstanding claims on the basis of information furnished by
 3 the department, and shall assume a rate of interest not higher than four
 4 per cent.

Commissioner
 to compute
 value.
 1919, 226, § 2

1 SECTION 59. The state treasurer shall hold any deposit made under
 2 section fifty-seven in trust for the payment of claims for benefits under
 3 this chapter, including claims accruing after the deposit was made, and
 4 he shall make such payments upon the written request and under the
 5 direction of the department, or he may, if the company so requests in
 6 writing, transfer from time to time to a trustee appointed by the com-
 7 pany and approved by the department, any part of any such deposit
 8 made with him, reasonably necessary for the prompt payment of said
 9 benefits, and the trustee shall make such payments in accordance with
 10 the written directions of the department.

Duties of state
 treasurer as to
 such deposits
 1919, 226, § 1.
 G. L. (ed. of
 1920) 152, § 57
 1930, 129, § 2.

11 The state treasurer shall keep a separate account with the company
 12 of the amount so received, the amount of interest earned thereon and
 13 the payments made. If the amount deposited proves to be larger than
 14 required, portions thereof may, from time to time, be refunded to the
 15 company by the state treasurer or by such trustee, if any, subject to the
 16 written approval of the commissioner of insurance and the department.
 17 If any balance remains after the payment of all benefits due to claim-
 18 ants under this chapter, the state treasurer or such trustee, if any, shall
 19 return the balance to the company upon written notice from the de-
 20 partment that there is no likelihood of further payments becoming due
 21 on account of such claims.

1 SECTION 60. The appointment of a receiver of a domestic company
 2 under section six of chapter one hundred and seventy-five shall not
 3 affect any order of the said commissioner or deposit made under section
 4 fifty-seven prior to such appointment, and the state treasurer or trustee
 5 appointed and approved as provided in section fifty-nine shall retain
 6 any deposit made with him as provided in section fifty-seven or fifty-

Appointment
 of receiver,
 effect; duties
 as to deposit.
 1930, 129, § 2.

nine and make the payments therefrom as provided in section fifty-nine. 7
 If a receiver is so appointed prior to compliance by the company with 8
 any such order, he shall, as soon as may be after his appointment, make 9
 the deposit required by said order, if the assets of the company in his 10
 hands are sufficient therefor. 11

Review by
 supreme judi-
 cial court.
 1930, 129, § 2.

SECTION 60A. Any company aggrieved by any order of the said 1
 commissioner made under section fifty-seven may, within five days from 2
 the date of its receipt, file a petition in the supreme judicial court for the 3
 county of Suffolk for a review thereof; but the filing of such a petition 4
 shall not suspend the operation of the order. The court shall sum- 5
 marily hear the petition and may make any appropriate order or decree. 6
 If the court shall order or decree that the amount of the deposit be 7
 reduced, the state treasurer or such trustee, if any, shall return to the 8
 company so much of the deposit as exceeds the amount fixed by the order 9
 or decree, or, if the company has not complied with the order of the said 10
 commissioner, it shall forthwith deposit with the state treasurer the 11
 amount so fixed. 12

Expenses of
 custody of
 deposit.
 1919, 226, § 3.
 G. L. (ed. of
 1920) 152, § 59.
 1930, 129, § 2.

SECTION 60B. A company making a deposit under section fifty-seven 1
 shall pay to the state treasurer a reasonable amount for the expenses of 2
 his office, attributable to the custody and disbursement of the deposit. 3
 Any such amount may, upon written application of the state treasurer, 4
 and, after written notice to the company and a hearing, be determined 5
 by the commissioner of insurance, and, with the written approval of the 6
 said commissioner, be deducted from any funds of the company on de- 7
 posit with the state treasurer. 8

Penalty for
 failure to
 comply with
 order of com-
 missioner under
 § 57.
 1919, 226, § 4.
 G. L. (ed. of
 1920) 152, § 60.
 1930, 129, § 2.

SECTION 60C. Failure of a company to comply with any lawful order 1
 of the commissioner of insurance under section fifty-seven shall, without 2
 any further action by the said commissioner, terminate its authority to 3
 issue policies of workmen's compensation insurance, and in such a case 4
 the company shall issue no such policies thereunder until it complies 5
 with such order and has received from said commissioner, as evidence of 6
 such compliance, a special certificate authorizing it to resume the issue 7
 of such policies. The commissioner may, in his discretion, refuse to 8
 issue such a certificate. 9

Additional
 penalties for
 violations of
 § 57, etc.
 Jurisdiction
 of supreme
 judicial court.
 1930, 129, § 2.

SECTION 60D. Any company failing to comply with any lawful order 1
 of the commissioner under section fifty-seven shall, in addition, forfeit 2
 one hundred dollars for each day of its default. Any forfeiture recov- 3
 ered under this section shall be paid to the state treasurer and shall be 4
 held and expended by him in like manner as a deposit made under said 5
 section fifty-seven. Any company issuing any policy of workmen's 6
 compensation insurance while in default of such compliance shall be 7
 punished by a fine of not less than one hundred nor more than one thou- 8
 sand dollars, and any officer or agent thereof issuing any such policy on 9
 the company's behalf during such default shall be punished by such 10
 fine or by imprisonment for not more than three months, or both. 11

The supreme judicial court for the county of Suffolk shall have juris- 12
 diction in equity, upon an information filed by the attorney general at 13

14 the relation of the commissioner of insurance, to enforce compliance with
 15 any order of the commissioner made under section fifty-seven, and the
 16 payment of any fine, forfeiture or penalty prescribed by this section.

1 SECTION 61. Every foreign insurance company transacting the busi-
 2 ness of workmen's compensation insurance in the commonwealth shall
 3 furnish a bond running to the commonwealth, with some surety com-
 4 pany authorized to transact business in the commonwealth as surety,
 5 for such term and such amount and in such form as may be approved
 6 by the commissioner of insurance, the bond being conditioned upon the
 7 making of the deposits required by the following section. The annual
 8 license of such a company shall not be issued or renewed until it has filed
 9 with the commissioner a bond as aforesaid covering a future period at
 10 least as long as that covered by the license. In place of a bond as afore-
 11 said the company may furnish other security, upon a like condition, sat-
 12 isfactory to the commissioner.

Bond of
foreign
company
1915, 183, § 2.
1916, 29

1 SECTION 62. Every such foreign insurance company shall, within five
 2 days after its withdrawal from the transaction of business in the com-
 3 monwealth or after the revocation of its license issued by the commis-
 4 sioner of insurance or of his refusal to renew it, deposit with a trustee
 5 to be named by the department an amount equal to twenty-five per cent
 6 of its obligations incurred or to be incurred under workmen's compen-
 7 sation policies issued to employers in the commonwealth; and within
 8 thirty days after such withdrawal, revocation of or refusal to renew a
 9 license, such company shall deposit with said trustee an amount equal
 10 to the remainder of such obligations incurred or to be incurred, the
 11 amount of which obligations shall be determined by the department.
 12 The amounts so deposited shall be available for the payment of the said
 13 obligations of the company to the same extent as if the company had
 14 continued to transact business in the commonwealth, and the trustee
 15 so receiving said deposits shall pay such obligations at the times and in
 16 a manner satisfactory to the department.

Foreign
companies
ceasing to do
business.
1915, 183, § 1.
245 Mass. 364.

1 SECTION 63. Insurance companies insuring employees under this
 2 chapter shall, at the request of the department, furnish it in writing any
 3 information required in connection with the administration by said
 4 department of this chapter, including any statistics and the names of
 5 all employers insured by them.

Information
by insurance
companies on
request of the
department.
1914, 708, § 15.

1 SECTION 64. The insurer shall make and enforce reasonable rules and
 2 regulations for the prevention of injuries on the premises of insured per-
 3 sons, and for this purpose inspectors of the insurer shall have free access
 4 to all such premises during regular working hours. Insured persons or
 5 employees thereof aggrieved by such rules or regulations may petition
 6 the department of labor and industries for a review, and it may affirm,
 7 amend or annul the rule or regulation.

Rules by
insurer
1911, 751,
IV, § 18.
1919, 350, § 69.
215 Mass. 480.

1 SECTION 65. For every case of personal injury resulting in death
 2 covered by this chapter, when there are no dependents, the insurance
 3 company shall pay into the treasury of the commonwealth one hundred

Special fund
for certain
payments.
1919, 272, § 1.

dollars. Such payments shall constitute a special fund in the custody of the state treasurer who shall make payments therefrom upon the written order of the department for the purposes set forth in section thirty-seven.

MISCELLANEOUS PROVISIONS.

Modification of liability. 1911, 751, I, § 1. 209 Mass. 607. 215 Mass. 480. 222 Mass. 65. 223 Mass. 386. 227 Mass. 237. 228 Mass. 147. 230 Mass. 309.

SECTION 66. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defence —

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

240 Mass. 262. 242 Mass. 165. 243 Mass. 536. 253 Mass. 499. 264 Mass. 312. 265 Mass. 89. 267 Mass. 5.

Application of the preceding section. 1911, 751, I, §§ 2, 3. 209 Mass. 607. 217 Mass. 5.

SECTION 67. The preceding section shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers, nor to actions for such injuries received by employees of an insured person.

225 Mass. 220. 230 Mass. 102. 243 Mass. 536. 3 Op. A. G. 569.

Application of certain other laws. 1911, 751, I, § 4. 1913, 807, § 4. 225 Mass. 220. 243 Mass. 94. 244 Mass. 47.

SECTION 68. Chapter one hundred and fifty-three and sections four and seven to ten, inclusive, of chapter two hundred and twenty-nine shall not apply to employees of an insured person, nor to laborers, workmen or mechanics employed by any county, city, town or district subject to sections sixty-nine to seventy-five, inclusive, while this chapter is in effect.

Compensation by the commonwealth, etc. Definition of certain terms in §§ 68-75. 1913, 807, § 1. 1924, 434. 1927, 309, § 12. 223 Mass. 270. 226 Mass. 517. 227 Mass. 44. 232 Mass. 458. 242 Mass. 290. 271 Mass. 362. Op. A. G. (1917) 68.

SECTION 69. The commonwealth and any county, city, town or district having the power of taxation which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen shall pay to laborers, workmen and mechanics employed by it who receive injuries arising out of and in the course of their employment, or, in case of death resulting from such injury, to the persons entitled thereto, the compensation required by this chapter. Compensation payable under this chapter to an injured employee of the commonwealth who receives full maintenance in addition to his cash salary or wage, and compensation payable thereunder to his dependents in case of his death, shall be based upon his average weekly wages plus the sum of seven dollars per week in lieu of the full maintenance received by him. Sections seventy to seventy-five, inclusive, shall apply to the commonwealth and to any county, city, town or district having the power of taxation which has accepted said chapter eight hundred and seven. The terms laborers, workmen and mechanics, as used in sections sixty-eight to seventy-five, inclusive, shall include foremen, subforemen and inspectors of the commonwealth or of any such county, city, town or district, to such extent as the commonwealth or such county, city, town or district, acting respectively through the governor and council, county commissioners, city council or the qualified voters in a town or district meeting, shall determine, as evidenced by a writing filed with the department.

1 SECTION 70. Procedure under sections sixty-nine to seventy-five, in- Procedure.
 2 clusive, and the jurisdiction of the department shall be the same as under 1913, 807, § 2.
 3 sections one to sixty-eight, inclusive, and the commonwealth or such 242 Mass. 290.
 4 county, city, town or district shall have the same rights in proceedings
 5 under said sections as the insurer. The state treasurer or the treasurer
 6 or officer having similar duties of such county, city, town or district shall
 7 pay compensation awarded for injury to persons in its employment upon
 8 proper vouchers without further authority.

1 SECTION 71. Except as provided in the following section, such county, Other
 2 city, town or district shall not be liable in any action for a personal injury remedies
 3 sustained by a laborer, workman or mechanic in the course of his employ- excluded
 4 ment by such county, city, town or district, or for death resulting from 1913, 807, § 3.
 5 such injury. 223 Mass. 288,
 226 Mass. 517,
 227 Mass. 44

242 Mass. 290.

1 SECTION 72. A laborer, workman or mechanic entering the service of Waiver of
 2 such county, city, town or district who would, if injured, have a right rights by
 3 of action against the county, city, town or district by law, may claim employee.
 4 or waive his right of action as provided in section twenty-four, and shall 1913, 807, § 4.
 5 be deemed to have waived such right of action unless he claims it. 242 Mass. 290.

1 SECTION 73. Any person entitled to receive compensation as pro- Election
 2 vided by section sixty-nine from the commonwealth or from such county, between com-
 3 city, town or district, who is also entitled to a pension by reason of the pensation and
 4 same injury, shall elect whether he will receive such compensation or pension.
 5 such pension, and shall not receive both. If a person entitled to such 1913, 807, § 5.
 6 compensation from the commonwealth or from such county, city, town 242 Mass. 290.
 7 or district receives by special act a pension for the same injury, he shall
 8 forfeit all claim for compensation; and any compensation received by him
 9 or paid by the commonwealth or by such county, city, town or district
 10 which employs him for medical or hospital services rendered to him may
 11 be recovered back in an action at law. No further payment shall be
 12 awarded by vote or otherwise to any person who has claimed and received
 13 compensation under sections sixty-nine to seventy-five, inclusive.

1 SECTION 74. Sections sixty-nine to seventy-five, inclusive, shall Application
 2 apply to all laborers, workmen and mechanics in the service of the of §§ 69-75.
 3 commonwealth or of such county, city, town or district under any em- 1913, 807, § 6.
 4 ployment or contract of hire, expressed or implied, oral or written, in- 1930, 159.
 5 cluding those employed in work done in performance of governmental 228 Mass. 316.
 6 duties as well as those employed in municipal enterprises conducted for 238 Mass. 412.
 7 gain or profit. Said sections shall not apply to inmates of institutions 242 Mass. 290.
 8 performing labor under sections forty-eight to seventy-eight, inclusive,
 9 of chapter one hundred and twenty-seven. For the purposes of said
 10 sections all laborers, workmen and mechanics paid by the commonwealth,
 11 but serving under boards or commissions exercising powers within defined
 12 districts, shall be deemed to be in the service of the commonwealth.

1 SECTION 75. Every board, commission and department of the com- Agents for
 2 monwealth employing laborers, workmen and mechanics, and every such enforcing
 3 county, city, town and district shall, through its executive officer or §§ 69-75.
 1915, 244,
 §§ 1, 2
 242 Mass. 290.

board, designate a person to act as its agent in furnishing the benefits due 4
 under sections sixty-nine to seventy-five, inclusive. Such agent shall be 5
 responsible for the proper carrying out of said sections under the direction 6
 and supervision of the department until his agency is revoked and a new 7
 agent designated. The name and address of every such agent shall be 8
 filed with the department immediately upon his designation. This sec- 9
 tion shall not apply to counties, cities, towns and districts which have 10
 provided by insurance for the payment of compensation required by this 11
 chapter. 12

CHAPTER 153.

LIABILITY OF EMPLOYERS TO EMPLOYEES FOR INJURIES NOT RESULTING IN DEATH.

- | | |
|--|--|
| <p>SECT.</p> <ol style="list-style-type: none"> 1. Liability. 2. Neglect to notify employer of negligence or defect bars recovery. 3. Known defect not remedied. Employee does not assume risk. 4. Risk not assumed by railroad employees. | <p>SECT.</p> <ol style="list-style-type: none"> 5. Limit of damages recoverable. 6. Notice of injury. 7. Independent contractor. 8. Insurance fund. 9. Examination of premises. |
|--|--|

Liability,
 1887, 270,
 §§ 1, 7,
 1892, 260, § 1.
 1893, 359.
 1894, 499.
 1897, 491.
 R. L. 106,
 §§ 71, 79.
 1908, 420.
 1909, 514.
 §§ 127, 142.
 144 Mass. 198.
 145 Mass. 468.

SECTION 1. If personal injury is caused to an employee, who, at the 1
 time of the injury, is in the exercise of due care by reason of — 2

First, A defect in the condition of the ways, works or machinery 3
 connected with or used in the business of the employer, which arose 4
 from, or had not been discovered or remedied in consequence of, the 5
 negligence of the employer or of a person in his service who had been 6
 intrusted by him with the duty of seeing that the ways, works or ma- 7
 chinery were in proper condition; or 8

- | | | |
|-------------------------------|--------------------------|--------------------------|
| 147 Mass. 573. | 174 Mass. 320, 398 | 200 Mass. 188, 522, 546. |
| 153 Mass. 73, 281, 468 | 175 Mass. 183, 363, | 201 Mass. 296, 352, 464 |
| 154 Mass. 29, 248, 407 | 466, 496. | 202 Mass. 17, 82, 193, |
| 155 Mass. 21, 368. | 176 Mass. 135. | 228, 340, 491. |
| 156 Mass. 131, 163, 298 | 177 Mass. 69, 144, 170. | 203 Mass. 265, 273, |
| 158 Mass. 135, 228, 238, 318. | 178 Mass. 9, 485. | 294, 532. |
| 159 Mass. 1. | 179 Mass. 190. | 204 Mass. 42. |
| 160 Mass. 131, 152, 201, | 180 Mass. 113, 363, 403 | 205 Mass. 59, 366. |
| 230, 248, 260, 457, 554, 557. | 181 Mass. 326. | 206 Mass. 463. |
| 161 Mass. 153, 368. | 182 Mass. 368, 500. | 207 Mass. 99, 117 |
| 162 Mass. 198, 312, 334 | 183 Mass. 13. | 208 Mass. 106, 282, 304. |
| 163 Mass. 221, 364 | 185 Mass. 82, 442 | 209 Mass. 65, 81. |
| 164 Mass. 168, 206, 453, 523. | 186 Mass. 47, 205 | 210 Mass. 344. |
| 165 Mass. 16, 202, 443. | 187 Mass. 87, 239, 397 | 212 Mass. 271. |
| 166 Mass. 4 | 188 Mass. 75, 290, 371, | 213 Mass. 148. |
| 167 Mass. 39, 167, | 437, 481. | 214 Mass. 472. |
| 406, 588, 590. | 189 Mass. 62, 336 | 217 Mass. 566. |
| 168 Mass. 1, 40, 217, 219, | 191 Mass. 40, 338, 479 | 219 Mass. 277, 399. |
| 226, 254, 270, 395, 450. | 192 Mass. 257, 481, 538. | 221 Mass. 20, 282. |
| 169 Mass. 67, 541, 574. | 193 Mass. 89. | 223 Mass. 509, 521. |
| 170 Mass. 298. | 194 Mass. 260, 310, | 226 Mass. 355. |
| 171 Mass. 417, 427. | 378, 412. | 230 Mass. 102, 423, |
| 172 Mass. 50, 89, | 196 Mass. 95 | 446, 587 |
| 130, 150, 548 | 197 Mass. 550. | 253 Mass. 99. |
| 173 Mass. 42, 400. | 198 Mass. 337, 398, 532. | |

144 Mass. 198.
 146 Mass. 586.
 148 Mass. 533.
 152 Mass. 160.
 153 Mass. 460.

Second, The negligence of a person in the service of the employer 9
 who was intrusted with and was exercising superintendence and whose 10
 sole or principal duty was that of superintendence, or, in the absence of 11

12 such superintendent, of a person acting as superintendent with the au- 155 Mass. 21,
 13 thority or consent of such employer; or 584.

- | | | |
|---------------------------------------|---|--|
| 156 Mass. 131, 293,
342, 368, 527. | 179 Mass. 307 | 203 Mass. 258, 519, 532. |
| 158 Mass. 174, 318, 379. | 180 Mass. 115, 572. | 204 Mass. 130, 197,
306, 323, 477. |
| 159 Mass. 348, 532, 536. | 181 Mass. 329, 480. | 205 Mass. 270, 283,
366, 431. |
| 160 Mass. 131, 201,
248, 457, 573. | 182 Mass. 260, 411,
420, 503. | 206 Mass. 227, 305,
451, 458. |
| 161 Mass. 170, 502. | 184 Mass. 39, 225, 287. | 207 Mass. 99, 200, 184. |
| 162 Mass. 185, 312, 334 | 185 Mass. 139, 214 | 208 Mass. 97, 196, 229,
296, 304, 346, 520. |
| 163 Mass. 216, 344, 364 | 186 Mass. 99, 318, 572. | 209 Mass. 52, 58, 81, 152. |
| 164 Mass. 296, 387. | 187 Mass. 18, 51, 67,
157, 229, 239, 432, 586. | 210 Mass. 177, 361. |
| 165 Mass. 71, 202, 221,
436, 443. | 188 Mass. 141, 420. | 211 Mass. 82, 504 |
| 166 Mass. 48, 268. | 189 Mass. 62, 336, 576. | 212 Mass. 171, 189,
271, 577. |
| 167 Mass. 23, 52, 588. | 190 Mass. 421 | 213 Mass. 125, 143, 145,
148, 284, 524 |
| 168 Mass. 10, 226. | 191 Mass. 9, 20, 40,
269, 479 | 214 Mass. 444, 461, 472. |
| 169 Mass. 416, 485. | 192 Mass. 319, 415, 538. | 216 Mass. 144, 274, 512. |
| 170 Mass. 156, 298. | 193 Mass. 103, 495. | 217 Mass. 161, 309, 566. |
| 171 Mass. 36, 162,
359, 395, 417. | 194 Mass. 386, 431. | 218 Mass. 71. |
| 172 Mass. 56, 78, | 195 Mass. 168. | 219 Mass. 6, 144. |
| 150, 222, 324. | 196 Mass. 336, 402, 524. | 221 Mass. 20, 195, 282. |
| 331, 468, 504, 555. | 197 Mass. 43, 550. | 222 Mass. 17. |
| 173 Mass. 26, 105,
180, 512. | 198 Mass. 60, 163,
337, 528, 577. | 223 Mass. 335, 521. |
| 174 Mass. 46, 202,
442, 453, 455. | 199 Mass. 254, 421, 522. | 227 Mass. 135. |
| 175 Mass. 438. | 200 Mass. 105, 221,
360, 432, 507, 522, 571. | 228 Mass. 361. |
| 176 Mass. 125, 258, 369. | 201 Mass. 117, 126,
269, 393, 486. | 229 Mass. 41. |
| 177 Mass. 176, 422, 565. | 202 Mass. 17, 228,
480, 554. | 230 Mass. 446. |
| 178 Mass. 242, 295. | | |

14 Third, The negligence of a person in the service of the employer who 153 Mass. 112,
 15 was in charge or control of a signal, switch, locomotive engine, elevated 356.
 16 train or train upon a railroad or elevated railway; 156 Mass. 13,
 262.

- | | | |
|---------------------|---------------------|--------------------|
| 159 Mass. 348, 532. | 188 Mass. 420. | 208 Mass. 11, 520. |
| 164 Mass. 296, 523. | 191 Mass. 44 | 210 Mass. 271. |
| 166 Mass. 268. | 195 Mass. 437. | 211 Mass. 570. |
| 169 Mass. 170. | 199 Mass. 522. | 214 Mass. 459. |
| 171 Mass. 249. | 200 Mass. 422, 551. | 218 Mass. 45. |
| 173 Mass. 177. | 203 Mass. 437. | 220 Mass. 250. |
| 176 Mass. 393. | 205 Mass. 540. | 256 Mass. 337. |
| 182 Mass. 237. | 207 Mass. 486. | |

17 The employee, or his legal representatives, shall, subject to the eight 151 Mass. 245.
 18 following sections, have the same rights to compensation and of action
 19 against the employer as if he had not been an employee, nor in the serv-
 20 ice, nor engaged in the work, of the employer.

21 A car in use by or in possession of a railroad corporation, or an ele-
 22 vated car in use by or in possession of an elevated railway corporation,
 23 shall be considered as a part of the ways, works or machinery of the cor-
 24 poration which uses or has it in possession, within the meaning of clause
 25 first, whether owned by such corporation or by some other company or
 26 person. One or more cars which are in motion, whether attached to an
 27 engine or not, shall constitute a train within the meaning of clause third,
 28 and whoever, as a part of his duty for the time being, physically con-
 29 trols or directs the movements of a signal, switch, locomotive engine,
 30 elevated train or train shall be deemed to be a person in charge or control
 31 of a signal, switch, locomotive engine, elevated train or train within the
 32 meaning of said clause.

33 This section shall not apply to injuries caused to domestic servants or 197 Mass. 391.
 34 farm laborers by fellow employees. 217 Mass. 5.

1 SECTION 2. An employee or his legal representatives shall not be Neglect to
 2 entitled under section one of this chapter or under chapter two hun- notify emp-
 3 dred and twenty-nine to any right of action for damages against his employer of
 4 employer if such employee knew of the defect or negligence which caused neglect or
 5 the injury, and failed within a reasonable time to give, or cause to be defect bars
 recovery.
 1887, 270, § 5.
 R. L. 106, § 77.
 1909, 514, § 134.

156 Mass 368.
183 Mass 385.
192 Mass 257.

given, information thereof to the employer, or to some person superior 6
to himself in the service of the employer who was intrusted with general 7
superintendence. 8

Known defect
not remedied.
Employee
does not
assume risk.
1909, 363.
221 Mass. 282.
230 Mass. 557.

SECTION 3. If a defect in the ways, works or machinery of an em- 1
ployer has been reported to the person whose duty it is to remedy said 2
defect, or cause it to be remedied, or to report its existence, and such 3
defect is not remedied within a reasonable time, and by reason of said 4
defect an employee is injured, such employee shall not be held to have 5
assumed the risk of such injury. 6

Risk not as-
sumed by
railroad em-
ployees.
1895, 362, § 7.
R. L. 111,
§ 209
1906, 463, II,
§ 167.
1909, 514, § 143
188 Mass 390.
196 Mass. 471.

SECTION 4. An employee of a railroad corporation injured by any 1
locomotive, car or train used contrary to any provision of sections one 2
hundred and fifty-five and one hundred and fifty-seven to one hundred 3
and fifty-nine, inclusive, of chapter one hundred and sixty shall not be 4
deemed to have assumed the risk of such injury, although he continues 5
in the employment of such corporation after the unlawful use of such 6
locomotive, car or train has been brought to his knowledge. An em- 7
ployee of a railroad corporation injured by any locomotive, car or train 8
by reason of the negligence of any other employee of the corporation 9
shall not be deemed to have assumed the risk of such injury. 10

Limit of
damages
recoverable.
1887, 270, § 3.
1892, 260.

SECTION 5. The amount of damages awarded in an action under sec- 1
tion one for a personal injury to an employee, in which no damages for 2
his death are awarded, shall not exceed four thousand dollars. 3

1893, 359. R. L. 106, § 74. 203 Mass. 273.
1900, 446. 1909, 514, § 131. 211 Mass. 504.

Notice of
injury.
1887, 270, § 3.
1888, 155, § 1
1892, 260, § 2.
1894, 389.
1900, 446.
R. L. 106, § 75
1909, 514, § 132.
1910, 166, § 2;
611.
1911, 178, § 1.
1912, 251.
1914, 699.
150 Mass. 190,
517
153 Mass. 29,
356, 380, 468.
155 Mass. 1.
156 Mass. 262.
157 Mass. 51.
160 Mass. 143,
201, 248.
162 Mass. 334.
163 Mass. 105.
166 Mass. 268.
167 Mass. 595
170 Mass. 348.
172 Mass. 415.
173 Mass. 177.
175 Mass. 391.
178 Mass. 59.
180 Mass 69,
270
182 Mass. 237
197 Mass. 178,
586
198 Mass. 385.
199 Mass. 418,
421
200 Mass 284.
201 Mass 473.
202 Mass. 228.
204 Mass. 197.
209 Mass. 196.
210 Mass 86.
216 Mass. 512.
552

SECTION 6. No action for the recovery of damages for injury under 1
section one of this chapter or for death under section four or seven of 2
chapter two hundred and twenty-nine shall be maintained unless notice 3
of the time, place and cause of the injury is given to the employer within 4
sixty days, and the action is commenced within one year, after the acci- 5
dent which causes the injury or death. Such notice shall be in writing, 6
signed by the person injured or by a person in his behalf. If the person 7
injured dies within the time required for giving the notice, his executor or 8
administrator may give such notice within sixty days after his appoint- 9
ment; and in such case the action may be begun within one year after 10
the appointment of such executor or administrator. If from physical or 11
mental incapacity it is impossible for the person injured to give the notice 12
within the time provided in this section, he may give it within ten days 13
after such incapacity has been removed, and if he dies within said ten 14
days his executor or administrator may give such notice within sixty days 15
after his appointment. If the employer dies without such notice having 16
been given and before the time for giving such notice has elapsed, the 17
notice may be given to his executor or administrator, and the time within 18
which the notice may be given as herein provided shall run from the ap- 19
pointment of the executor or administrator. A notice given under this 20
section shall not be held invalid or insufficient solely by reason of an 21
inaccuracy in stating the time, place or cause of the injury if it is shown 22
that there was no intention to mislead, and that the employer was not 23
in fact misled thereby. If the employer dies without such action having 24
been brought and before the time for bringing the action has elapsed, the 25
action may be begun against his executor or administrator not less than 26

27 six months and not more than one year after the executor or admin- 219 Mass. 164
 28 istrator has given bond for the performance of his trust. Any form of 228 Mass. 361
 29 written communication signed by the person so injured, or by some per- 253 Mass. 499.
 30 son in his behalf, or by his executor or administrator, or by some person
 31 in behalf of such executor or administrator, containing the information
 32 that the person was so injured, giving the time, place and cause of the
 33 injury or death, shall be considered a sufficient notice.

1 SECTION 7. If an employer enters into a contract, written or verbal, Independent
 2 with an independent contractor to do a part of such employer's work, contractor
 3 or if such contractor enters into a contract with a sub-contractor to do 1887, 270, § 4.
 4 all or any part of the work comprised in such contractor's work with R. L. 106, § 76.
 5 the employer, such contract or sub-contract shall not bar the liability 1909, 514, § 133.
 6 of the employer for injuries to the employees of such contractor or sub- 158 Mass. 232.
 7 contractor caused by any defect in the condition of the ways, works, 190 Mass. 288.
 8 machinery or plant, if they are the property of the employer or are fur-
 9 nished by him and if such defect arose, or had not been discovered or
 10 remedied, through the negligence of the employer or of some person
 11 intrusted by him with the duty of seeing that they were in proper
 12 condition.

1 SECTION 8. An employer who has contributed to an insurance fund Insurance
 2 created and maintained for the mutual purpose of indemnifying an em- fund.
 3 ployee for personal injuries for which compensation may be recovered 1887, 270, § 6.
 4 under section one or to any relief society formed under sections eighty- R. L. 106, § 78.
 5 six, eighty-seven and eighty-eight of chapter one hundred and fifty-nine, 1909, 514, § 135.
 6 or the corresponding provisions of earlier laws may prove in mitigation
 7 of the damages recoverable by an employee under said section one, such
 8 proportion of the pecuniary benefit received by such employee from any
 9 such fund or society on account of such contribution of said employer as
 10 the contribution of such employer to such fund or society bears to the
 11 whole contribution thereto.

1 SECTION 9. A justice of the superior court may, upon petition setting Examination
 2 forth in ordinary language that the servant or employee of a certain per- of premises.
 3 son, has been injured in the course of his employment, through some 1908, 380.
 4 defect in the ways, works or machinery owned or used by the employer, 1909, 514, § 141.
 5 and that it is necessary in order to protect the interests of the injured 221 Mass. 489.
 6 person that an examination should be made of the ways, works or ma-
 7 chinery through whose defect the injury occurred, and after such notice
 8 to the employer as any justice of said court may direct or approve, and
 9 a hearing, grant an order directing the employer or person in control
 10 of such ways, works or machinery to permit the person named in said
 11 order to make such examination, under conditions to be set forth in the
 12 order.

CHAPTER 154.

ASSIGNMENT OF WAGES.

SECT.

- 1. Definition of assignment.
- 2. Requisites for validity of assignments to secure small loans.
- 3. Requisites for validity of other assignments.

SECT.

- 4. Same subject.
- 5. Standard form of assignment.
- 6. Validity against trustee process.
- 7. Effect of assignment.

Definition of assignment. 1906, 390, § 3. 1909, 514, § 123.

SECTION 1. The term "assignment", as used in this chapter, shall include every instrument purporting to transfer an interest in or an authority to collect the future wages or salary of a person. 1 2 3

Requisites for validity of assignments to secure small loans. 1908, 605, §§ 7, 8. 1910, 563. 1911, 727, § 22. 1912, 675, § 6. 200 Mass. 482. 221 Mass. 241. 266 Mass. 583.

SECTION 2. No assignment of or order for wages or salary to be earned in the future to secure a loan of less than three hundred dollars shall be valid against an employer of the person making such assignment or order until the assignment or order is accepted in writing by the employer, nor until the assignment or order and the acceptance of the same have been filed and recorded with the clerk of the town where the person making the assignment or order resides, if he is a resident of the commonwealth, or in which he is employed if he is not a resident thereof; nor shall it be valid unless said assignment is substantially in the form prescribed in section five. No such assignment or order shall be recorded by the clerk of a town unless it states on its face that the sum of ten dollars per week, as earned, of the wages or salary so assigned is exempt from such assignment or order. No such assignment or order shall be valid when made by a married man unless the written consent of his wife to the making thereof is attached thereto. No such assignment or order shall be valid for a period exceeding one year from the making thereof. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17

Requisites for validity of other assignments. 1905, 308. 1906, 390, § 1. 1909, 514, § 121. 1916, 208, § 1. 1929, 159. 196 Mass. 528. 266 Mass. 583.

SECTION 3. No assignment of or order for future wages other than one subject to the preceding section shall be valid for a period exceeding two years from the making thereof, nor unless made to secure a debt contracted prior to or simultaneously with the execution of said assignment or order, nor unless executed in writing in the standard form set forth in section five and signed by the assignor in person and not by attorney, nor unless such assignment or order states the date of its execution, the money or the money value of goods actually furnished by the assignee and the rate of interest, if any, to be paid thereon. Three fourths of the weekly earnings or wages of the assignor shall at all times be exempt from such assignment or order, and no assignment or order shall be valid which does not so state on its face. No such assignment or order shall be valid unless the written acceptance of the employer of the assignor, and, if the assignor is a married man, the written consent of his wife to the making thereof, are endorsed thereon or attached thereto. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

Same subject. 1906, 390, § 2. 1909, 514, § 122. 207 Mass. 328.

SECTION 4. No assignment under section three shall be valid unless a copy thereof is delivered to the assignor by the assignee at the date of the execution of such assignment. No such assignment shall be binding 1 2 3

4 on the employer of the assignor until a copy of the assignment and a
 5 written account, which shall conform to the requirements hereinafter
 6 stated, have been delivered to said employer. The account shall contain
 7 a statement of the balance due and of the sums of money received by
 8 the assignee, together with the date of every such payment and a state-
 9 ment as to whether such payment is interest, a payment on the prin-
 10 cipal, or, in case of a loan, a payment on the charge for making and
 11 securing it.

1 SECTION 5. The standard form of assignment shall be as follows:

Standard form
 of assignment,
 1906, 390, § 4.
 1909, 514,
 § 124.
 1916, 208, § 2.
 235 Mass. 284.

Know All Men by these Presents.

That I, _____ of _____ in the county
 of _____, for a valuable consideration, to me paid by _____,
 of _____, the receipt whereof I do hereby acknowledge, do hereby
 assign and transfer to said _____ all claims and
 demands, not exempt by law (which I now have, and all) which within a period
 of _____ from the date hereof I may and shall have against my present
 employer, and against any person whose employ I shall hereafter enter, (for all
 sums of money due and) for all sums of money and demands which, at any time
 within said period may and shall become due to me, for services as _____.
 To have and to hold the same to the said _____, his executors, adminis-
 trators and assigns, to secure a debt

(1) Of _____ dollars (with interest thereon from _____, at the
 rate of _____ per cent per annum), for money (or goods) actually furnished
 by the assignee amounting to _____ dollars.

(2) Contracted prior to the execution of this assignment (or contracted simul-
 taneously with the execution of this assignment).

(3) Three fourths of the weekly earnings or wages, which are
 dollars, are exempt from this assignment.

(4)¹ Ten dollars per week, as earned, is exempt from this assignment.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____.
 Signed and delivered, in presence of _____ h. _____ m.

M. Received and entered in records of assignment of wages in
 clerk's office of the _____ of _____, book _____, page _____.
 _____, Clerk.

1 SECTION 6. No assignment of future earnings shall be valid against
 2 a trustee process, unless before service of the writ upon the alleged trustee
 3 the assignment has been recorded in the office of the clerk of the town
 4 where the assignor resides at the time of such record.

Validity
 against trustee
 process.
 1865, 43,
 §§ 2, 3.

P. S. 183, § 39.	5 Gray, 49.	115 Mass. 165.	131 Mass. 534.
R. L. 189, § 34.	7 Gray, 150.	120 Mass. 94.	162 Mass. 562.
1905, 308.	2 Allen, 407.	121 Mass. 167, 431.	184 Mass. 486.
1909, 514, § 125.	9 Allen, 106.	123 Mass. 353.	185 Mass. 54.
1910, 563.	12 Allen, 498.	124 Mass. 162.	194 Mass. 579.
8 Cush. 151.	102 Mass. 233, 235.	125 Mass. 475.	205 Mass. 26.
1 Gray, 105.	108 Mass. 347.	126 Mass. 117.	221 Mass. 241.
2 Gray, 565.	110 Mass. 204.		

1 SECTION 7. Except as above provided, an assignment of wages made
 2 in accordance with this chapter shall bind all wages earned by the as-
 3 signor within the period named in such assignment.

Effect of
 assignment,
 1906, 390, § 5.

1909, 514, § 126. 207 Mass. 328. 221 Mass. 241.

¹ Clause (4) to be used in place of clause (3) only for assignment under section 2.

TITLE XXII.

CORPORATIONS.

CHAPTER 155.	General Provisions relative to Corporations.
CHAPTER 156.	Business Corporations.
CHAPTER 157.	Co-operative Corporations.
CHAPTER 158.	Certain Miscellaneous Corporations.
CHAPTER 159.	Common Carriers.
CHAPTER 159A.	Common Carriers of Passengers by Motor Vehicle.
CHAPTER 160.	Railroads.
CHAPTER 161.	Street Railways.
CHAPTER 162.	Electric Railroads.
CHAPTER 163.	Trackless Trolley Companies.
CHAPTER 164.	Manufacture and Sale of Gas and Electricity.
CHAPTER 165.	Water and Aqueduct Companies.
CHAPTER 166.	Telephone and Telegraph Companies, and Lines for the Transmission of Electricity.
CHAPTER 167.	Banks and Banking.
CHAPTER 168.	Savings Banks.
CHAPTER 169.	Deposits with Others than Banks.
CHAPTER 170.	Co-operative Banks.
CHAPTER 171.	Credit Unions.
CHAPTER 172.	Trust Companies.
CHAPTER 173.	Mortgage Loan Investment Companies.
CHAPTER 174.	Bond and Investment Companies.
CHAPTER 175.	Insurance.
CHAPTER 176.	Fraternal Benefit Societies.
CHAPTER 177.	Assessment Insurance. [Repealed.]
CHAPTER 178.	Savings Bank Life Insurance.
CHAPTER 179.	Proprietors of Wharves, Real Estate lying in Common, and General Fields.
CHAPTER 180.	Corporations for Charitable and Certain Other Purposes.
CHAPTER 181.	Foreign Corporations.
CHAPTER 182.	Voluntary Associations and Certain Trusts.

CHAPTER 155.

GENERAL PROVISIONS RELATIVE TO CORPORATIONS.

SECT.	GENERAL PROVISIONS.	SECT.	
1.	Scope of chapter, etc.	4.	Use of names of public service corporations.
2.	Duties of commissioner of corporations and taxation.	5.	Investigation, etc., of use of names of public service corporations.
3.	Charters subject to alteration or repeal.	5A.	Provision for further depreciation, when ordered by department of public utilities.
3A.	Public service corporations to make certain deposits of funds in national banks, etc.		

- SECT.
- POWERS OF CORPORATIONS.
6. General powers.
 7. By-laws.
 8. Conveyance of land.
 9. Corporate name.
 10. Change of name.
 11. Unauthorized business may be enjoined.
 12. Free beds in hospitals.
- ORGANIZATION AND MEETINGS.
13. Corporations created by special charter.
 14. First meeting of chartered corporations.
 15. Meeting called by justice of the peace, when.
- CAPITAL STOCK.
16. Par value of shares.
 17. Shares not to be issued for less than par.
 18. Preferred stock.
 19. Laws governing preferred stock; form of certificate.
 20. Notice to stockholders of increase; disposition of new stock.
 21. Executors, etc., may vote.
 22. Stock books; corporate records.
 23. List of stockholders to be filed with state secretary.
- TRANSFERS OF STOCK.
24. What law governs.
 25. Construction.
 26. Definitions.
 27. Mode of transfer.
 28. Powers of infants, incompetents and fiduciaries not affected.
 29. Rights of record owner.
 30. Title by delivery may have priority over title by power of attorney, etc.
 31. Delivery by one having no title.

- SECT.
32. Endorsement procured by fraud, etc.
 33. Rescission of transfer.
 34. Effect of rescission on rights of purchaser for value in good faith
 35. Incomplete transfer.
 36. Effect of attempted transfer.
 37. Warranties.
 38. Warranties by mortgagee, etc.
 39. New certificates.
 40. Lien or restriction to be stated on certificate.
 41. Effect of alteration.
 42. New certificate in place of one lost or destroyed.
 43. Endorsement.
 44. Who deemed owner of certificate.
 45. Transfer of instalment stock.
 46. New certificates. Pledge.
- UNCLAIMED DIVIDENDS.
47. List of unclaimed dividends to be published.
- FALSE REPORTS OR STATEMENTS CONCERNING CORPORATIONS.
48. Penalty for false statement.
 49. Statement required by foreign law.
- DISSOLUTION OF CORPORATIONS.
50. Dissolution of corporations.
 51. Continuation for three years to close concerns.
 52. Receivers.
 53. Receivers to pay debts and distribute surplus.
 54. Surrender of certificate of incorporation.
 55. Returns to secretary of dissolution.
- REVIVAL OF CORPORATIONS.
56. Revival of certain corporations dissolved by statute.

GENERAL PROVISIONS.

1 SECTION 1. The provisions of this chapter, unless expressly limited
 2 in their application, shall apply to all corporations created by or organ-
 3 ized under the laws of the commonwealth, except so far as they are in-
 4 consistent with other provisions of law relative to particular corporations
 5 or classes of corporations. In this chapter, unless the context otherwise
 6 requires, "commissioner" means the commissioner of corporations and
 7 taxation.

Scope of chapter, etc.
 P. S. 105, § 1.
 R. L. 109, § 1.
 1919, 350,
 §§ 52, 53.

1 SECTION 2. The commissioner shall examine the certificates and
 2 reports relative to corporations submitted to him under the provisions
 3 of law, and make suitable endorsements upon such as conform to the
 4 requirements of law. He shall keep a record of the names of corpora-
 5 tions which submit certificates to his inspection, of the date of inspec-
 6 tion and of his certificates when given, and of the result in brief of his

Duties of commissioner of corporations and taxation
 1870, 224, § 61.
 P. S. 106, § 1.
 R. L. 110, § 1.
 1907, 437,
 §§ 3, 95
 1919, 333, § 17.
 1920, 2.

inspection. He shall report to the attorney general instances of neglect or omission on the part of corporations to comply with the provisions of law for the enforcement of the penalties therefor.

Charters subject to alteration or repeal. Const. amend. LIX. 1830, 81. R. S. 38, § 36; 44, § 23. G. S. 68, § 41. P. S. 105, §§ 2, 3. R. L. 109, § 3. 1903, 437, §§ 2, 95. 1914, 742, §§ 12, 199. 23 Pick. 334. 6 Cush. 424.

SECTION 3. Every act of incorporation passed since March eleventh, eighteen hundred and thirty-one, shall be subject to amendment, alteration or repeal by the general court. All corporations organized under general laws shall be subject to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them. Corporations shall, notwithstanding such repeal or dissolution, be subject to sections fifty-one and fifty-two. Such laws of amendment, alteration or repeal or such dissolution shall not take away or impair any remedy which may exist by law consistently with said sections against the corporation, its members or officers, for a liability previously incurred.

- | | | |
|----------------|---------------------|----------------|
| 9 Cush. 604. | 13 Allen, 29 | 212 Mass. 82. |
| 4 Gray, 227. | 103 Mass. 254. | 215 Mass. 394. |
| 13 Gray, 239. | 104 Mass. 446. | 218 Mass. 387. |
| 15 Gray, 106. | 109 Mass. 103, 506. | 249 Mass. 235. |
| 4 Allen, 198. | 118 Mass. 290, 561. | 251 Mass. 569. |
| 5 Allen, 230. | 123 Mass. 32. | 267 Mass. 607. |
| 11 Allen, 268. | 147 Mass. 548. | |

Public service corporations to make certain deposits of funds in national banks, etc. 1924, 166.

SECTION 3A. After December thirty-first, nineteen hundred and twenty-four, all deposits of funds of public service corporations, except common carriers under the supervision of the interstate commerce commission, shall be made by the officers of the corporations in national banks or duly chartered trust companies; but the foregoing provision shall not apply to any deposit for a period of not more than sixty days made for the purpose of meeting obligations maturing within said period or to any deposit for a similar period of time resulting from the sale of obligations or securities.

Use of names of public service corporations. 1913, 499, § 1. 1914, 742, §§ 173, 199. 1919, 350, § 117.

SECTION 4. No person owning, holding or controlling shares of stock of any public service corporation shall hereafter use any name or title or other words that, in the opinion of the department of public utilities, might lead the public to believe that such person is a public service corporation or that its business is that of a public service corporation.

Investigation, etc., of use of names of public service corporations. 1913, 499, §§ 2, 3. 1914, 742, §§ 173, 199. 1919, 350, § 117.

SECTION 5. The department of public utilities may investigate and determine whether any person is violating the preceding section; and any person violating any provision thereof shall forfeit to the commonwealth one hundred dollars a day for every day or part thereof during which such violation continues after the determination aforesaid. Any such violation shall forthwith be reported by the department to the attorney general, after said determination and notice thereof to such person. The said forfeiture may be recovered by an information or other appropriate proceeding brought in the supreme judicial or superior court in the name of the attorney general. Upon such information or other proceeding the court may issue an injunction restraining such person from further prosecution of his business within the commonwealth during the pendency of such proceeding or for all time, and may make such other order or decree as equity and justice may require.

This and the preceding section shall not apply to the continued use by any person of any name or title adopted prior to April seventeenth, nineteen hundred and thirteen.

1 SECTION 5A. If, when the department of public utilities, as required
 2 by law, approves an issue of stock, bonds, coupon notes or other evi-
 3 dences of indebtedness of a company under its supervision, or passes
 4 upon the price, rates, charges or service of such company, it determines
 5 that the provision made by such company for the depreciation of its
 6 property has been inadequate, the department shall order such company
 7 to set aside out of earnings such allowances for depreciation and for such
 8 period or periods as the department may from time to time prescribe.
 9 All moneys required by such order to be so set aside shall be kept as a
 10 separate fund and shall not, without the further order of the department,
 11 be used for any other purpose than for renewals other than ordinary
 12 repairs, or for extensions, reconstruction and enlargements of and addi-
 13 tions to plant, and the department shall prescribe in its order such
 14 requirements relative to the creation and maintenance of such fund and
 15 its devotion to such aforesaid authorized uses as it may deem advisable.
 16 All orders and decisions of the department under the provisions of this
 17 section shall be enforced as provided in section sixteen of chapter one
 18 hundred and sixty-four.

Provision for
 further depre-
 ciation, when
 ordered by
 department of
 public utilities
 1921, 268, § 1

POWERS OF CORPORATIONS.

1 SECTION 6. A corporation may, in its corporate name, sue and be
 2 sued, appear, prosecute and defend to final judgment or decree and execu-
 3 tion; have a corporate seal, which it may alter at pleasure; elect in such
 4 manner as it may determine all necessary officers, fix their compensation
 5 and define their duties and obligations; and make by-laws and regula-
 6 tions consistent with law for its own government, the due and orderly
 7 conduct of its affairs and the management of its property.

General
 powers
 1808, 65, § 1.
 1829, 53, § 1.
 1833, 83, § 1.
 R. S. 38, § 6;
 44, § 1
 G. S. 60, § 2.
 68, § 1.
 P. S. 105, § 4.
 R. L. 109, § 4.

1903, 437, §§ 4, cls. (b), 1914, 742, §§ 17, 199. 271 Mass. 479.
 (d), (e), (h), 95. 10 Mass. 91.

1 SECTION 7. Every corporation, except those governed by chapter
 2 one hundred and fifty-six, may by its by-laws, except as otherwise ex-
 3 pressly provided, determine the manner of calling and conducting its
 4 meetings; the number of members which shall constitute a quorum; the
 5 number of shares which shall entitle the members to one or more votes;
 6 the mode of voting by proxy; the mode of selling shares for the payment
 7 of assessments; and the tenure of office of the several officers; and may
 8 annex suitable penalties to such by-laws, not exceeding twenty dollars
 9 for one offence; but no by-law inconsistent with law shall be made by a
 10 corporation.

By-laws
 1808, 65, § 1
 1829, 53, § 1.
 1833, 83, § 1.
 R. S. 38, § 6;
 44, § 2
 G. S. 60, § 2.
 68, § 7.
 P. S. 105, § 5
 R. L. 109, § 5.
 S Met. 301, 321.
 256 Mass. 326.

1 SECTION 8. A corporation may convey land to which it has a legal
 2 title.

Conveyance
 of land.

R. S. 44, § 6. P. S. 105, § 6. 11 Allen, 65.
 G. S. 68, § 8. R. L. 109, § 6. 218 Mass. 339.

1 SECTION 9. A corporation organized under general laws may assume
 2 any name which, in the judgment of the commissioner, indicates that it
 3 is a corporation; but it shall not assume the name of another corporation
 4 established under the laws of the commonwealth, or of a corporation,
 5 firm, association or person carrying on business in the commonwealth,
 6 at the time of such organization or within three years prior thereto, or
 7 assume a name so similar thereto as to be likely to be mistaken for it,
 8 except with the written consent of said existing corporation, firm or
 9 association or of such person previously filed with the commissioner.

Corporate
 name.
 1851, 133, § 6.
 G. S. 61, § 1
 1870, 224, § 8.
 P. S. 106, § 17.
 1891, 257.
 R. L. 109, § 8;
 110, § 16
 1903, 437,
 §§ 5, 95.
 1914, 742,
 §§ 6, 199
 1918, 257, § 346
 1919, 5, 333,
 §§ 17, 18.

1920, 2.
149 Mass. 436.
151 Mass. 558.
212 Mass. 219,
569
220 Mass. 42.
237 Mass. 281.
240 Mass. 505.
241 Mass. 239.
260 Mass. 137.

The supreme judicial or superior court shall have jurisdiction in equity, 10
upon the application of any person interested or affected, to enjoin such 11
corporation from doing business under a name assumed in violation of 12
this section, although its certificate or articles of organization may have 13
been approved and a certificate of incorporation may have been issued 14
to it. 15

266 Mass. 483. 268 Mass. 561. 269 Mass. 211. 270 Mass. 209.

Change
of name.
1891, 360,
§§ 1-3, 6
1892, 198; 201.
1895, 104
1898, 474, § 9.
1899, 164;
442, § 9.
1901, 422, § 9.
R. L. 109,
§§ 9, 10.
1908, 163.
1914, 742,
§ 58.
1919, 350,
§§ 45, 46, 53.
1926, 379, § 3.
1929, 24, § 7.
1931, 426,
§ 254.

SECTION 10. A corporation, except one subject to chapter one hun- 1
dred and fifty-six or chapters one hundred and sixty to one hundred 2
and sixty-three, inclusive, may at a meeting duly called for the purpose, 3
by vote of two thirds of each class of stock outstanding and entitled to 4
vote, or, in case such corporation has no capital stock, by vote of two 5
thirds of the persons legally qualified to vote in meetings of the cor- 6
poration, or by a larger vote if its agreement of association or by-laws 7
shall so require, change its name; provided, that no corporation subject 8
to section twenty-six of chapter one hundred and eighty shall change 9
its name until after approval of such change by the state secretary. 10
Articles of amendment signed and sworn to by the president, treasurer 11
and a majority of the directors or other officers having the powers of 12
directors, shall within thirty days after such meeting be prepared, set- 13
ting forth such amendment and the due adoption thereof. Such articles 14
shall be submitted to the commissioner who shall examine them, and 15
if he finds that they conform to the requirements of law, he shall so 16
certify and endorse his approval thereon. Thereupon the state secre- 17
tary shall direct the officers of the corporation to publish in such form 18
as he may see fit, in a newspaper published in the county where the cor- 19
poration has its principal office or place of business, notice of such change 20
of name. When the state secretary is satisfied that such notice has been 21
published as required by him, he shall, upon the payment of a fee of 22
one dollar, grant a certificate of the name which the corporation shall 23
bear, which name shall thereafter be its legal name, and he shall cause 24
the articles of amendment to be filed in his office. In the case of cor- 25
porations subject to chapter one hundred and seventy-five or one hun- 26
dred and seventy-six, the approval of the commissioner of insurance 27
shall be required before the commissioner of corporations and taxation 28
approves the articles of amendment. No articles of amendment chang- 29
ing the name of any corporation shall take effect until they have been 30
filed in the office of the state secretary as aforesaid. 31

Unauthorized
business may
be enjoined.
1906, 372.
196 Mass. 458.
197 Mass. 194.
198 Mass. 413.
215 Mass. 394.
220 Mass. 536.

SECTION 11. Upon an information in equity by the attorney general 1
at the relation of the commissioner, the supreme judicial court may 2
restrain by injunction any corporation from assuming or exercising any 3
franchise or privilege or transacting any kind of business not authorized 4
by its charter and the laws of the commonwealth. 5

Free beds in
hospitals.
1889, 258.
R. L. 110, § 50.
1903, 437,
§§ 94, 95.
1914, 742,
§§ 60, 199
1919, 333, § 15.

SECTION 12. Every corporation may, by a vote of a majority of each 1
class of stock outstanding and entitled to vote, appropriate not more 2
than five thousand dollars or an annual sum of not more than five hun- 3
dred dollars for the support of free beds in one or more hospitals in the 4
commonwealth, for the use of its employees. 5

ORGANIZATION AND MEETINGS.

1 SECTION 13. A corporation created by special charter shall, if no time
 2 is limited therein, be organized within two years after the passage of
 3 its act of incorporation. Within thirty days after the final adjournment
 4 of the meeting for organization of any such corporation, the recording
 5 officer thereof shall make, sign, swear to and file in the office of the state
 6 secretary a certificate stating the date on which the meeting for organiza-
 7 tion was held, the names of the officers elected at such meeting and the
 8 amount of capital stock, if any, fixed under its charter.

Corporations
 created by
 special charter.
 1856, 264, § 1.
 G. S. 68, § 2.
 P. S. 105, § 8.
 1898, 336
 R. L. 109, § 12.
 1903, 437.
 §§ 6, 95.

1 SECTION 14. The first meeting of such corporation, unless otherwise
 2 provided in its act of incorporation, shall be called by a notice, signed by
 3 the person or by a majority of the persons named in such act, setting
 4 forth the time, place and purposes of the meeting, and delivered seven
 5 days at least before the meeting to each member or published in a news-
 6 paper of the county where the corporation is established. If all the
 7 persons so named shall, in writing, upon the charter or a certified copy
 8 thereof, waive such notice and fix the time and place of the meeting, no
 9 notice shall be required. The persons so named and their associate sub-
 10 scribers to stock before the date of the act shall hold the franchise or
 11 privileges granted until the corporation is organized.

First meeting
 of chartered
 corporations.
 1808, 65, § 2.
 1829, 53, § 2.
 1833, 83, § 2.
 R. S. 44, § 3.
 1855, 149.
 G. S. 68, § 3.
 P. S. 105, § 9.
 R. L. 109, § 13.
 1903, 437.
 §§ 6, 9, 95.
 1918, 257.
 § 347
 1919, 5.
 1920, 2.
 16 Mass. 94.

3 Met. 282.	12 Allen, 362.	101 Mass. 385.	146 Mass. 482.
11 Cusb. 369.	98 Mass. 98.	129 Mass. 540.	199 Mass. 127, 141.

1 SECTION 15. If, by reason of the death or absence of the officers of a
 2 corporation, or other cause, there is no person duly authorized to call or
 3 preside at a legal meeting, or if the clerk or other officer refuses or neglects
 4 to call it, a justice of the peace may, upon written application of three or
 5 more of the members or stockholders, issue a warrant to any one of them,
 6 directing him to call a meeting by giving such notice as is required by
 7 law, and may in the same warrant direct him to preside at the meeting
 8 until a clerk is duly chosen and qualified if no officer is present legally
 9 authorized to preside.

Meeting called
 by justice of
 the peace,
 when
 1833, 49.
 R. S. 44, § 4.
 G. S. 68, § 5.
 P. S. 105, § 11.
 R. L. 109, § 15.
 1903, 437.
 §§ 21, 95.
 1906, 463.
 11, §§ 34, 258,
 111, §§ 15, 158.

1914, 742, §§ 19, 199.	1918, 257, § 374	1919, 5.	1920, 2.
------------------------	------------------	----------	----------

CAPITAL STOCK.

1 SECTION 16. The par value of the common or preferred shares of all
 2 corporations shall be one hundred dollars. Any corporation which may
 3 be organized with shares of a par value other than one hundred dollars
 4 may at a meeting of stockholders called for the purpose change the par
 5 value of its shares to that amount if a certificate of such change shall,
 6 within ten days thereafter, be made, signed and sworn to by its president,
 7 treasurer and a majority of its directors, or other officers having the
 8 powers of directors, and, having been approved as to its form by the
 9 commissioner, be filed in the office of the state secretary.

Par value
 of shares.
 1860, 128, § 1.
 1867, 131
 1870, 224, § 7.
 1873, 37
 P. S. 105, § 16.
 1894, 500.
 1898, 503, § 2.
 R. L. 109, § 18.
 1914, 742,
 §§ 29, 199.

1 SECTION 17. No corporation shall issue a share for a less amount
 2 to be actually paid in thereon than the par value of the shares at the
 3 date of issue.

Shares not to
 be issued for
 less than par.

1851, 133, § 16.	1871, 392, § 3.	157 Mass. 68
1858, 167.	1873, 39, § 1	249 Mass. 272.
1859, 104	P. S. 105, § 17, 106, § 41.	263 Mass. 169.
G. S. 68, § 9.	R. L. 109, § 19.	

Preferred stock.
1902, 441, § 1.
1903, 437, § 95.
1913, 764, § 5.
1914, 742, § 30, 199.
1915, 299, § 1.
1925, 184, § 1.

SECTION 18. Every corporation may issue preferred stock of one or more classes to an amount not exceeding at any time the amount of the general stock then outstanding, with such preferences and voting powers or restrictions or qualifications thereof as shall be fixed and determined in the agreement of association at the organization of the corporation; or after organization, as to any such preferred stock or additional class thereof, by a two thirds vote of all the stock, or by a by-law adopted by a two thirds vote of all the stock, at a meeting duly called for the purpose. This section shall not apply to corporations organized under chapter one hundred and fifty-six or to railroad corporations or street railway companies.

Laws governing preferred stock; form of certificate.
1902, 441, § 2.
1914, 742, § 30, 199.
1925, 184, § 2.

SECTION 19. Such stock shall be issued subject to all general laws governing the issue of capital stock; and each certificate subsequently issued of stock in the corporation shall have fully and plainly printed thereon the preferences and voting powers or restrictions or qualifications thereof as fixed and determined in respect of each class of preferred stock pursuant to the provisions of section eighteen.

Notice to stockholders of increase; disposition of new stock.
1870, 179.
1871, 109;
392, § 4.
1877, 230, § 3.
P. S. 105, § 20;
106, § 37.
R. L. 109, § 29;
110, § 34.
1903, 437, § 95.
132 Mass. 76.
168 Mass. 345.

SECTION 20. If a corporation, not subject to chapter one hundred and fifty-six, increases its capital stock and no other provision therefor is made by law, its directors shall forthwith give written notice thereof to each stockholder who was such at the date of the vote to increase, stating the amount of the increase, the number of shares or fractions of shares of the new stock which such stockholder is entitled to take, and the time, not less than thirty days after the date of such vote, within which such new stock shall be taken; and, within said time, each stockholder may take at par his proportion of such new shares, according to the number of his shares at the date of such vote to increase. If, at the expiration of said time, any shares remain untaken, the directors shall sell them by public auction for the benefit of the corporation at not less than the par value thereof.

Executors, etc., may vote.
1829, 53, § 12.
R. S. 38, § 35.
1838, 98, § 2.
G. S. 68, § 11.
P. S. 105, § 13.

SECTION 21. An executor, administrator, guardian, conservator, trustee or person in any other representative or fiduciary capacity shall represent the shares of his trust at all meetings of a corporation, and may vote as a stockholder.

R. L. 109, § 17. 1906, 463, II, §§ 38. 1914, 742, §§ 21, 199. 101 Mass. 398.
1903, 437, §§ 29, 95. 258, III, §§ 19, 158. 9 Cush. 192. 264 Mass. 499.

Stock books; corporate records.
1847, 107.
1858, 144.
1859, 227.
G. S. 68, §§ 10, 12, 20.
1861, 120.
1864, 201, § 1.
P. S. 105, §§ 21-23.
R. L. 109, §§ 32, 33, 35.
1903, 437, § 30, 95.
1906, 463, II, §§ 42, 258, III, §§ 23, 158.
1914, 742, §§ 24, 25, 27, 199.
1919, 333, § 17.
1920, 2.

SECTION 22. The agreement of association, an attested copy of the articles of organization or of articles in amendment of said agreement or of said articles and of the by-laws, with a reference on the margin of the copy of the by-laws to all amendments thereof, and a true record of all meetings of stockholders shall be kept by every corporation at its principal office in the commonwealth for the inspection of its stockholders. The stock and transfer books of every corporation, which shall contain a complete list of all stockholders, their residences and the amount of stock held by each, shall be kept at an office of the corporation in the commonwealth for the inspection of its stockholders. Said stock and transfer books and said attested copies and records shall be competent evidence in any court of the commonwealth. If any officer or agent of a corporation having charge of such copies, books or records refuses or

14 neglects to exhibit them or to submit them to examination as aforesaid,
 15 he or the corporation shall be liable to any stockholder for all actual
 16 damages sustained by reason of such refusal or neglect, and the supreme
 17 judicial or superior court shall have jurisdiction in equity, upon petition
 18 of a stockholder, to order any or all of said copies, books or records to
 19 be exhibited to him and to such other stockholders as may become
 20 parties to said petition, at such a place and time as may be designated
 21 in the order, but in an action for damages or a proceeding in equity under
 22 this section for neglect or refusal to exhibit for inspection the stock and
 23 transfer books, it shall be a defence that the actual purpose and reason
 24 for the inspection sought are to secure a list of stockholders for the
 25 purpose of selling said list or copies thereof or of using the same for a
 26 purpose other than in the interest of the applicant, as a stockholder,
 27 relative to the affairs of the corporation.

1923, 172.
 191 Mass. 239.
 205 Mass. 121.
 220 Mass. 224,
 380.
 221 Mass. 38.
 234 Mass. 592.
 1 Op. A. G. 278.

1 SECTION 23. A corporation not subject to chapter one hundred and
 2 fifty-six shall within fifteen days after a written request by a stockholder
 3 thereof, made not less than thirty nor more than sixty days prior to the
 4 time fixed for the annual meeting of stockholders, cause a complete list
 5 of the stockholders as of the sixtieth day prior to the time so fixed, with
 6 the residence of and the number of shares belonging to each stockholder,
 7 to be made and filed in the office of the state secretary. The list shall
 8 be in such form as the commissioner shall require or approve, and shall
 9 be signed and sworn to by the treasurer of the corporation or by some
 10 other officer cognizant of the facts specially appointed by the corpora-
 11 tion to make the same. If a corporation and its treasurer or other officer
 12 so specially appointed omits or neglects to cause a list of stockholders to
 13 be so made and filed, they shall each forfeit not more than one thousand
 14 dollars to be recovered in the manner provided in section forty-two of
 15 chapter one hundred and fifty-eight.

List of stock-
 holders to be
 filed with state
 secretary
 1889, 222, § 3.
 R. L. 109, § 34.
 1903, 437, § 95.
 1914, 742,
 §§ 26, 199.
 1 Op. A. G. 278.

TRANSFERS OF STOCK.

1 SECTION 24. In any case not provided for by sections twenty-five to
 2 forty-four, inclusive, the rules of law and equity, including the law mer-
 3 chant, and in particular the rules relating to the law of principal and
 4 agent, executors, administrators and trustees, and to the effect of fraud,
 5 misrepresentation, duress or coercion, mistake, bankruptcy, or other
 6 invalidating cause, shall govern.

What law
 governs
 1910, 171, § 18.
 211 Mass. 429.
 248 Mass. 368.

1 SECTION 25. Sections twenty-four to forty-four, inclusive, shall be
 2 interpreted and construed in such manner as to effectuate their general
 3 purpose to make uniform the law of the states which enact the uniform
 4 stock transfer act.

Construction.
 1910, 171, § 19.

1 SECTION 26. (1) In sections twenty-four to forty-four, inclusive,
 2 unless the context or subject matter otherwise requires, the following
 3 words shall have the following meanings:

Definitions.
 1910, 171, § 22.
 211 Mass. 429.
 224 Mass. 442.

4 "Certificate", a certificate of stock in a corporation organized under
 5 the laws of this commonwealth or of another state whose laws are con-
 6 sistent with said sections.

7 "Delivery", voluntary transfer of possession from one person to
 8 another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest. 9
 “Purchase” includes to take as mortgagee or as pledgee. 10
 “Purchaser” includes mortgagee and pledgee. 11
 “Shares”, a share or shares of stock in a corporation organized under the laws of this commonwealth or of another state whose laws are consistent with said sections. 12
 “State” includes state, territory, district and insular possession of the United States. 13
 “Transfer”, transfer of legal title. 14
 “Title”, legal title, not including a merely equitable or beneficial ownership or interest. 15
 “Value”, any consideration sufficient to support a simple contract. 16
 An antecedent or pre-existing obligation, whether for money or not, constitutes value if a certificate is taken either in satisfaction thereof or as security therefor. 17
 (2) A thing is done in “good faith” within the meaning of said sections when it is in fact done honestly, whether it be done negligently or not. 18

Mode of transfer.
 1798, 59, § 8.
 1808, 65, § 4.
 1829, 53, § 4.
 1833, 187, § 8.
 R. S. 38, § 12;
 39, § 52; 40, § 4.
 1846, 45.
 G. S. 60, § 13;
 63, § 11; 65, § 4.
 1864, 229, § 10.
 1870, 224, § 26.
 1871, 381, § 10.
 1874, 372, § 44.
 P. S. 106, § 30;
 110, § 4; 112,
 § 56; 113, § 13.
 1884, 229.
 R. L. 109, § 37;
 110, § 28;
 111, § 59;
 112, § 18; 123,
 § 42.
 1903, 423;
 437, §§ 28, 95.
 1906, 463,
 II, §§ 41, 258.
 III, §§ 22, 158.

SECTION 27. Title to a certificate and to the shares represented thereby shall be transferred only — 1
 (a) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby; or 2
 (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person. 3
 This section shall be applicable although the charter or articles of organization or code of regulations or by-laws of the corporation issuing the certificate, and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. 4

1910, 171, §§ 1, 24.	159 Mass. 64.	219 Mass. 405.
1914, 742, §§ 23, 199.	182 Mass. 555.	234 Mass. 568.
12 Gray, 213, 227.	190 Mass. 509.	248 Mass. 368.
8 Allen, 15.	193 Mass. 522.	251 Mass. 508.
138 Mass. 240.	216 Mass. 330.	255 Mass. 72.
150 Mass. 200.		

Powers of infants, incompetents and fiduciaries not affected.
 1910, 171, § 2.

SECTION 28. Sections twenty-four to forty-four, inclusive, shall not be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid endorsement, assignment or power of attorney. 1

Rights of record owner.
 1798, 59, § 8.
 R. S. 49, § 4.
 G. S. 65, § 4.
 1881, 302.
 P. S. 105, § 24;
 110, § 4.
 1884, 229.
 R. L. 109,
 §§ 36, 37;
 123, § 42.

SECTION 29. Sections twenty-four to forty-four, inclusive, shall not be construed as forbidding a corporation — 1
 (a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner; or 2
 (b) To hold liable for calls and assessments a person registered on its books as the owner of shares. 3

1903, 423; 437, §§ 28, 95.	1906, 463, II, §§ 41, 258, III, §§ 22, 158.	1910, 171, §§ 3, 24, 1914, 742, §§ 23, 199.
-------------------------------	--	--

1 SECTION 30. The title of a transferee of a certificate under a power
 2 of attorney or assignment not written upon the certificate, and the title
 3 of any person claiming under such transferee, shall cease and determine if,
 4 at any time prior to the surrender of the certificate to the corporation
 5 issuing it, another person, for value in good faith, and without notice of the
 6 prior transfer, shall purchase and obtain delivery of such certificate with
 7 the endorsement of the person appearing by the certificate to be the owner
 8 thereof, or shall purchase and obtain delivery of such certificate and the
 9 written assignment or power of attorney of such person though contained
 10 in a separate document.

Title by
 delivery may
 have priority
 over title by
 power of
 attorney, etc.
 1910, 171, § 4.

1 SECTION 31. The delivery of a certificate to transfer title in accord-
 2 ance with section twenty-seven shall be effectual, except as provided in
 3 section thirty-three, though made by one having no right of possession
 4 and having no authority from the owner of the certificate or from the
 5 person purporting to transfer the title.

Delivery by
 one having
 no title.
 1910, 171, § 5
 211 Mass. 429
 216 Mass. 330
 251 Mass. 598

1 SECTION 32. The endorsement of a certificate by the person appear-
 2 ing by the certificate to be the owner of the shares represented thereby
 3 shall be effectual, except as provided in the following section, though the
 4 endorser or transferor —

Endorsement
 procured by
 fraud, etc.
 1910, 171, § 6.

- 5 (a) Was induced by fraud, duress or mistake to make the endorsement
- 6 or delivery; or
- 7 (b) Has revoked the delivery of the certificate, or the authority given
- 8 by the endorsement or delivery of the certificate; or
- 9 (c) Has died or become legally incapacitated after the endorsement,
- 10 whether before or after the delivery of the certificate; or
- 11 (d) Has received no consideration.

1 SECTION 33. If the endorsement or delivery of a certificate (a) was
 2 procured by fraud or duress, or (b) was made under such mistake as to
 3 make the endorsement or delivery inequitable; or if the delivery of a
 4 certificate was made (c) without authority from the owner, or (d) after the
 5 owner's death or legal incapacity, the possession of the certificate may be
 6 reclaimed and the transfer thereof rescinded, unless —

Rescission of
 transfer.
 1910, 171, § 7.
 216 Mass. 330
 250 Mass. 246
 255 Mass. 72.

- 7 (1) The certificate has been transferred to a purchaser for value in
- 8 good faith without notice of any facts making the transfer wrongful, or
- 9 (2) The injured person has elected to waive the injury, or has been
- 10 guilty of laches in endeavoring to enforce his rights.

11 Any court of appropriate jurisdiction may enforce specifically such
 12 right to reclaim the possession of the certificate or to rescind the transfer
 13 thereof and, pending litigation, may enjoin the further transfer of the
 14 certificate, or impound it.

1 SECTION 34. Although the transfer of a certificate or of shares rep-
 2 resented thereby has been rescinded or set aside, nevertheless, if the
 3 transferee has possession of the certificate or of a new certificate rep-
 4 resenting part or the whole of the same shares of stock, a subsequent
 5 transfer of such certificate by the transferee, mediately or immediately,
 6 to a purchaser for value in good faith, without notice of any facts making
 7 the transfer wrongful, shall give such purchaser an indefeasible right to
 8 the certificate and the shares represented thereby.

Effect of
 rescission on
 rights of pur-
 chaser for value
 in good faith.
 1910, 171, § 8.

Incomplete transfer.
1910, 171, § 9.
220 Mass. 480.
224 Mass. 442.
253 Mass. 8.

SECTION 35. The delivery of a certificate by the person appearing by the certificate to be the owner thereof, without the endorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary endorsement. The transfer shall take effect as of the time when the endorsement is actually made. This obligation may be specifically enforced.

Effect of attempted transfer.
1910, 171, § 10.

SECTION 36. An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer, and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

Warranties.
1910, 171, § 11.

SECTION 37. A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants —

- (a) That the certificate is genuine;
- (b) That he has a legal right to transfer it; and
- (c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

Warranties by mortgagee, etc.
1910, 171, § 12.

SECTION 38. A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

New certificates.
1910, 171, § 13.
222 Mass. 27.

SECTION 39. Except where a certificate is lost or destroyed, a corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

Lien or restriction to be stated on certificate.
1910, 171, § 15.

SECTION 40. There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation, and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

Effect of alteration.
1910, 171, § 16.
251 Mass. 508.

SECTION 41. The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

New certificate in place of one lost or destroyed.
1906, 463.
11, § 43.
111, §§ 24, 158.
1910, 171, § 17.

SECTION 42. If a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction

6 and upon the giving of a bond with sufficient surety to be approved by
 7 the court to protect the corporation or any persons injured by the issue
 8 of the new certificate from any liability or expense, which it or they may
 9 incur by reason of the original certificate remaining outstanding. The
 10 court may also in its discretion order the payment of the corporation's
 11 reasonable costs and counsel fees.

12 The issue of a new certificate under an order of the court as provided
 13 in this section, shall not relieve the corporation from liability in damages
 14 to a person to whom the original certificate has been or shall be trans-
 15 ferred for value without notice of the proceedings or of the issuance of
 16 the new certificate.

17 Section thirty-four of chapter one hundred and fifty-six shall apply to
 18 railroads and street railways.

1 SECTION 43. A certificate shall be deemed to be endorsed when an
 2 assignment or a power of attorney to sell, assign or transfer the certificate
 3 or the shares represented thereby is written on the certificate and signed
 4 by the person appearing by the certificate to be the owner of the shares
 5 represented thereby, or when the signature of such person is written
 6 without more upon the back of the certificate. In either of such cases
 7 a certificate shall be deemed to be endorsed though it has not been
 8 delivered.

Endorsement
 1910, 171, § 20
 251 Mass. 508

1 SECTION 44. The person to whom a certificate was originally issued
 2 shall be deemed to be the person appearing by the certificate to be the
 3 owner thereof, and of the shares represented thereby, until and unless
 4 he endorses the certificate to another specified person, and thereupon
 5 such other specified person shall be deemed to be the person appearing
 6 by the certificate to be the owner thereof until and unless he also endorses
 7 the certificate to another specified person. Subsequent special endorse-
 8 ments may be made with like effect.

Who deemed
 owner of
 certificate.
 1910, 171, § 21.
 251 Mass. 508

1 SECTION 45. Stock shall not be transferred on the books of a cor-
 2 poration if any instalments thereon remain overdue and unpaid.

Transfer of
 instalment
 stock.

1903, 423, § 1; 437, § 28.

1914, 742, §§ 23, 199.

1 SECTION 46. A transferee under a transfer described in section
 2 twenty-seven, upon delivery of the former certificate to the treasurer of
 3 the corporation, shall be entitled to receive a new certificate. A pledgee
 4 of stock transferred as collateral security shall be entitled to a new cer-
 5 tificate if the instrument of transfer substantially describes the debt or
 6 duty which is intended to be secured thereby. Such new certificate shall
 7 express on its face that it is held as collateral security, and the name of
 8 the pledgor shall be stated thereon, who alone shall be liable as a stock-
 9 holder, and entitled to vote thereon.

New certifi-
 cates.
 Pledge.
 1808, 65, § 4
 1829, 53, § 4
 1833, 187, § 8
 R. S. 38, § 12.
 39, § 52.
 1838, 98, § 3.
 1846, 45
 G. S. 60, § 13;
 63, § 11; 68,
 § 13
 1864, 229, § 10.
 1870, 224, § 26
 1871, 381, § 10.

1874, 372, § 44.
 P. S. 105, § 25; 106, § 30;
 112, § 56; 113, § 13.
 R. L. 109, § 38; 110, § 28;
 111, § 59; 112, § 18.
 1903, 423; 437, §§ 28, 95.
 1906, 463, 11, §§ 41, 258,
 111, §§ 22, 158.

1914, 742, §§ 23, 199.
 11 Cush. 183
 12 Gray, 213.
 3 Allen, 342.
 8 Allen, 15.
 10 Allen, 505.
 138 Mass. 240.
 150 Mass. 200.

154 Mass. 172.
 176 Mass. 442.
 182 Mass. 555.
 193 Mass. 522.
 203 Mass. 480.
 206 Mass. 71.
 219 Mass. 403.

UNCLAIMED DIVIDENDS.

List of un-
claimed divi-
dends to be
published.
1837, 56.
G. S. 68, § 19.
P. S. 105, § 27.
R. L. 109, § 40.

SECTION 47. Every corporation shall, once in every five years, pub- 1
lish three times successively in a newspaper in Boston, and also in a 2
newspaper in the county where the corporation is established, a list of 3
all dividends which have remained unclaimed for two years or more and 4
the names of the persons to whose credit such dividends stand. 5

1903, 437, §§ 32, 95. 1906, 463, II, §§ 44, 258, III, §§ 25, 158. 1914, 742, §§ 62, 199.

FALSE REPORTS OR STATEMENTS CONCERNING CORPORATIONS.

Penalty for
false statement.
1856, 252, § 8.
G. S. 58, § 26.
1867, 267, § 3.
P. S. 119, § 230.
1887, 214,
§ 101.
1894, 522,
§ 101.
R. L. 118,
§ 101.
1907, 576,
§ 110.

SECTION 48. Whoever knowingly makes, executes, files or publishes 1
any report or statement required by law to be made, executed, filed or 2
published by a corporation in this commonwealth, whether such cor- 3
poration is organized under the laws of this commonwealth or elsewhere, 4
or whoever causes the same to be done, which report or statement is false 5
in any material representation, shall be punished by a fine of not more 6
than five thousand dollars or by imprisonment for not more than three 7
years, or both. 8

1911, 751, IV, § 19.

1914, 661, § 1.

Statement
required by
foreign law
1914, 661, § 2.

SECTION 49. Whoever knowingly makes, executes or publishes any 1
report or statement required by the law of another state or country to 2
be made, executed, or published by a corporation, or whoever causes the 3
same to be done, within this commonwealth, which report or statement is 4
false in any material representation, shall be punished by a fine of not 5
more than five thousand dollars or by imprisonment for not more than 6
three years, or both. 7

DISSOLUTION OF CORPORATIONS.

Dissolution of
corporations.
1852, 55,
§§ 1, 3.
G. S. 68, § 35.
P. S. 105, § 40.
R. L. 109, § 52.
1903, 437,
§§ 51, 95.
1906, 463,
II, §§ 226, 258,
III, §§ 138, 158.
1914, 742,
§§ 84, 199.
1919, 333,
§§ 17, 18.
1920, 2
1928, 50
7 Gray, 113,
393.
9 Gray, 34.
13 Allen, 497.
99 Mass. 267.
119 Mass. 447.
219 Mass. 95.
227 Mass. 551.
258 Mass. 74.
270 Mass. 534.

SECTION 50. A corporation which desires to close its affairs may, 1
unless otherwise provided in the agreement of association, by the vote of 2
a majority of its members if it has no capital stock, otherwise by a vote 3
of a majority of all its stock, or, if two or more classes of stock have 4
been issued, of a majority of each class outstanding and entitled to vote, 5
authorize a petition for its dissolution to be filed in the supreme judicial 6
or superior court setting forth in substance the grounds of the applica- 7
tion, or such a petition may be so filed by the holder or holders of not less 8
than forty per cent of the capital stock issued and outstanding and en- 9
titled to vote of a corporation subject to chapter one hundred and 10
fifty-six, if the votes of its board of directors and of its stockholders are 11
equally divided on a question affecting the general management of the 12
affairs of the corporation and there appears to be no way of reaching an 13
agreement and breaking such deadlock; and the court, after notice to 14
parties interested and a hearing, may decree a dissolution of the cor- 15
poration. A corporation so dissolved shall be held to be extinct in all 16
respects as if its corporate existence had expired by the limitation of its 17
charter. 18

Continuation
for three years
to close
concerns.
1819, 43.
R. S. 44, § 7.
G. S. 68, § 36.
P. S. 105, § 41.
R. L. 109, § 53.

SECTION 51. Every corporation whose charter expires by its own 1
limitation or is annulled by forfeiture or otherwise, or whose corporate 2
existence for other purposes is terminated in any other manner, shall 3
nevertheless be continued as a body corporate for three years after the 4
time when it would have been so dissolved for the purpose of prosecuting 5

6 and defending suits by or against it and of enabling it gradually to settle
 7 and close its affairs, to dispose of and convey its property and to divide
 8 its capital stock, but not for the purpose of continuing the business for
 9 which it was established; provided, that the corporate existence of
 10 such a corporation, for the purposes of any suit brought by or against
 11 it within said period of three years, shall continue beyond said period
 12 for a further period of sixty days after final judgment in the suit.

161 Mass. 443.	228 Mass. 484.	255 Mass. 159.
209 Mass. 105.	239 Mass. 313.	258 Mass. 74.

1903, 437.
 §§ 52, 95
 1906, 463,
 II, §§ 227, 258,
 III, §§ 139, 158.
 1914, 742,
 §§ 85, 199.
 1920, 165.
 16 Mass. 245.
 22 Pick. 176.
 23 Pick. 334.
 123 Mass. 32.

1 SECTION 52. If the charter of the corporation expires or is annulled,
 2 or if the corporation is dissolved as provided in section fifty, or if its cor-
 3 porate existence for other purposes is terminated in any other manner,
 4 the supreme judicial or superior court, upon application of a creditor,
 5 stockholder or member, shall have jurisdiction in equity to appoint one
 6 or more receivers to take charge of its estate and effects and to collect
 7 the debts and property due and belonging to it, with power to prosecute
 8 and defend suits in its name or otherwise, to appoint agents under them
 9 and to do all other acts which might be done by such corporation, if in
 10 being, which may be necessary for the final settlement of its unfinished
 11 business. The powers of such receivers and the existence of the corpo-
 12 ration may be continued as long as the court finds necessary for said
 13 purposes.

1920, 2	227 Mass. 551.	265 Mass. 214.
123 Mass. 32.	239 Mass. 313.	267 Mass. 270.
157 Mass. 77.	258 Mass. 74.	270 Mass. 534.
209 Mass. 105.		

Receivers,
 1833, 145.
 R. S. 44.
 §§ 8, 9.
 1852, 55, § 2.
 G. S. 68, §§ 37,
 38.
 P. S. 105,
 §§ 42, 43.
 1884, 263.
 R. L. 109,
 § 54.
 1903, 437,
 §§ 53, 95.
 1905, 156.
 1906, 463,
 II, §§ 228, 258,
 III, §§ 140,
 158.
 1914, 742,
 §§ 86, 199.
 1919, 333,
 §§ 12, 13.

1 SECTION 53. The receivers shall pay all debts due from the corpora-
 2 tion if the funds in their hands are sufficient therefor; and if they are
 3 not, they shall distribute them ratably among the creditors who prove
 4 their debts in the manner directed by any decree of the court for that
 5 purpose. If there is a balance remaining after the payment of the debts,
 6 the receivers shall distribute and pay it to those who are justly entitled
 7 thereto as having been stockholders or members of the corporation, or
 8 their legal representatives.

1906, 463, II, §§ 229, 258, III, §§ 141, 158 1914, 742, §§ 87, 199	1 Grav. 382. 219 Mass. 95.	258 Mass. 74 265 Mass. 214.
--	-------------------------------	--------------------------------

Receivers to
 pay debts and
 distribute
 surplus.
 1833, 145.
 R. S. 44, § 10.
 1852, 55, § 2.
 G. S. 68, § 39.
 P. S. 105, § 44.
 R. L. 109, § 55.
 1903, 437,
 §§ 54, 95.

1 SECTION 54. If a petition, signed and sworn to by a majority in
 2 interest of the stockholders of a railroad or street railway company
 3 organized under general laws or by a majority in number or interest of
 4 the members of any other corporation organized under the general laws,
 5 except a corporation created for the purpose of business or profit having
 6 a capital stock divided into shares or which is under the supervision of
 7 the commissioner of insurance, has, with the certificate of incorporation,
 8 been filed in the office of the state secretary, stating that such members
 9 desire to surrender the certificate of incorporation and to have the cor-
 10 poration dissolved and giving their reasons therefor, the state secretary, if
 11 he considers such reasons sufficient, shall require the petitioners to pub-
 12 lish a notice in one or more newspapers in the county where the corpora-
 13 tion is located stating that, for reasons which appear to him sufficient,
 14 the certificate of incorporation of the corporation therein named is
 15 annulled. Upon the filing by the petitioner with the state secretary of
 16 a copy of each newspaper in which the notice of dissolution was ordered

Surrender of
 certificate of
 incorporation.
 1898, 502.
 R. L. 109, § 56.
 1906, 463.
 II, §§ 230, 258,
 III, §§ 142,
 158.
 1919, 350,
 §§ 45, 46.
 219 Mass. 95.
 258 Mass. 74.

to be published, the corporation shall be dissolved, subject to the three preceding sections. 17 18

Returns to secretary of dissolution. 1880, 157. P. S. 105, § 45. R. L. 109, § 57. 1903, 437, §§ 55, 95.

SECTION 55. If a corporation is dissolved or annulled, the clerk of the court in which the decree therefor is entered shall forthwith make return thereof to the state secretary, giving the name of the corporation and the date upon which such decree was entered. 1 2 3 4

1906, 463, 11, §§ 231, 258, 1914, 742, §§ 88, 199. 111, §§ 143, 158. 258 Mass. 74.

REVIVAL OF CORPORATIONS.

Revival of certain corporations dissolved by statute. 1930, 45.

SECTION 56. If the commissioner finds that a corporation has been dissolved subject to the provisions of this section by act of the general court and that such corporation ought to be revived for all purposes or for any limited time or for any specified purpose or purposes with or without limitation of time, he may, not later than three years after the effective date of said act, upon application by any interested party, file in the office of the state secretary a certificate, in such form as the commissioner may prescribe, reviving such corporation as aforesaid. The commissioner may subject the revival of such corporation to such terms and conditions, including the payment of reasonable fees, as in his judgment the public interest may require. Upon the filing of a certificate reviving a corporation for all purposes, said corporation shall stand revived with the same powers, duties and obligations as if it had not been dissolved, except as otherwise provided in said certificate; and all acts and proceedings of its officers, directors and stockholders or members, acting or purporting to act as such, which would have been legal and valid but for such dissolution, shall, except as aforesaid, stand ratified and confirmed. If such a corporation is revived as aforesaid for a limited time or for any specified purpose or purposes, it shall stand revived for such time or for the accomplishment of such purpose or purposes in accordance with the terms of the commissioner's certificate. For cause shown to his satisfaction, the commissioner may, by certificate filed as aforesaid, extend the time for which a corporation revived for a limited time shall stand revived. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

CHAPTER 156.

BUSINESS CORPORATIONS.

SECT.

GENERAL PROVISIONS.

1. Definitions.
2. Application of chapter regulated.
3. Adoption by existing corporations.
4. Corporate powers.
5. Holding stock in certain public service companies regulated.

ORGANIZATION.

6. Organization under general laws.
7. Duration of real estate corporation.

SECT.

8. First meeting of incorporators. Notice.
9. Organization, election of officers.
10. Completion of organization. Articles of organization; liability for false statement.
11. Articles of organization, etc., approval, filing.
12. Certificate of incorporation.
13. By-laws.
14. Classes of stock. Stock without par value.

SECT.

15. For what stock may be issued.

16. Issue of authorized stock subsequent to original issue.

17. Validation of invalid issue.

18. Payment of subscriptions.

19. Sale of rights of delinquent subscriber.

20. Sale of stock for unpaid instalments, etc.

OFFICERS.

21. Officers.

22. Officers and agents. Choice, terms of office, etc.

23. Election of directors of manufacturing corporation by employees.

24. Certificate of change in officers. Penalty.

25. Powers of directors.

26. Executive committee.

27. Meetings of directors.

STOCKHOLDERS.

28. Meetings of stockholders.

29. Certificate of change of date of annual meeting. Penalty.

30. Special meetings.

31. Voting rights of corporations.

32. Voting powers of stockholders. Proxies.

STOCK.

33. Stock certificates.

34. Lost or destroyed certificates.

LIABILITY OF STOCKHOLDERS, OFFICERS AND DIRECTORS.

35. Liability of stockholders.

36. Liability of president, treasurer and directors.

SECT.

37. Liability of directors.

38. Enforcement of liability of stockholders, officers, etc.

39. Procedure.

40. Apportionment of assessment.

AMENDMENTS AFTER ORGANIZATION.

41. Amendments requiring majority vote.

41A. Increase in number of non-par shares without increase of capital.

42. Amendments requiring two thirds or larger vote.

43. Articles of amendment.

44. Increase of capital stock.

45. Reduction of capital stock.

46. Remedy of minority stockholder.

ANNUAL REPORTS.

47. Form of annual report of condition.

48. Filing of annual report.

49. Verification by auditor.

50. Penalty for failure to file report of condition.

RECEIVERS.

51. Receivers, appointment, etc.

ENFORCEMENT OF PENALTIES.

52. Enforcement of penalties.

ORGANIZATION AND FILING FEES.

53. Fees for organization papers.

54. Fees for filing certain certificates.

55. Fees for all other certificates, statements and reports.

GENERAL PROVISIONS.

1 SECTION 1. In this chapter, unless a contrary intention appears, "cor-
 2 poration" shall mean a corporation to which, under section two, this
 3 chapter applies, and "commissioner" shall mean the commissioner of
 4 corporations and taxation.

Definitions.
 1919, 350,
 §§ 52, 53.

1 SECTION 2. Except as expressly made applicable by reference in
 2 other chapters, this chapter shall not apply to corporations organized
 3 for the purpose of carrying on the business of a bank, savings bank, co-
 4 operative bank, trust company, credit union, surety or indemnity
 5 company, or safe deposit company, or for the purpose of carrying on
 6 within the commonwealth the business of an insurance company, rail-
 7 road, electric railroad, street railway or trolley motor company, tele-
 8 graph or telephone company, gas or electric light, heat or power com-
 9 pany, canal, aqueduct or water company, cemetery or crematory com-
 10 pany, or to any other corporations which now have or may hereafter
 11 have the right to take land within the commonwealth by eminent do-
 12 main or to exercise franchises in public ways granted by the common-

Application
 of chapter
 regulated.
 R. S. 38, § 1.
 G. S. 60, § 1.
 1870, 224.
 §§ 13, 64, 65.
 R. L. 110, § 2.
 1903, 437.
 §§ 1, 95.
 1910, 385.
 1912, 586.
 1917, 224.
 1923, 438, § 1.
 1931, 426,
 § 255.
 192 Mass. 428.
 214 Mass. 79.
 246 Mass. 242.

wealth or by any county, city or town. It shall apply to all other do- 13
 mestic corporations having a capital stock and heretofore or hereafter 14
 established either by general or special law for the purpose of carrying on 15
 business for profit except as provided in chapter one hundred and fifty- 16
 seven and except so far as such application may be inconsistent with 17
 provisions still in force of any special acts of incorporation, enacted before 18
 March eleventh, eighteen hundred and thirty-one, and not subject to 19
 amendment, alteration or repeal by the general court, or with provisions 20
 of any special acts of incorporation hereafter enacted; and this chapter 21
 shall govern the amount of real or personal estate which any corporation 22
 subject to it may hold, and the right to increase or decrease its capital 23
 stock, notwithstanding the provisions of any special act of incorporation, 24
 except in the case of corporations empowered to manufacture, store, 25
 transmit, sell or distribute power. 26

Adoption by
 existing cor-
 porations.
 1829, 53, § 13.
 R. S. 38,
 §§ 26, 27.
 G. S. 60,
 §§ 28, 29.
 1870, 224, § 65.
 1874, 349, § 1.
 cl. 4.
 P. S. 106, § 4
 R. L. 110, § 3.
 1903, 437,
 §§ 2, 95.
 1910, 353.
 1931, 426,
 § 256.

SECTION 3. Corporations which would otherwise be within the appli- 1
 cation of this chapter, as defined in section two, but which were created 2
 before March eleventh, eighteen hundred and thirty-one, by any special 3
 act not subject to amendment, alteration or repeal by the general court, 4
 may, at a legal meeting of the stockholders duly called therefor, by vote 5
 of two thirds of each class of stock outstanding and entitled to vote, adopt 6
 the provisions of this chapter and all provisions of chapter one hundred 7
 and fifty-five applicable to corporations subject to this chapter. A copy 8
 of such vote, signed and sworn to by the president, treasurer and a 9
 majority of the directors, shall be submitted to and examined by the 10
 commissioner. If the commissioner finds that it conforms to the re- 11
 quirements of law, he shall endorse his approval thereon, and, upon pay- 12
 ment of the fee provided in section fifty-five, it shall be filed in the office 13
 of the state secretary; and thereupon such corporation with its mem- 14
 bers and officers shall be entitled to all the rights, privileges and im- 15
 munities and be subject to all the liabilities set forth in this chapter and 16
 in the provisions of chapter one hundred and fifty-five applicable to 17
 corporations subject to this chapter, and no stockholder in such corpora- 18
 tion shall be liable for debts of the corporation contracted after the 19
 filing of the copy of such vote except for the causes and in the manner 20
 provided in this chapter. 21

Corporate
 powers.
 1851, 133.
 1855, 478, § 1.
 1857, 24.

SECTION 4. In addition to the powers and privileges given by section 1
 six of chapter one hundred and fifty-five, every corporation shall have 2
 the following powers and privileges: 3

G. S. 61, § 7.	R. L. 109, § 7;	131 Mass. 258.
1870, 224, § 31.	110, §§ 33, 46.	182 Mass. 147.
1871, 110, § 3.	1903, 437, §§ 4, cls. (a),	238 Mass. 518.
1877, 67.	(c), (f), (g), 95.	240 Mass. 574.
P. S. 105, § 7; 106, §§ 36, 50.		

(a) To have perpetual succession in its corporate name, unless a period 4
 for its duration is limited by any general or special law. 5

(b) Except as provided in section two, to have a capital stock to such 6
 an amount as may be fixed, as provided in this chapter, in its agreement 7
 of association or articles of organization or of amendment. 8

6 Gray, 25.
 9 Gray, 367.
 141 Mass. 590.
 145 Mass. 261.
 147 Mass. 224.

(c) To hold, purchase, convey, mortgage or lease within or without 9
 this commonwealth such real or personal property as the purposes of the 10
 corporation may require. 11

150 Mass. 317.	157 Mass. 37.	244 Mass. 240.
155 Mass. 554.	168 Mass. 53	268 Mass. 561.

12 (d) To make contracts, incur liabilities and borrow money on its 111 Mass. 315.
 13 credit and for its use. 123 Mass. 129.

131 Mass. 258.	249 Mass. 473.	260 Mass. 134, 145.	267 Mass. 483.
150 Mass. 140.	258 Mass. 306, 453.	262 Mass. 242.	271 Mass. 479.
167 Mass. 161.			

1 SECTION 5. No corporation, unless authorized by a special act still Holding stock
 2 in force, shall purchase, acquire, take or hold, directly or indirectly, more public service
 3 than ten per cent of the total capital stock of any domestic corporation companies
 4 authorized to carry on within the commonwealth the business of a rail- regulated.
 5 road, street railway, electric railroad, elevated railway, trolley motor, 1913, 597.
 6 gas or electric light, heat or power company.

ORGANIZATION.

1 SECTION 6. Three or more persons may associate themselves by writ- Organization
 2 ten agreement of association with the intention of forming a corporation under general
 3 under general laws for any lawful purpose not excluded by section two. laws. 1851, 133,
 4 The agreement of association shall state: §§ 1-3.

1852, 9.	1875, 177, § 3.	1903, 437, §§ 7, 8, 95.
1853, 68, § 1.	1878, 86, § 1.	1906, 286
G. S. 61, §§ 1, 2.	1879, 275, §§ 1, 4.	1912, 595
1860, 128, § 1.	P. S. 105, § 16, 106, §§ 6-8,	1914, 598, § 24.
1862, 182.	10, 13-16, 31; 107, § 1.	1918, 257, § 363.
1866, 187, § 1; 290, § 2.	1888, 116.	1919, 5.
1867, 131.	1894, 500.	1920, 2; 349, § 1.
1870, 224, §§ 1, 2, 4, 7.	1898, 503, § 2.	11 Gray, 139.
1871, 110, § 1.	1899, 199, § 1.	12 Allen, 273, 362.
1872, 244.	R. L. 109, § 18; 110,	98 Mass. 98.
1873, 37, § 11.	§§ 4-6, 8, 11-15.	101 Mass. 381, 385.
1874, 165; 295, § 1.		

5 (a) That the subscribers thereto associate themselves with the inten-
 6 tion of forming a corporation.

7 (b) The corporate name assumed. 149 Mass. 436.

8 (c) The location of the principal office of the corporation in the com-
 9 monwealth, and elsewhere in the case of corporations organized to do
 10 business wholly outside the commonwealth.

11 (d) The purposes for which the corporation is formed and the nature 97 Mass. 494.
 12 of the business to be transacted. 224 Mass. 20.

13 (e) If only shares with par value are to be issued, the total amount of
 14 the capital stock of the corporation, which shall not be less than one
 15 thousand dollars, to be authorized, and the number of shares into which
 16 the capital stock is to be divided, and the par value of the shares, which
 17 shall not be less than five dollars, or, in lieu thereof, if any shares without
 18 par value are to be issued, the number of shares without par value to be
 19 authorized, which shall not be less than ten, and the number of shares
 20 having par value to be authorized, if any, and the par value thereof,
 21 which shall not be less than five dollars.

22 (f) The restrictions, if any, imposed upon the transfer of shares. 143 Mass. 353.
 179 Mass. 169. 199 Mass. 371. 219 Mass. 405. 162 Mass. 148.
 181 Mass. 476. 210 Mass. 172. 272 Mass. 432.

23 (g) If there are to be two or more classes of stock, a description of the
 24 different classes and a statement of the terms on which they are to be
 25 created and of the method of voting thereon.

26 (h) Any other lawful provisions for the conduct and regulation of the
 27 business of the corporation, for its voluntary dissolution, or for limiting,
 28 defining or regulating the powers of the corporation, or of its directors or
 29 stockholders, or of any class of stockholders.

30 (i) The subscriber or subscribers by whom the first meeting of the
 31 incorporators shall be called.

(j) The names and residences of the incorporators and the amount of stock subscribed for by each. 32 33

Duration of real estate corporation. 1912, 595. 1914, 598, § 24.

SECTION 7. The agreement of association of any corporation formed for the purpose of acquiring, holding, managing, improving, leasing, buying and selling real estate, except a corporation formed for the purpose of owning forest land classified under chapter sixty-one, shall state the term of duration of the corporation, which shall not exceed fifty years. 1 2 3 4 5

First meeting of incorporators. Notice. 1855, 478, § 2. G. S. 61, § 3; 68, § 4. 1866, 290, § 4. 1870, 224, § 9. P. S. 105, § 10; 106, § 18. R. L. 109, § 14; 110, § 17. 1903, 437, §§ 9, 95. 1918, 257, § 347. 1919, 5. 1920, 2. 16 Mass. 94. 11 Cush. 369. 98 Mass. 98. 101 Mass. 385. 129 Mass. 540. 130 Mass. 264. 146 Mass. 482.

SECTION 8. The first meeting of the incorporators shall be called by a notice signed by such subscriber to the agreement of association as may be designated therein or by a majority of the subscribers to such agreement; and such notice shall state the time, place and purposes of the meeting, which shall be held within the commonwealth. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof, and an affidavit of one of the signers that the notice has been duly served, shall be recorded with the records of the corporation. If all of the incorporators shall in writing, upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

2 Op. A. G. 496.

Organization, election of officers. 1851, 133, § 4. G. S. 61, § 5. 1870, 224, § 10. P. S. 106, § 20. R. L. 110, § 19. 1903, 437, §§ 10, 95. 1918, 257, § 348. 1919, 5. 1920, 2. 15 Gray, 211.

SECTION 9. At the first meeting of a corporation organized under general law or created by special act, or at any adjournment thereof, the incorporators shall organize by the choice, by ballot, of a temporary clerk, who shall be sworn, by the adoption of by-laws and by the election by ballot of directors, of a treasurer, of a clerk and of such other officers as the by-laws require to be elected by the stockholders. The temporary clerk shall make and attest a record of the proceedings, until the clerk has been chosen and sworn, including a record of such choice and qualification. 1 2 3 4 5 6 7 8 9

117 Mass. 478.

Completion of organization articles of organization; liability for false statement.

1829, 56, § 6. R. S. 38, § 15. 1851, 133, § 4. 1855, 68, § 2. 1857, 276, § 1. G. S. 60, § 16; 61, § 8. 1870, 224, §§ 11, 32. 1875, 177, § 2. P. S. 106, §§ 21, 46, 48. R. L. 110, §§ 20, 43, 44. 1903, 437, §§ 11, 95. 115 Mass. 380. 126 Mass. 300. 152 Mass. 428. 244 Mass. 240. 249 Mass. 272. 263 Mass. 160. 1 Op. A. G. 205, 659.

SECTION 10. A majority of the directors elected at such first meeting shall forthwith make, sign and make oath to articles setting forth: (a) A true copy of the agreement of association and the names of the subscribers thereto, or, if the corporation is created by special act, a copy of the act of incorporation. (b) The date of the first meeting and of the successive adjournments thereof, if any. (c) Subject to section fourteen, the amount of capital stock then to be issued, the amount thereof to be paid for in full in cash, the amount thereof to be paid for in cash by instalments and the instalment to be paid before the corporation commences business, and the amount thereof to be paid for in property. If such property consists in any part of real estate, its location, area and the amount of stock to be issued therefor shall be stated; if any part of such property is personal, it shall be described in such detail as the commissioner may require, and the amount of stock to be issued therefor stated. If any part of the capital stock is issued for services or expenses, the nature of such services or 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17

18 expenses and the amount of stock which is issued therefor shall be clearly
19 stated.

20 (d) The name, residence and post office address of each of the officers
21 of the corporation.

22 The directors who sign such articles and the officers and directors who
23 sign any amendment thereof shall be jointly and severally liable to any
24 stockholder of the corporation for actual damages caused by any state-
25 ment therein which is false and which they know, or on reasonable
26 examination could have known, to be false.

1 SECTION 11. The articles of organization, the agreement of associa-
2 tion, and the record of the first meeting of the incorporators, including
3 the by-laws, shall be submitted to the commissioner, who shall examine
4 them and who may require such amendment thereof or such additional
5 information as he deems necessary. If he finds that the provisions of law
6 relative to the organization of the corporation have been complied with,
7 he shall endorse his approval on the articles. Thereupon, the articles
8 shall, upon payment of the fee provided by section fifty-three, be filed
9 in the office of the state secretary.

Articles of
organization,
etc., approval,
filing
1829, 56, § 6.
R. S. 38, § 15.
1851, 133, § 4.
1857, 276, § 1.
G. S. 60, § 16;
61, § 5.
1870, 224,
§§ 11, 32, 37.
1875, 177, § 2.
P. S. 106, §§ 21,
46, 48, 59.

1898, 503, § 1
R. L. 110, §§ 20, 43, 44, 57.
1903, 437, §§ 12, 95.

1918, 257, § 349.
1919, 5.
1920, 2.

1931, 394, § 163.
117 Mass. 476.

1 SECTION 12. Upon the approval and filing as above provided of the
2 articles of organization of a corporation organized under general laws,
3 the state secretary shall issue a certificate of incorporation in the follow-
4 ing form:

Certificate of
incorporation
1870, 224, § 11.
P. S. 106, § 21.
R. L. 110, § 20.
1903, 437,
§§ 12, 95.
1918, 257,
§ 349.
1919, 5.
1920, 2.
117 Mass. 476.
126 Mass. 300.
145 Mass. 403.
149 Mass. 436.
151 Mass. 558.
204 Mass. 169.
233 Mass. 334.

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the names of the subscribers to the agreement of
association) have associated themselves with the intention of forming a corpo-
ration under the name of (the name of the corporation), for the purpose (the
purpose declared in the agreement of association), with a capital stock of (the
amount fixed in the agreement of association, with a statement of the several
classes into which the stock is divided and their respective amounts, and of the
method of paying for such stock, whether by cash in full, cash in instalments,
property, services or expenses, or partly by one method and partly by another
or others), and have complied with the provisions of the statutes of this com-
monwealth in such case made and provided, as appears from the articles of
organization of said corporation, duly approved by the commissioner of cor-
porations and taxation and recorded in this office: now, therefore, I (the name
of the secretary), secretary of the commonwealth of Massachusetts, do hereby
certify that said (the names of the subscribers to the agreement of association),
their associates and successors, are legally organized and established as, and
are hereby made, an existing corporation under the name of (name of the cor-
poration), with the powers, rights and privileges, and subject to the limitations,
duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the
commonwealth of Massachusetts hereunto affixed, this _____ day of
_____ in the year _____ (the date of filing of the articles of
organization).

5 If such corporation is organized with capital stock without par value,
6 the form of said certificate may be modified to conform thereto.

7 The state secretary shall sign the certificate of incorporation and cause
8 the great seal of the commonwealth to be thereto affixed, and such
9 certificate shall have the force and effect of a special charter. The ex-
10 istence of every corporation organized under general laws shall begin
11 upon the filing of the articles of organization in the office of the state

secretary. The state secretary shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

By-laws,
1808, 65, § 1.
1829, 53, § 1.
1833, 83, § 1.
R. S. 38,
§§ 6, 7; 44, § 2.
G. S. 60, §§ 2,
7; 68, § 7.
1870, 224, § 20.
P. S. 105, § 5;
106, § 28.
R. L. 109, § 5;
110, § 26.
1903, 437,
§§ 13, 95.
8 Met. 301,
321.
218 Mass. 387.

SECTION 13. Every corporation may determine by its by-laws the time and place of holding and the manner of conducting its meetings, and, in accordance with sections twenty-one and twenty-two, of electing its officers, the powers, duties and tenure of its officers, the number of its directors, the number of stockholders and of directors necessary to constitute a quorum, the manner of calling regular and special meetings of the directors, the expediency of providing for an executive committee, the number of members thereof, and the duties which may be delegated to it, the method of making demand for payment of subscriptions to its capital stock, the conditions under which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost or destroyed, the method in general of transacting its business and the manner by which the by-laws may be altered, amended or repealed.

Classes of
stock.
Stock without
par value.
1855, 290.
G. S. 60, § 12.
1870, 224, § 25.
P. S. 106, § 42.
R. L. 110, § 36.
1902, 441.
1903, 437,
§§ 27, 95.
1920, 349, § 3.
136 Mass. 204.
222 Mass. 418.
251 Mass. 529.

SECTION 14. Every corporation in its agreement of association, or in the case of a corporation created by special law, in its articles of organization, or in an amendment to said agreement or articles which may be adopted as hereinafter provided, may create shares of stock with or without par value and may create two or more classes of stock with such preferences, voting powers, restrictions and qualifications thereof as shall be fixed in said agreement or articles or in such amendment. Subject to any provisions so fixed, every share without par value shall be equal to every other such share.

The provisions of law relating to the issue of shares of capital stock with par value shall apply to the issue of shares without par value, and a corporation may issue its authorized shares without par value for such cash, property, tangible or intangible, services or expenses as may be determined from time to time by the board of directors, subject to the provisions of the agreement of association, articles of organization or amendments thereof and, in the case of an increase of capital stock, subject to the vote of stockholders determining the terms and manner of the disposition of the increased stock pursuant to section forty-one, and when the cash or other consideration for which they are to be issued, as stated in the articles of organization, or certificate of issue, or articles of amendment, made pursuant to section ten, sixteen or forty-four, has been received, said shares shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments, except as provided in section thirty-five.

In any case in which the law requires that the par value of the shares of stock of a corporation be stated, it shall be stated, in respect of shares without par value, that such shares are without par value; and wherever the amount of stock, authorized or issued, is required to be stated, if any shares without par value are authorized, the number of shares authorized or issued of the several classes shall be stated, and it shall also be stated whether such shares are with or without par value and what the par value is of such shares as have par value.

For what stock
may be issued.
1851, 133, § 16.

SECTION 15. Capital stock may be issued for cash, at not less than par, if the shares have par value, and may be issued for property, tangi-

3 ble or intangible, or for services or expenses. Stock issued for cash may
 4 be paid for in full before it is issued or by instalments. If it is paid for
 5 by instalments, the stock certificate shall be legibly stamped with the
 6 words “ per cent paid up, balance payable (stating manner
 7 and time of payment) and shares subject to forfeiture if
 8 unpaid”, the facts being truly stated; and, as each instalment is de-
 9 manded and paid, the certificate shall be stamped accordingly.

1858, 167.
 1859, 104.
 G. S. 68, § 9.
 1871, 392, § 3.
 1873, 39, § 1.
 1875, 177, § 2.
 1879, 275,
 §§ 2, 3.
 P. S. 105, § 17;
 106, §§ 41,
 47-49.

R. L. 109, § 19;	150 Mass. 200.	187 Mass. 262.	235 Mass. 162.
110, §§ 44, 45.	152 Mass. 428.	193 Mass. 198.	238 Mass. 369.
1903, 437, §§ 14, 95.	155 Mass. 184.	194 Mass. 518.	249 Mass. 272.
1918, 257, § 350.	183 Mass. 355.	224 Mass. 564.	263 Mass. 160.
1919, 5.	185 Mass. 265.	231 Mass. 513.	268 Mass. 14.
1920, 2.			

1 SECTION 16. The whole or any part of any unissued balance of the
 2 authorized capital stock may be issued, subsequent to the issue of stock
 3 certified by the articles of organization, by vote of the directors, under
 4 authority of the by-laws or of a general or special vote of the incorporators
 5 at the first meeting or of the stockholders at a subsequent meeting, if,
 6 within thirty days after such vote of the directors, a certificate signed
 7 and sworn to by the president, treasurer and a majority of the directors is
 8 submitted to the commissioner, setting forth — (a) the total amount of
 9 capital stock authorized; (b) the amount of stock already issued for cash
 10 payable by instalments and the amount paid thereon; also the amount
 11 of full paid stock already issued for cash, property, services or expenses;
 12 (c) the amount of additional stock to be issued for cash, property, services
 13 or expenses, respectively; (d) a description of said property, and a state-
 14 ment of the nature of said services or expenses, in the manner required
 15 by section ten. The commissioner shall examine such certificate in the
 16 same manner as the original articles of organization. If he finds that it
 17 conforms to the requirements of law, he shall endorse his approval
 18 thereon, and it shall thereupon be filed in the office of the state secretary,
 19 upon payment of the fee provided in section fifty-five. No issue of stock
 20 subsequent to that certified by the articles of organization shall be
 21 lawful until said certificate is filed with the secretary as aforesaid. No
 22 stock shall be at any time issued unless the cash, so far as due, or the
 23 property, services or expenses for which it was authorized to be issued,
 24 has been actually received or incurred by, or conveyed or rendered to,
 25 the corporation, or is in its possession as surplus; nor shall any note or
 26 evidence of indebtedness, secured or unsecured, of any person to whom
 27 stock is issued, be deemed to be payment therefor; and the president,
 28 treasurer and directors shall be jointly and severally liable to any stock-
 29 holder of the corporation for actual damages caused to him by such issue.

Issue of
 authorized
 stock subse-
 quent to origi-
 nal issue.
 1829, 53,
 §§ 6, 8.
 R. S. 38,
 §§ 16, 24.
 G. S. 60,
 §§ 14, 17.
 1870, 224.
 §§ 27, 32, 37.
 P. S. 106,
 §§ 46, 47, 59.
 1898, 503, § 1.
 R. L. 110,
 §§ 43, 44, 57.
 1903, 437,
 §§ 14, 95.
 1918, 257,
 § 350.
 1919, 5.
 1920, 2; 556.
 1931, 394,
 § 164.
 194 Mass. 518
 263 Mass. 160
 268 Mass. 14

1 SECTION 17. An issue of stock subsequent to that certified by the
 2 articles of organization which is invalid solely for the reason that the
 3 certificate is not submitted to the commissioner within thirty days as
 4 required by the preceding section may be rendered lawful and valid as
 5 of the date of its issue if the certificate is afterward submitted to him,
 6 and is examined and approved by him and filed in the office of the state
 7 secretary, upon payment of such fee, not exceeding twenty-five dollars,
 8 as the commissioner may fix.

Validation of
 invalid issue.
 1918, 257,
 § 351.
 1919, 5.
 1920, 2.
 1931, 394,
 § 165.

1 SECTION 18. In the case of capital stock authorized to be issued for
 2 cash, whether or not to be paid in full before issue, the directors may
 3 require payment in such proportions and at such times and places as

Payment of
 subscriptions.
 1903, 437,
 §§ 15, 16.
 1918, 257, § 352.

1919, 5.
1920, 2.

they deem proper, by making demand therefor according to the by-laws, 4
or, in default of such by-law, by notice mailed to each subscriber or 5
stockholder at least seven days before his subscription or any portion 6
thereof, or any instalment due upon stock already issued, is payable. 7

Sale of rights
of delinquent
subscriber.
1903, 437, § 15.
5 Gray, 520.
110 Mass. 213.
168 Mass. 345.
188 Mass. 587.

SECTION 19. If, under the articles of organization, capital stock 1
issued for cash is to be paid for in full before it is issued, and the sub- 2
scriber refuses or neglects to pay the amount demanded for thirty days 3
after the time limited for payment in the demand made under the pre- 4
ceding section, his rights of subscription may be sold by public auction 5
by the treasurer of the corporation who, out of the proceeds of such sale, 6
shall pay to the corporation the amount then due from such subscriber 7
with interest and incidental charges, first giving notice by mail to such 8
subscriber, not less than ten days prior to such sale, of the time and place 9
appointed therefor and of the amount due and payable by him. Upon the 10
sale of such rights as aforesaid, the directors shall give to the purchaser a 11
certificate thereof. If the rights of such subscriber do not sell for an 12
amount sufficient to pay the amount due from him with interest and 13
charges of sale, he shall be liable to the corporation in an action at law for 14
the deficiency; if they sell for more, he shall be entitled to the surplus. 15
At the expiration of thirty days after the time limited for payment as 16
aforesaid, the directors may waive their right to offer such rights for sale, 17
and may elect to proceed at law against such delinquent subscriber to 18
recover all amounts due and payable by him with interest. If said rights 19
are not sold at said auction, or if a judgment rendered in an action against 20
a subscriber remains unsatisfied for thirty days, all amounts previously 21
paid by him shall be forfeited to the corporation. 22

Sale of stock
for unpaid in-
stalments, etc.
1903, 437, § 16.
1910, 171.
1918, 257,
§ 352.
1919, 5.
1920, 2.

SECTION 20. If, under the articles of organization, capital stock is 1
issued payable by instalments, and a stockholder refuses or neglects to 2
pay an instalment for thirty days after the time limited for payment in 3
the demand under section eighteen, the treasurer of the corporation may 4
sell such stockholder's shares by public auction, and, out of the proceeds 5
of such sale, shall pay to the corporation all instalments then due from 6
such stockholder with interest and incidental charges. A notice stating 7
the time and place of such sale and the amount of the instalment due and 8
payable and also the number of the certificate and number of shares of 9
stock thus offered for sale shall be sent by the treasurer by mail not less 10
than ten days prior to such sale to such stockholder and also the person 11
who originally subscribed to the said delinquent stock. Upon the sale 12
of such stock as aforesaid, the directors shall transfer the shares so sold 13
to the purchaser, who shall be entitled to a certificate therefor, so stamped 14
as to indicate the instalments paid, and shall be liable under this section 15
for all subsequent instalments. Upon the issue of such certificate, the 16
certificate outstanding shall be void except as provided in sections 17
twenty-four to forty-six, inclusive, of chapter one hundred and fifty-five. 18
The balance, if any, of the proceeds of such sale shall be held by the cor- 19
poration for such stockholder, his representatives or assigns, and be paid 20
to him or them at any time upon surrender and delivery to the corpora- 21
tion of his certificate. If no person offers an amount sufficient to pay all 22
instalments due upon such stock with interest and incidental charges, it 23
may or may not be sold, and the delinquent stockholder shall be liable to 24
the corporation in an action at law for such instalments, interest and 25

26 incidental charges, if the stock is not sold, or for the deficiency, if it is
 27 sold, and if a judgment rendered in such action remains unsatisfied for
 28 thirty days, the original subscriber shall be so liable. Instead of offering
 29 such stock for sale, the directors, at the expiration of the time limited in
 30 the notice for payment of such instalments, may proceed by an action
 31 at law against the delinquent stockholder, and, if a judgment rendered
 32 against him in such action remains unsatisfied for thirty days, against
 33 the original subscriber, for the recovery of such instalments, interest and
 34 incidental charges. The delinquent stockholder or the original subscriber,
 35 as the case may be, upon the payment of such instalments, interest and
 36 incidental charges, or of the judgment therefor, shall be entitled to a
 37 certificate of the stock, so stamped as to indicate the instalments paid,
 38 and, thereupon, the certificate outstanding for such stock shall be void,
 39 except as provided in sections twenty-four to forty-six, inclusive, of chap-
 40 ter one hundred and fifty-five. If a judgment rendered in an action
 41 against the original subscriber remains unsatisfied for thirty days, said
 42 stock shall be forfeited to the corporation, an entry of transfer to it shall
 43 be made on its books, and, thereupon, the certificate outstanding shall
 44 be void as aforesaid. While the stock remains the property of the cor-
 45 poration, no dividends shall be declared nor instalments paid upon it;
 46 but it shall remain subject to the control of the corporation according
 47 to its by-laws.

OFFICERS.

1 SECTION 21. The business of every corporation shall be managed and
 2 conducted by a president, a board of not less than three directors, a
 3 clerk, a treasurer and such other officers and such agents as the corpora-
 4 tion by its by-laws shall authorize. The treasurer may be required to
 5 give a bond for the faithful performance of his duty in such sum and with
 6 such sureties as the by-laws may prescribe. The clerk, who shall be a
 7 resident of the commonwealth, shall be sworn and shall record all votes
 8 of the corporation in a book to be kept therefor.

Officers.
 1808, 65, § 1.
 1829, 53, § 1.
 R. S. 38,
 §§ 2-4.
 G. S. 60, §§ 3,
 5, 6.
 1866, 290, § 3.
 1870, 224,
 §§ 15, 17, 18.
 P. S. 106,
 §§ 23, 25, 26.
 R. L. 110,
 §§ 22, 24.

1903, 437,
 §§ 17, 18, 95.

1920, 237, § 1.
 15 Gray, 211.

188 Mass. 254.
 273 Mass. 66.

1 SECTION 22. Except as otherwise provided in this and the following
 2 section, the directors, treasurer and clerk shall be elected annually by
 3 ballot, by such stockholders as have the right to vote, and the president
 4 shall be elected annually by and from the board of directors. All other
 5 agents and officers shall be chosen or appointed, and all vacancies filled,
 6 in the manner prescribed in the by-laws, or, in default of such by-law,
 7 by the board of directors. Every director, unless the by-laws otherwise
 8 provide, shall be a stockholder. The directors and other officers shall
 9 hold office for one year and until their successors are chosen and quali-
 10 fied, except that a corporation may, by its articles of organization or by
 11 an amendment to such articles adopted as provided in this chapter,
 12 divide its directors into classes and prescribe the tenure of office of the
 13 several classes and the class of stock by which each class of directors shall
 14 be elected; but no class shall be elected for a shorter period than one
 15 year or for a longer period than five years, and the term of office of at
 16 least one class shall expire in each year.

Officers and
 agents.
 Choice,
 terms of
 office, etc.
 1808, 65, § 1.
 1829, 53, § 1.
 R. S. 38,
 §§ 3-5.
 G. S. 60,
 §§ 4, 5.
 1866, 290, § 3.
 1870, 224, § 16.
 1874, 349, § 1.
 cl. 1.
 P. S. 106,
 §§ 24, 25.
 R. L. 110,
 §§ 22, 23.
 1903, 437,
 §§ 18, 95.
 1918, 257,
 § 353.
 1919, 5.
 1920, 2;
 237, § 1.
 S. C. 93.

7 Gray, 1
 179 Mass. 61.

231 Mass. 513.
 264 Mass. 499.

273 Mass. 390.

Election of directors of manufacturing corporation by employees. 1919, 70.

SECTION 23. A manufacturing corporation may provide by by-law for the nomination and election by its employees of one or more of them as members of its board of directors. All such elections shall be held at the works of the corporation on the day of the annual meeting, and the voting shall be by secret ballot. If less than a majority of those entitled to vote participate in the election there shall be no election, and the vacancy shall be filled as provided in the preceding section. A director elected by the employees shall have the same rights and powers and shall be subject to the same duties and responsibilities as a director elected by the stockholders.

Certificate of change in officers. Penalty. 1907, 282. 1908, 180. 1915, 15. 1918, 257. §§ 354, 355. 1919, 5. 1920, 2.

SECTION 24. Whenever any change is made in the officers of a corporation, except at the annual meeting, the corporation shall forthwith file in the office of the commissioner a certificate of such change, signed and sworn to by the clerk. Any corporation which omits to make and file a certificate as aforesaid within thirty days after such change has been made, or which fails to keep a clerk of the corporation in this commonwealth, shall forfeit not more than five hundred dollars, to be recovered in the manner prescribed by section fifty-two.

Powers of directors. 1903, 437, § 19. 2 Met 163. 188 Mass. 515.

SECTION 25. The board of directors may exercise all the powers of the corporation, except such as are conferred by law, or by the by-laws of the corporation, upon the stockholders.

190 Mass. 61. 209 Mass. 354. 211 Mass. 453. 268 Mass. 561.

Executive committee. 1903, 437, § 19. 2 Met 163. 154 Mass 277. 211 Mass. 453.

SECTION 26. A corporation may, by its by-laws, provide for an executive committee to be elected from and by its board of directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe.

Meetings of directors. 1903, 437, § 25.

SECTION 27. Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board shall be a legal meeting without notice if each director, by a writing filed with the records of the meeting, waives such notice.

STOCKHOLDERS.

Meetings of stockholders. 1829, 53, § 15. R. S. 38, § 7; 44, § 2. G. S. 60, § 7; 68, § 7. 1870, 224, § 20. P. S. 105, § 5; 106, § 28. R. L. 109, § 5; 110, § 26. 1903, 437, §§ 20, 95. 1904, 207. 1924, 91, § 1. S Met. 301. 10 Cush. 27. S Allen, 217.

SECTION 28. There shall be an annual meeting of the stockholders, and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws; but it shall be held within ninety days after the end of the fiscal year of the corporation. All meetings of stockholders shall be held in the commonwealth. A written notice, stating the place, day and hour thereof, shall be given by the clerk, at least seven days before the meeting, to each stockholder entitled to vote thereat and to each stockholder who, under the agreement of association or any amendment thereof or under the by-laws, is entitled to such notice, by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears upon the books of the corporation. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular

17 or special meeting of the stockholders shall be required if every stock-
 18 holder entitled to notice thereof, or his attorney thereunto authorized,
 19 by a writing which is filed with the records of the meeting, waives such
 20 notice.

1 SECTION 29. Whenever any change is made altering the date fixed
 2 in the by-laws for the annual meeting of a corporation, the corporation
 3 shall forthwith file in the office of the commissioner a certificate of such
 4 change, signed and sworn to by the clerk of the corporation. Any cor-
 5 poration which omits to make and file a certificate as aforesaid within
 6 thirty days after such a change has been made, shall forfeit not more
 7 than one hundred dollars, to be recovered in the manner prescribed by
 8 section fifty-two.

Certificate of
 change of
 date of annual
 meeting.
 Penalty.
 1903, 222.
 1918, 257.
 §§ 356, 357.
 1919, 5.
 1920, 2.

1 SECTION 30. Special meetings of the stockholders may be called by
 2 the president or by a majority of the directors, and shall be called by
 3 the clerk, or in case of the death, absence, incapacity or refusal of the
 4 clerk, by any other officer, upon written application of three or more
 5 stockholders who are entitled to vote and who hold at least one tenth
 6 part in interest of the capital stock entitled to vote at the meeting,
 7 stating the time, place and purpose of the meeting.

Special
 meetings.
 R. S. 44, § 2.
 G. S. 68, § 7.
 P. S. 105, § 5.
 R. L. 109, § 5.
 1903, 437.
 §§ 22, 95.
 1924, 91, § 2.

1 SECTION 31. No corporation shall, directly or indirectly, vote upon
 2 any share of its own stock.

1903, 437, § 23.

101 Mass. 398.

Voting rights
 of corporations.

1 SECTION 32. Stockholders entitled to vote shall, except as provided
 2 in sections two and four of chapter one hundred and fifty-seven, have
 3 one vote for each share of stock owned by them; provided, that in cor-
 4 porations having two or more classes of stock, the voting powers of
 5 the different classes may be fixed in the manner provided by section
 6 fourteen. Capital stock shall not be voted upon if any instalment of
 7 the subscription therefor which has been duly demanded under section
 8 eighteen is overdue and unpaid. Stockholders may vote either in per-
 9 son or by proxy. No proxy which is dated more than six months before
 10 the meeting named therein shall be accepted, and no such proxy shall be
 11 valid after the final adjournment of such meeting.

Voting powers
 of stockholders.
 Proxies.
 R. S. 38, § 7;
 44, § 2.
 G. S. 60, § 7;
 68, § 7.
 1870, 224, § 19.
 P. S. 105, § 5;
 106, § 27.
 R. L. 109, § 5;
 110, § 25.
 1903, 437.
 §§ 24, 95.
 1912, 175.
 1920, 349, § 2.
 253 Mass. 205.

STOCK.

1 SECTION 33. Each stockholder shall be entitled to a certificate, in
 2 form conformable to section fifteen, which shall be signed by the presi-
 3 dent or a vice president and either the treasurer or an assistant treas-
 4 urer of the corporation, shall be sealed with its seal and shall certify
 5 the number of shares, and the class thereof, owned by him in such
 6 corporation; but when any such certificate is signed by a transfer
 7 agent or transfer clerk and by a registrar and the registrar is not the
 8 same person, partnership, association, trust or corporation as the trans-
 9 fer agent or transfer clerk, the signature of the president or a vice presi-
 10 dent or of the treasurer or an assistant treasurer of the corporation, or
 11 both such signatures, or the seal of the corporation, or either or both
 12 such signatures and such seal, upon such certificate may be facsimile,
 13 and such certificate shall be as valid and effectual for all purposes as if
 14 signed by such officer or officers, or sealed with its corporate seal, as

Stock
 certificates.
 1808, 65, § 3.
 1820, 53, § 3.
 R. S. 38, § 10.
 1852, 180.
 1855, 290.
 G. S. 60,
 §§ 10, 12.
 1870, 224,
 §§ 23, 25.
 1874, 349, § 1.
 P. S. 106,
 §§ 29, 42.
 R. L. 110,
 1902, 441,
 § 2.
 1903, 437,
 §§ 26, 95.
 1916, 105.
 1926, 129.
 1929, 102;
 375, § 1.
 1931, 394,
 § 106.
 16 Mass. 94.

8 Cush. 168.
211 Mass. 124.
222 Mass. 418.

the case may be. Each certificate of stock, which by the agreement of 15
association or amended agreement of association or, in the case of a 16
corporation created by special law, by its articles of organization or by 17
amendment is limited as to its voting rights or is preferred as to its divi- 18
dend or as to its share of assets upon dissolution, shall have plainly 19
written, printed or stamped thereon either a sufficient statement of such 20
limitation or preference or a notification that its preferences, voting 21
powers, restrictions and qualifications are fixed in the agreement of 22
association or articles of organization or amendments filed in the office of 23
the state secretary. 24

Lost or
destroyed
certificates.
1870, 224, § 26.
P. S. 106, § 30.
R. L. 110, § 28.
1903, 437,
§§ 31, 95.

SECTION 34. The directors of a corporation may, subject to section 1
forty-two of chapter one hundred and fifty-five and to the by-laws of 2
the corporation, determine the conditions upon which a new certificate 3
of stock may be issued in place of any certificate alleged to have been 4
lost or destroyed. They may, in their discretion, require the owner of 5
a lost or destroyed certificate, or his legal representative, to give a bond 6
with sufficient surety to the corporation in a sum not exceeding double 7
the market value of the stock to indemnify the corporation against any 8
loss or claim which may arise by reason of the issue of a certificate in 9
place of such lost or destroyed stock certificate. 10

LIABILITY OF STOCKHOLDERS, OFFICERS AND DIRECTORS.

Liability of
stockholders.
1821, 38.
1826, 137, § 2.
1829, 53, §§ 6,
7, 10, 11.
R. S. 38, §§ 16,
21, 32.
1851, 133,
§ 15; 252.
1852, 9.
1855, 290.
G. S. 60,
§§ 12, 17, 22;
68, § 16.
1862, 218, § 2.
1870, 224, § 39.
1875, 177, § 1.
1876, 1.
P. S. 106, § 61.
R. L. 110, § 59.
1903, 437,
§§ 33, 95.
1920, 349, § 4.
16 Gray, 127.
2 Allen, 498.
6 Allen, 579.
267 Mass. 52.

SECTION 35. The stockholders of a corporation which reduces its 1
capital stock in violation of section forty-five shall be liable for the 2
payment of the debts and contracts of the corporation existing at 3
the time of such reduction to the extent of the amount withdrawn and 4
paid to them respectively. The stockholders of a corporation shall 5
also be liable for all money due to operatives for services rendered 6
within six months before demand made upon the corporation and its 7
neglect or refusal to make such payment. A stockholder who pays on 8
a judgment or otherwise more than his proportion of any debt included 9
in this section shall have a claim for contribution against the other 10
stockholders. 11

Unless otherwise provided in the agreement of association, articles of 12
organization or amendments thereof, such contribution, in the case of 13
liability based on reduction of capital stock, shall be in proportion to the 14
amounts so withdrawn and paid to them respectively, and in the case 15
of any other liability under this section shall be in proportion to the 16
amounts of stock held by them respectively at the time when their 17
liability accrued, shares of stock with par value to be computed for 18
this purpose at their par value as fixed at that time, and shares without 19
par value to be computed at the value, at the time of issue, of the cash, 20
property, services or expenses for which they were issued, but not in- 21
cluding paid-in surplus. 22

Liability of
president,
treasurer and
directors.
1821, 38.
1829, 53, § 9.
R. S. 38, § 28.
G. S. 60, § 30.
1862, 218, § 1.
1870, 224, § 38.
1875, 177, § 2.
P. S. 106, § 60.
1898, 266.

SECTION 36. The president, treasurer and directors of every cor- 1
poration shall be jointly and severally liable for all the debts and con- 2
tracts of the corporation contracted or entered into while they are 3
officers thereof if any stock is issued in violation of section fifteen or 4
sixteen, or if any statement or report required by this chapter is made 5
by them which is false in any material representation and which they 6
know to be false; but directors who vote against such issue, and are 7

8 recorded as so voting, shall not be so liable, and only the officers sign-
 9 ing such statement or report shall be so liable; provided, that if a report
 10 of condition as a whole states the condition of the corporation with sub-
 11 stantial accuracy, in accordance with usual methods of keeping accounts,
 12 it shall not be deemed to be false; and provided, also, that the officers or
 13 directors signing a false report of condition shall be liable only for debts
 14 contracted and contracts entered into before the filing of the next sub-
 15 sequent report of condition, and only to persons who shall have relied
 16 upon such false report to their damage.

182 Mass. 530.	237 Mass. 312.	265 Mass. 108.
190 Mass. 35	261 Mass. 38	266 Mass. 418
193 Mass. 138.	263 Mass. 99, 160.	273 Mass. 375.

1 SECTION 37. The directors of every corporation shall be jointly and
 2 severally liable for the debts and contracts of the corporation in the
 3 following cases:

4 First. For declaring or assenting to a dividend if the corporation is,
 5 or thereby is rendered, bankrupt or insolvent, to the extent of such
 6 dividend.

7 Second. For debts contracted between the time of making or assent-
 8 ing to a loan to a stockholder or director and the time of its repayment,
 9 to the extent of such loan.

10 Directors who vote against declaring said dividend or who vote against
 11 making said loan shall not be liable as aforesaid.

183 Mass. 557.	263 Mass. 99	267 Mass. 52.
190 Mass. 61.	265 Mass. 108.	

1 SECTION 38. A stockholder of a corporation shall be held liable for
 2 its debts and contracts under section thirty-five, and the president or
 3 treasurer, or a director of any such corporation, shall be held so liable
 4 under section thirty-six or thirty-seven, if the corporation has been duly
 5 adjudicated bankrupt. The president or treasurer, or a director, shall
 6 also be held so liable under section thirty-six or thirty-seven, if before
 7 a suit to enforce such liability is brought by a creditor of said corporation,
 8 a written demand by or on behalf of the creditor upon such corporation
 9 for the payment of his claim has been made, and said corporation has
 10 for ten days thereafter neglected to pay it. Except as above provided,
 11 no suit shall be maintained against a stockholder or officer for the debts
 12 or contracts of the corporation.

13 After such adjudication of bankruptcy, or after the said demand and
 14 neglect to pay the claim, the clerk, or other officer having charge of the
 15 records of such corporation, upon request of a creditor of the corporation
 16 or of his attorney, shall furnish to him a certified list of the names of all
 17 persons who were officers or stockholders in such corporation at the
 18 time when the liability to be enforced against them personally accrued.
 19 The supreme judicial or superior court shall have jurisdiction in equity
 20 to compel such list to be furnished. After an adjudication of bank-
 21 ruptcy or after the said demand and neglect to pay the claim, any cred-
 22 itor may file a bill in equity in the supreme judicial or superior court in
 23 behalf of himself and of such other creditors of the corporation, entitled
 24 to enforce their claims against the same defendants, as may join in the
 25 bill as plaintiffs, against it and all persons who are liable to the plaintiff
 26 as stockholders or officers for the recovery of the money due from the
 27 corporation to himself and to such other creditors for which the stock-
 28 holders or officers may be personally liable by reason of any act or omis-

R. L. 110, § 58.
 1903, 437.
 §§ 34, 95.
 1914, 488, § 1.
 1918, 257,
 § 358.
 1919, 5.
 1920, 2.
 1931, 313, § 1.
 10 Gray, 232,
 600
 137 Mass. 516
 148 Mass. 226
 150 Mass. 264

Liability of
 directors.
 1821, 38.
 1829, 53,
 §§ 8, 9.
 R. S. 38.
 §§ 23-25.
 G. S. 60,
 §§ 25-27.
 1862, 218, § 1.
 1870, 224, § 38.
 1877, 230, § 1.
 P. S. 106, § 60.
 1898, 266.
 R. L. 110, § 58.
 1903, 437,
 §§ 35, 95.
 5 Allen, 398.

Enforcement
 of liability of
 stockholders,
 officers, etc.
 1808, 65, § 6.
 1817, 183.
 1826, 137, § 1.
 1829, 53, § 11
 R. S. 38, §§ 29-
 31; 44, § 22.
 1851, 315,
 §§ 1, 3
 1852, 24.
 G. S. 60, §§ 31,
 32, 34; 68, § 17.
 1862, 218,
 §§ 3, 4.
 1864, 219.
 1866, 290, § 10.
 1870, 224,
 §§ 40-42, 60.
 P. S. 106,
 §§ 62-64, 83.
 R. L. 110,
 §§ 60-62, 85.
 1903, 437,
 §§ 36, 95.
 1914, 488, § 2.
 1918, 257,
 § 359.
 1919, 5.
 1920, 2.
 11 Gray, 139.
 14 Gray, 193.
 15 Gray, 216
 108 Mass. 404,
 523
 109 Mass. 473.
 115 Mass. 286,
 380.
 118 Mass. 269.
 127 Mass. 563,
 592, 595.
 141 Mass. 399.
 156 Mass. 490.
 237 Mass. 312.
 263 Mass. 99.
 265 Mass. 108.
 266 Mass. 418.
 273 Mass. 375.

sion on the part of the corporation or any of the other defendants, setting forth the bankruptcy of the corporation, or the said demand and neglect to pay the claim, and the grounds upon which it is expected to charge the stockholders or officers personally.

Procedure.
1862, 218,
§§ 7-9.
1870, 224,
§§ 45, 47.
P. S. 106,
§§ 67-69.
R. L. 110,
§§ 65-67.
1903, 437,
§§ 37, 95.
10 Allen, 352.
237 Mass. 312.
265 Mass. 108.

SECTION 39. Such suit shall not be discontinued by the plaintiff except by order of the court after notice to other creditors. It shall not abate by reason of the non-joinder of persons liable as defendants, unless the plaintiff, after notice by plea or answer of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a defendant, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the plaintiff, to defend the suit.

Apportionment
of assessment.
1862, 218, § 5.
1870, 224, § 43.
P. S. 106, § 65.
R. L. 110, § 63.
1903, 437,
§§ 38, 95.
1920, 349, § 5.
16 Gray, 127.
111 Mass. 200.
127 Mass. 586.

SECTION 40. Such sums as may be decreed to be paid by the stockholders in such suit shall be assessed upon them in the proportions fixed in section thirty-five with respect to claims for contribution; but a stockholder shall not be liable to pay a larger amount than the amount of stock held by him at the time when his liability accrued, shares of stock with par value to be computed for this purpose at their par value as fixed at that time and shares without par value to be computed at the value, at the time of issue, of the cash, property, services or expenses for which they were issued, but not including paid-in surplus.

AMENDMENTS AFTER ORGANIZATION.

Amendments
requiring
majority vote.
1829, 53, § 2.
R. S. 38,
§§ 11, 20.
1851, 133, § 8.
1855, 478, § 5.
1857, 24.
G. S. 60, §§ 11,
21, 61, § 6.
1865, 283, § 8.
1866, 290, § 5.
1870, 179, 224,
§ 24.
1871, 110, § 2.
1873, 37, § 2.
1875, 177, § 3.
1877, 67.
230, § 3.
1878, 86, § 2.
P. S. 13, § 43;
105, §§ 7, 16,
20, 106, §§ 31,
34, 35, 37.
1894, 500.
1898, 503, § 2.
1899, 199, § 2.
R. L. 109, §§ 7,
18, 29, 52, 110,
§§ 31, 32, 34.
1902, 441, § 1.
1903, 437,
§§ 40, 95.
1920, 349, § 6.
211 Mass. 424.
220 Mass. 183.
238 Mass. 369,
374.
239 Mass. 174.
251 Mass. 514,
529.
253 Mass. 205.
263 Mass. 160.

SECTION 41. Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, or authorize such terms and manner of disposition to be determined in whole or in part by the board of directors or officers of the corporation, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under section fifty of chapter one hundred and fifty-five. Such increased stock may in whole or in part be disposed of without being offered to the stockholders. Any corporation having authorized shares with par value may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, including in any event a majority of the outstanding stock of each class affected, change such shares or any class thereof into an equal or greater number of shares without par value, or provide for the exchange thereof pro rata for an equal or greater number of shares without par value; provided, that the preferences, voting powers, restrictions and qualifications of the outstanding shares so changed or exchanged shall not be otherwise impaired or diminished without the consent of the holders thereof.

Increase in
number of
non-par

SECTION 41A. Any corporation having authorized shares without par value may, without increasing its capital, at a meeting duly called for

3 the purpose, by vote of a majority of all its stock, or, if two or more
 4 classes of stock have been issued, of a majority of each class outstanding
 5 and entitled to vote, including in any event a majority of the outstand-
 6 ing stock of each class affected, change such shares or any class thereof
 7 into a greater number of shares without par value, or provide for the
 8 exchange thereof pro rata for a greater number of shares without par
 9 value; provided, that the preferences, voting powers, restrictions and
 10 qualifications of the outstanding shares so changed or exchanged shall
 11 not be otherwise impaired or diminished without the consent of the
 12 holders thereof.

shares with-
 out increase
 of capital.
 1930, 325.
 263 Mass. 160.

1 SECTION 42. Every corporation may, at a meeting duly called for
 2 the purpose, by vote of two thirds of each class of stock outstanding and
 3 entitled to vote, or by a larger vote if the agreement of association or
 4 act of incorporation so requires, change its corporate name, the nature of
 5 its business, the classes of its capital stock subsequently to be issued and
 6 their preferences and voting power, or make any other lawful amendment
 7 or alteration in its agreement of association or articles of organization,
 8 or in the corresponding provisions of its act of incorporation, or author-
 9 ize the sale, lease or exchange of all its property and assets, including
 10 its good will, upon such terms and conditions as it deems expedient.

Amendments
 requiring two
 thirds or
 larger vote.
 1852, 195.
 G. S. 60, § 37;
 61, § 14.
 1870, 224.
 §§ 15, 27, 31.
 1875, 177, § 4.
 P. S. 106,
 §§ 23, 42, 51,
 53.
 1891, 360, § 1.
 1892, 198.
 R. L. 109, § 9;
 110, §§ 36, 46,
 47, 49.

1903, 437, §§ 40, 95.	220 Mass. 183.	260 Mass. 81.
1920, 349, § 6.	251 Mass. 514, 529.	271 Mass. 70, 533.
139 Mass. 5.		

1 SECTION 43. Within thirty days after any meeting at which any
 2 amendment or alteration of the agreement of association or articles of
 3 organization has been adopted, articles of amendment, signed and sworn
 4 to by the president, treasurer and a majority of the directors, setting
 5 forth such amendment or alteration and the due adoption thereof, shall
 6 be submitted to the commissioner, who shall examine them with the
 7 same powers as in the case of the original articles of organization, and, if
 8 he finds that they conform to the requirements of law, shall so certify
 9 and endorse his approval thereon. Thereupon the articles of amend-
 10 ment shall, upon payment of the fee provided in section fifty-four or
 11 fifty-five, as the case may be, be filed in the office of the state secretary.
 12 No such amendment or alteration shall take effect until such articles of
 13 amendment shall have been filed as aforesaid.

Articles of
 amendment.
 1851, 133, § 8.
 1854, 178, § 5.
 G. S. 61, § 9.
 1870, 224.
 §§ 34, 35, 37.
 1875, 177, § 4.
 1878, 86, § 2.
 P. S. 106, §§ 31,
 51, 56, 57, 59.
 1885, 310.
 1891, 361, § 4.
 1894, 500.
 1898, 503.
 R. L. 109,
 §§ 10, 18; 110,
 §§ 47, 54, 55,
 57.
 1903, 437.
 §§ 41, 95.

1918, 257, § 360.	1931, 394, § 167.	251 Mass. 514.
1919, 5.	220 Mass. 183.	263 Mass. 160.
1920, 2.	249 Mass. 401.	271 Mass. 70, 533.

1 SECTION 44. If an increase in the total amount of the capital stock
 2 of any corporation shall have been authorized by vote of its stockholders
 3 in accordance with section forty-one, the articles of amendment shall
 4 also set forth — (a) the total amount of capital stock already authorized;
 5 (b) the amount of stock already issued for cash payable by instalments
 6 and the amount paid thereon; and the amount of full paid stock already
 7 issued for cash, property, services or expenses; (c) the amount of addi-
 8 tional stock authorized; (d) the amount of such stock to be issued for
 9 cash, property, services or expenses, respectively; (e) a description of
 10 said property and a statement of the nature of said services or expenses,
 11 in the manner required by section ten.

Increase of
 capital stock.
 1851, 133, § 8.
 G. S. 61, § 9.
 1870, 224, § 34.
 P. S. 106, § 56.
 R. L. 110, § 54.
 1903, 137.
 §§ 42, 95.
 249 Mass. 272,
 401.
 263 Mass. 160.

1 SECTION 45. If a reduction of the capital stock of any corporation
 2 shall have been authorized by its stockholders in accordance with section

Reduction of
 capital stock.
 1855, 178, § 5.

G. S. 61, § 9.
 1870, 224, § 35.
 P. S. 106, § 57.
 R. L. 110, § 55.
 1903, 437,
 §§ 43, 95.
 1912, 586.

forty-one, the articles of amendment shall also set forth — (a) the total amount of capital stock already authorized and issued; (b) the amount of the reduction and the manner in which it shall be effected; (c) a copy of the vote authorizing the reduction. No reduction of capital stock shall be lawful which renders the corporation bankrupt or insolvent, but the capital stock may be reduced by the surrender by every stockholder of his shares and the issue to him in lieu thereof of a proportional decreased number of shares, if the assets of such corporation are not reduced thereby, without creating any liability of the stockholders of such corporation in case of the subsequent bankruptcy of such corporation.

Remedy of minority stockholder. 1903, 437, § 44. 224 Mass. 20, 504. 260 Mass. 81. 271 Mass. 70.

SECTION 46. A stockholder in any corporation which shall have duly voted to sell, lease or exchange all its property and assets or to change the nature of its business in accordance with section forty-two, who, at the meeting of stockholders, has voted against such action may, within thirty days after the date of said meeting, make a written demand upon the corporation for payment for his stock. If the corporation and the stockholder cannot agree upon the value of the stock at the date of such sale, lease, exchange or change, such value shall be ascertained by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the corporation within thirty days after it is made, it may be recovered in contract by the stockholder from the corporation. Upon payment by the corporation to the stockholder of the agreed or awarded price of his stock, the stockholder shall forthwith transfer and assign the stock certificates held by him at, and in accordance with, the request of the corporation.

ANNUAL REPORTS.

Form of annual report of condition. 1829, 53, § 7. R. S. 38, § 22. 1838, 177. 1851, 133, § 9. 1854, 438. 1857, 276. G. S. 60, §§ 23, 24; 61, § 10. 1861, 121. 1862, 210. 1870, 224, §§ 33, 63. 1871, 110, §§ 4, 5. 1874, 349, § 1. P. S. 106, § 54. 1887, 225. 1896, 369. R. L. 110, § 51. 1903, 437, §§ 45, 46, 95. 1920, 349, § 7. 1931, 313, § 2. 188 Mass. 478. 223 Mass. 119. 228 Mass. 202. 235 Mass. 79. 266 Mass. 418. 273 Mass. 375.

SECTION 47. Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and submit to the commissioner a report of condition which shall be signed and sworn to by its president, treasurer and a majority of its directors stating —

1. The name of the corporation.
2. The location (with street address) of its principal office in this commonwealth, and elsewhere in the case of a corporation organized to do business wholly outside the commonwealth.
3. The date of its last preceding annual meeting.
4. The total amount of its authorized capital stock so far as it consists of shares with par value, and the total number of shares without par value authorized to be issued; the amount of stock with par value, and the number of shares without par value, issued and outstanding and the amount then paid thereon; the class or classes, if any, into which it is divided; the par value, if any, and number of its shares.
5. The names and addresses of all the directors and officers of the corporation, and the date at which the term of office of each expires.
6. A statement of the assets and liabilities of the corporation as of the date of the end of its last fiscal year, to be made in such form as the commissioner shall prescribe.

1 SECTION 48. The commissioner shall examine such report, and if
 2 he finds that it conforms to the requirements of this chapter, he shall
 3 endorse his approval thereon; and upon the payment of the fee required
 4 by section fifty-five, it shall be filed in the office of the state secretary,
 5 who shall receive and preserve it in book form convenient for reference
 6 and open to public inspection.

Filing of
 annual report
 1870, 224, § 37.
 P. S. 106, § 59
 1887, 225.
 1890, 199.
 1896, 369.
 1898, 503, § 1.
 R. L. 110,
 §§ 51, 57.

1903, 437, §§ 16, 95.

235 Mass. 79

1 SECTION 49. Such report of a corporation which has a capital stock of
 2 one hundred thousand dollars or more, for this purpose counting shares
 3 without par value as of a par value of one hundred dollars each, shall be
 4 accompanied by a written statement on oath by an auditor that such
 5 report represents the true condition of the affairs of said corporation as
 6 disclosed by its books at the time of making such audit. Such auditor
 7 shall be employed for each ensuing fiscal year by a committee of three
 8 stockholders who are not directors which shall be selected at each annual
 9 meeting of the stockholders, or, if there are not three stockholders other
 10 than directors able and willing to serve on such committee, he shall
 11 be employed by the directors; but no bookkeeper, treasurer or other
 12 officer of the corporation shall be appointed as such auditor. The state-
 13 ment of the auditor shall be filed by him with said report in the office of
 14 the state secretary and shall be attached to and form part of it. The
 15 auditor shall be duly sworn to the faithful performance of his duties, and
 16 the officers of the corporation who sign said report of condition shall
 17 certify thereon that the auditor was duly elected and qualified, as herein
 18 provided.

Verification
 by auditor.
 1897, 192.
 1898, 64.
 R. L. 110, § 52
 1903, 437,
 §§ 47, 95
 1908, 300, § 1
 1909, 326.
 1920, 349, § 7.

1 SECTION 50. If a corporation fails to file its report of condition within
 2 the time required by law, the commissioner shall give notice by mail,
 3 postage prepaid, to such corporation of its default. If it omits to file
 4 such report within thirty days after such notice of default has been given,
 5 it shall forfeit to the commonwealth not less than five nor more than ten
 6 dollars for each day for fifteen days after the expiration of the said thirty
 7 days, and not less than ten nor more than two hundred dollars for each
 8 day thereafter during which such default continues, or any other sum,
 9 not greater than the maximum penalty or forfeiture, which the court
 10 may deem just and equitable. If a corporation fails for two successive
 11 years to file its annual report of condition, the supreme judicial court,
 12 upon application by the commissioner, after notice and hearing, may
 13 decree a dissolution of the corporation.

Penalty for
 failure to file
 report of
 condition.
 1870, 224, § 60.
 1877, 230, § 2.
 P. S. 106,
 §§ 55, 81.
 1887, 225.
 1896, 369.
 R. L. 110,
 §§ 53, 84.
 1903, 437,
 §§ 49, 95.
 1906, 346, § 1.
 1914, 198, § 7.

RECEIVERS.

1 SECTION 51. Under the circumstances set forth in section fifty-two of
 2 chapter one hundred and fifty-five, or if a judgment has been recovered
 3 against a corporation, and it has neglected for thirty days after demand
 4 made on execution to pay the amount due with the officer's fees, or to
 5 exhibit to the officer real or personal property belonging to it and subject
 6 to be taken on execution sufficient to satisfy the same, and the execution
 7 has been returned unsatisfied, one or more receivers may be appointed
 8 with the powers and duties provided in, and subject to, said section.

Receivers,
 appointment,
 etc.
 1903, 137, § 53.
 1905, 156.
 227 Mass. 551.
 232 Mass. 38.
 265 Mass. 214

ENFORCEMENT OF PENALTIES.

Enforcement of penalties. 1870, 224, § 60. 1877, 57. P. S. 106, §§ 81, 82. 1887, 225. 1896, 369. R. L. 110, § 84. 1903, 437, §§ 50, 95. 254 Mass. 331.

SECTION 52. Penalties or forfeitures incurred by any corporation which omits to cause to be duly filed any certificate or report required by section twenty-four, twenty-nine or forty-seven, may be recovered in an action brought in Suffolk county in the name of the commonwealth, or they may be recovered by an information in equity in the name of the attorney general at the relation of the commissioner, brought in the supreme judicial court in Suffolk county. Upon such information, the court may issue an injunction restraining the further prosecution of the business of the corporation until such penalties or forfeitures, with interest and costs, have been paid and until such certificate or report has been filed.

1
2
3
4
5
6
7
8
9
10
11

ORGANIZATION AND FILING FEES.

Fees for organization papers. 1863, 231, § 2. 1865, 76. 1870, 224, § 59. 1871, 356. P. S. 106, § 84. 1887, 225. 1896, 369.

SECTION 53. The fee for filing the articles of organization required by section ten, including the issuing by the state secretary of the certificate of incorporation, shall be one twentieth of one per cent of the total amount of the authorized capital stock with par value, and one cent a share for all authorized shares without par value, as fixed by the articles of organization, but not in any case less than fifty dollars.

1
2
3
4
5
6

R. L. 110, § 86. 1907, 396, § 1. 1928, 360, § 1.
1903, 437, §§ 88, 95. 1920, 349, § 8; 598, § 1. 1931, 394, § 168.

Fees for filing certain certificates. 1863, 231, § 2. 1865, 76. 1871, 356. P. S. 106, § 84. 1887, 225. 1896, 369; 523, § 2. R. L. 110, § 86. 1903, 437, §§ 89, 95. 1907, 396, § 2. 1920, 349, § 9; 598, § 2. 1928, 360, § 2. 220 Mass. 183. 238 Mass. 369, 374. Op. A. G. (1920) 158.

SECTION 54. The fees for filing and recording the following certificates shall be as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

For filing and recording a certificate providing for an increase of capital stock with par value, one twentieth of one per cent of the amount by which the capital is increased; but not in any case less than twenty-five dollars.

For filing and recording a certificate providing for a change of shares with par value to shares without par value, whether or not the capital is changed thereby, one cent for each share without par value resulting from such change, less an amount equal to one twentieth of one per cent of the total par value of the shares so changed; but not in any case less than twenty-five dollars.

For filing and recording a certificate providing for an increase in the number of shares without par value, whether or not the capital is changed thereby, one cent for each additional share; but not in any case less than twenty-five dollars.

Fees for all other certificates, statements and reports. 1870, 224, § 59. 1875, 177, § 4. 1879, 202, § 2. P. S. 106, § 84. 1887, 225.

SECTION 55. The fees for filing all other certificates, statements or reports required by law of corporations shall be ten dollars for each certificate, statement or report, but no fee shall be paid for filing the certificate of change of officers or of annual meeting required by section twenty-four or twenty-nine or the annual tax return required by sections thirty-five and forty of chapter sixty-three.

1
2
3
4
5
6

1895, 169. 1903, 437, §§ 90, 95. 1920, 2; 598, § 3.
1896, 369; 523, § 1. 1918, 257, § 361. 232 Mass. 22.
R. L. 110, § 86. 1919, 5. 238 Mass. 369.

CHAPTER 157.

CO-OPERATIVE CORPORATIONS.

SECT.

CO-OPERATIVE BUSINESS CORPORATIONS.

- 1. Organization.
- 2. Distribution of profits of corporation organized for co-operative purposes, etc.

CO-OPERATIVE AGRICULTURAL, DAIRY OR MERCANTILE ASSOCIATIONS.

- 3. Incorporation of certain co-operative associations.
- 4. Capital stock.
- 5. Investment of reserve fund, etc.
- 6. Apportionment of earnings.
- 7. Certificate of organization to be approved and filed. Fee.
- 8. Use of word co-operative forbidden to organizations not subject to this chapter.
- 9. Fee for filing articles.

SECT.

AGRICULTURAL AND OTHER CO-OPERATIVE CORPORATIONS WITHOUT CAPITAL STOCK.

- 10. Incorporation authorized. Powers, etc., of members.
- 11. Powers of corporation.
- 12. First meeting. Directors.
- 13. By-laws; scope, amendment, etc.
- 14. Membership.
- 15. Amendment, etc., of agreement of association, etc.
- 16. Marketing contracts by corporation with its members.
- 17. Liquidated damages. Injunctions.
- 18. Local taxation. Fee for filing articles of organization.

CO-OPERATIVE BUSINESS CORPORATIONS.

1 SECTION 1. A corporation may be organized under chapters one
 2 hundred and fifty-five and one hundred and fifty-six, with shares having
 3 par value, for the purpose of co-operation in carrying on any business and
 4 of co-operative trade.

Organization.
 1866, 290,
 §§ 1, 5
 1870, 224, § 3.
 1879, 210.

P. S. 106, § 9
 R. L. 110, § 7.

1903, 437, §§ 93, 95.
 1920, 349, § 10.

1 SECTION 2. Such corporation shall distribute its earnings or profits
 2 among its workmen, purchasers and stockholders at such times and in
 3 such manner as its by-laws prescribe, but at least once in every twelve
 4 months. No distribution shall be made, unless at least ten per cent of
 5 the net profits have been appropriated for a contingent or sinking fund,
 6 until an amount has accumulated equal to thirty per cent of its capital
 7 stock issued and outstanding. No person shall hold shares in any such
 8 corporation to an amount exceeding one thousand dollars at their par
 9 value, nor shall a stockholder be entitled to more than one vote upon
 10 any subject.

Distribution
 of profits of
 corporation
 organized for
 co-operative
 purposes, etc.
 1866, 290, § 12
 1870, 224, § 51
 P. S. 106, § 7.
 R. L. 110, § 70
 1903, 437, § 93

CO-OPERATIVE AGRICULTURAL, DAIRY OR MERCANTILE ASSOCIATIONS.

1 SECTION 3. Seven or more persons, residents of the commonwealth,
 2 may associate themselves as a corporation, association, society, company
 3 or exchange, to conduct within the commonwealth any agricultural,
 4 dairy or mercantile business on the co-operative plan. The word "co-
 5 operative" shall form a part of the name of the corporation, and, for the
 6 purposes of this and the six following sections, the words "association",
 7 "company", "exchange", "society" and "union", shall have the same
 8 signification and shall import a corporation. The corporation shall be
 9 formed as provided in chapters one hundred and fifty-five and one hun-

Incorporation
 of certain co-
 operative
 associations
 1870, 224, § 8
 P. S. 106, § 17.
 R. L. 110, § 16.
 1913, 447,
 §§ 1, 2
 1920, 349, § 19.
 1923, 438, § 2.

dred and fifty-six, with shares having par value, and shall be subject to the provisions thereof so far as consistent with said sections.

Capital stock.
1866, 290, § 7.
1870, 224, § 52.
1871, 109
1877, 230, § 3.
P. S. 106,
§§ 38, 73.
R. L. 110,
§§ 35, 70.
1913, 447, § 3.

SECTION 4. The capital stock of a co-operative corporation formed under section three shall not be less than one hundred dollars nor more than two hundred thousand dollars. No stockholder shall own shares of a greater par value than one tenth of the total par value of the capital stock, nor shall any member be entitled to more than one vote on any subject arising in the management of the corporation.

1915, 118, § 1.

1921, 297.

Investment of
reserve fund,
etc.
1913, 447, § 4.

SECTION 5. At any regular meeting, or at any duly called special meeting, at which a majority of its stockholders are present, a corporation formed under section three may authorize the investment of its reserve fund or any part thereof, first, in the building where it is doing business, or, second, in a first mortgage of real estate owned and occupied as a dwelling by any of its stockholders.

Apportionment
of earnings.
1866, 290, § 12.
1870, 224, § 51.
P. S. 106, § 72.
R. L. 110, § 69.
1903, 437,
§§ 93, 95.
1913, 447,
§§ 5, 6
1915, 118, § 3.

SECTION 6. The directors of every corporation formed under section three shall apportion its earnings in the following manner:

1. They shall set aside annually not less than ten per cent of its net profits for a reserve fund until there is accumulated in said reserve fund an amount not less than thirty per cent of its paid-up capital stock.

2. They shall declare and pay dividends on the paid-up capital stock not exceeding five per cent per annum.

3. From the balance of its annual net earnings the directors may appropriate a sum not exceeding five per cent thereof to be used in teaching co-operation.

4. The directors shall distribute the remainder of such earnings or any part thereof by a uniform dividend upon the amount of purchases or sales of shareholders, through the corporation, and, if the directors so vote, upon the amount of wages earned and paid to employees, except that in the case of a purchaser not a shareholder, who desires to become such, a dividend of one half the uniform dividend may be declared upon such non-shareholder's purchases or sales and credited to him on account of the purchase of stock for which he may subscribe. In productive corporations, including creameries, canneries, storages, factories and the like, dividends shall be calculated on raw material delivered to the corporation instead of on goods purchased. If the corporation be both a purchasing and a selling, or a productive, concern, the dividends may be on both raw material and on goods purchased. The profits or net earnings of such corporation shall be distributed to those entitled thereto at such times as the by-laws prescribe, but at least once in every twelve months.

Certificate of
organization
to be approved
and filed.
Fee.
1913, 447, § 7.
1931, 394,
§ 169.

SECTION 7. Any co-operative association now organized by law in the commonwealth for any of the purposes mentioned in section three, and qualified so to do, may by a majority vote of the stockholders at a meeting called therefor vote to accept sections three to seven, inclusive, and shall thereupon present to the commissioner of corporations and taxation a certificate, signed and sworn to by its clerk or secretary, setting forth a copy of said vote, the date when passed, and such further evidence as the commissioner may require of its legal existence and of its intention to accept said sections. The commissioner shall examine the certificate and evidence of organization, and, if it appears that the law has been com-

11 plied with, shall so certify, and shall approve the certificate by his en-
 12 dorsement thereon, and thereupon such corporation shall have the
 13 powers and privileges and be subject to the duties and liabilities of cor-
 14 porations formed under section three. Upon the payment of one dollar,
 15 said certificate shall be filed in the office of the state secretary.

1 SECTION 8. Any person, partnership, association or corporation,
 2 domestic or foreign, except co-operative banks and corporations organ-
 3 ized under section ten, transacting business for profit in the common-
 4 wealth under any name or title containing the word "co-operative",
 5 unless the net earnings thereof are distributed in a manner permitted
 6 for a co-operative corporation by this chapter, shall forfeit to the com-
 7 monwealth not more than ten dollars for every day or part thereof
 8 during which such name or title is so used. Such forfeiture may be
 9 recovered by an information brought in the supreme judicial or superior
 10 court by the attorney general, at the relation of the commissioner of
 11 corporations and taxation. Upon such information, the court may
 12 issue a temporary or permanent injunction restraining such person,
 13 partnership, association or corporation from doing business in the
 14 commonwealth, or from so using such name or title, and may make
 15 such other orders and decrees as justice and equity may require.

Use of word
 co-operative
 forbidden to
 organizations
 not subject to
 this chapter.
 1915, 118, § 2
 1918, 257,
 § 362.
 1919, 5.
 1920, 2.
 1923, 438, § 3.

1 SECTION 9. The fee for filing the articles of organization required by
 2 section three, including the issuing by the state secretary of the certifi-
 3 cate of incorporation, shall be one twentieth of one per cent of the total
 4 amount of the authorized capital stock as fixed by the articles of organ-
 5 ization, but in no case less than five dollars.

Fee for filing
 articles.
 1915, 118, § 2.
 1931, 394,
 § 170.

AGRICULTURAL AND OTHER CO-OPERATIVE CORPORATIONS WITHOUT
 CAPITAL STOCK.

1 SECTION 10. Agricultural and horticultural associations engaged in
 2 any branch of agriculture, horticulture, viticulture, forestry, dairying,
 3 the raising of livestock or poultry and any other farming activity or
 4 business, if instituted for the mutual benefit of their members and
 5 formed for the purpose of doing business without profit to the associa-
 6 tion itself may be incorporated without capital stock. Such corporations
 7 shall be formed in the manner provided by chapters one hundred and
 8 fifty-five and one hundred and fifty-six and shall be subject to the pro-
 9 visions of said chapters, so far as applicable. Members of corporations
 10 so organized shall have the rights and powers and be subject to the
 11 duties and liabilities of stockholders of corporations having capital stock,
 12 under the provisions of said chapters, so far as is consistent with this
 13 and the eight following sections.

Incorporation
 authorized.
 Powers, etc.,
 of members.
 1923, 438, § 4.

1 SECTION 11. Any corporation organized under the preceding section
 2 shall have power to mortgage or pledge its real or personal property and
 3 to issue promissory notes or other evidences of indebtedness. Such
 4 corporation shall also have power to establish reserves and invest the
 5 funds thereof in such manner as it may deem advisable or as may be
 6 provided in its by-laws; and to exercise all other powers, rights and
 7 privileges necessary or incidental to the purposes for which said cor-
 8 poration was organized or to the activities in which it is engaged; pro-

Powers of cor-
 poration.
 1923, 438, § 4.

vided, however, that no such corporation shall handle the products of 9
any non-member, except for storage. 10

First meeting,
Directors,
1923, 438, § 4.

SECTION 12. The first meeting of the corporation shall be held within 1
six months after the execution of the agreement of association. If the 2
directors of the corporation have been previously chosen in anticipation 3
of its organization, or in connection with a plan for preliminary organiza- 4
tion, or in accordance with contracts made in anticipation of such 5
organization, such choice of directors shall be ratified at said meeting. 6
Elections of directors shall thereafter be governed by section twenty- 7
two of chapter one hundred and fifty-six, except as provided in the 8
following section. 9

By-laws; scope,
amendment,
etc.
1923, 438, § 4.

SECTION 13. In addition to the powers granted by section thirteen of 1
chapter one hundred and fifty-six, any corporation organized under sec- 2
tion ten may provide in its by-laws for the election of directors by dis- 3
tricts; for the election of advisory directors who are not members, the 4
number of whom shall not be greater than one fifth the total number of 5
directors; for voting of members by mail in elections and on questions 6
concerning the operation and business of the corporation; for the admis- 7
sion, withdrawal, suspension or expulsion of members; for dues and 8
assessments to be paid by members and the conditions under which such 9
dues and assessments shall be imposed and collected; for determining 10
the rights and interests of members in the property of the corporation, 11
whether equal or unequal; for establishing the basis of voting by the 12
members, especially whether the votes of all members shall be equal, or 13
in proportion to the land area leased or used by each member for produc- 14
tion of the products handled by the corporation, or in proportion to the 15
quantity of such products delivered by each member to the corporation 16
during the preceding year; for an approved or established form of market- 17
ing contract; and for fines or other penalties for violation of its by-laws 18
or marketing contract. No by-law shall be amended or repealed nor any 19
new by-law adopted, unless notice of the proposed action is given in the 20
call for the meeting at which the proposal is to be considered, or in the 21
call for the vote if the vote is to be taken by mail. 22

Membership.
1923, 438, § 4.

SECTION 14. Membership in such corporations shall be limited to 1
persons engaged in the production of products which are handled or to be 2
handled by the corporation, as specified in its articles of organization, 3
including the lessees or tenants of land used for the production of such 4
products and lessors or landlords to whom are due all or any part of such 5
products produced on leased or rented premises in payment for the use of 6
such premises. If a member is a corporation, it may be represented by 7
any officer thereof, duly authorized in writing. 8

Amendment,
etc., of agree-
ment of associ-
ation, etc.
1923, 438, § 4.

SECTION 15. Any such corporation may amend or alter its agreement 1
of association or articles of organization in the manner provided by sec- 2
tions forty-one to forty-three, inclusive, of chapter one hundred and fifty- 3
six, so far as applicable; provided, that such amendment or alteration 4
shall require a vote of three fourths of the members present and voting 5
at a meeting of the corporation called to consider such amendment or 6
alteration, or if the vote upon such amendment or alteration is taken by 7
mail, by vote of three fourths of the members who return votes. A vote 8

9 by mail upon such amendment or alteration shall not be valid unless votes
10 are returned by at least three fifths of the members of the corporation.

1 SECTION 16. Any such corporation may enter into marketing con-
2 tracts with its members by which the members shall agree to sell, for any
3 period of time not exceeding ten years, all or any specified part of their
4 products or of certain specified products exclusively to or through the
5 corporation or any agency designated by it. If such contract provides
6 for a sale to the corporation, title to the products covered thereby shall
7 pass to the corporation absolutely, except for recorded liens, upon delivery
8 or at any other time specified in said contract, if expressly so agreed
9 therein. Any such contract may, however, provide for sale by the cor-
10 poration of the products of its members with or without acquisition of
11 title to such products by the corporation and may further provide that
12 the corporation shall pay over to the members the resale price after de-
13 ducting all necessary expenses including any allowances, contributions
14 or deductions authorized by its by-laws or by the contract itself. Such
15 contract shall not be construed as a violation of any provision of sections
16 one to seven, inclusive, of chapter ninety-three, unless it results in an
17 undue enhancement of the price of the product to which the contract
18 applies, nor shall any corporation organized under section ten be liable to
19 prosecution for any action reasonable and proper in the exercise of the
20 rights and powers conferred by sections ten to nineteen, inclusive.

Marketing
contracts by
corporation
with its
members.
1923, 438, § 4.

1 SECTION 17. The marketing contract may fix as liquidated damages
2 specific sums to be paid by a member upon breach of the provisions of said
3 contract requiring sale or delivery of products by the member exclusively
4 to or through the corporation or any agency designated by it, and such
5 provision shall be valid and enforceable in the courts of the common-
6 wealth. Any such corporation may be granted a temporary or permanent
7 injunction against a member for breach or threatened breach of such
8 contract with reference to the said provisions for sale or delivery of
9 products.

Liquidated
damages.
Injunctions.
1923, 438, § 4.

1 SECTION 18. A corporation organized under the provisions of section
2 ten, and any corporation, association or organization now or hereafter
3 established, organized or chartered without capital stock for a similar
4 purpose under laws other than those of this commonwealth, shall not be
5 liable to taxation under the provisions of chapter sixty-three, but shall
6 be taxable under the provisions of chapter fifty-nine, in the same manner
7 and to the same extent as an individual or partnership. The fee for filing
8 the articles of organization required by section ten, including the issuing
9 by the state secretary of the certificate of incorporation, shall be fifty
10 dollars.

Local taxation.
Fee for filing
articles of
organization.
1923, 438, § 4.
1931, 394,
§ 171
261 Mass. 110.

CHAPTER 158.

CERTAIN MISCELLANEOUS CORPORATIONS.

<p>SECT.</p> <p>1. Application of chapter, etc.</p> <p style="text-align: center;">ORGANIZATION.</p> <p>2. Formation of corporations.</p> <p>3. Corporations for furnishing steam and hot water.</p> <p>4. Formation of other corporations.</p> <p>5. Contents of agreement.</p> <p>6. First meeting, how called and notified.</p> <p>7. Subscribers to hold franchise; distribution of shares.</p> <p>8. Organization; choice of officers; records.</p> <p>9. Certificate of organization to be filed.</p> <p style="text-align: center;">POWERS AND DUTIES.</p> <p>10. Business powers of corporations.</p> <p>11. Change of corporate business.</p> <p>12. Certain corporations may open streets, when.</p> <p>13. Companies liable to repay damages, etc.</p> <p>14. Companies, etc., to be regulated by selectmen, etc.</p> <p>15. Corporations for propagation of herrings and alewives.</p> <p>16. Interest upon deposits of customers.</p> <p>17. Proceedings if rent of safe deposit boxes not paid.</p> <p style="text-align: center;">OFFICERS.</p> <p>18. Officers.</p> <p>19. How chosen.</p> <p>20. Clerk, treasurer, bond.</p> <p style="text-align: center;">CAPITAL STOCK.</p> <p>21. Stockholder to have certificate of stock.</p> <p>22. Lost certificates.</p> <p>23. Capital stock of companies specially chartered, how limited.</p> <p>24. Increase and reduction of capital stock.</p> <p>25. Special stock.</p> <p>26. Employees' stock.</p> <p>27. Dividends on employees' stock.</p> <p>28. Transfer of employees' stock.</p>	<p>SECT.</p> <p>29. Assessments upon shares.</p> <p>30. Sale of shares to pay assessments.</p> <p>31. Notice of sale, and transfer of shares sold.</p> <p>32. Capital stock, payment of.</p> <p>33. Capital stock, how paid in.</p> <p>34. Voting by proxy.</p> <p>35. Quorum of stockholders.</p> <p style="text-align: center;">CONFIRMATION OF PROCEEDINGS.</p> <p>36. Confirmation of proceedings.</p> <p style="text-align: center;">CERTIFICATES AND RETURNS.</p> <p>37. Annual certificate of condition.</p> <p>38. Corporations failing to make such certificate may be dissolved.</p> <p>39. Certificate of increase of capital stock.</p> <p>40. Certificate of reduction.</p> <p>41. Examination and endorsement of certificates.</p> <p>42. Penalties for omitting to file certificates.</p> <p style="text-align: center;">FEES</p> <p>43. Fees for filing certificates, etc.</p> <p style="text-align: center;">LIABILITY OF OFFICERS AND STOCKHOLDERS.</p> <p>44. Liability of officers for debts and contracts.</p> <p>45. Liability of stockholders or members.</p> <p>46. Procedure before enforcing liability.</p> <p>47. Clerk to furnish creditor with names of officers and stockholders.</p> <p>48. Penalty for refusing to give certified list. False list.</p> <p>49. Creditor may file bill in equity against corporation, officers and stockholders.</p> <p>50. Stockholders to be assessed in proportion to stock.</p> <p>51. Suit in equity not abated by death of one defendant.</p> <p>52. Suit in equity, when dismissed.</p> <p>53. Suit in equity not abated by non-joinder of persons liable.</p> <p>54. Actions may be defended by officer or stockholder.</p>
--	--

Application of chapter, etc.

SECTION 1. The provisions of this chapter, unless expressly limited in their application, and except so far as they are inconsistent with other provisions of law relative to particular corporations or classes of corporations, or with the provisions of special laws, shall apply to corporations heretofore or hereafter organized under general or special laws of the commonwealth for the purpose of carrying on the business of a safe deposit company and to corporations heretofore or hereafter organized under general or special laws of the commonwealth for the purpose

1
2
3
4
5
6
7
8

9 of carrying on within the commonwealth the business of transmitting
 10 intelligence by electricity or of a heat or power, gas, electric, canal,
 11 water or aqueduct company, and to any other corporations, except rail-
 12 road, street railway, electric railroad or trolley motor companies, which
 13 now have or may hereafter have the right to take land within the com-
 14 monwealth by eminent domain, or to exercise franchises in public ways
 15 granted by the commonwealth or by any county, city or town. In
 16 this chapter, unless the context otherwise requires, the "commissioner"
 17 means the commissioner of corporations and taxation.

ORGANIZATION.

1 SECTION 2. Any persons, to the number hereinafter provided, who
 2 associate themselves by a written agreement hereinafter described with
 3 the intention of forming a corporation for any purpose permitted under
 4 section one, upon complying with section nine, shall be and remain a
 5 corporation.

Formation of
 corporations.
 1851, 133, § 1
 1852, 9
 G. S. 61, § 1.
 1870, 224, § 1.
 P. S. 106, § 6.

R. L. 110, § 4.	12 Allen, 273, 362.	101 Mass. 381, 385.
11 Gray, 139	98 Mass. 98.	1 Op. A. G. 47, 185.
15 Gray, 211, 494.		

1 SECTION 3. For the purpose of generating and furnishing steam or
 2 hot water for heating, cooking and mechanical power, or for the purpose
 3 of generating and furnishing hydrostatic or pneumatic pressure for me-
 4 chanical power, in any town, or for any two or more of said purposes,
 5 ten or more persons may associate themselves, with a capital of not less
 6 than one thousand nor more than five hundred thousand dollars.

Corporations
 for furnishing
 steam and hot
 water.
 1855, 146, § 1.
 1857, 276, § 1.
 G. S. 61, § 15.
 1870, 224, § 5.
 1879, 202, § 1.

P. S. 106, § 11	1893, 397	1910, 346.
1885, 240, § 1	R. L. 110, § 9.	157 Mass. 37.
1891, 189, § 1.		

1 SECTION 4. For the purpose of carrying on any other lawful business
 2 for which corporations may be formed under this chapter, three or more
 3 persons may associate themselves, with a capital of not less than one
 4 thousand dollars. The capital of such companies other than gas and
 5 electric companies shall not exceed one million dollars.

Formation of
 other cor-
 porations.
 1874, 165.
 P. S. 106, § 14
 R. L. 110, § 13.
 173 Mass. 252

1 Op. A. G. 153, 275, 304

1 SECTION 5. The agreement of association shall state that the sub-
 2 scribers thereto associate themselves with the intention of forming a
 3 corporation, the corporate name assumed, the purpose for which it is
 4 formed, the town, which shall be in this commonwealth, where it is
 5 established or located, the amount of its capital stock and the par value
 6 and number of its shares.

Contents of
 agreement
 1851, 133, § 3.
 G. S. 61, § 2
 1866, 290, § 2
 1870, 224, § 7
 P. S. 106, § 16
 R. L. 110, § 15.
 11 Gray, 139.

97 Mass. 494.

1 SECTION 6. The first meeting shall be called and record made as
 2 provided in section eight of chapter one hundred and fifty-six.

First meeting,
 how called and
 notified

1855, 478, § 2.	P. S. 106, § 18.	1918, 257, § 372.
G. S. 61, § 3.	R. L. 110, § 17.	1919, 5, 333, §§ 17, 18.
1866, 290, § 4.	1914, 742, § 7.	1920, 2.
1870, 224, § 9.		

1 SECTION 7. The subscribers to the agreement of association shall
 2 hold the franchise until the organization has been completed; and, un-
 3 less it is otherwise provided in such agreement, each subscriber who
 4 elects to take such shares at the first meeting may take such proportion
 5 of the shares of the capital stock as the number of subscribers to the
 6 agreement bears to the whole number of shares, or any part of such

Subscribers to
 hold franchise;
 distribution of
 shares.
 1870, 224, § 30
 P. S. 106, § 19
 R. L. 110, § 18.
 1914, 742, § 8.
 111 Mass. 200.

proportion, upon paying the assessments thereon as called for by the corporation. All shares not so taken shall be disposed of as the corporation determines.

Organization; choice of officers; records. 1851, 133, §§ 4, 5.

SECTION 8. At such first meeting, or at any adjournment thereof, the incorporators shall organize as provided in section nine of chapter one hundred and fifty-six.

G. S. 61, § 5. 1870, 224, § 10.

P. S. 106, § 20. R. L. 110, § 19.

1914, 742, § 9.

Certificate of organization to be filed. 1851, 133, § 4. 1855, 68, § 2. 1857, 276, § 1. G. S. 61, § 8. 1879, 224, § 11. P. S. 106, § 21. R. L. 110, § 20. 1914, 742, § 10. 1931, 394, § 172. 101 Mass. 381. 149 Mass. 436. 151 Mass. 558.

SECTION 9. The president, treasurer and a majority of the directors shall forthwith make, sign and swear to a certificate setting forth a true copy of the agreement of association with the names of the subscribers thereto, the date of the first meeting and the successive adjournments thereof, if any, and shall submit such certificate and also the records of the corporation to the commissioner, who shall examine the same, and who may require such other evidence as he may judge necessary. If it appears that the requirements of the preceding sections, and of sections five and six of chapter one hundred and sixty-four in the case of gas and electric companies, preliminary to the establishment of the corporation have been complied with, the commissioner shall so certify and approve the certificate by his endorsement thereon. Such certificate shall thereupon be filed by said officers in the office of the state secretary, who, upon payment of the fee hereinafter provided, shall issue a certificate in the following form:

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the name of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital of (the amount of capital fixed in the agreement of association), and have complied with the provisions of the statutes of this commonwealth in such case made and provided, as appears from the certificate of the president, treasurer and directors of said corporation, duly approved by the commissioner of corporations and taxation and recorded in this office: Now, therefore, I, (the name of the secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the commonwealth of Massachusetts hereunto affixed, this day of in the year (the date of execution of the certificate).

The state secretary shall sign the same and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter and shall be conclusive evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

POWERS AND DUTIES.

Business powers of corporations. 1851, 133, § 7. 1855, 478, § 1.

SECTION 10. A corporation may in its corporate name purchase, hold and convey real and personal property necessary for the purposes of its organization; may carry on its business, or so much thereof as is con-

4 venient, beyond the limits of this commonwealth, and may there pur-
 5 chase and hold real or personal property necessary for conducting its
 6 business; but it shall not direct its operations or appropriate its funds
 7 to any other purpose than that specified in its agreement of association
 8 or its charter, as the case may be, except as provided in the following
 9 section and in sections twenty-two and twenty-three of chapter one hun-
 10 dred and sixty-four. No conveyance or mortgage of its real property, or
 11 lease thereof for more than one year, shall be made unless authorized by
 12 a vote of the stockholders at a meeting called for the purpose.

1857, 24.
 G. S. 61, § 7.
 1866, 290, § 2.
 1870, 224,
 §§ 15, 31.
 P. S. 106,
 §§ 23, 50.
 R. L. 110, § 46.
 1914, 742, § 59.
 1920, 295.
 147 Mass. 224.
 157 Mass. 37.
 258 Mass. 453.

1 SECTION 11. A corporation may, by a vote of all its stockholders
 2 at a meeting duly called for the purpose, alter, add to or change the
 3 business for the transaction of which it was incorporated, but it shall
 4 not engage in any business which is not authorized by law. A certifi-
 5 cate setting forth such alteration, addition or change, signed and sworn
 6 to by the president, treasurer and a majority of the directors, shall be
 7 filed in the office of the state secretary.

Change of
 corporate
 business.
 1875, 177, § 4.
 P. S. 106, § 51.
 1885, 310.
 R. L. 110, § 47.
 1910, 124.
 1914, 742, § 52.

1 SECTION 12. Corporations organized for the purpose of transporting
 2 the United States mail, merchandise and other articles by means of
 3 pneumatic pressure or power, corporations engaged in or organized for
 4 the purpose of manufacturing, buying, selling, distributing or dealing
 5 in artificial cold and refrigerating and cooling materials and corpora-
 6 tions organized for any of the purposes mentioned in section three, may,
 7 with the written consent of the aldermen of a city or the selectmen of
 8 a town, dig up and open the ground in any of the streets, lanes and
 9 highways thereof, so far as is necessary to accomplish the objects of
 10 the corporation; but such consent shall not affect the right or remedy to
 11 recover damages for an injury caused to persons or property by the acts
 12 of such corporations. They shall put all such streets, lanes and high-
 13 ways into as good repair as they were in when opened; and upon failure
 14 so to do within a reasonable time shall be guilty of a nuisance.

Certain cor-
 porations may
 open streets,
 when.
 1855, 146, § 2.
 G. S. 61, § 16.
 1870, 224, § 56;
 353, § 2.
 1879, 202, § 1.
 P. S. 106, § 75.
 1885, 240, § 1.
 1896, 544, § 1.
 1899, 453.
 R. L. 110, § 76.
 12 Allen, 75.
 188 Mass. 242.
 220 Mass. 575.

1 SECTION 13. If a person who is injured in his person or property by
 2 a defect in a highway which is caused by the operations of a company
 3 or corporation described in the preceding section in laying down or
 4 repairing its pipes or otherwise obstructing such way recovers damages
 5 therefor of the town wherein such injury is received, such town shall, if
 6 such company or corporation is liable for said damages and has reason-
 7 able notice to appear and defend the original action, be entitled to recover
 8 of such company or corporation the damages so recovered from it with
 9 the taxable costs of both parties in such action.

Companies
 liable to repay
 damages, etc.
 1860, 121.
 P. S. 106, § 76.
 1896, 544, § 2.
 R. L. 110, § 77.

1 SECTION 14. The aldermen of a city or the selectmen of a town in
 2 which pipes or conductors of such company or corporation are sunk
 3 may regulate, restrict and control all acts and doings of such company
 4 or corporation which may in any manner affect the health, safety, con-
 5 venience or property of the inhabitants of such city or town.

Companies,
 etc., to be
 regulated by
 selectmen, etc.
 1855, 146, § 3.
 G. S. 61, § 17.
 1870, 224, § 57.

P. S. 106, § 77.

R. L. 110, § 78.

1 SECTION 15. A corporation which is organized for the purpose of
 2 opening outlets, canals, sluiceways or ditches for the introduction and
 3 propagation of herrings and alewives, before making any purchase of
 4 real estate or doing any acts in pursuance of its organization, shall obtain

Corporations
 for propagation
 of herrings and
 alewives.
 1866, 187, § 1.
 1870, 224,
 §§ 4, 36, 54.

P. S. 106,
 §§ 10, 58, 74.
 R. L. 110,
 §§ 8, 56, 71.
 1903, 437, § 92.

the written authority of the aldermen of the city or the selectmen of the town within which its works are to be located, and, within thirty days after obtaining such authority, shall file a copy thereof, certified by the city or town clerk, in the office of the state secretary. Such corporations shall be organized under and governed by chapter one hundred and fifty-six so far as applicable.

Interest upon
 deposits of
 customers.
 1901, 470.
 R. L. 110, § 81.
 1914, 742, § 63.

. SECTION 16. If a corporation which has a franchise in and the use of the public streets of a town for the supply and distribution of gas, water, electric light or power, or for the maintenance of communication by wire or otherwise, holds for a longer period than six months money which is collected in advance from its customers to guarantee it against loss of charges or tolls, it shall pay annually upon said guaranty fund interest at the rate of four per cent per annum to the depositors thereof, which shall be applied to the payment of charges and tolls by said depositors. The annual return required of such corporations by section thirty-seven shall include a true statement of all money, and of the value of any collateral, so held as a guaranty for the payment of charges or tolls, specifying the amount so deposited by the inhabitants of each town. If such corporation fails or neglects to make such return or fails, neglects or refuses to pay such interest it shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Proceedings if
 rent of safe
 deposit boxes
 not paid.
 1887, 89.
 R. L. 116, § 38.

SECTION 17. If the amount due for the rent or use of a box or safe in the vaults of a domestic corporation organized for the purpose of letting vaults, safes and other receptacles shall not have been paid for two years, such corporation may cause to be mailed, postpaid, to the person in whose name such safe or box stands upon the books of such corporation and at his address as stated on said books, a notice stating that if the amount then due for the use or rent of such safe or box shall not be paid within sixty days from the date of such notice such corporation will cause such safe or box to be opened in the presence of its president, treasurer or superintendent and of a notary public, and the contents thereof, if any, to be sealed up in a package and placed in one of the storage vaults of such corporation. If, upon the expiration of said sixty days from the date of such notice, such person shall have failed to pay the amount due for the use or rent of such safe or box in full to the date of such notice, all right of such person in such safe or box and of access thereto shall cease, and such corporation may in the presence of its president, treasurer or superintendent and of a notary public not an officer or in the general employ of such corporation, cause such safe or box to be opened, and such notary public shall remove the contents thereof, make a list of the same and shall seal up such contents in a package and shall mark thereon the name of the person in whose name such safe or box stood on the books of such corporation and his address as stated on said books, and such package shall in the presence of said notary public and of said president, treasurer or superintendent be placed in one of the storage vaults of such corporation; and the proceedings of such notary public, including said list of the contents of said safe or box and his estimate of the total value of said contents, shall be set forth by him in his own handwriting and under his official seal in a book to be kept by such corporation for the purpose. The officer of such corporation who sent said written notice shall in the same book state his proceedings rela-

Increase and reduction of capital stock.
 1829, 53, §§ 3, 10.
 R. S. 38, §§ 11, 20.
 1851, 133, § 8.
 1855, 478, § 5.

SECTION 24. Every corporation, unless otherwise expressly provided, at a meeting called for the purpose, may increase or reduce the amount of its capital stock and the number of shares therein, within the amount limited by its charter, if a chartered corporation, and by the provisions of this chapter, if organized under general laws.

1857, 24.	1866, 290, § 5.	1875, 177, § 3.	R. L. 110, § 31.
G. S. 60, §§ 11, 21; 61, § 6.	1870, 224, § 24. 1871, 110, § 2.	P. S. 13, § 43; 106, § 34.	1914, 742, § 35. 1920, 295.
1865, 283, § 8.	1873, 39, § 2.	1899, 199, § 2.	

Special stock.
 1855, 290.
 G. S. 60, § 12.
 1870, 224, § 25.
 P. S. 106, § 42.
 R. L. 110, § 36.
 1914, 742, § 31.
 15 Gray, 274.
 136 Mass. 204.
 139 Mass. 5.

SECTION 25. A corporation may, by a vote of three fourths of its general stockholders at a meeting duly called for the purpose, issue special stock, the total amount of which outstanding at any time shall not exceed two fifths of the actual capital paid in on the general and special stock, and shall be subject to redemption at par after a fixed time which shall be expressed in the certificates. Holders of special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed half yearly sum or dividend, which shall be expressed in the certificates, not exceeding four per cent, and they shall not be liable for the debts of the corporation beyond their stock.

Employees' stock.
 1886, 209, § 1.
 R. L. 110, § 37.
 1914, 742, § 32.

SECTION 26. A corporation may, by a vote of its general stockholders at a meeting called for the purpose, issue employees' stock to be held only by the employees of such corporation. The par value of the shares of such employees' stock shall be ten dollars, and the purchasers thereof may pay for them in monthly instalments of one dollar upon each share. The total amount of such employees' stock outstanding at any time shall not exceed two fifths of the actual capital paid in on the general and employees' stock.

Dividends on employees' stock.
 1886, 209, § 2.
 R. L. 110, § 38.
 1914, 742, § 33.

SECTION 27. If a dividend is paid by a corporation to its stockholders, the holders of employees' stock shall receive upon each share which has been paid for in full in time to be entitled to a dividend, an amount which shall bear such proportion to the amount paid as a dividend upon each share of the general stock of such corporation as the par value of the shares of such employees' stock bears to the par value of the shares of such general stock.

Transfer of employees' stock.
 1886, 209, § 3.
 R. L. 110, § 39.
 1914, 742, § 34.

SECTION 28. The shares of employees' stock shall not be sold or transferred except to an employee of such corporation or to the corporation itself. A corporation which issues employees' stock may prescribe by its by-laws the number of shares which may be held by any one employee and the method of transfer and redemption of such stock as is held by any person after he ceases to be an employee of the corporation.

Assessments upon shares.
 1808, 65, § 5.
 1829, 53, § 5.
 R. S. 38, § 13.
 G. S. 60, § 14.
 1870, 224, § 27.
 P. S. 106, § 43.
 R. L. 110, § 40.
 1914, 742, § 45.

SECTION 29. Every corporation may, from time to time at a legal meeting called for the purpose, assess upon each share such amount of money as it considers proper, not exceeding in the whole the par value thereof, unless the price is fixed as provided by section eighteen of chapter one hundred and sixty-four or section seven of chapter one hundred and sixty-six, and, in such case, not exceeding said price. Such assessment shall be paid to the treasurer at such times and by such instalments as the corporation directs.

1 SECTION 30. If the stockholder neglects to pay an amount duly
 2 assessed on his shares for thirty days after the time appointed for pay-
 3 ment, the treasurer of the corporation may sell by public auction a suffi-
 4 cient number thereof to pay all assessments then due from him with
 5 necessary and incidental charges.

Sale of shares
to pay assess-
ments.
1808, 65, § 5.
1829, 53, § 5.
R. S. 38, § 11.
G. S. 60, § 15.

1870, 224, § 28.
P. S. 106, § 44.
R. L. 110, § 41.

1914, 742, § 46.
14 Mass. 286.

14 Pick. 483.
121 Mass. 272.

1 SECTION 31. The treasurer shall give notice of the time and place
 2 appointed for such sale, and of the amount due on each share, by adver-
 3 tising the same three weeks successively before the sale in a newspaper,
 4 published in the county where the corporation is established; and an
 5 assignment of the shares so sold, made by the treasurer and acknowledged
 6 before a justice of the peace and recorded in the books of the corpora-
 7 tion, shall transfer said shares to the purchaser, who shall be entitled to
 8 a certificate therefor.

Notice of sale,
and transfer of
shares sold.
1808, 65, § 5.
1829, 53, § 5.
R. S. 38, § 15.
G. S. 60, § 16.
1870, 224, § 29.
P. S. 106, § 45.
R. L. 110, § 42.
1914, 742, § 47.

1 SECTION 32. A corporation shall not begin business until the whole
 2 amount of its capital stock has been paid in and a certificate of that fact,
 3 and of the manner in which the same has been paid in and, at the time of
 4 making the certificate, been invested or voted by the corporation to be
 5 invested, signed and sworn to by the president, treasurer and a majority
 6 of the directors, has been filed in the office of the state secretary.

Capital stock,
payment of
1829, 53, § 6.
R. S. 38, §§ 16,
17.
1851, 133, § 4.
1857, 276, § 1.
G. S. 60, §§ 17,
18, 61, § 8.
1866, 290, § 8.

1870, 224, § 32.
1875, 177, § 2.
P. S. 106, § 46.
R. L. 110, § 43.

6 Met 114
101 Mass. 381.
117 Mass. 476.
152 Mass. 428.

192 Mass. 223.
193 Mass. 138.
195 Mass. 461.

1 SECTION 33. The capital stock, except as provided in this section,
 2 shall be paid in in cash. The conveyance to the corporation of real or
 3 personal property at a fair valuation shall be a sufficient paying in of
 4 its capital stock to the extent of such value, if a statement, made, signed
 5 and sworn to by its president, treasurer and a majority of its directors,
 6 giving a description of such property and the value at which it has been
 7 taken in payment, in such detail as the commissioner shall require or
 8 approve, and endorsed with his certificate that he is satisfied that said
 9 valuation is fair and reasonable, is filed with the state secretary. Such
 10 statement shall be included in the certificate of payment of capital re-
 11 quired by the preceding section. No note or obligation given by a stock-
 12 holder, whether secured by pledge or otherwise, shall be considered as
 13 payment of any part of the capital stock.

Capital stock,
how paid in.
1829, 53, § 8.
R. S. 38, § 24.
G. S. 60, § 14.
1870, 224, § 27.
1875, 177, § 2.
P. S. 106,
§§ 47, 48.
R. L. 110, § 44.
192 Mass. 223.
193 Mass. 138.

1 SECTION 34. Absent stockholders may vote at all meetings by proxy,
 2 authorized in writing, which shall be executed and dated within six
 3 months previous to the meeting at which it is used.

Voting by
proxy.
R. S. 38, § 7.

G. S. 60, § 7.
1870, 224, § 19.

P. S. 106, § 27.
R. L. 110, § 25.

1914, 742, § 16.
1918, 257, § 373.

1919, 5.
1920, 2.

1 SECTION 35. Every corporation may determine by its by-laws what
 2 number of stockholders shall attend, either in person or by proxy, or
 3 what number of shares or amount of interest shall be represented at any
 4 meeting, to constitute a quorum. If the quorum is not so determined,
 5 a majority in interest of the stockholders shall constitute a quorum.

Quorum of
stockholders.
1829, 53, § 15.
R. S. 38, § 7.
G. S. 60, § 7.
1870, 224, § 20.
P. S. 106, § 28.
R. L. 110, § 26.

CONFIRMATION OF PROCEEDINGS.

Confirmation of proceedings.
 1874, 349, § 2.
 P. S. 106, § 80.
 R. L. 110, § 83.
 1914, 742, § 72.

SECTION 36. If doubts arise as to the legality of the organization of any corporation created by special charter for a purpose mentioned in this chapter, which is in the exercise of its franchise, or as to the regularity or sufficiency of the proceedings of any such corporation, whether created by special charter or formed under general laws, in consequence of failure subsequent to the organization to comply with the directions or requirements of any statute, the stockholders, at a special meeting called for the purpose in the manner provided in section eight of chapter one hundred and fifty-six or by a justice of the peace upon the written request therefor of a majority of the acting directors, may by vote confirm such defective proceedings and all subsequent proceedings of the corporation dependent thereon. The clerk shall thereupon make a certificate on oath setting forth the particular matters especially causing the doubt, and a copy of the call of the meeting and of the vote of the stockholders, and the date of holding the meeting, which he shall present to the commissioner who shall examine the same, and, if he finds that this section has been complied with, shall so certify by endorsement thereon. Upon filing the certificate so endorsed in the office of the state secretary, such proceedings shall be taken to be legal and valid as fully as if the requirements of the statutes had been complied with.

CERTIFICATES AND RETURNS.

Annual certificate of condition.
 1829, 53, § 7.
 R. S. 38, § 22.
 1838, 177.
 1851, 133, §§ 9, 10.
 1854, 438.
 1855, 68, § 3.
 1857, 276.
 G. S. 60, §§ 23, 24; 61, § 10.
 1862, 210.
 1866, 290, § 6.
 1870, 224, § 33.
 1871, 110, §§ 4, 5.
 1874, 349, § 1.
 P. S. 106, § 54.
 1887, 225.
 1890, 199.
 1896, 369.
 1897, 192.
 1898, 64.
 R. L. 110, § 51, 52.

SECTION 37. Every corporation shall annually file in the office of the state secretary, within thirty days after the date fixed in its by-laws for its annual meeting, or within thirty days after the final adjournment thereof, but not more than three months after the date so fixed for said meeting, a certificate signed and sworn to by its president or vice president, and treasurer or assistant treasurer, and at least a majority of its directors, stating the date of holding such meeting, the amount of capital stock as it then stands fixed by the corporation, the amount then paid in, and the assets and liabilities of the corporation, in such form, with such detail and of such date as the commissioner shall require or approve. Such certificates shall be preserved by the state secretary in book form convenient for reference. Such certificate of a corporation having a capital stock of one hundred thousand dollars or more shall be verified by an auditor as provided in section forty-nine of chapter one hundred and fifty-six.

1914, 742, §§ 65, 66. 1931, 188, § 1; 394, § 173. 220 Mass. 380.
 1926, 26. 188 Mass. 478. 228 Mass. 202.

Corporations failing to make such certificate may be dissolved.
 1877, 230, § 2.
 P. S. 106, § 55.

SECTION 38. If a corporation fails for two successive years to file such annual certificate, the supreme judicial court, upon application by the commissioner, after notice and a hearing, may decree a dissolution of the corporation.

1887, 225. 1896, 369. R. L. 110, § 53. 1914, 742, § 67.

Certificate of increase of capital stock.
 1851, 133, § 8.
 G. S. 61, § 9.
 1870, 224, § 34.
 P. S. 106, § 56.

SECTION 39. A corporation shall, upon an increase of its capital stock, within thirty days after the payment or collection of the last installment thereof, file a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president or vice president,

5 and treasurer or assistant treasurer, and a majority of its directors, in
 6 the office of the state secretary and also, if the corporation is subject to
 7 chapter one hundred and sixty-four or one hundred and sixty-five, in
 8 the office of the department of public utilities. If such a certificate is
 9 not filed as aforesaid within said period of thirty days, it may thereafter
 10 be received by the commissioner for examination in accordance with
 11 section forty-one upon payment to him of such sum, not exceeding
 12 twenty-five dollars, as he may determine, and be filed as hereinbefore
 13 provided, subject to the provisions of sections forty-one and forty-three
 14 to the same extent as if such certificate had been filed as aforesaid within
 15 said period.

R. L. 110, § 54
 1914, 742, § 68.
 1919, 350,
 § 117.
 1929, 97
 1931, 188, § 2.
 1 Op. A. G. 203.

1 SECTION 40. A corporation shall, within thirty days after a reduction
 2 of its capital stock is voted, file in the office of the state secretary and
 3 also, if the corporation is subject to chapter one hundred and sixty-four,
 4 in the office of the department of public utilities, a copy of the vote
 5 authorizing such reduction, signed and sworn to by its clerk.

1914, 742, § 69.

1919, 350, § 117.

Certificate of
 reduction.
 1855, 478, § 5.
 G. S. 61, § 9.
 1870, 224, § 35.
 P. S. 106, § 57.
 R. L. 110, § 55

1 SECTION 41. The certificate or copy which is required by section
 2 eleven, fifteen, thirty-two, thirty-seven, thirty-nine or forty to be filed
 3 shall, before filing, be submitted to the commissioner, who shall examine
 4 the same; and if it appears to him to be a sufficient compliance in form
 5 with the requirements of law, he shall certify his approval thereof by
 6 endorsement upon the same; but he shall endorse only the date and fact
 7 of submission to his inspection upon the copies of votes of corporations;
 8 and upon the payment of the fee provided by section forty-three, the
 9 same may be filed in the office of the state secretary; and, upon such
 10 filing, the corporation and its officers shall be conclusively held to have
 11 complied with the requirements of law in respect to the filing of such
 12 certificate or copy, except that it may be shown in evidence that the
 13 statements made in such certificate or copy were false, and were known
 14 to be so by any officer signing or making oath to the same.

Examination
 and endorse-
 ment of
 certificates.
 1870, 224, § 37.
 P. S. 106, § 59.
 1887, 225.
 1896, 369.
 1898, 503, § 1.
 R. L. 110, § 57.
 1914, 742, § 70.
 1931, 426,
 § 257.
 1 Op. A. G. 203,
 278.

1 SECTION 42. A corporation which omits to file any certificate or copy
 2 which is required by section thirty-seven, thirty-nine or forty shall forfeit
 3 two hundred dollars, to be recovered in an action of tort brought in the
 4 name of the commonwealth in Suffolk county or in the county where
 5 the corporation is established; and its president, treasurer and directors,
 6 for the time being, shall in addition be jointly liable in a like amount for
 7 such omission; and all forfeitures by a corporation under any provision
 8 of this chapter may also be collected by information in equity, which
 9 may be brought in Suffolk county and shall be brought in the supreme
 10 judicial court in the name of the attorney general, at the relation of the
 11 commissioner; and upon such information the court may issue an in-
 12 junction restraining the further prosecution of the business of the cor-
 13 poration named therein until such forfeitures, with interest and costs, are
 14 paid and until the returns required by this chapter are filed.

Penalties for
 omitting to file
 certificates.
 1863, 246.
 1866, 290, § 9.
 1870, 224, § 60.
 1877, 57.
 P. S. 106,
 §§ 81, 82.
 1887, 225.
 1896, 369.
 R. L. 110, § 84.
 1914, 742, § 89.

FEES.

Fees for filing certificates, etc. P. S. 106, § 84.	SECTION 43. The fees for filing the following certificates and copies of votes required to be filed with the state secretary shall be as follows:	1 2 3 4 5 6
	1887, 225. 1896, 369. R. L. 110, § 86.	1908, 219, 382. 1914, 742, § 91.
		1915, 92; 264. 1931, 394, § 174.
Of organization. 1863, 231, § 2. 1865, 76. 1870, 224, § 59. 1871, 356. R. L. 110, § 86.	For filing the certificates required by section nine, including the issuing of the certificate of incorporation by the state secretary, one twentieth of one per cent of the amount of the capital stock as fixed by the agreement of association; but not less in any case than five dollars.	3 4 5 6
	1908, 219, 382.	1914, 742, § 91.
		1915, 92; 264.
		1931, 394, § 174.
Of increase of capital. 1863, 231, § 2.	For filing the certificate required by section thirty-nine, one twentieth of one per cent of the amount by which the capital is increased.	7 8
	1865, 76 1871, 356. 1896, 523, § 2.	R. L. 110, § 86. 1908, 219, 382. 1914, 742, § 91.
		1915, 92; 264. 1931, 394, § 174.
Other certificates. 1870, 224, § 59. 1875, 177, § 4. 1879, 202, § 2. 1895, 169. 1896, 523, § 1.	For filing the copies of the votes or certificates required by section eleven, thirty-six, thirty-seven or forty of this chapter or section sixteen of chapter one hundred and fifty-five, ten dollars for each copy or certificate; for filing any other certificate required by law, one dollar.	9 10 11 12
	R. L. 110, § 86. 1908, 219, 382. 1914, 742, § 91.	1915, 92; 264. 1920, 598, §§ 5, 6. 1924, 44, § 3. 1931, 394, § 174.

LIABILITY OF OFFICERS AND STOCKHOLDERS.

Liability of officers for debts and contracts. 1821, 38.	SECTION 44. The officers of a corporation shall be jointly and severally liable for its debts and contracts in the following cases, and not otherwise:	1 2 3
	1829, 53, §§ 8, 9 R. S. 38, §§ 23-25, 28. G. S. 60, §§ 17-25, 30. 1862, 218, § 1 1870, 224, § 38. 1875, 177, § 2. 1877, 230, § 1.	P. S. 106, § 60. 1898, 266. R. L. 110, § 58. 10 Gray, 232, 600. 12 Gray, 203. 6 Allen, 579.
		106 Mass. 131. 108 Mass. 523. 118 Mass. 295. 137 Mass. 516. 148 Mass. 226. 195 Mass. 461.
	The president and directors shall be so liable —	4
189 Mass. 566. 190 Mass. 61.	First, For making or consenting to a dividend if the corporation is or thereby is rendered insolvent, to the extent of such dividend.	5 6
183 Mass. 557.	Second, For debts contracted between the time of making or assenting to a loan to a stockholder and the time of its repayment, to the extent of such loan.	7 8 9
5 Allen, 398. 127 Mass. 563. 156 Mass. 490. 173 Mass. 242. 198 Mass. 76.	Third, If the debts of a corporation exceed its capital, to the extent of such excess existing at the time of the commencement of the suit against the corporation in which the judgment was recovered upon which the suit in equity to enforce such liability is brought as provided in section forty-nine.	10 11 12 13 14
	The president, directors and treasurer shall be so liable —	15
190 Mass. 35.	Fourth, For signing any statement filed under section thirty-three, if the property mentioned in such statement is not conveyed and taken at a fair valuation; but only the officers who sign the statement shall be so liable.	16 17 18 19
	The president, directors and other officers shall be so liable —	20
148 Mass. 226. 150 Mass. 264. 182 Mass. 530. 193 Mass. 138.	Fifth, For signing any certificate which is required by law knowing it to be false; but only the officers who have knowledge thereof shall be liable.	21 22 23

24 Sixth, For debts contracted before the original capital has been fully 195 Mass. 461
 25 paid in and the certificate of such payment has been filed in accordance
 26 with section thirty-two.

1 SECTION 45. The members or stockholders in any corporation shall Liability of
 2 be jointly and severally liable for its debts or contracts in the following stockholders
 3 cases, and not otherwise: or members.
 1821, 38.

- | | | |
|----------------------------|------------------|----------------|
| 1826, 137, § 2. | 1862, 218, § 2. | 6 Met 114. |
| 1829, 53, §§ 6, 7, 10, 11. | 1870, 224, § 39. | 8 Cush. 168. |
| R. S. 38, §§ 16, 21, | 1875, 177, § 1. | 15 Gray, 216. |
| 32, 33 | 1876, 1, § 1. | 2 Allen, 498. |
| 1851, 133, § 15; 252. | P. S. 106, § 61. | 101 Mass. 385. |
| 1852, 9 | R. L. 110, § 59. | 111 Mass. 200. |
| 1855, 290 | 1914, 742, § 74. | 127 Mass. 586. |
| G. S. 60, §§ 12, 17, 22; | 13 Pick 484. | 195 Mass. 461. |
| 68, § 16. | 21 Pick 417. | |

4 First, For such as may be contracted before the original capital is 6 Met 114
 5 fully paid in; but only those stockholders who have not paid in full the 12 Met 3
 6 par value of their shares, and those who have purchased such shares 14 Cush. 183
 7 with knowledge of the fact, shall be liable for such debts. 127 Mass. 563
 131 Mass. 590

8 Second, For the payment of all debts existing at the time when the 127 Mass. 595.
 9 capital is reduced, to the extent of the amounts withdrawn and paid to
 10 stockholders.

11 Third, If special stock is created under section twenty-five, the general
 12 stockholders shall be liable for all debts and contracts until the special
 13 stock shall have been fully redeemed.

14 Fourth, For all money due to operatives for services rendered within 127 Mass. 586.
 15 six months before demand made upon the corporation, and its neglect
 16 or refusal to make payment.

17 Any such member or stockholder who pays, on a judgment or other- 9 Cush. 192.
 18 wise, more than his proportion of any such debt shall have a claim for 16 Gray, 127.
 19 contribution against the other members or stockholders. 2 Allen, 498.

- | | | |
|---------------|----------------|----------------|
| 6 Allen, 579. | 118 Mass. 295. | 127 Mass. 586. |
|---------------|----------------|----------------|

1 SECTION 46. A stockholder or officer in a corporation shall not be Procedure be-
 2 held liable for its debts or contracts unless a judgment has been recovered fore enforcing
 3 against it and it has neglected for thirty days after demand made on liability.
 4 execution to pay the amount due, with the officer's fees, or to exhibit 1851, 315, § 3.
 5 to him real or personal property of the corporation subject to be taken 1852, 24.
 6 on execution, sufficient to satisfy the same, and the execution has been G. S. 60, § 34.
 7 returned unsatisfied. 1862, 218, § 3.
 1866, 290, § 10.
 1870, 224, § 40.
 P. S. 106, § 62.
 R. L. 110, § 60.

- | | | | |
|------------------|----------------|----------------|----------------|
| 1914, 742, § 75. | 115 Mass. 380. | 198 Mass. 76. | 247 Mass. 334. |
| 8 Allen, 86 | 127 Mass. 563. | 203 Mass. 551 | 347. |
| 103 Mass. 160. | 174 Mass. 434. | 207 Mass. 441 | 253 Mass. 205. |
| 108 Mass. 523. | 180 Mass. 513. | 244 Mass. 128. | |

1 SECTION 47. The clerk or other officer who has charge of the records Clerk to
 2 of a corporation against which judgment has been so recovered and furnish creditor
 3 execution so issued and returned unsatisfied, upon reasonable request of with names of
 4 the judgment creditor or of his attorney, shall furnish to him a certified officers and
 5 list of the names of all persons who were officers and stockholders. stockholders.
 6 such corporation at the time of the commencement of the suit in which 1864, 219, § 1.
 7 judgment was recovered. 1870, 224, § 41.
 P. S. 106, § 63.
 R. L. 110, § 61.
 1914, 742, § 76.
 244 Mass. 128

247 Mass. 347.

1 SECTION 48. If an officer unreasonably refuses to give the certified Penalty for
 2 list mentioned in the preceding section or wilfully gives a false list, he refusing to give
 3 shall be liable to the judgment creditor for double the amount of all certified list.
 4 damages occasioned by such refusal or false list. False list.
 1864, 219, § 2.
 1870, 224, § 60.

- | | | |
|------------------|------------------|------------------|
| P. S. 106, § 83. | R. L. 110, § 85. | 1914, 742, § 90. |
|------------------|------------------|------------------|

Creditor may file bill in equity against corporation, officers and stockholders. 1808, 65, § 6
1817, 183
1826, 137, § 1
1829, 53, § 11
R. S. 38, §§ 29-31; 44, § 22
1851, 315, §§ 1, 3
1852, 24
G. S. 60, §§ 31, 32, 34; 68, § 17
1862, 218, § 4
1866, 290, § 10
1870, 224, § 42.

SECTION 49. After the execution has been returned unsatisfied, any creditor may file a bill in equity, in behalf of himself and all other creditors of the corporation, against it and all persons who were stockholders therein at the time of the commencement of the suit in which such judgment was recovered, or against all the officers who are liable for its debts and contracts, for the recovery of the money due from the corporation to himself and the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or that of its officers or any of them, setting forth the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally.

P. S. 106, § 64	3 Allen, 485.	109 Mass. 473.	156 Mass. 490.
R. L. 110, § 62.	5 Allen, 398.	115 Mass. 286, 380.	173 Mass. 242.
1914, 742, § 77.	9 Allen, 471.	118 Mass. 269.	194 Mass. 590.
8 Cush. 93	101 Mass. 385	295	203 Mass. 551.
10 Gray, 232.	106 Mass. 131.	127 Mass. 563.	244 Mass. 128
11 Gray, 139.	108 Mass. 404.	586, 592, 595.	247 Mass. 336.
14 Gray, 193.	523.	144 Mass. 399.	347.

Stockholders to be assessed in proportion to stock. 1862, 218, § 5.
1870, 224, § 43.
P. S. 106, § 65
R. L. 110, § 63
1914, 742, § 78
16 Gray, 127
111 Mass. 200.

SECTION 50. Such sums as may be decreed to be paid by the stockholders in such suit in equity shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when the suit in which said judgment was recovered was begun; but no stockholder shall be liable to pay a larger sum than the amount of stock held by him at that time at its par value.

127 Mass. 586.	244 Mass. 128.	247 Mass. 347.
----------------	----------------	----------------

Suit in equity not abated by death of one defendant. 1862, 218, § 7
1870, 224, § 45.
P. S. 106, § 67.
R. L. 110, § 65.

SECTION 51. If a defendant dies during the pendency of such a suit in equity, it shall not abate thereby; but his estate in the hands of his executor or administrator shall be liable to the same extent as he would be if living. Such executor or administrator may voluntarily appear and become a party to the suit or may be summoned by the plaintiff.

1914, 742, § 80.	173 Mass. 242.	244 Mass. 128.	247 Mass. 347.
------------------	----------------	----------------	----------------

Suit in equity, when dismissed. 1862, 218, § 8
1870, 224, § 46.
P. S. 106, § 68.

SECTION 52. Such suit in equity shall not be dismissed by the plaintiff without an order of court and such notice to other creditors as the court may find reasonable under the circumstances.

R. L. 106, § 69.	1914, 742, § 81.	244 Mass. 128.	247 Mass. 347.
------------------	------------------	----------------	----------------

Suit in equity not abated by non-joinder of persons liable. 1862, 218, § 9.
1870, 224, § 47
P. S. 106, § 69

SECTION 53. No such suit in equity shall be abated by reason of the non-joinder of persons liable as defendants unless the plaintiff, after being notified by plea or answer of the existence of such persons, unreasonably neglects to make them parties.

R. L. 110, § 67.	10 Allen, 352.	247 Mass. 347.
1914, 742, § 82.	244 Mass. 128.	

Actions may be defended by officer or stockholder. 1867, 36, §§ 1, 2.
1870, 224, §§ 48, 49.
P. S. 106, §§ 70, 71.
R. L. 110, § 68
1914, 742, § 83.
14 Allen, 470
244 Mass. 128.

SECTION 54. If, in an action against a corporation, it appears to the court that one of the objects of the action is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, any such person may be permitted, on petition, to defend such action, and in such case the court may require of him or of a person in his behalf, a bond with sufficient surety or sureties, conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition.

247 Mass. 347.

CHAPTER 159.

COMMON CARRIERS.

SECT.

COMMON CARRIERS IN GENERAL.

- 1. Discrimination by carriers forbidden.
- 2. Penalty.
- 3. Limitation of liability.
- 4. Railroads, etc., not to require indemnity from employees.
- 5. General agent for foreign expresses.
- 6. Agent to give bond.
- 7. Penalty on agent of delinquent company.
- 8. Protection of business of carriers.
- 9. Provisions applicable.

SUPERVISION AND REGULATION.

- 10. Duties of department of public utilities.
- 11. Records.
- 12. Carriers subject to jurisdiction.
- 13. Inquiry into rates, etc.
- 14. Regulation of rates, etc.
- 15. Free service, tickets, etc., prohibited, except, etc.
- 16. Hearings upon service, etc. Use of electric power.
- 17. Charges for service regulated.
- 18. Fixing of rates, charges, etc., subject to approval of department.
- 19. Schedules of rates to be filed, etc.
- 20. Hearing upon changes in schedules and action thereon.
- 21. Establishment of through routes, joint rates, etc., for passengers and freight.
- 22. Department may require signals.
- 23. Repairs, fares, etc.
- 24. Hearings and examinations as to certain common carriers on complaint of mayor, etc.
- 25. Public hearings. Notice to members of general court.
- 26. Valuation of properties.
- 27. Inspection and investigation.
- 28. Notice of accidents.
- 29. Investigation of accidents.
- 30. Complaint of defect.
- 31. Forms of accounts, returns, etc.
- 32. Returns, form and time for filing.
- 33. Returns of persons doing an express business.
- 34. Examination of books, etc.
- 35. Examination of condition of company on request of director, etc.
- 36. Annual audit.
- 37. Service of orders of department.
- 38. Effect of request or advice of department.

SECT.

39. Enforcement of law through attorney general.

40. Enforcement of orders by court.

41. Representation of department at hearings.

42. [Repealed.]

43. Annual report.

44. Penalty for improperly divulging information obtained by examination or audit.

COMMON CARRIERS OF PASSENGERS BY MOTOR VEHICLE.

45. [Repealed.]

46. [Repealed.]

47. [Repealed.]

48. [Repealed.]

48A. [Repealed.]

48B. [Repealed.]

49. [Repealed.]

49A. [Repealed.]

ISSUE OF STOCK OR BONDS OF RAILROADS AND STREET RAILWAYS.

50. Price at which railroad, etc., corporations shall offer new stock to their stockholders, etc.

51. Stock may be sold at auction in certain cases.

52. Determination by department as to amount of stock.

53. Computing amount of capital stock as basis for issue of bonds.

TRANSFER OF FRANCHISE OR PROPERTY OF RAILROADS AND STREET RAILWAYS.

54. Transfers to be approved.

55. Conditional sale of rolling stock.

56. Recording. Fees.

CROSSINGS AT GRADE BETWEEN RAILROADS AND STREET RAILWAYS.

57. Grade crossings regulated.

58. Supervision by department of crossings.

ALTERATION OF CROSSINGS.

59. Alteration of crossings.

60. Land may be taken and damages assessed.

61. Award to be made by a commission.

62. Commission; appointment, award.

<p>SECT.</p> <p>63. Revision by jury.</p> <p>64. Recovery after alteration of proportion of expense.</p> <p style="text-align: center;">ABOLITION OF GRADE CROSSINGS.</p> <p>65. Abolition of grade crossings regulated.</p> <p>66. [Repealed.]</p> <p>67. [Repealed.]</p> <p>68. [Repealed.]</p> <p>69. [Repealed.]</p> <p>70. Manner and limits of grade crossing abolitions, how determined. Cost, how apportioned, etc.</p> <p>71. [Repealed.]</p> <p>72. State highways.</p> <p>73. Assessment upon or contribution of street railway company deemed part of value of its property.</p> <p>74. Change of locations. Removal and relocation of tracks, etc. "State highway" defined.</p> <p>75. Damages.</p> <p>76. Settlement of claim barred by limitation.</p> <p>77. Maintenance of crossing and approaches.</p> <p>78. Audit of expenses. Investigations. Orders for payments.</p> <p>79. Enforcement of law.</p> <p>80. Proceedings upon agreement as to alterations.</p> <p>81. [Repealed.]</p> <p>82. Certain provisions not to apply.</p> <p style="text-align: center;">RAILROAD AND STREET RAILWAY BRIDGES.</p> <p>83. Examination of railroad and street railway bridges.</p> <p>84. Maintenance and repair.</p> <p>85. Enforcement.</p>	<p>SECT.</p> <p>RAILROAD, STREET RAILWAY AND STEAM-BOAT RELIEF CORPORATIONS.</p> <p>86. Railroad, etc., relief corporations.</p> <p>87. By-laws, returns.</p> <p>88. Railroad, etc., company may associate with employees.</p> <p style="text-align: center;">RAILROAD, STREET RAILWAY AND STEAM-BOAT POLICE.</p> <p>89. Railroad, etc., police.</p> <p>90. Copy of appointment to be filed.</p> <p>91. Term of office.</p> <p>92. Badges.</p> <p>93. Powers of police.</p> <p>94. Arrest. Duties of police.</p> <p>95. Compensation. Liability.</p> <p style="text-align: center;">ACTIONS AGAINST RAILROADS AND STREET RAILWAYS FOR LABOR AND MATERIALS.</p> <p>96. Action against owner of railroad or railway for labor and materials.</p> <p>97. Contractor not to have such action.</p> <p>98. Notice of intention to be filed.</p> <p>99. Statement of amount of debt to be filed.</p> <p>100. Limitation of actions.</p> <p style="text-align: center;">OFFENCES RELATING TO RAILROADS AND STREET RAILWAYS.</p> <p>101. Evasion of payment of fare.</p> <p>102. Torpedo to be marked.</p> <p>103. Injury to signals.</p> <p>104. Throwing missiles, etc.</p> <p style="text-align: center;">GENERAL JURISDICTION AND POWERS OF THE DEPARTMENT.</p> <p>105. General jurisdiction, powers, etc., of the department not to be limited, etc.</p>
--	--

COMMON CARRIERS IN GENERAL.

Discrimination by carriers forbidden. 1869, 252, § 1. P. S. 73, § 1. R. L. 70, § 1.

SECTION 1. Every common carrier of merchandise or other property shall receive, transport and forward all property offered for such purposes by other such carriers as promptly, faithfully and impartially, at as low rates of charge, and in a manner and on terms and conditions as favorable to the carrier offering such property, as he on the same day and at the same place receives, forwards and transports, in the ordinary course of business, property of a like description offered by persons other than such carriers. Such carrier shall not discriminate against any particular person or subject him to any undue or unreasonable prejudice or disadvantage. The supreme judicial or superior court shall have jurisdiction in equity to enforce this section.

Penalty. 1869, 252, § 2. P. S. 73, § 2. R. L. 70, § 2.

SECTION 2. Every such carrier who wilfully neglects or refuses to comply with the preceding section shall forfeit not less than fifty nor more than five hundred dollars, to the person offering the property for transportation.

1 SECTION 3. No common carrier of passengers shall, by rule, regula-
 2 tion, sign or otherwise, require passengers whom it suffers to enter, or
 3 leave by, a door of its car or train, to do so at their own risk; and no
 4 such passenger shall be prevented from recovering compensation in
 5 damages for any injury by reason of any such rule, regulation, sign or
 6 requirement.

Limitation
of liability.
1911, 129.

1 SECTION 4. A corporation engaged in carrying passengers or in
 2 transporting freight for hire shall not require or receive from a person
 3 who is employed or about to be employed by it a bond or other security,
 4 either with or without surety, to indemnify such corporation against
 5 loss or damage to other persons or to property resulting from the act or
 6 neglect of such person, except a bond to account for money or other
 7 property of such corporation. A corporation or a person in its behalf
 8 who violates the provisions of this section shall be punished by a fine
 9 of not more than fifty dollars for the first offence and of not more than
 10 one hundred dollars for a subsequent offence.

Railroads, etc.,
not to require
indemnity from
employees.
1890, 282.
R. L. 106, § 15
1909, 514, § 24
251 Mass. 599.

1 SECTION 5. Every association of persons who are not inhabitants of
 2 this commonwealth which does an express business therein shall in writ-
 3 ing appoint a person, who is a citizen and a resident thereof, to be a gen-
 4 eral agent, upon whom all lawful processes against such persons may be
 5 served with like effect as if served on said persons; and said writing or
 6 power of attorney shall contain an agreement on the part of the persons
 7 making it that the service of any lawful process against it or them on
 8 said general agent shall be of the same legal force and validity as such
 9 service on said persons or any of them. The power of attorney shall be
 10 filed in the office of the state secretary, and copies certified by him shall
 11 be taken as sufficient evidence and proof thereof. Such agency shall be
 12 continued so long as such express business is done in this commonwealth,
 13 and the power of attorney shall not be revoked until a similar power is
 14 given to another person and filed as aforesaid.

General agent
for foreign
expresses.
1871, 371, § 1.
P. S. 73, § 3.
1884, 330.
R. L. 70, § 3.
180 Mass. 270.
251 Mass. 569.

1 SECTION 6. Such general agent shall give bond to the state treasurer,
 2 with one or more sureties to be approved by him, in the sum of two
 3 thousand dollars, conditioned that he will accept service of all lawful
 4 process against his principal.

Agent to
give bond.
1871, 371, § 2.
P. S. 73, § 4.
R. L. 70, § 4.

1 SECTION 7. No person shall act for more than thirty days as such
 2 general agent unless the two preceding sections have been complied
 3 with; and whoever so acts without such compliance shall forfeit not
 4 more than five hundred dollars.

Penalty on
agent of
delinquent
company.
1871, 371, § 3.

P. S. 73, § 5.

R. L. 70, § 5.

1 SECTION 8. Whoever, with intent to defraud or injure in his business
 2 a person licensed by any town as a carrier of goods for hire, takes from
 3 the order box of such carrier or effaces or destroys any order to or direc-
 4 tion for such carrier to call for and receive goods to be transported by
 5 such carrier, or appropriates any such order or direction or makes use of
 6 the information derived therefrom for the purpose of executing the same,
 7 or for the purpose of transporting any goods or receiving the hire there-
 8 for, shall be punished by a fine of not more than twenty-five dollars.

Protection of
business of
carriers.
1895, 481.
R. L. 70, § 7.

Provisions applicable. 1869, 408, § 4. R. L. 70, § 8. 201 Mass. 564.

SECTION 9. Sections one hundred and ninety-three, two hundred and six and two hundred and thirty-three of chapter one hundred and sixty shall apply to steamboat lines within the commonwealth and to persons who are engaged or who desire to engage in the express business thereon.

SUPERVISION AND REGULATION.

Duties of department of public utilities.

SECTION 10. The department of public utilities, in this chapter called the department, shall enforce this chapter. 1919, 350, § 117.

Records. 1869, 408, § 7. 1874, 372, § 6.

SECTION 11. Every vote, recommendation and order of the department relative to common carriers shall be entered of record.

P. S. 112, § 9. 1906, 463, I, §§ 1, 68, 1913, 784, § 7. R. L. 111, §§ 8. III, § 158. 205 Mass. 94. 1902, 132, § 1.

Carriers subject to jurisdiction. 1869, 408, §§ 2, 5. 1874, 372, § 7. P. S. 112, § 14. R. L. 111, § 12. 1903, 173. 1904, 265. 1906, 266, 433, § 1; 463, I, §§ 6, 7, 68, III, § 158. 1913, 784, §§ 2, 3. 1916, 266, § 6. 1918, 54, 226, § 2. 1919, 350, § 117; 371, §§ 1, 3, 7. 1931, 498, § 5. 201 Mass. 564. 224 Mass. 365. 247 U. S. 105.

SECTION 12. The department shall, so far as may be necessary for the purpose of carrying out the provisions of law relative thereto, have general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the commonwealth, and all persons, firms, corporations, associations and joint stock associations or companies furnishing or rendering any such service or services, in sections ten to forty-four, inclusive, collectively called common carriers and severally called a common carrier:

(a) The transportation or carriage of persons or property, or both, between points within the commonwealth by railroads, street railways, in this chapter called railways, electric railroads, trackless trolleys and steamships, including express service and car service carried on upon or rendered in connection with such railroads, railways, electric railroads, trackless trolleys or steamships.

(b) The carriage of passengers for hire upon motor vehicles as provided in chapter one hundred and fifty-nine A, in section seventy A of chapter one hundred and sixty and in section forty-four of chapter one hundred and sixty-one, but only to the extent therein provided.

(c) The operation of all conveniences, appliances, facilities or equipment utilized in connection with, or appertaining to, such transportation or carriage of persons or property or such express service or car service, by whomsoever owned or provided, whether the service be common carriage or merely in facilitation of common carriage.

202 Mass. 137.

(d) The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith.

Inquiry into rates, etc. 1869, 408, §§ 2, 5. 1874, 372, § 7. P. S. 112, § 14. R. L. 111, § 12.

SECTION 13. The department may inquire into the rates, charges, regulations, practices, equipment and services of common carriers in this commonwealth, and elsewhere, rendering any service of a kind subject to its jurisdiction.

1903, 173. 1911, 755, §§ 1, 2. 224 Mass. 365. 1904, 265. 1913, 784, § 10. 247 U. S. 105. 1906, 463, I, §§ 6, 7, 68.

Regulation of rates, etc. R. S. 39, § 83. G. S. 63, § 112.

SECTION 14. Whenever the department shall be of opinion, after a hearing had upon its own motion or upon complaint, that any of the rates,

3 fares or charges of any common carrier for any services to be performed
 4 within the commonwealth, or the regulations or practices of such common
 5 carrier affecting such rates, are unjust, unreasonable, unjustly discrim-
 6 inatory, unduly preferential, in any wise in violation of any provision
 7 of law, or insufficient to yield reasonable compensation for the service
 8 rendered, the department shall determine the just and reasonable rates,
 9 fares and charges to be charged for the service to be performed, and
 10 shall fix the same by order to be served upon every common carrier by
 11 whom such rates, fares and charges or any of them are thereafter to be
 12 observed. Every such common carrier shall obey every requirement of
 13 every such order served upon it, and do everything necessary or proper
 14 in order to secure absolute compliance with every such order by all its
 15 officers, agents and employees. If, upon investigation, the department
 16 finds that in any case it is consistent with the public interests to author-
 17 ize a common carrier to make its charge for transportation less for a
 18 longer than for a shorter distance, the department may grant such author-
 19 ity and may from time to time modify or revoke the same.

20 If complaint is made to the department concerning any rate, fare or
 21 charge demanded and collected by any railroad corporation for any serv-
 22 ice performed and the department finds after hearing and investigation
 23 that an unjustly discriminatory rate, fare or charge has been collected
 24 for any service, the department may order the railroad corporation
 25 which has collected the same to make due reparation to the person who
 26 has paid the same, with interest from the date of the payment of such
 27 unjustly discriminatory amount; but such order of reparation shall cover
 28 only payments made within two years before the date of filing the petition
 29 seeking to have reparation ordered. Such order may be made without
 30 formal hearing whenever the railroad corporation affected shall assent
 31 in writing thereto, or file or join in a petition therefor, but in no case
 32 shall any such order be made until the department shall be satisfied by
 33 such investigation as may be necessary that the rate, fare or charge
 34 collected was in fact unjustly discriminatory.

1870, 325, § 1.
 1874, 372,
 § 179.
 P. S. 112, § 180.
 R. L. 111,
 § 225.
 1906, 463, 11,
 §§ 181, 258.
 1908, 599, § 1.
 1911, 755, § 1.
 1913, 781, § 22.
 1916, 92,
 210 Mass. 159,
 221 Mass. 463,
 227 Mass. 197,
 232 Mass. 309,
 264 Mass. 427.
 247 U. S. 105.
 Op. A. G.
 (1920) 229.

1 SECTION 15. Except as provided by section two hundred of chapter
 2 one hundred and sixty, no common carrier shall, directly or indirectly,
 3 issue or give any free service, free tickets, free pass or free transportation
 4 for passengers or property between points within the commonwealth;
 5 but this section shall not prohibit any railroad corporation or railway
 6 company from giving free or reduced rate service to policemen, letter
 7 carriers and firemen while in uniform or engaged in the discharge of their
 8 duties, or prohibit any common carrier from giving free or reduced rate
 9 service to its employees, or in cases of public emergency, or for such
 10 charitable purposes as may be approved by the department, nor prohibit
 11 any telephone or telegraph company, unless the department shall other-
 12 wise order, from giving service at reduced rates to the commonwealth
 13 or to any city or town; nor shall this section prohibit the commissioners
 14 of the department, its experts, inspectors and counsel from being trans-
 15 ported over the railroads and the railways of the commonwealth free of
 16 charge while engaged in the performance of their duties; nor shall this
 17 section prohibit the giving by any such common carrier of free or reduced
 18 rate service to the classes defined and provided for in the act of con-
 19 gress entitled "An act to regulate commerce" and acts amendatory
 20 thereof.

Free service,
 tickets, etc.,
 prohibited,
 except, etc.,
 1908, 599, § 1.
 1913, 781, § 18.
 1914, 679.
 34 U. S. Sts.
 at L. 584.
 227 Mass. 493.

Hearings upon
service, etc.
Use of electric
power.
1869, 408,
§§ 2, 5.
1874, 372, § 7.
P. S. 112, § 14.
R. L. 111, § 12.
1906, 267;
463, I, § 68.
1911, 755, § 2.
1913, 784, § 23.
1916, 244.
262 Mass. 137.

SECTION 16. If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees.

Charges for
service
regulated.
1913, 784, § 17.
224 Mass. 463.

SECTION 17. All charges made, demanded or received by any common carrier for any service rendered or performed, or to be rendered or performed by it or in connection therewith in the conduct of its common carrier business, or made, demanded or received by any two or more common carriers joining in rendering or performing any service shall be just and reasonable, and every such common carrier and any two or more such common carriers joining in rendering or performing any service shall be entitled to make, demand and receive just and reasonable charges for any such service, and every unjust or unreasonable charge is hereby prohibited and declared unlawful; but charges heretofore established and set out in any schedule filed as provided in section nineteen shall be deemed prima facie lawful until changed or modified by the department under the powers conferred upon it by this chapter, but this provision shall not give to such rates any greater weight as evidence of the reasonableness of other rates than they would otherwise have.

Fixing of
rates, charges,
etc., subject
to approval
of department.
1913, 784, § 19.
224 Mass. 463.
252 Mass. 309.

SECTION 18. Subject to the powers of the department to regulate and prescribe rates and charges, a common carrier may make commodity, transit or other classes of rates. The furnishing by any common carrier of any service at the rates and upon the terms and conditions provided for in any existing contract executed prior to July first, nineteen hundred and thirteen, shall not constitute a discrimination unless the department so determines. The department shall not be prevented from taking such action as it deems proper by any commitment or

9 agreement of a common carrier entered into by reason of any require-
 10 ment or recommendation of any board or public officers acting under
 11 delegated authority from the general court prior to July first, nineteen
 12 hundred and thirteen. Unless the department determines otherwise,
 13 common carriers shall be permitted, whether required to do so by law
 14 or not, to issue mileage, workingmen's, excursion, school or commuta-
 15 tion passenger tickets, or reduced rate tickets for the transportation of
 16 children under twelve years of age or of pupils attending school, or
 17 joint interchangeable mileage tickets, with special privileges as to the
 18 amount of free baggage which may be carried under mileage tickets of
 19 five hundred miles or more. All season tickets, before issuance, shall
 20 be subject to the approval of the department as to the form thereof
 21 and the conditions named therein.

1 SECTION 19. Every common carrier shall file with the department
 2 and shall plainly print and keep open to public inspection schedules
 3 showing all rates, joint rates, fares, telephone rentals, tolls, classifica-
 4 tions and charges for any service, of every kind rendered or furnished,
 5 or to be rendered or furnished, by it within the commonwealth, and all
 6 conditions and limitations, rules and regulations and forms of con-
 7 tracts or agreements in any manner affecting the same, in such places,
 8 within such time, and in such form and with such detail as the depart-
 9 ment may order. In the case of common carriers subject to the inter-
 10 state commerce commission the forms prescribed for such schedules
 11 and the requirements relative to the filing and publication thereof shall
 12 conform, as nearly as may be, to the forms prescribed by and the similar
 13 requirements of the said commission. No common carrier shall, except
 14 as otherwise provided in this chapter, charge, demand, exact, receive or
 15 collect a different rate, joint rate, fare, telephone rental, toll or charge
 16 for any service rendered or furnished by it, or to be rendered or fur-
 17 nished, from that applicable to such service as specified in its schedule
 18 filed with the department and in effect at the time. Nor shall any
 19 common carrier refund, or remit directly or indirectly, any rate, joint
 20 rate, fare, telephone rental, toll or charge so specified, or any part
 21 thereof, nor extend to any person or corporation any rule, regulation,
 22 privilege or facility except such as are specified in the said schedule and
 23 regularly and uniformly extended to all persons and corporations under
 24 like circumstances for the like, or substantially similar, service. Unless
 25 the department otherwise orders, no change shall be made in any rate,
 26 joint rate, fare, telephone rental, toll, classification or charge, or in any
 27 rule or regulation or form of contract or agreement in any manner af-
 28 fecting the same as shown upon the schedules filed in accordance with
 29 this chapter, except after thirty days from the date of filing a statement
 30 with the department setting forth the changes proposed to be made in
 31 the schedule then in force and the time when such changes shall take
 32 effect, and such notice to the public as the department orders, to be
 33 given prior to the time fixed in such statement to the department for
 34 the changes to take effect. The department for good cause shown may
 35 allow changes before the expiration of said thirty days, under such
 36 conditions as it may prescribe, and may suspend the taking effect of
 37 changes under the circumstances and in the manner provided in the
 38 following section. At the time when any changes take effect they shall
 39 be plainly indicated upon existing schedules, or new schedules shall be
 40 printed and filed as the department may order. This section shall not

Schedules of
 rates to be
 filed, etc.
 1913, 784, § 20.
 227 Mass. 493.
 228 Mass. 575.
 Op. A. G.
 (1919) 14

prevent any telegraph or telephone corporation from continuing to 41
 furnish the use of its lines, equipment or service under any contracts in 42
 force on July first, nineteen hundred and thirteen, or upon the taking 43
 effect of any schedules of rates filed with the department as provided 44
 in this chapter, at the rates fixed in such contract; provided, that when 45
 any such contracts are or become terminable by notice, the department 46
 may direct by order that such contracts shall be terminated by the 47
 telegraph or telephone corporation which is a party thereto, and there- 48
 upon such contracts shall be terminated by such telegraph or telephone 49
 corporation as and when directed by such order. 50

Hearing upon
 changes in
 schedules and
 action thereon.
 1913, 784, § 21.
 1916, 24
 224 Mass. 463.
 228 Mass. 575.
 232 Mass. 309.

SECTION 20. Whenever the department receives notice of any changes 1
 proposed to be made in any schedule filed under this chapter, it may, 2
 either upon complaint or upon its own motion, and after notice, hold a 3
 public hearing and make investigation as to the propriety of such pro- 4
 posed changes. Pending any such investigation and the decision thereon, 5
 the department may, by order served upon the common carrier affected, 6
 suspend the taking effect of such changes, but not for a longer period 7
 than ten months beyond the time when the same would otherwise take 8
 effect. After such hearing and investigation, the department may make, 9
 in reference to any new rate, joint rate, fare, telephone rental, toll, classi- 10
 fication, charge, rule, regulation or form of contract or agreement pro- 11
 posed, such order as would be proper in a proceeding under section four- 12
 teen. At any such hearing involving any proposed increase in any rate, 13
 joint rate, fare, telephone rental, toll or charge, the burden of proof to 14
 show that such increase is necessary to obtain a reasonable compensation 15
 for the service rendered shall be upon the common carrier. If, at a hear- 16
 ing involving any proposed decrease in any rate, joint rate, fare, telephone 17
 rental, toll or charge demanded by any common carrier, it shall appear 18
 to the department that the said rate, joint rate, fare, telephone rental, 19
 toll or charge is insufficient to yield reasonable compensation for the 20
 service rendered, the department may determine what will be a just and 21
 reasonable minimum to be charged, and make an order that the common 22
 carrier shall not thereafter demand or collect less than the minimum so 23
 prescribed without first obtaining the consent of the department, after 24
 a public hearing. 25

Establishment
 of through
 routes, joint
 rates, etc., for
 passengers
 and freight
 1845, 191,
 §§ 1-4
 1857, 291,
 §§ 1-3
 1858, 10,
 G. S. 63,
 §§ 117-119
 1869, 408, § 5
 1872, 53, § 12,
 180, §§ 3, 4
 1874, 372,
 §§ 165-167
 1876, 182
 P. S. 112,
 §§ 216-218.
 R. L. 111,
 §§ 272-274
 1906, 463, 11,
 §§ 205-207,
 258
 1913, 781, § 25
 1916, 137
 9 Cash. 369
 12 Gray, 180,
 303.

SECTION 21. Wherever there is no satisfactory through route for the 1
 transportation of passengers or freight at a reasonable rate, the depart- 2
 ment may order, after notice and a public hearing had upon complaint, 3
 any two or more railroad or railway companies whose lines, owned, op- 4
 erated, leased, or controlled by stock ownership, or otherwise, form a 5
 continuous or connecting line of transportation, or could be made to do 6
 so by the construction and maintenance of switch connection or inter- 7
 change track at connecting points, or by transfer of property or passengers 8
 at connecting points, to establish through routes and joint rates, fares 9
 and charges for the transportation of passengers and property, and for 10
 the operation of the cars and other equipment for such transportation, 11
 within the commonwealth, as the department may by order designate; 12
 and, if the board of aldermen or selectmen act adversely upon, or fail to 13
 act within sixty days from the date of, the filing of a petition, brought 14
 by a railway company under section seventy of chapter one hundred 15
 and sixty-one for a location of tracks in their city or town upon which 16
 the petitioning company may construct the switch connection or inter- 17

18 change track necessary to the establishment of such through routes or
 19 transportation, or to the operation of such cars or other equipment,
 20 the petitioner or any interested party may, within sixty days thereafter,
 21 file such petition with the department which may, if after notice and a
 22 public hearing it is of the opinion that public convenience and necessity
 23 so require, grant locations upon which the grantee company may con-
 24 struct the switch connection or interchange track necessary to the es-
 25 tablishment of such through routes or transportation, or to the operation
 26 of such cars or other equipment; and, if such railroad or railway com-
 27 panies cannot agree as to the division of rates or the conditions under
 28 which such through routes or transportation shall be established or such
 29 cars or other equipment operated, the department may, after due hear-
 30 ing, determine and prescribe the proportionate parts of such through
 31 rates payable to each of such companies, and the conditions under which
 32 such through routes or transportation shall be established or such cars or
 33 other equipment operated; provided, that a railroad or railway company
 34 shall have control of and responsibility for the management and opera-
 35 tion of all trains or cars while upon its railroad or railway as fully as
 36 if it owned them; and provided, further, that in case of a petition for
 37 the establishment of such through routes and transportation by railway
 38 companies, or for locations for the construction of the switch connection
 39 or interchange track necessary to the establishment of such through
 40 routes and transportation by railway companies, the department shall
 41 give fourteen days' notice of any public hearing held by it under the
 42 foregoing provisions of this section, to the petitioners, to the companies
 43 affected and to the board of aldermen of the city or the selectmen of the
 44 town where the lines of said companies connect or within which a con-
 45 nection between the lines of said companies is proposed to be made. The
 46 department may, upon reasonable terms and conditions, require and
 47 order any railroad or railway company which carries freight in carload
 48 lots to establish and maintain for the purpose of receiving or delivering
 49 freight in carload lots, a switch connection with any private side track
 50 constructed on land adjoining the location of any such railroad or rail-
 51 way, if the department is of opinion that such connection is reasonable
 52 and practicable, can be put in and used with safety, and will furnish
 53 sufficient business to justify its construction and maintenance, and the
 54 department may grant to any railway company the necessary locations in
 55 public ways and places for any switch connection ordered by the depart-
 56 ment to be constructed by such railway company.

14 Gray, 253,
 266.
 14 Allen, 462.
 239 Mass. 235.

1 SECTION 22. The department may from time to time require rail-
 2 road and railway corporations to install and maintain at such places
 3 upon the railroad or railway premises as it shall designate such block or
 4 other signals or devices as it shall approve for the purpose of safeguard-
 5 ing public travel.

Department
 may require
 signals
 1906, 267, § 1;
 463, I, § 6.
 1 Op. A. G. 638.

1 SECTION 23. If the department is of opinion that repairs are nec-
 2 essary upon any railroad or railway, or that an addition to its rolling
 3 stock, or an addition to or change or relocation of its stations or station
 4 houses or waiting rooms, or a change in its rates of fares for transporting
 5 freight or passengers, or in the mode of operating the railroad or railway
 6 and conducting its business, is reasonable and expedient to promote the
 7 security, convenience and accommodation of the public, it shall in writ-

Repairs,
 fares, etc.
 1869, 408, § 3.
 1874, 372, § 9.
 P. S. 112, § 16.
 R. L. 111, § 15.
 1904, 357, § 1.
 1906, 463, I,
 §§ 9, 68.
 1909, 343.

ing inform the corporation or company of the improvement and changes 8
which it recommends. 9

Hearings and
examinations
as to certain
common car-
riers on com-
plaint of
mayor, etc.
1869, 408, § 4
1874, 372, § 10.
P. S. 112, § 17.
R. L. 111, § 16
1904, 357, § 2.
1906, 433, § 5;
463, 1, §§ 10,
68.

SECTION 24. Upon written complaint, relative to the service or 1
charges for service in, to or from any city or town as rendered or made 2
by any company engaged therein in the transmission of intelligence by 3
electricity, by the mayor or selectmen, or by twenty customers of the 4
company, the department shall grant a public hearing, first giving to 5
complainants and the company reasonable written notice of the time 6
and place thereof. On written complaint of the mayor, selectmen or 7
twenty legal voters of a city or town within which any railroad or rail- 8
way is located, alleging grounds of complaint, the department shall 9
examine the condition and operation of such railroad or railway, first 10
giving to the complainants and the corporation or company reasonable 11
written notice of the time and place thereof. 12

Public hearings.
Notice to
members of
general court.
1919, 149.

SECTION 25. The department shall give seasonable notice by mail 1
to any member of the general court of any hearing before the depart- 2
ment concerning common carriers upon a matter affecting the interests 3
of the district represented by him. 4

Valuation of
properties.
1913, 784, § 14

SECTION 26. The department may investigate and determine the 1
fair value for any purpose of all the property of any common carrier 2
rendering a public service subject to the supervision of the department, 3
actually used or useful for the convenience of the public, whenever it 4
deems the ascertainment of such value necessary to carry into effect any 5
provision of this chapter, and may at any time make a revaluation 6
of such property. In making any valuation under this section, the 7
department shall have access to and may use any books, documents or 8
records in the possession of any department or board of the common- 9
wealth or any political subdivision thereof. 10

Inspection and
investigation
1869, 408, § 7.
1874, 372, § 17.
P. S. 112, § 10.
1894, 535,
§§ 3, 4.
1897, 376, § 1.
R. L. 111,
§§ 9, 223.
1902, 402.
1906, 463, 1,
§§ 2, 56, 68.
1908, 599, § 3.
1910, 401
1913, 784, § 13.

SECTION 27. The department may, either through its members or 1
responsible agents, engineers, inspectors or examiners duly authorized 2
by it, enter upon any premises occupied by any common carrier for any 3
purpose consistent with this chapter. It may inspect the property, 4
equipment, buildings, plants, factories, power houses, ducts, conduits 5
and offices of any common carrier. It may, in connection with such 6
inspection, have performed for it such service of the kind rendered by 7
the common carrier as it may reasonably require, including passage 8
upon any locomotive, car or steamship while in service, and upon rea- 9
sonable notice, the use of an inspection locomotive or car whenever 10
that is necessary, in the opinion of the department, for a physical inspec- 11
tion of all or any of the lines and stations of any railroad or railway 12
under its supervision. 13

Notice of
accidents.
1849, 172, § 2.
G. S. 63, § 100.
1869, 408, § 14.
1873, 98, § 2.
1874, 372,
§ 159.
1878, 7.
P. S. 112, § 208
R. L. 111, § 263.
1903, 297.
1906, 463, 1,
§§ 62, 68.

SECTION 28. Every railroad corporation and railway company shall 1
give immediate notice of an accident on its railroad or railway, resulting 2
in a loss of life, to the medical examiner of the county who resides near- 3
est to the place of accident, and shall also, within twenty-four hours, 4
give notice to the department of any such accident or of any accident 5
of the description of accidents of which it may require notice to be 6
given. For each omission to give such notice, the corporation or com- 7
pany shall forfeit not more than one hundred dollars. 8

1 SECTION 29. An inspector shall, under the direction of the depart-
 2 ment, investigate as promptly as may be any accident upon a railroad
 3 or railway, or resulting from the operation thereof, which causes the
 4 death or imperils the life of any person, and shall report thereon to
 5 the department, which shall investigate the cause of any such accident
 6 resulting in loss of life, and may investigate any other accident. The
 7 inspector shall attend the inquest held in case of any such death by
 8 accident and may cause any person who has knowledge of the facts or
 9 circumstances connected with such death to be summoned as a witness
 10 to testify at the inquest.

Investigation
of accidents
1899, 408, § 11
1873, 98, § 1
1874, 372, § 11
P. S. 112, § 18
1894, 335, § 5
1897, 376, § 2
R. L. 111,
§§ 17, 224
1906, 463, I,
§§ 11, 57, 63

1 SECTION 30. An employee may make written complaint to the
 2 department of a defect in the ways, works, machinery or appliances
 3 of a railroad or railway, and the name of the complainant shall not be
 4 divulged.

Complaint
of defect
1894, 335, § 6.
1897, 376, § 3
R. L. 111, § 15

1906, 463, I, §§ 12, 68.

1 SECTION 31. The department may, from time to time, prescribe
 2 forms of accounts, records and memoranda for the common carriers
 3 under its supervision, or for such classes of common carriers as it shall
 4 establish. The forms shall conform as nearly as may be to those estab-
 5 lished by the interstate commerce commission. The accounts of such
 6 common carriers shall be kept in accordance with the forms prescribed.
 7 It shall have access to the list of stockholders of any railroad corpora-
 8 tion or railway company and may cause the said list or any part thereof
 9 to be copied for its information or for the information of said stock-
 10 holders. Any railroad corporation or railway company which refuses to
 11 submit its books to the examination of the department or unreasonably
 12 neglects to keep its accounts in the method prescribed by the depart-
 13 ment shall forfeit not more than five thousand dollars.

Forms of
accounts,
returns, etc
1857, 240, § 4
G. S. 63, § 145
1864, 229, § 42.
1870, 307,
§§ 3, 4
1871, 381, § 54.
1874, 372, § 15.
1876, 173;
185, §§ 5, 6.
P. S. 112,
§§ 23, 24, 26;
113, § 59.
1889, 328, § 2
R. L. 111,
§§ 23, 24, 26;
112, § 94.
1906, 433, § 11;
463, I, §§ 17, 18,
20, 68, 111,
§ 152.

1913, 784, § 12.

1917, 122, §§ 3, 4.

1 SECTION 32. The department shall prescribe the forms for the annual
 2 returns to be made to it by the several kinds of common carriers, may
 3 from time to time make changes and additions in such form, and shall
 4 give to such carriers one year's notice of any changes or additions requir-
 5 ing an alteration in the method or form of keeping their accounts. The
 6 annual returns required by law to be made to the department shall be
 7 returns for the year ending on December thirty-first, and shall be trans-
 8 mitted thereto, upon blank forms to be furnished by the department, on
 9 or before March thirty-first following, or such subsequent date as in any
 10 case, for good cause shown, the department may fix. If a return is de-
 11 fective or appears erroneous, the department shall forthwith order the
 12 common carrier to amend it within fifteen days. The original of each
 13 return or amended return, subscribed and sworn to as required by law,
 14 shall be preserved in the office of the department.

Returns, form
and time for
filing.
1857, 240, § 4
G. S. 63, § 145.
1864, 229, § 42.
1870, 307,
§§ 3, 4
1871, 381, § 54.
1874, 372, § 15.
1876, 173.
P. S. 112, § 26;
113, § 59.
1889, 328, § 2
R. L. 111, § 26.
112, § 94.
1906, 463, I,
§ 20, 11, § 258,
111, §§ 152,
158
1909, 502, § 1.
1910, 558, § 1.
1917, 122,
§§ 1, 4, 5.

1 SECTION 33. Every person doing an express business upon either a
 2 railroad or railway in the commonwealth shall annually transmit to the
 3 department a return on oath of his doings setting forth copies of all
 4 contracts made during the year with other persons doing a transporta-
 5 tion or express business upon any railroad or railway in the common-
 6 wealth, and shall give complete information in reply to the questions
 7 presented in the form for such return which shall be prescribed by the

Returns of
persons doing
an express
business
1908, 599,
§§ 1, 2.
1917, 122, § 1.
291 Mass. 591.

department. A person neglecting to make such return or, if defective 8
or erroneous, to amend it within fifteen days after a request so to do 9
shall forfeit twenty-five dollars for each day during which such neglect 10
continues. 11

Examination of books, etc. 1869, 408, § 6.
1874, 372, § 12.
1876, 185, § 2.
P. S. 112, §§ 19, 21.
R. L. 111, §§ 19, 21.
1906, 433, § 10;
463, I, §§ 13, 15, 6S.

SECTION 34. The department, through its commissioners or by em- 1
ployees duly authorized, may examine all books, contracts, records, 2
documents, papers and memoranda of any common carrier, and by 3
subpœna duces tecum compel the production thereof, or of duly verified 4
copies of the same or any of them, and compel the attendance of such 5
witnesses as the department may require to give evidence at any such 6
examination. 7

1913, 784, § 11.

Examination of condition of company on request of director, etc. 1876, 185, § 4.
P. S. 112, § 22.
R. L. 111, § 22.
1906, 463, I, §§ 16, 6S.

SECTION 35. Upon the written application of a director, or of any 1
person owning one fiftieth part of the paid-in capital stock of a cor- 2
poration or company operating a railroad or railway, or who owns the 3
bonds or other evidences of indebtedness of such corporation or company 4
equal in amount to one fiftieth part of its paid-in capital stock, the 5
department shall examine the books and the financial condition of said 6
corporation or company, and shall cause the result of such examination 7
to be published in one or more daily newspapers in Boston, and in some 8
newspaper published in the county where such applicant resides. 9

Annual audit. 1913, 784, § 11.

SECTION 36. The department may provide for an annual audit by 1
employees duly authorized by it of all accounts of any common carrier 2
or class of common carriers. 3

Service of orders of department. 1913, 784, § 26.

SECTION 37. Every order of the department shall be served upon 1
every person or corporation to be affected thereby, either by personal 2
delivery of a certified copy thereof, or by mailing a certified copy thereof, 3
in a sealed package, postage prepaid, to the person to be affected thereby 4
or, in the case of a corporation, to any officer or agent thereof upon 5
whom a summons may be served under the laws of the commonwealth. 6
Every person and corporation shall notify the department forthwith, in 7
writing, of the receipt of the certified copy of every order so served, and 8
in the case of a corporation such notification shall be signed and acknow- 9
ledged by a person or officer duly authorized by the corporation to admit 10
such service. Within a time specified in the order, every person and cor- 11
poration upon whom it is served shall, if so required in the order, notify 12
the department in like manner whether the terms of the order are accepted 13
and will be obeyed. Every such order shall take effect at a time therein 14
specified and shall continue in force either for a period designated therein 15
or until changed or abrogated by the department. 16

Effect of request or advice of department. 1869, 408, § 12.
1874, 372, § 13.
P. S. 112, § 20.
R. L. 111, § 20.
1906, 463, I, §§ 14, 6S.
192 Mass. 308.

SECTION 38. No request or advice of the department shall in any 1
manner impair the legal duties and obligations of a railroad corporation 2
or railway company or its legal liability for the consequences of its acts 3
or of the neglect or mismanagement of any of its agents or servants. 4

Enforcement of law through attorney general. 1869, 408, § 3.

SECTION 39. If in the judgment of the department any common 1
carrier violates or neglects in any respect to comply with the provisions 2
of any law, and after written notice by the department continues such 3

4 violation or neglect, or neglects to make returns as required by law, or
 5 to amend the same when lawfully required so to do, the department
 6 shall forthwith present the facts to the attorney general for action.

R. L. 111, § 14,
 112, § 99

1906, 433, § 6, 463, 1,
 §§ 8, 68, 111, § 156.

197 Mass. 194.

1870, 307, § 5;
 383, § 1,
 1874, 372, § 8,
 P. S. 112, § 15;
 113, § 62.

1 SECTION 40. Whenever the department is of opinion that a common
 2 carrier subject to its supervision is failing or omitting or about to fail or
 3 omit to do anything required of it by law or by order of the department,
 4 or is doing anything or about to do anything or permitting anything or
 5 about to permit anything to be done, contrary to or in violation of the
 6 law or of any order of the department, it shall direct its counsel to begin,
 7 subject to the supervision of the attorney general, an action or proceeding
 8 in the supreme judicial court in the name of the department for the
 9 purpose of having such violations or threatened violations stopped and
 10 prevented either by mandamus or injunction.

Enforcement
 of orders by
 court
 1913, 784, § 28,
 1918, 280, § 15,
 224 Mass. 365,
 227 Mass. 197,
 232 Mass. 309,
 465,
 253 Mass. 178,
 247 U. S. 105.

1 SECTION 41. The department may be represented at any public
 2 hearing before any legislative committee or public board in the com-
 3 monwealth, or of any other state or of the United States, with respect
 4 to any proposed legislation or action by public authorities within or
 5 without the commonwealth affecting any public service within the com-
 6 monwealth subject to its supervision, whenever it deems such represen-
 7 tation desirable in the interests of the commonwealth. It may apply
 8 by petition to the interstate commerce commission for relief, and may
 9 present evidence and arguments to the said commission, in any case in
 10 which it is of opinion that a common carrier subject to its supervision is
 11 violating any provision of the interstate commerce law or any valid order
 12 or regulation made under authority thereof. The department may also
 13 confer with or appear before boards of other states having powers over
 14 any common carrier when in its judgment the interests of the common-
 15 wealth will be promoted thereby.

Representation
 of department
 at hearings.
 1913, 784, § 10.

1 SECTION 42. [REPEALED, 1922, 259, § 2.]

1 SECTION 43. The department shall make an annual report including
 2 such statements, facts and explanations as will describe the actual
 3 working of the system of carriers under its supervision in its bearing
 4 upon the business and prosperity of the commonwealth, with such
 5 tables and abstracts of all the returns required and such suggestions
 6 as to its general policy or any part thereof, or the condition, affairs or
 7 conduct of the activities under its supervision as may seem appropriate,
 8 together with a report of any proceeding had under authority of section
 9 twenty-three and the result thereof.

Annual report.
 1869, 408,
 §§ 3, 11,
 1870, 307, § 2,
 1874, 372,
 §§ 9, 14, 15,
 P. S. 112,
 §§ 13, 16, 26,
 R. L. 111, § 11,
 1906, 433, § 4,
 463, 1, §§ 9,
 68,
 1918, 189, § 1.

1 SECTION 44. Any employee or agent of the department who divulges
 2 any fact or information coming to his knowledge during the course of any
 3 examination or audit under this chapter, except in so far as he may be
 4 directed by the department, or by a court or judge, or be authorized by
 5 law, shall be punished by a fine of not more than one thousand dollars.

Penalty for
 improperly
 divulging in-
 formation
 obtained by
 examination
 or audit.
 1913, 784, § 11.

COMMON CARRIERS OF PASSENGERS BY MOTOR VEHICLE.

SECTION 45. [REPEALED, 1931, 408, § 2.] 1

SECTION 46. [REPEALED, 1931, 408, § 2.] 1

SECTION 47. [REPEALED, 1931, 408, § 2.] 1

SECTION 48. [REPEALED, 1931, 408, § 2.] 1

SECTION 48A. [INSERTED, 1925, 280, § 2; REPEALED, 1931, 408, § 2.] 1

SECTION 48B. [INSERTED, 1925, 280, § 2; REPEALED, 1931, 408, § 2.] 1

SECTION 49. [REPEALED, 1931, 408, § 2.] 1

SECTION 49A. [INSERTED, 1928, 115; REPEALED, 1931, 408, § 2.] 1

ISSUE OF STOCK OR BONDS OF RAILROADS AND STREET RAILWAYS.

Price at which
railroad, etc.,
corporations
shall offer new
stock to their
stockholders,
etc.
1870, 179
1871, 392, § 1.
1873, 39, § 1;
305.
1878, 84, § 1.
1879, 90, § 1
P. S. 106, § 39;
112, § 58.
113, § 16.
1893, 315, § 1.
1894, 472, § 1.
R. L. 109, § 30.
1906, 463, 11,
§§ 69, 258,
III, §§ 111, 158.
1908, 636, § 1.
1909, 369
1915, 298, § 1.
1919, 333,
§§ 23, 24
1920, 2.
216 Mass. 432.
3 Op. A. G. 329.

SECTION 50. Any corporation which owns or operates a railroad, 1
railway, electric railroad or elevated railway shall, upon any increase of 2
its capital stock, except as provided in the following section, offer the new 3
shares proportionately to its stockholders at such price, not less than the 4
par value thereof, as may be determined by its stockholders. The direc- 5
tors upon the approval of such increase, as provided in section forty- 6
eight of chapter one hundred and sixty and section twenty-eight of chap- 7
ter one hundred and sixty-one, shall give written notice of the increase 8
to each stockholder of record upon the books of the company at a date 9
designated by vote of the directors passed after the approval by the 10
department of such issue, stating the amount of the increase, the number 11
of shares to which, according to the proportionate number of his shares 12
at said date designated by the vote of the directors, he is entitled, the 13
price at which he is entitled to take them, and fixing a time not less than 14
fifteen days after said date designated by vote of the directors within 15
which he may subscribe for such additional stock. Each stockholder 16
may, within the time limited, subscribe for his portion of such stock, to be 17
paid for in cash before the issue of a certificate therefor. No fractions of 18
shares shall be issued, but stockholders may combine them by purchase 19
or sale of rights to subscribe. 20

Stock may be
sold at auction
in certain
cases.
1870, 179.
1871, 392, § 2.
1873, 39, § 1,
305; 333.
1874, 372, § 46.
1878, 84, § 2.
1879, 90.
P. S. 106, § 40;
112, § 59, 113,
§ 16.
1893, 315, § 2.
1894, 472,
§§ 1, 2.
R. L. 109, § 31.
1906, 463, 11,
§§ 70, 258,
III, § 112.
1908, 636, § 2.

SECTION 51. If such increase does not exceed four per cent of the 1
existing capital stock of the company, the directors, without first offer- 2
ing the same to the stockholders, may sell the shares by auction to the 3
highest bidder, at not less than the par value thereof, to be actually paid 4
in cash. They may also so sell at public auction any shares, which, after 5
the expiration of the time limited in the notice required by the preceding 6
section, remain unsubscribed for by the stockholders entitled to take 7
them. Such shares shall be offered for sale in Boston, or in such other 8
town as may be prescribed by the department; and notice of the time 9
and place of such sale shall be published at least five times during the ten 10
days immediately preceding the sale in each of at least three of such 11
daily newspapers as may be prescribed by the department. 12

1919, 333, § 24
1920, 2

113 Mass. 79
216 Mass. 132.

1 SECTION 52. The determination by the department, under the pro-
 2 visions of section forty-eight of chapter one hundred and sixty and section
 3 twenty-eight of chapter one hundred and sixty-one, as to the amount of
 4 stock which is reasonably necessary for the purpose for which such stock
 5 has been authorized shall, in the case of the corporations described in
 6 section fifty, be based upon the price at which such stock is to be
 7 issued as fixed by the stockholders; but the department shall refuse to
 8 approve any particular issue of stock if, in its opinion, the price fixed by
 9 the stockholders is so low as to be inconsistent with the public interest.

Determination
 by department
 as to amount
 of stock
 1908, 436, § 3
 216 Mass. 412

1 SECTION 53. In computing the amount of capital stock of a railroad
 2 corporation, electric railroad, railway or elevated railway company in
 3 order to determine the maximum amount of bonds, coupon notes or
 4 other evidences of indebtedness, payable at periods of more than twelve
 5 months after the date thereof, under sections forty-seven, forty-eight
 6 and sixty-four of chapter one hundred and sixty or section twenty-nine
 7 of chapter one hundred and sixty-one, and under any similar provisions
 8 of any special acts limiting the amount of such securities, which a rail-
 9 road corporation, electric railroad, railway or elevated railway company
 10 may issue, there shall be added to the par value of the capital stock all
 11 cash premiums paid into the corporation on all shares issued by such
 12 corporation or company subsequent to July ninth, eighteen hundred and
 13 ninety-four, under chapter four hundred and sixty-two of the acts of
 14 eighteen hundred and ninety-four or any similar provisions of law.

Computing
 amount of
 capital stock
 as basis for
 issue of bonds
 1908, 620

TRANSFER OF FRANCHISE OR PROPERTY OF RAILROADS AND STREET
 RAILWAYS.

1 SECTION 54. A lease or purchase and sale of the franchise and property
 2 of a railroad corporation, or railway company, and a consolidation of
 3 two or more railroad corporations, or railway companies, or a contract
 4 that either corporation or company shall perform all the transportation
 5 upon and over the road of the other, whether authorized by general laws
 6 or a special act, shall not be valid or binding until the terms thereof
 7 shall, after public notice and a hearing, have been approved by the
 8 department, and a certificate signed by it, setting forth the vote of
 9 approval, shall have been filed in the office of the state secretary. The
 10 department shall announce its decision within thirty days after the final
 11 hearing upon the application of any railroad corporation or railway
 12 company for permission to lease or sell to, consolidate with or purchase
 13 the franchise and other property of, any other railroad corporation or
 14 railway company, or to contract with any other railroad corporation
 15 or railway company that either corporation or company shall perform
 16 all the transportation upon and over the road of the other.
 17 This section may be enforced as provided in section two hundred
 18 and fifty-two of chapter one hundred and sixty.

Transfers to
 be approved.
 1894, 506, § 1.
 R. L. 111,
 § 278.
 1906, 463, I,
 §§ 67, 68,
 1907, 585,
 §§ 7, 10
 202 Mass. 277
 Op. A. G. 182
 (1917) 94.

1 SECTION 55. A contract for the sale of railroad or railway rolling
 2 stock may stipulate that the title to the property sold or contracted
 3 to be sold shall not vest in the purchaser until the purchase price is
 4 fully paid, or that the vendor shall have and retain a lien thereon for
 5 the unpaid purchase money although possession thereof may be deliv-
 6 ered immediately or at any subsequent time, and a contract for the
 7 leasing or hiring of such property may stipulate for a conditional sale

Conditional
 sale of rolling
 stock.
 1894, 326,
 §§ 1, 4
 R. L. 111, § 75.
 1906, 463, I,
 §§ 59, 68.
 187 Mass. 500.

thereof at the termination of such contract, and that the rentals or amounts to be received thereunder, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price is paid in full and until the terms of the contract are performed, notwithstanding delivery to and possession by such lessee or bailee. No such contract shall be valid, as against any subsequent attaching creditor or any subsequent bona fide purchaser for value and without notice, unless it is in writing executed by the parties and acknowledged by the vendee, lessee or bailee in the same manner as deeds are acknowledged, and recorded in the office of the state secretary; nor unless each locomotive, engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor", as the case may be. Chapter two hundred and fifty-five shall not apply to such contract.

Recording.
Fees.
1894, 326, § 2.
R. L. 111, § 76.
1906, 463, 1,
§§ 60, 68,
11, § 258.
1925, 195.

SECTION 56. A contract authorized by the preceding section shall be recorded by the state secretary in a book kept therefor; and upon payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a written declaration thereof may be made by the vendor, lessor or bailor, or his assignee on the margin of the record of the contract, attested, or it may be made by a separate instrument, acknowledged by the vendor, lessor or bailor, or his assignee, and recorded as aforesaid. The minimum fee for recording such a contract or declaration shall be five dollars, and if it contains more than twelve pages there shall be an additional fee of forty cents for each page in excess of twelve. The fee for noting such declaration on the margin of the record shall be one dollar.

CROSSINGS AT GRADE BETWEEN RAILROADS AND STREET RAILWAYS.

Grade crossings
regulated.
1864, 229, § 35.
1871, 381, § 46.
P. S. 113, § 40.
1895, 426, § 1.

SECTION 57. A railway shall not be constructed across the tracks of a railroad nor shall a railroad be constructed across the tracks of a railway at the same level therewith without the consent of the department.

R. L. 112, § 63. 1906, 463, 1, §§ 21, 68. 187 Mass. 445.

Supervision by
department of
crossings.
1892, 228.
R. L. 111, § 27.
1906, 463,
1, §§ 22, 68.

SECTION 58. In any case in which the consent or approval of the department required by law for any crossing at grade is given, it may, after notice to the parties interested and a hearing, impose conditions, limitations, restrictions and regulations relative to such crossing, its construction and use, and may change and modify them.

ALTERATION OF CROSSINGS.

Alteration of
crossings.
1842, 22.
G. S. 63,
§§ 53, 54.
1872, 262,
§§ 1, 2.
1874, 305,
§§ 1, 3;
372, § 96.
P. S. 112, § 129.
1885, 194, § 2.
R. L. 111,
§ 134.
1902, 533, § 1.
1906, 463, 1,
§§ 23, 68.

SECTION 59. If a public way and a railroad cross each other, and the board of aldermen of the city or the selectmen of the town where the crossing is situated, or the division of highways of the department of public works, if the crossing and its approaches are in direct continuation of a state highway, or the directors of the railroad corporation, or the directors of a railway company having tracks on said way, deem it necessary for the security or convenience of the public that an alteration not involving the abolition of a crossing at grade should be made in the crossing, the approaches thereto, the location of the railroad or way, or

10 in a bridge at the crossing, they shall apply to the county commissioners, 1908, 542, § 1
 11 or, if the crossing is situated, in whole or in part, in Boston, to the de- 1909, 47, § 1
 12 partment, who shall, after public notice, hear all parties interested, and, 1923, 351, § 1
 13 if they decide that such alteration is necessary, shall prescribe the manner 115 Mass. 109.
 14 and limits within which it shall be made, and shall forthwith certify their 116 Mass. 73,
 15 decision to the parties and to said department. This proceeding may 84
 16 include any case where there is need of the rebuilding of a highway 141 Mass. 208
 17 bridge or any structural change or renewal in order to strengthen or 153 Mass. 218
 18 improve it. If any railway company is authorized to lay and use tracks 154 Mass. 419
 19 upon the said way, the said company shall bear such part of the expense 164 Mass. 551.
 20 of building, rebuilding, changing, renewing, repairing or improving a 171 Mass. 135.
 21 bridge forming a part of said way, or of altering or improving the ap- 173 Mass. 12.
 22 proaches thereto, as the commission provided for in sections sixty-one 174 Mass. 379
 23 and sixty-two deem just. 175 Mass. 430
 177 Mass. 511
 198 Mass. 584
 203 Mass. 304
 220 Mass. 569
 232 Mass. 171
 236 Mass. 260
 239 Mass. 127
 242 Mass. 455
 246 Mass. 286
 266 Mass. 358

1 SECTION 60. If it is decided that the location of the railroad or of Land may be
 2 the way shall be changed, land or other property may be taken therefor taken and
 3 by eminent domain on behalf of the railroad corporation or the town, as damages
 4 the case may be, under chapter seventy-nine, and damages may be re- assessed
 5 covered therefor under said chapter. 1874, 305, § 2.
 372, § 97
 P. S. 112, § 131

1885, 194, §§ 2, 3	1906, 463, 1, §§ 24, 68	181 Mass. 491
R. L. 111, § 135	171 Mass. 135	266 Mass. 358.

1 SECTION 61. A commission of three disinterested persons, appointed Award to be
 2 as provided in the following section, shall determine which party shall made by a
 3 carry such decision into effect and which party shall pay the charges and commission
 4 expenses of making such alteration and the future charges for keeping such § 2
 5 bridge or crossing and the approaches thereto in repair, as well as the § 68
 6 costs of the application to the county commissioners, or the department, P. S. 112, § 131.
 7 and of the hearing before said commission; and it may apportion all 1885, 194, § 4
 8 such charges, expenses and costs between the railroad corporation, the 1887, 295,
 9 railway company having tracks on said way, and the counties, cities or R. L. 111,
 10 towns where said crossing is situated and other cities and towns which § 436
 11 may be specially benefited; and if the crossing and its approaches are 1902, 533, § 2
 12 in direct continuation of a state highway, the commonwealth may be 1906, 463, 1,
 13 included in such apportionment and its share shall be paid from the §§ 25, 68.
 14 annual appropriation for maintenance and repair of state highways. If 1908, 542, § 2
 15 a railway company is authorized to lay and use tracks upon any bridge 1923, 351, § 2
 16 in a highway built, repaired or altered as above provided for, or the 181 Mass. 491.
 17 approaches to which are altered or improved as above provided for, the 198 Mass. 584
 18 said commission shall determine what part of the charges and expenses 203 Mass. 304.
 19 of making such changes or improvements, or of keeping such bridge or 232 Mass. 171
 20 crossing and approaches in good condition, shall be paid by said railway 236 Mass. 260
 21 company. 242 Mass. 455,
 590
 266 Mass. 358

1 SECTION 62. Upon application of the county commissioners, the Commission;
 2 department, the division of highways of the department of public works, appointment,
 3 the board of aldermen, the selectmen or the directors of the railroad award
 4 corporation or of the railway company for the appointment of such § 2-4
 5 commission, the superior court shall cause notice thereof to be given to 1872, 262,
 6 the other parties interested fourteen days at least before the time fixed 1874, 372, § 99
 7 for the hearing; and thereupon, after hearing, shall appoint such com- 1875, 231, § 1.
 8 mission, one member of which shall be a member of and designated by 1876, 212
 9 the department. The commission shall meet as soon as may be after 1878, 175, § 1
 P. S. 112, § 132.
 1885, 194, § 5.
 R. L. 111,
 § 137.
 1902, 533, § 3.
 1906, 463, 1,
 §§ 26, 68

1923, 351, § 3.
184 Mass. 491.
203 Mass. 304.

its appointment, and, after notice to and a hearing of the parties, shall
make a written award and return it to said court. 10 11

232 Mass. 171. 242 Mass. 590. 266 Mass. 358.
236 Mass. 260. 246 Mass. 286.

Revision
by jury.
1875, 231.
§§ 2, 3.
1878, 175, § 2.
P. S. 112, § 133.
R. L. 111,
§ 138.
1906, 463, I.
§§ 27, 68.
148 Mass. 474.
156 Mass. 217.
184 Mass. 491.
236 Mass. 260.
242 Mass. 455,
590.

SECTION 63. A party aggrieved by said award may, within fourteen
days after the return thereof, apply to the court for a jury to revise and
determine any matter of fact found therein; and thereupon the court,
after notice to all parties interested, shall order a trial by jury in the
same manner as civil cases are tried by jury. The decree of the court
upon said award or upon the verdict of a jury shall be final and binding,
and said court may in equity enforce compliance therewith, and also
issue and enforce such interlocutory decrees and orders as justice may
require. 1 2 3 4 5 6 7 8 9

Recovery after
alteration of
proportion of
expense.
1872, 262, § 5.
1874, 372,
§ 101.
P. S. 112, § 134.
R. L. 111,
§ 139.
1906, 463, I.
§§ 28, 68.
6 Cush. 124.
242 Mass. 590.

SECTION 64. The party designated for that duty, having carried into
effect the decision made under section fifty-nine, may recover in con-
tract from any other party the proportion awarded to be paid by such
other party, with interest; and if the party so designated unreasonably
fails to carry the decision into effect, any other party affected by such
failure may proceed to do it, and may recover in contract from each or
all of the others the proportion awarded to be paid by them, and from
the party so failing all charges, expenses and costs occasioned thereby. 1 2 3 4 5 6 7 8

ABOLITION OF GRADE CROSSINGS.

Abolition of
grade crossings
regulated
1885, 194, § 1.
1890, 428,
§§ 1, 11.
1891, 262.
1894, 216.
1897, 264.
R. L. 111,
§ 149.
1902, 440, § 1.
1906, 463, I.
§§ 29, 68.
1930, 417, § 1.
158 Mass. 299.
161 Mass. 259.
175 Mass. 430.
183 Mass. 535.
185 Mass. 160,
219.
186 Mass. 128.
189 Mass. 439.
194 Mass. 80.
202 Mass. 585.
206 Mass. 208.
207 Mass. 58.
209 Mass. 298.
213 Mass. 567.
219 Mass. 85.
223 Mass. 408.
229 Mass. 399.
236 Mass. 98.
253 Mass. 391.
268 Mass. 93.

SECTION 65. The department of public works shall proceed to make
an investigation of crossings where a public or private way and a railroad
cross each other at grade, in sections sixty-five to eighty-two, inclusive,
referred to as grade crossings. Said department shall annually on or
before October first file with the department of public utilities lists of
grade crossings the abolition of which it suggests for early consideration.
Such lists shall state the names of the grade crossings, the names of the
corporations operating the railroads crossed and the counties, cities and
towns in which such crossings are located. The department of public
works shall receive all petitions for the abolition of grade crossings from
the aldermen of the city, the selectmen of the town, or the county com-
missioners of the county, where such a crossing exists, or the board of
directors of the railroad corporation operating the railroad crossed, and
after a hearing, due notice of which shall have been given to said rail-
road corporation, city or town and county, may in its discretion place
said crossing on one of said lists. The department of public utilities,
after due notice to the department of public works, the counties and
municipalities in which such crossings are located and the railroad cor-
porations operating the railroads crossed, shall proceed to hold public
hearings upon such lists and such additional grade crossings as the
department of public works shall have notified it to include. Upon the
completion of such hearings the department of public utilities by order
shall designate a program of grade crossings the abolition of which shall
be considered; provided, that such program order may be amended or
revised from time to time by the department of public utilities on request
of the department of public works. In establishing such program the
department of public utilities shall take into consideration the relative
security and convenience of the public likely to result from the abolition 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

29 of each particular grade crossing included therein as compared with the
 30 abolition of other grade crossings. Such program order shall state with
 31 respect to each grade crossing the name of the crossing, the name of the
 32 railroad corporation operating the railroad crossed, and the names of
 33 the counties, cities and towns in which the crossing is located. A copy
 34 of such program order and amendments and revisions thereof shall be
 35 filed in the office of the department of public utilities and of the depart-
 36 ment of public works.

1 SECTION 66. [REPEALED, 1930, 417, § 2.]

1 SECTION 67. [REPEALED, 1930, 417, § 2.]

1 SECTION 68. [REPEALED, 1930, 417, § 2.]

1 SECTION 69. [REPEALED, 1930, 417, § 2.]

1 SECTION 70. The department of public works shall proceed to con-
 2 sider the abolition of grade crossings in the order established by the
 3 program orders as adopted and amended or revised under section sixty-
 4 five, and shall hold public hearings on each such grade crossing abolition,
 5 due notice of which shall be given to such railroad corporations, counties,
 6 cities and towns as may be required by law to bear part of the cost of
 7 abolition. After hearing as aforesaid, it shall by order determine the
 8 manner and limits of the grade crossing abolition, what part, if any, of
 9 an existing public or private way shall be discontinued, and whether or
 10 not a new way shall be substituted therefor, the grade for the railroad
 11 and the way, the changes to be made in the location and grades of a
 12 street railway having a location in the part of such public way where
 13 the crossing exists or in ways connecting therewith, the general method
 14 of construction, and what land or other property it considers necessary
 15 to be taken, including, in its discretion, an easement in land adjoining
 16 the location of a public or private way, or of a railroad, consisting of a
 17 right to have the land of the location protected by having the surface
 18 of such adjoining land slope from the boundary of the location in a man-
 19 ner specified by it; provided, that so much of any such order as relates
 20 to the foregoing shall not be effective unless the consent of the depart-
 21 ment of public utilities thereto shall first be obtained, but no consent
 22 shall be given by said department to an order requiring a change in the
 23 grade of a railroad or street railway until the carrier interested, if it so
 24 requests, has been given an opportunity to be heard before said depart-
 25 ment on the sole question of such change. The department of public
 26 works shall determine in such order when the work shall be commenced,
 27 who shall do the work and how much shall be done by each. All such
 28 work not done in whole or in part by the department of public works
 29 shall be done under its general supervision. Except as otherwise provided
 30 in this section and section eighty, the railroad corporation shall pay fifty
 31 per cent of the total actual cost of the alterations aforesaid, including
 32 therein, in addition to the cost of construction, all damages on account
 33 thereof, but excluding the actual cost to a street railway company of
 34 changing its railway and location to conform to the order of abolition,
 35 which shall be borne by it. The remainder of said total cost shall be
 36 apportioned by said department of public works between the common-
 37 wealth and the city or town where the crossing is situated, and in making

Manner and
 limits of
 grade crossing
 abolitions,
 how deter-
 mined. Cost,
 how appor-
 tioned, etc.
 1890, 428, § 3.
 1891, 33, § 2.
 1894, 216.
 1897, 264.
 R. I., 411,
 § 151.
 1902, 440, § 2.
 1906, 463, 1,
 §§ 34, 68.
 1914, 722, § 1
 1930, 417, § 3.
 161 Mass. 32.
 169 Mass. 495.
 172 Mass. 5,
 179 Mass. 520
 183 Mass. 147
 185 Mass. 160.
 202 Mass. 1,
 585.
 203 Mass. 304.
 206 Mass. 208.
 213 Mass. 567.
 229 Mass. 399.
 238 Mass. 328.
 268 Mass. 93.

said apportionment said department shall take into account the benefits 38
to the city or town and shall assess upon the city or town such percentage 39
of the total cost, not more than ten per cent nor less than five per cent 40
thereof, as may in the judgment of said department be just; provided, 41
that if less than ten per cent of such total cost is assessed upon the city 42
or town, the difference between the amount so assessed and said ten per 43
cent shall be assessed upon the county in which such crossing exists; 44
and provided, further, that if in the judgment of said department it 45
shall be deemed just, the forty per cent of said total cost thereby due to 46
be apportioned to the commonwealth may be reduced by an amount 47
equal to not more than five per cent of the said total cost, which amount 48
shall be assessed upon said county and shall be in addition to any amount 49
which may be assessed upon it as hereinbefore provided. If the crossing 50
is of a railroad and a private way, and no crossing of a public way is 51
abolished in connection therewith, the total cost as aforesaid shall be 52
paid by the parties affected by the abolition in such proportion as said 53
department may establish. Said department shall equitably apportion 54
the amount assessed as herein provided to be paid by the railroad cor- 55
porations between the several railroads which are affected by the aboli- 56
tion. Said department may require the railroad corporation or corpora- 57
tions and the cities, towns and counties affected by any such grade 58
crossing abolition, or any of them, to cause to be prepared and submitted 59
to it plans, specifications and estimates of the cost of such abolition. A 60
copy of any order made under this section, after so much thereof as is 61
required hereby to be consented to by the department of public utilities 62
has been consented to as hereinbefore provided, shall be filed in the 63
office of the department of public works and of the department of public 64
utilities, and a copy thereof shall be served on the state comptroller, the 65
railroad corporation or corporations, the county and city or town af- 66
fected by such abolition. The department of public works shall include 67
in its budget estimate in each year a sum sufficient to meet the cost of 68
such portion of any abolition or abolitions of grade crossings, to be 69
undertaken during the following year, as is to be paid by the common- 70
wealth, counties and municipalities. 71

SECTION 71. [REPEALED, 1930, 417, § 2.] 1

State highways.
1910, 498.
1917, 344, 1,
§ 29, VIII, § 1.
1919, 350,
§§ 111, 113.
1930, 417, § 4.
268 Mass. 93.

SECTION 72. Whenever a grade crossing is abolished upon a state 1
highway, county way, or way which has been petitioned for as a state 2
highway, the said highway or way shall be so constructed that there 3
shall be a clear view in each direction for at least one hundred and fifty 4
feet from the center of said highway or other way where the same passes 5
over or under the railroad, except in any particular case, when compli- 6
ance with said requirement is deemed by the department of public 7
works to be unnecessary and unreasonable under all the circumstances. 8

Assessment
upon or con-
tribution of
street railway
company
deemed part
of value of
its property.
1902, 440, § 7.
1906, 463, 1,
§§ 35, 68.
1930, 417, § 5.
268 Mass. 93

SECTION 73. The amount of any expenditure under section eighty by 1
a street railway company toward the cost of abolishing a grade crossing 2
shall be deemed and taken in all proceedings thereafter as a part of the 3
value of its property for street railway purposes; and such company 4
may issue stock or bonds to such amount as the department of public 5
utilities shall, subject to the laws relating to the issue of stocks and bonds 6
by street railway companies, approve as reasonably necessary to provide 7
for the payment of such expenditure. 8

1 SECTION 74. If in an order of abolition under section seventy it is
 2 determined that the location of the railroad or of the public or private
 3 way shall be changed, such order when a copy thereof is filed with the
 4 department of public utilities shall establish the location as thus changed,
 5 and if it is necessary to take land or an easement therein to provide
 6 such new location, the department of public works shall take the same
 7 by eminent domain under chapter seventy-nine, and in such case the
 8 order of taking shall be included in said order of abolition under section
 9 seventy. Said taking shall be on behalf of the commonwealth if the
 10 land or easement is to be used for or in connection with a state high-
 11 way or on behalf of the city or town if the land or easement is to be
 12 used for or in connection with any other public way, or on behalf of
 13 the railroad corporation if the land or easement is to be used for or in
 14 connection with a private way or by the railroad corporation.
 15 If in an order of abolition under section seventy it is determined that
 16 the location of a street railway shall be changed, such order when a copy
 17 thereof is filed with the department of public utilities shall establish the
 18 location as thus changed.
 19 The department of public works may in any order entered under
 20 said section seventy, or from time to time thereafter with the approval
 21 of the department of public utilities, order the removal or relocation
 22 of any surface street railway tracks, and of any conduits, pipes, wires,
 23 poles or other property located in public ways or places which it deems
 24 to interfere with any such grade crossing abolition or the work or works
 25 required therefor, and may grant new locations for any such struc-
 26 tures so removed or relocated. Such orders, to the extent specified
 27 therein, shall be deemed a revocation of the right or license to main-
 28 tain such tracks, conduits, pipes, wires, poles or other property in such
 29 public ways or places, and the owner of any such structures shall comply
 30 with said orders without expense to the commonwealth or any party
 31 which said department of public works has determined shall do the
 32 whole or any part of the work. If any such owner shall fail to comply
 33 with the order of the department of public works within a reasonable
 34 time, to be fixed in the order, said department may discontinue and
 35 remove such tracks, conduits, pipes, wires, poles or other property or
 36 may relocate the same, and the cost of such discontinuance, removal
 37 or relocation shall be repaid by the owner, and if not repaid may be
 38 recovered by the commonwealth in an action of contract. No such
 39 discontinuance, removal or relocation shall entitle the owner of the
 40 property thus affected to any damages on account thereof. Any
 41 structures in or upon private lands may be removed and relocated by
 42 the department of public works as a part of the cost of the abolition, or
 43 if removed and relocated by the owner thereof the reasonable expense
 44 shall be paid to him by the commonwealth as a part of the cost of
 45 the abolition. If in any order hereunder or under said section seventy
 46 any location shall be changed, such order when a copy thereof is filed
 47 with the department of public utilities shall establish the location as
 48 thus changed. In this section and in sections seventy-five, seventy-
 49 seven, seventy-eight and eighty, the words "state highway" shall
 50 include any public way and part thereof in direct continuation of a
 51 state highway and not more than one hundred feet from the end thereof.

Change of
 locations.
 Removal and
 relocation of
 tracks, etc.
 "State high-
 way" defined.
 1890, 428, § 4.
 1892, 312.
 1894, 216.
 1897, 264.
 R. L. 111.
 § 152.
 1902, 440, § 3.
 1905, 408, § 2.
 1906, 463, 1.
 §§ 30, 68.
 1918, 257.
 § 204, 285.
 1919, 5.
 1920, 2.
 1930, 417, § 6.
 163 Mass. 356.
 169 Mass. 495.
 171 Mass. 228.
 200 Mass. 227.
 202 Mass. 1,
 585.
 206 Mass. 208.
 236 Mass. 379.
 268 Mass. 93.
 4 Op. A. G. 199.

1 SECTION 75. All damages sustained by any person in his property
 2 by the taking of land for or by the alterations of the grade of a public

Damages-
 1890, 428, § 5.
 1891, 123.

1894, 216.
 1897, 264
 1898, 200.
 1900, 463.
 R. L. 111,
 § 153
 1903, 478
 1905, 498, § 3.
 1906, 463, 1,
 §§ 37, 68.
 1908, 390, § 1.
 1930, 417, § 7.
 162 Mass. 170.
 164 Mass. 354.
 171 Mass. 494.
 172 Mass. 180.
 173 Mass. 432.
 175 Mass. 246.
 176 Mass. 101.
 178 Mass. 382,
 386.
 179 Mass. 520.
 180 Mass. 71.
 185 Mass. 219.
 187 Mass. 45,
 356.
 189 Mass. 439
 199 Mass. 292.
 200 Mass. 400.
 202 Mass. 1,
 585
 203 Mass. 4,
 372.
 209 Mass. 298,
 419.
 211 Mass. 526.
 213 Mass. 567
 215 Mass. 381.

way, or by an abutter thereon by the discontinuance of such public 3
 way, to the same extent as damages are recoverable by abutters on 4
 ways discontinued by towns, or by the taking of an easement in land 5
 adjoining a public way, shall primarily be paid by the city or town, or, 6
 in case such public way is a state highway, by the commonwealth; and 7
 all damages caused by the taking of land for the railroad or by the 8
 change or discontinuance of a private way, or by the taking of an ease- 9
 ment in land adjoining a private way or a railroad location shall pri- 10
 marily be paid by the railroad corporation. Any amount paid by way 11
 of damages by the commonwealth or the city or town or the railroad 12
 corporation primarily liable therefor shall be subject to investigation 13
 by the department of public works, unless such settlements are assented 14
 to in writing by all parties in the proceeding. If the parties interested 15
 cannot agree upon said damages, any party may have the damages 16
 determined under chapter seventy-nine. All expense resulting from the 17
 necessary relocating or changing of streams and watercourses forming 18
 the natural drainage channels of the territory where alterations of 19
 grades are authorized, and of sewers, drains and pipes therein owned 20
 and operated by a city or town, shall be primarily paid by said city or 21
 town, and shall be a part of the actual cost of the alterations specified 22
 in section seventy. 23

221 Mass. 169.

228 Mass. 202

268 Mass. 93.

Settlement of
 claim barred
 by limitation.
 1911, 486, § 2.
 268 Mass. 93.

SECTION 76. In any case arising under the preceding section, where 1
 any person sustaining damage to his property in the manner therein 2
 specified fails to bring a petition within the time limited by chapter 3
 seventy-nine, the attorney general may join with the other parties inter- 4
 ested in a settlement of the claim of such person; and the proportion 5
 of the amount agreed upon in settlement thereof which would be charge- 6
 able to the commonwealth under section seventy shall be paid by the 7
 commonwealth as if it were a part of the actual cost of the work re- 8
 quired to be done under said section. 9

Maintenance
 of crossing and
 approaches.
 1890, 428, § 6.
 1891, 33, § 2
 R. L. 111,
 § 154.
 1906, 463, 1,
 §§ 38, 68.
 1912, 156.
 1930, 417, § 8.
 210 Mass. 229.
 256 Mass. 293.
 268 Mass. 93.

SECTION 77. After the completion of the work, the expense of main- 1
 tenance and repair shall be paid as follows: if the public way crosses 2
 the railroad by an overhead bridge, the superstructure and subflooring 3
 of the bridge and its abutments or other supports shall be maintained 4
 and kept in repair by the railroad corporation, but the approaches of 5
 the bridge and the pavement or wearing surface over the subflooring 6
 shall be maintained and kept in repair by the city or town where situ- 7
 ated, or, in case such public way is a state highway, by the common- 8
 wealth; if the public way passes under the railroad, the bridge and its 9
 abutments or supports shall be maintained and kept in repair by the 10
 railroad corporation, and the public way and its approaches shall be 11
 maintained and kept in repair by the city or town where situated, or, in 12
 case such public way is a state highway, by the commonwealth; if several 13
 railroads cross a public way at or near a given point, the department of 14
 public works shall apportion and award in what manner and proportion 15
 each of said railroad corporations shall maintain and keep in repair the 16
 superstructure and subflooring of the bridge and its abutments or sup- 17
 ports if the public way crosses the railroad by an overhead bridge, and 18
 the bridge and its abutments or supports if the public way passes under 19
 said railroads. 20

1 SECTION 78. All accounts of expense incurred by the railroad corpo-
 2 rations or the city or town shall from time to time be submitted to the
 3 department of public works which shall audit the same, including any
 4 expense incurred by the commonwealth for or in connection with a
 5 state highway, and report thereon to the state comptroller. Said de-
 6 partment shall upon request of any of the parties to the proceeding in-
 7 vestigate the amounts presented for allowance by the commonwealth or
 8 any city or town or any railroad corporation as expended in the pay-
 9 ment of damages for land taken or affected by reason of the proposed
 10 alteration, which have been paid by the party primarily liable therefor,
 11 as provided in section seventy-five, unless it appears that all the parties
 12 to the proceeding for the abolition of the grade crossing have assented
 13 in writing to the payment or settlement so made by the party primarily
 14 liable; and if said department determines that the amount so paid is in
 15 excess of what in its opinion should have been properly paid therefor,
 16 it shall allow only such portion of the amount so paid as it may deem
 17 to be just and reasonable. In case of any dispute as to the propriety
 18 or reasonableness of the whole or a part of any account of expense, the
 19 department of public utilities, upon application of any party to the pro-
 20 ceedings, shall determine the amount thereof, if any, to be allowed, and
 21 its determination shall be final. The department of public works shall,
 22 from time to time, issue its orders for payments on the part of each rail-
 23 road corporation, not exceeding the amount apportioned to it by said
 24 department, and for the payment by the commonwealth of a sum not
 25 exceeding the amounts apportioned to it and to the county and city or
 26 town; and such county and city or town shall repay to the common-
 27 wealth the amount apportioned to it, with interest thereon at the rate
 28 of four per cent per annum in such instalments and at such times within
 29 ten years thereafter as said department, with the approval of the state
 30 comptroller, having regard to the financial condition of the county, city
 31 or town, shall determine.

Audit of
 expenses
 Investigations.
 Orders for
 payments
 1890, 428, § 7
 1893, 283
 1894, 515
 1898, 538
 R. L. 111,
 § 155
 1902, 440, § 4
 1906, 463, 1,
 §§ 39, 68
 1908, 390, § 2
 1914, 18
 1930, 417, § 9
 162 Mass. 564
 172 Mass. 117
 183 Mass. 117
 213 Mass. 507
 225 Mass. 548
 268 Mass. 93
 4 Op. A. G. 199

1 SECTION 79. The superior court shall have jurisdiction in equity to
 2 enforce compliance with sections sixty-five to eighty-two, inclusive, and
 3 with the orders and agreements made thereunder. The supreme ju-
 4 dicial court shall have jurisdiction in equity to review, modify, amend
 5 or annul any order of the department of public works or the department
 6 of public utilities made under authority of said sections, but only to the
 7 extent of the unlawfulness of such order.

Enforcement
 of law
 1890, 428, § 8
 1895, 103
 R. L. 111,
 § 156
 1906, 463, 1,
 §§ 40, 68
 1930, 417, § 19
 162 Mass. 564

253 Mass. 391

268 Mass. 93.

1 SECTION 80. If the board of aldermen of a city or the selectmen of a
 2 town where a public way and a railroad cross each other and the directors
 3 of the railroad corporation deem it necessary for the security and con-
 4 venience of the public that alterations should be made in such crossing,
 5 in the approaches thereto, in the location of the railroad or public way
 6 or in the grades thereof, or in a bridge at such crossing, or that such
 7 crossing should be discontinued with or without building a new way in
 8 substitution therefor, and they agree as to the alterations to be made,
 9 a written instrument signed, in behalf of a city, by the mayor, author-
 10 ized by the board of aldermen, or in behalf of a town, by the chairman of
 11 the selectmen, authorized by vote of the town, and by the president
 12 of the railroad corporation, authorized by its directors, specifying the

Proceedings
 upon agreement
 as to altera-
 tions
 1890, 428,
 §§ 9, 11
 R. L. 111,
 §§ 157, 159
 1902, 440, § 6
 1906, 463, 1,
 §§ 41, 43, 68
 1909, 358
 1910, 544
 1914, 722, § 2.
 1918, 257,
 § 205, 285.
 1919, 5
 1920, 2
 G. L. ed. of
 1920, 159, § 81
 1930, 417,
 §§ 2, 11.

153 Mass. 161,
268 Mass. 93.

manner and limits within which the alterations shall be made, and by which party the work shall be done, or how it shall be apportioned between the city or town and the railroad corporation, the general method of construction, the grades for the railroad and the public way, and also what land or other property it is necessary to take, and what portion, if any, of an existing public way is to be discontinued, and how the cost thereof shall be apportioned between the city or town and the railroad corporation, shall be valid and binding on the city or town and the railroad corporation, respectively, and have the same force and effect as an order of the department of public works under section seventy, if the department of public utilities, after notice to all parties interested by advertisement and a public hearing, approves of the alterations set forth in the agreement as necessary for the convenience and security of the public; provided, that the department of public works, acting on behalf of the commonwealth, may, if in its judgment it seems advisable, join in such an agreement to abolish any grade crossing, thereby engaging the commonwealth to pay to the parties entitled thereto under the agreement, such amount, not exceeding, in case of an abolition of a crossing of a railroad and a public way other than a state highway, forty per cent of the total cost of the alterations, as defined in section seventy, as said department deems just, and such an agreement in which the commonwealth so joins shall be valid and binding on the commonwealth as well as the other parties thereto, and shall have the same force and effect as an order of said department under said section seventy, after approval as aforesaid by the department of public utilities. Said agreement, when approved by the department of public utilities and filed in its office, shall establish the locations as thus altered, and if it is necessary to take land or an easement therein to provide such new locations, the department of public works, in case of the abolition of a grade crossing to the cost of which the commonwealth is to contribute, otherwise the department of public utilities, shall take the same by eminent domain on behalf of the commonwealth, of the city or town, and of the railroad corporation, respectively, under chapter seventy-nine. Except as otherwise provided in this section, so much of section seventy-four as relates to the taking of land, and so much of section seventy-five as relates to the right of any person to recover damages sustained in consequence of such taking or of the alterations made in pursuance of said order shall apply to the taking of land and to damages sustained under an agreement made pursuant to this section. The crossing and approaches shall be maintained and kept in repair as provided in section seventy-seven. If the agreement provides for the abolition of a grade crossing to the cost of which the commonwealth is to contribute, the department of public works shall keep itself informed of the progress and character of the work and of the amounts reasonably expended for work done or for damages, so far as rendered necessary for the abolition of the grade crossing; and for that purpose it may employ any necessary agents, and, from time to time, as it may consider proper, shall issue certified statements of the amount legally and properly expended for such abolition of a grade crossing. A street railway company or county or other party which would be affected by the alteration of a crossing as aforesaid may join in any agreement under this section.

1 SECTION 82. Sections fifty-nine to sixty-four, inclusive, of this chap- Certain pro-
 2 ter and sections one hundred and eight, one hundred and eleven, one visions not
 3 hundred and twelve, one hundred and thirteen and two hundred and to apply
 4 fifty-two of chapter one hundred and sixty, so far as they relate to pro- 1890, 428, § 12
 5 ceedings for the abolition of grade crossings, shall not apply to cases R. L. 111,
 6 within the provisions of the preceding seventeen sections. § 160
 1906, 463, 1,
 §§ 45, 68.
 268 Mass. 93.

RAILROAD AND STREET RAILWAY BRIDGES.

1 SECTION 83. Every railroad corporation and railway company shall, Examination
 2 upon request of the department, and at least once in two years, cause of railroad and
 3 an examination of its bridges and of the approaches thereto to be made street railway
 4 by a competent engineer, who shall report the result of his examination, bridges.
 5 his conclusions and recommendations to the corporation or company, 1887, 334,
 6 and it shall forthwith transmit a copy of the report to the department. §§ 1-3
 7 Before a railway company builds a bridge, it shall first submit the plans 1899, 286
 8 thereof to the department for approval. Upon the completion of a new R. L. 111,
 9 bridge, the railroad corporation or railway company shall forthwith cause § 169
 10 such examination and report to be made and transmitted to the depart- 1906, 463, 1,
 11 ment. The report shall furnish such information, in such detail and with §§ 58, 68
 12 such drawings or prints, as may be requested in writing by the depart-
 13 ment. The department may make further examination of the bridge
 14 structure if necessary or expedient. This section shall not exempt a
 15 corporation from making other and more frequent examination of its
 16 bridges and the approaches thereto.

1 SECTION 84. If the county commissioners of a county, the board of Maintenance
 2 aldermen of a city or the selectmen of a town where a bridge at the cross- and repair
 3 ing of a public way and a railroad, or a bridge upon which a railway 1908, 552, § 1.
 4 company is authorized to lay and use tracks, is located in whole or in 236 Mass. 260.
 5 part, or the directors of a corporation owning or operating such railroad,
 6 or the directors of a company owning or operating such railway, are
 7 of the opinion that such bridge is in need of maintenance or repair, they
 8 may apply to the department, which shall, after public notice, hear all
 9 persons interested, and, if it decides that the work of maintenance or
 10 repair is necessary, shall prescribe the manner in and the limits within
 11 which it shall be done, and shall forthwith certify its decision to the
 12 parties.

1 SECTION 85. If railroad corporations, railway companies, counties, Enforcement.
 2 cities, towns, or any of them, jointly or severally, are charged with 1908, 552, § 2.
 3 the duty of maintaining or repairing any such bridge under any provision 210 Mass. 229
 4 of law, agreement, or decree of court, and if the parties so charged with 256 Mass. 293.
 5 such duty refuse or neglect to carry into effect such decision within a
 6 reasonable time, any other such party may apply to the superior court,
 7 which may in equity enforce such decision.

RAILROAD, STREET RAILWAY AND STEAMBOAT RELIEF CORPORATIONS.

1 SECTION 86. Seven or more persons, a majority of whom are residents Railroad, etc.,
 2 of the commonwealth, being employees of any railroad, railway or relief corpora-
 3 steamboat corporation, organized under the laws of the commonwealth, tions.
 4 may form a corporation under chapter one hundred and eighty for the 1882, 244, § 1.
 5 purpose of receiving, managing and applying such property and funds 1890, 181, § 1.
 6 as it may receive by contribution, assessment or otherwise for the in- R. L. 125, § 17.
 1906, 463, 1,
 §§ 46, 68.
 168 Mass. 243.
 202 Mass. 549.

provement and benefit of its members, and for their relief and the relief of their families in case of sickness, injury, inability to labor, or other cases of need.

By-laws, returns, 1882, 244, §§ 2, 3. R. L. 125, § 18. 1906, 463, 1, §§ 47, 68.

SECTION 87. The by-laws of such corporation shall be approved by the department, and shall prescribe the manner in which, and the officers and agents by whom, the purpose of its incorporation may be carried out, and also the manner in which its property may be invested. Such corporation shall annually, and as often as may be required by the department, render to it such statements of its membership and financial transactions and such other information relative thereto as the department may consider necessary for a proper exhibit of its business and standing. The department may verify such statement by an examination of the books and papers of the corporation; and whoever, having charge or custody of such books and papers, neglects to comply with this section shall be punished by a fine of not more than five hundred dollars.

Railroad, etc., company may associate with employees. 1886, 125. 1890, 181, § 2. R. L. 125, § 19. 1906, 463, 1, §§ 48, 68.

SECTION 88. A railroad corporation operating a railroad or portion thereof in the commonwealth, or a railway company, may, by vote of its directors, associate itself with seven or more of its employees in forming a corporation under section eighty-six, or may, upon the invitation of any such corporation, become a member thereof, and may from time to time aid such corporation by contributions to its funds or otherwise. The by-laws of such corporation shall provide for the manner in which the railroad corporation or railway company shall vote and be represented in said corporation. The funds of such corporation shall not be liable to attachment by trustee process, or be liable to be taken on execution or on any other process, legal or equitable, to satisfy any debt or liability of the railroad corporation or railway company or of any member of the corporation.

RAILROAD, STREET RAILWAY AND STEAMBOAT POLICE.

Railroad, etc., police. 1871, 331, §§ 1, 8. 1874, 372, § 143. 1880, 85, § 1. P. S. 103, § 13. 1895, 318, §§ 1, 4. R. L. 108, §§ 13, 21. 1906, 463, 1, §§ 49, 68.

SECTION 89. The mayor of a city, or the selectmen of a town, upon the petition of a railroad corporation having a passenger station therein, or of a railway company operating a railway therein, or of a common carrier of passengers by water for hire having a usual place of receiving or discharging passengers therein, may appoint as many of the persons, designated in said petition, as police officers as they may deem proper for the purposes and with the powers hereinafter set forth.

196 Mass. 353.

Copy of appointment to be filed. 1871, 331, § 2. 1874, 372, § 143. 1878, 90. 1880, 85, § 2. P. S. 103, § 11. 1896, 225, § 1. R. L. 108, § 14. 1906, 463, 1, §§ 50, 68.

SECTION 90. An attested copy of the record of all such appointments shall be filed by the petitioner with the clerk of every city or town, other than the city or town of appointment, where the railroad corporation or railway company operates its cars, or such carrier is accustomed to receive or discharge passengers, and where it is intended that such police officers shall act; and the filing of such attested copy shall constitute the persons named therein railroad, railway or steamboat police, respectively, within such city or town, and upon the boats or vessels of such carriers by water, while within the boundaries of the commonwealth, and shall be conclusive evidence of the regularity of their appointment.

1 SECTION 91. Such police officers shall be sworn before a justice of
 2 the peace or notary public, and shall hold their offices until their ap-
 3 pointment is revoked by the mayor of the city or the selectmen of the
 4 town where they are appointed; but such petitioner, upon ceasing to
 5 require the services of any of such officers, shall file a notice to that
 6 effect with the clerk of the city or town where he is appointed, and with
 7 the clerks of the several cities and towns where notice of such appoint-
 8 ment has been filed, and thereupon the power of such officer shall cease.

1920, 2. 1931, 394, § 185.

Term of office.
 1871, 331.
 §§ 1, 9.
 1874, 372,
 § 143.
 1880, 85, § 2.
 P. S. 103, § 15.
 1883, 65.
 R. L. 108, § 15.
 1906, 463, 1.
 § 51, 68.
 1918, 257,
 § 341.
 1919, 5.

1 SECTION 92. Such police officers shall, when on duty except as detec-
 2 tives, wear in plain sight a metallic badge, inscribed with the words,
 3 "Railroad Police", "Street Railway Police", or "Steamboat Police",
 4 as the case may be, and the name or initials of the corporation or com-
 5 pany for which they are appointed; and the presence of any such officer
 6 on the ears, steamboats or premises of the corporation or company upon
 7 whose petition he was appointed, wearing such badge, shall be prima
 8 facie evidence that he is lawfully upon duty.

Badges.
 1871, 331, § 3.
 1874, 372,
 § 141.
 1880, 85, § 3.
 P. S. 103, § 16.
 1895, 318, § 2.
 1896, 225, § 2.
 R. L. 108,
 §§ 16, 22.
 1906, 463, 1.
 § 52, 68.

1 SECTION 93. Railroad, railway or steamboat police officers may pre-
 2 serve order on the premises, cars, vessels and boats of the corporation
 3 or company upon whose petition they are appointed and at the wharves
 4 and landing places owned or used by such carrier by water; may, with-
 5 out a warrant, arrest an idle, noisy, intoxicated or disorderly person
 6 upon such premises, cars, vessels or boats; or a passenger upon such
 7 cars, vessels or boats who refuses to pay his fare, and remove him to
 8 the baggage or other suitable car or place; may, without a warrant,
 9 arrest any person committing any of the offences specified in section one
 10 hundred and four; and railway police officers may, without a warrant,
 11 arrest any person committing any of the offences specified in section
 12 ninety-four of chapter one hundred and sixty-one.

Powers of
 police.
 1871, 331.
 §§ 4, 5, 7.
 1874, 372,
 §§ 145, 146.
 1880, 85, § 4.
 P. S. 103,
 § 17, 18.
 1895, 318, § 3.
 R. L. 108,
 §§ 17-19, 23.
 1906, 463, 1,
 § 53, 68.
 143 Mass. 228.
 148 Mass. 119.
 193 Mass. 280.
 210 Mass. 159.
 216 Mass. 178.
 219 Mass. 341.

1 SECTION 94. The person so arrested by railroad or railway police
 2 officers shall be taken to the police station or other place of lawful deten-
 3 tion in the city or town where the arrest is made, or in the city or town
 4 where the car, boat or vessel next stops, or in any city or town of the
 5 same or adjoining county through which the car passes after the arrest;
 6 he may be placed in charge of a police officer or constable in either of
 7 such cities or towns, to be taken to a lawful place of detention within
 8 twenty-four hours after the time of such arrest, Sunday excepted. Com-
 9 plaint shall be made against the person arrested by the officer taking him
 10 to the place of detention, for the offence for which he was arrested, to a
 11 district court, or trial justice having jurisdiction of such offences com-
 12 mitted in the city or town where such person is detained, and such court
 13 or justice shall have jurisdiction of the case.

Arrest.
 Duties of
 police.
 1895, 318, § 3.
 R. L. 108, § 23.
 1906, 463, 1,
 § 54.
 1914, 423.
 193 Mass. 280.

1 SECTION 95. Railroad, railway and steamboat police officers shall
 2 be paid by the corporation or company upon whose petition they are
 3 appointed. Such corporation or company shall be liable for any official
 4 misconduct of such officers to the same extent as for torts of agents or
 5 servants in their employ.

Compensation
 Liability.
 1874, 372,
 § 147.
 P. S. 103, § 20.
 R. L. 108, § 20.
 1906, 463, 1,
 §§ 55, 68.

ACTIONS AGAINST RAILROADS AND STREET RAILWAYS FOR LABOR AND MATERIALS.

Action against owner of railroad or railway for labor and materials. 1873, 353, § 1. P. S. 112, § 143. R. L. 111, § 164. 1904, 373. 1906, 463, II, §§ 218, 258, III, §§ 117, 158.

SECTION 96. A person to whom a debt is due for labor performed or for materials furnished and actually used in constructing a railroad or railway under a contract with a person other than the railroad corporation or railway company, who has authority from or is rightfully acting for such corporation or company in furnishing such labor or materials, shall have a right of action against such corporation or company to recover such debt with costs, except as provided in the four following sections.

115 Mass. 580. 174 Mass. 45. 226 Mass. 148.
121 Mass. 510. 204 Mass. 494.

Contractor not to have such action. 1873, 353, § 2. P. S. 112, § 144.

SECTION 97. A person who has contracted to construct the whole or a specified part of such railroad or railway shall not have such right of action.

R. L. 111, § 165. 1906, 463, II, §§ 219, 258, III, §§ 118, 158. 226 Mass. 148.

Notice of intention to be filed. 1873, 353, § 4. P. S. 112, § 146. R. L. 111, § 167. 1904, 373.

SECTION 98. A person shall not have such right of action for materials furnished, unless, before beginning to furnish them, he files in the office of the clerk of the city or town where any of the materials are to be furnished a written notice of his intention to claim such right, in the manner provided for filing the statement named in the following section.

1906, 463, II, §§ 221, 258, III, §§ 120, 158.

Statement of amount of debt to be filed. 1873, 353, § 3. P. S. 112, § 145. R. L. 111, § 166. 1904, 373. 1906, 463, II, §§ 220, 258, III, §§ 119, 158. 127 Mass. 101.

SECTION 99. A person shall not have such right of action for labor performed, unless, within thirty days after ceasing to perform it, he files in the office of the clerk of a city or town where any of said labor was performed a written statement, on oath, of the amount of the debt so due him and of the name of the persons for whom and by whose employment the labor was performed. Such right of action shall not be lost by a mistake in stating the amount due; but the claimant shall not recover as damages a larger amount than is named in said statement as due to him, with interest thereon.

Limitation of actions. 1873, 353, § 5. P. S. 112, § 147. R. L. 111, § 168.

SECTION 100. Such action shall not be maintained unless begun within sixty days after the plaintiff ceased to perform such labor or to furnish such materials.

1904, 373. 1906, 463, II, §§ 222, 258, III, §§ 121, 158.

OFFENCES RELATING TO RAILROADS AND STREET RAILWAYS.

Evasion of payment of fare. 1849, 191, § 2. 1857, 240, § 5. G. S. 63, §§ 113, 141. 1864, 229, § 33. 1871, 381, § 37. 1874, 372, § 150. P. S. 112, § 197. R. L. 111, § 251. 1906, 463, I, §§ 64, 68.

SECTION 101. Whoever fraudulently evades or attempts to evade the payment of a toll or fare lawfully established by a railroad corporation or railway company, either by giving a false answer to the collector of the toll or fare, or by traveling beyond the point to which he has paid the same, or by leaving the train or car without having paid the toll or fare established for the distance traveled, or otherwise, shall forfeit not less than five nor more than twenty dollars. Whoever does not upon demand first pay such toll or fare shall not be entitled to be transported for any distance, and may be ejected from a railway car; but no person

10 shall be removed from a car of a railroad corporation except as provided ^{143 Mass. 68.}
 11 in section ninety-three, nor from a train except at a regular passenger ^{228.}
 12 station. ^{174 Mass. 401.}

178 Mass. 64. 185 Mass. 279 216 Mass. 178. 222 Mass. 121

1 SECTION 102. No railroad corporation or railway company or any ^{Torpedo to}
 2 officer or employee thereof shall use or deposit a torpedo or other explo- ^{be marked}
 3 sive upon or near the tracks of any railroad or railway for the purpose of ^{1908, 495.}
 4 signalling or otherwise, unless there is plainly and conspicuously stamped
 5 or otherwise permanently marked thereon in a manner approved by
 6 the department a word or words indicating that such torpedo or other
 7 explosive is dangerous.

1 SECTION 103. Whoever unlawfully and intentionally injures, molests ^{Injury to}
 2 or destroys any signal of a railroad corporation or railway company, ^{signals}
 3 or any line, wire, post or other structure or mechanism used in connec- ^{1876, 63.}
 4 tion with such signal, or prevents or in any way interferes with the ^{P. S. 112, § 207.}
 5 proper working of such signal, shall be punished by a fine of not more ^{1884, 5}
 6 than five hundred dollars or by imprisonment for not more than two ^{1899, 252}
 7 years, or both. ^{R. L. 111,}
^{§ 262.}
^{1906, 463, 1.}
^{§§ 65, 68.}

1 SECTION 104. Whoever wilfully throws or shoots a missile at a loco- ^{Throwing mis-}
 2 motive engine, or railroad or railway car or train, or at a person on such ^{iles, etc.}
 3 engine, car or train, or in any way assaults or interferes with a con- ^{1880, 110}
 4 ductor, engineer, brakeman, or motorman, while in the performance of ^{P. S. 112, § 206.}
 5 his duty on or near such engine, car or train, shall be punished by a ^{R. L. 111,}
 6 fine of not more than one hundred dollars or by imprisonment for not ^{§ 260.}
 7 more than one year, or both. A person so offending may be arrested ^{1906, 463, 1,}
 8 without a warrant by an officer authorized to serve criminal process, ^{§§ 66, 68.}
 9 and kept in custody in jail or other convenient place not more than ^{145 Mass. 403,}
 10 twenty-four hours, Sundays and legal holidays excepted, at or before the ^{575.}
 11 expiration of which time he shall be taken before a proper court or mag-
 12 istrate, and proceeded against according to law.

GENERAL JURISDICTION AND POWERS OF THE DEPARTMENT.

1 SECTION 105. The jurisdiction, powers, authority and discretion dele- ^{General juris-}
 2 gated to the department by sections ten to twenty-six, inclusive, of this ^{isdiction, powers,}
 3 chapter and section one hundred and eighty-five of chapter one hundred ^{etc., of the de-}
 4 and sixty shall not be limited by other provisions of law contained in ^{partment not}
 5 chapters one hundred and fifty-nine to one hundred and sixty-three, ^{to be limited,}
 6 inclusive, or in chapter one hundred and sixty-six, nor shall such provi- ^{etc.}
 7 sions prevent the department from exercising to the fullest extent such ^{1913, 784, § 29.}
 8 jurisdiction, powers, authority and discretion. ^{224 Mass. 463.}
^{Op. A. G.}
^{(1920).}

CHAPTER 159A.

COMMON CARRIERS OF PASSENGERS BY MOTOR VEHICLE.

SECT.

- 1. Licensing of certain motor carriers regulated. Fees.
- 2. License to specify route.
- 3. Department to be licensing authority to permit through traffic in certain cases.
- 4. Certain licenses to remain in force until revoked. Revocation of licenses.
- 5. Temporary licenses.
- 6. Bond. Operation prohibited if bond cancelled, etc.
- 7. Certificate of public convenience and necessity.
- 8. Permit.

SECT.

- 9. Driver, qualifications and license.
- 10. Licensee declared to be common carrier.
- 11. Revocation of registration and driver's license for violations.
- 12. Local rules and regulations. Powers of department relative to.
- 13. Powers, etc., of registrar of motor vehicles, etc., not affected.
- 14. Chapter not applicable to trolley motors or trackless trolleys.
- 15. General penalty. Jurisdiction of courts.
- 16. Penalty for evasion of payment of fare. Eviction.

Licensing of certain motor carriers regulated. Fees. 1916, 293, § 1. 1918, 229, § 2. 1919, 371, §§ 1, 7. G. L. (ed. of 1920) 159, § 45. 1925, 280, §§ 1, 4. 1926, 163; 392, § 1. 1931, 408, §§ 1, 2. 253 Mass. 178. 254 Mass. 28, 240, 248, 253, 271. 258 Mass. 498. 260 Mass. 193. 4 Op. A. G. 7, 183, 422. Op. A. G. (1917) 45, 101. Op. A. G. (1919) 66.

SECTION 1. No person shall, except as otherwise provided in this chapter, operate any motor vehicle upon any public way in any city or town for the carriage of passengers for hire, in such a manner as to afford a means of transportation similar to that afforded by a railway company, by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated or may be running, or for transporting passengers for hire as a business between fixed and regular termini, without first obtaining a license for such operation from the city council of such city or the selectmen of such town, in this chapter called the licensing authority; provided, that, in respect to any boulevard or way under the jurisdiction of the metropolitan district commission, such commission shall constitute the licensing authority. Any such license issued by a city council under this section shall be subject to the approval of the mayor. The fee for any such license shall not exceed ten dollars. Such license may limit the number of vehicles to be operated thereunder. Any person, receiving a license under this section and operating a vehicle or vehicles thereunder, shall, in respect to such operation, be subject to such orders, rules or regulations as shall be adopted by the licensing authority under this chapter. No license, certificate or permit shall be required under this chapter in respect to such carriage of passengers as is exclusively interstate.

License to specify route 1931, 408, § 1. 253 Mass. 178. 254 Mass. 28, 240, 248, 253, 271. 258 Mass. 498. 260 Mass. 193.

SECTION 2. Every such license shall specify the route or routes over which the motor vehicles used thereunder may be operated. A licensee shall not operate motor vehicles for the purposes specified in the preceding section otherwise than upon routes specified in the license or licenses issued to him, provided that in the event of the closing of the whole or a portion of such a route by public authority or of interference with operation thereon by street repairs, fire, accident, unusual and severe traffic congestion or other emergency, a licensee may temporarily operate such vehicles by a reasonably direct and convenient detour.

Department to be licensing authority to permit through

SECTION 3. If a person desiring to operate any motor vehicle for the purposes and in the manner aforesaid over a route covering at least

3 twenty miles holds a license therefor in the terminal municipalities and
 4 also a license in all but one of the intervening municipalities, or, in case
 5 seven or more municipalities intervene, in all but one or two thereof,
 6 the department of public utilities, hereinafter in this chapter called the
 7 department, on petition of such person, shall act as the licensing author-
 8 ity in the one or two municipalities, as the case may be, in which such
 9 person's application for such an original license has not been favorably
 10 acted upon within three months after the filing thereof. The depart-
 11 ment, before issuing such a license, shall give a public hearing thereon
 12 after notice to the licensing authority of such a municipality, and if the
 13 department finds that public convenience and necessity require that the
 14 applicant be allowed to operate motor vehicles through such a munici-
 15 pality and over a route as aforesaid, it may issue a license therefor and
 16 shall specify therein the route or routes over which such motor vehicles
 17 shall be operated therein, but operation under such a license shall be
 18 limited to through traffic without stopping in such municipality for
 19 taking on or discharging passengers, except in case of a railroad or rail-
 20 way company operating a bus line as a part of its system.

traffic in
 certain cases.
 G. L. (ed. of
 1920) 159, § 45.
 1926, 392, § 1.
 1931, 408,
 §§ 1, 2
 253 Mass. 178.
 254 Mass. 28,
 249, 248, 253,
 271
 258 Mass. 198.
 260 Mass. 193.

1 SECTION 4. Each license issued after July eighteenth, nineteen hun-
 2 dred and twenty-seven, under the provisions of general law applicable
 3 thereto or under this chapter, and not since revoked, shall remain in
 4 force and effect as to the routes and for the number of vehicles specified
 5 in such license or operated thereunder, notwithstanding any limitation
 6 therein contained as to the time it shall remain in effect, until revoked
 7 as hereinafter provided. After public notice and hearing, the licensing
 8 authority may, for good and sufficient reasons to be stated in the order
 9 of revocation, revoke in whole or in part such a license issued by such
 10 authority, but unless within thirty days after any such order of revoca-
 11 tion, except an order made by the department or by the metropolitan
 12 district commission acting as such licensing authority, the licensee con-
 13 sents thereto in writing, such order shall not be valid until approved by
 14 the department after public notice and hearing.

Certain licenses
 to remain in
 force until
 revoked.
 Revocation
 of licenses.
 G. L. (ed. of
 1920) 159, § 45.
 1927, 276.
 1931, 408,
 §§ 1, 2
 253 Mass. 178.
 254 Mass. 28,
 249, 248, 253,
 271.
 258 Mass. 198.
 260 Mass. 193.

1 SECTION 5. The department may, in order to provide for unusual,
 2 sudden or unforeseen transportation needs, or to avoid interruption of
 3 existing transportation facilities, issue such temporary licenses as it
 4 deems that public convenience and necessity may require over such
 5 route or routes as it shall specify. All temporary licenses issued under
 6 the provisions of this section shall be limited to such period as the de-
 7 partment shall specify, not exceeding sixty days. No such license shall
 8 be renewed, nor shall more than one such license for substantially the
 9 same route be granted to the same person because of the same emergency.

Temporary
 licenses.
 1931, 408, § 1.

1 SECTION 6. No motor vehicle shall be operated under any license
 2 issued under this chapter until the licensee, in addition to complying
 3 with all orders, rules and regulations of the licensing authority, shall
 4 have deposited with the state treasurer a bond, running to him in such
 5 sum as the department may reasonably require, with a surety or sureties
 6 or other security approved by the state treasurer and by the depart-
 7 ment, conditioned to pay any final judgment obtained against the prin-
 8 cipal named in the bond for any injury to person or property or for dam-

Bond.
 Operation
 prohibited
 if bond
 cancelled, etc.
 1916, 293, § 1.
 1919, 371, § 2.
 G. L. (ed. of
 1920) 159, § 46.
 1925, 346, § 8.
 1926, 368, § 6;
 392, § 2
 1927, 268, § 1.
 1931, 408,
 §§ 1, 2.

253 Mass. 178.
254 Mass. 28,
240, 248, 253,
271
258 Mass. 498.
260 Mass. 193.
4 Op. A. G. 422.

ages for causing the death of any person by reason of any negligent or 9
unlawful act, on the part of said principal, his or its agents, employees 10
or drivers, in the use or operation of any such motor vehicle. Any person 11
so injured or damaged, or his executor or administrator, or the executor 12
or administrator of any person whose death was so caused, may enforce 13
payment of such judgment by suit on said bond in the name of the state 14
treasurer, and in such suit the court may make any appropriate order 15
for the application of any security deposited as aforesaid. If any lia- 16
bility insurance policy filed as security for any such bond, or any such 17
bond with a surety company as surety, shall be cancelled or a renewal 18
policy or bond is not filed prior to the expiration thereof, or if the state 19
treasurer or the department at any time after notice and hearing shall 20
determine that the sureties on any such bond or the security therefor is 21
not sufficient, or if the department shall in its discretion determine and 22
notify the licensee that a larger bond is required, no such motor vehicle 23
shall thereafter be operated until the licensee has furnished other or 24
additional security approved by the state treasurer and by the depart- 25
ment. No security other than as herein provided shall be required of 26
any such licensee. 27

Certificate
of public
convenience
and necessity.
1925, 280, § 2
(G. L. 159,
§ 48A).
1931, 408,
§§ 1, 2
254 Mass. 28,
240, 248, 253.
258 Mass. 498.
262 Mass. 583.

SECTION 7. No person shall operate a motor vehicle under a license 1
issued as aforesaid unless he has also obtained from the department a 2
certificate declaring that public convenience and necessity require such 3
operation. The department may, after public hearing, issue or refuse 4
to issue such a certificate, or may issue the same for the partial exercise 5
only of the privilege sought. Such certificate shall specify the route or 6
routes over which the motor vehicles to be used thereunder may operate, 7
and may prescribe the period during which the rights granted therein or 8
in such license may be exercised, and may attach to the exercise of said 9
rights such terms and conditions as the department shall deem that 10
public convenience and necessity may require. The department, after 11
notice and hearing, may revoke any such certificate for cause, and may, 12
in like manner, revise any provisions thereof and any of the terms and 13
conditions of such certificate or license. Upon such revocation, or upon 14
the termination of the period covered by such certificate, the right of 15
any person to operate thereunder shall immediately terminate. The 16
department may adopt rules prescribing the manner and form in which 17
applications for certificates or for any modification of outstanding cer- 18
tificates shall be made. 19

Permit.
1925, 280, § 2
(G. L. 159,
§ 48B)
254 Mass. 28,
240, 248, 253.
258 Mass. 498.

SECTION 8. No motor vehicle shall be operated under a license issued 1
under the provisions of this chapter without a permit from the depart- 2
ment. Such permit shall not be issued until an inspector of the depart- 3
ment finds that such motor vehicle, in respect to type, construction, 4
equipment and operating condition, conforms to the rules and regulations 5
promulgated by the department under the provisions of this chapter. 6
The department may charge for such permit such reasonable fee not 7
exceeding ten dollars as it may fix. Such permit may be revoked or 8
suspended by the department at any time when it appears to the depart- 9
ment that the motor vehicle covered by such permit does not conform 10
to said rules and regulations. No other permit, license or registration 11
shall be required for any such motor vehicle, except as provided in 12
chapter ninety. 13

1 SECTION 9. No person shall drive any motor vehicle under authority
 2 of this chapter unless he shall, in addition to holding an unlimited license
 3 to operate motor vehicles from the registrar of motor vehicles, be licensed
 4 by the department. No license shall be issued by the department except
 5 to persons at least twenty-one years of age. The department may charge
 6 a fee of one dollar for each such license, and may revoke or suspend such
 7 a license at any time for such cause as may seem to it sufficient. No other
 8 license or permit than as specified or referred to in this section shall be
 9 required for any such driver.

Driver, quali-
 fications and
 license
 1931, 408, § 1.

1 SECTION 10. Any person engaged in the operation of motor vehicles
 2 under a license and certificate as provided in this chapter is hereby
 3 declared to be a common carrier. The department shall have general
 4 supervision and regulation of, and jurisdiction and control over such
 5 common carriers to the same extent as it has over railway companies,
 6 except as to the issue of securities by persons whose securities are not
 7 subject to the jurisdiction of the department. The department may,
 8 from time to time, prescribe forms of accounts, records and memoranda
 9 for such common carriers and their accounts shall be kept in accordance
 10 with the forms prescribed.

Licensee
 declared to
 be common
 carrier
 1918, 226, § 2.
 1919, 371,
 §§ 1, 7.
 1925, 280, § 1
 [G. L. 159,
 § 45]
 1926, 163;
 392, § 1.
 1931, 408,
 §§ 1, 2.
 254 Mass. 28,
 240, 248, 253,
 271.

258 Mass. 498.

1 SECTION 11. If the department after notice and hearing finds that
 2 any motor vehicle subject to this chapter has been operated in violation
 3 of any provision thereof, it may notify the registrar of motor vehicles
 4 of its findings, and the registrar may thereupon revoke the registration
 5 of such motor vehicle or the license of the driver thereof, or both, as may
 6 be recommended by the department.

Revocation of
 registration
 and driver's
 license for
 violations.
 1931, 408, § 1.

1 SECTION 12. The licensing authority in any city or town may, in
 2 respect of matters not treated of in the provisions of law governing the
 3 operation of motor vehicles under this chapter or rules established by
 4 the department, adopt rules and regulations governing such operation.
 5 After the adoption of any such rules and regulations, any person operat-
 6 ing such a motor vehicle as authorized by this chapter, or a railway or
 7 railroad company operating a railway or railroad in such city or town, or
 8 any twenty residents thereof, may petition the department for the
 9 alteration, amendment or revocation of any such rule or regulation.

Local rules
 and regula-
 tions. Powers
 of department
 relative to.
 1916, 293, § 1.
 1919, 371,
 §§ 2, 3
 G. L. (ed. of
 1920) 159, § 47
 1925, 176
 1927, 268, § 2.
 1931, 408,
 §§ 1, 2.
 254 Mass. 28,
 240, 248, 253,
 271
 258 Mass. 498.

10 The department, upon such petition, after notice to the licensing
 11 authority and a hearing, may alter, amend or revoke such rule or regu-
 12 lation and establish in place thereof rules and regulations thereafter to
 13 be observed in such city or town. Thereafter the department, upon its
 14 own initiative or upon petition of the mayor of such city or the select-
 15 men of such town, or of any person so operating any such motor vehicle
 16 in such city or town, or of a railway or railroad company operating a
 17 railway or railroad in such city or town, or of any twenty residents thereof,
 18 after notice to the licensing authority of such city or town, may alter,
 19 amend or revoke any rule or regulation established by the department,
 20 and may adopt rules and regulations in substitution thereof. Rules and
 21 regulations prescribed by the department under this section shall not be
 22 subject to amendment or repeal by a city or town or by the licensing
 23 authority thereof.

Powers, etc., of registrar of motor vehicles, etc., not affected.

SECTION 13. Nothing contained in this chapter shall lessen or affect the authority or powers of the department of public works or of the registrar of motor vehicles under chapter ninety.

1925, 280, § 2 [G. L. 159, § 48B], 1931, 408, § 1, 254 Mass. 28, 240, 248, 253. 258 Mass. 498.

Chapter not applicable to trolleymotors or trackless trolleys.

SECTION 14. The provisions of this chapter shall not apply to transportation by the system known as trolleymotor or trackless trolley under the provisions of chapter one hundred and sixty-three.

1931, 408, § 1.

General penalty. Jurisdiction of courts. 1919, 371, § 5. G. L. (ed. of 1920) 159, § 49. 1925, 280, § 3. 1931, 408, §§ 1, 2. 253 Mass. 178. 254 Mass. 28, 240, 248, 253. 258 Mass. 498.

SECTION 15. Whoever violates any provision of this chapter, or any order, rule or regulation adopted or established thereunder, or any requirement, condition, limitation or restriction contained in any license, certificate or permit issued under authority of this chapter, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the house of correction for not more than two months, or both; and the supreme judicial and superior courts shall have jurisdiction in equity to restrain any such violation upon petition of the department, any licensing authority, ten citizens of any city or town affected by such violation, or any interested party.

Penalty for evasion of payment of fare. Eviction. 1928, 115 [G. L. 159, § 49A]. 1931, 408, §§ 1, 2.

SECTION 16. Whoever fraudulently evades or attempts to evade the payment of a fare lawfully established by a common carrier duly licensed under the provisions of this chapter, either by giving a false answer to the collector of the fare, or by travelling beyond the point to which he has paid the same, or by leaving the motor vehicle without having paid the fare lawfully established for the distance travelled, or otherwise, shall forfeit not less than five nor more than twenty dollars. Whoever does not upon demand first pay such fare shall not be entitled to be transported for any distance, and may be ejected from such a motor vehicle.

CHAPTER 160.

RAILROADS.

SECT.

- 1. Definitions.
- 2. Application to certain matters arising in Boston.

CORPORATIONS SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

- 3. Corporations subject to this chapter.
- 4. Corporation chartered by concurrent legislation.
- 5. Corporation or trustees operating railroads of other corporations.

RIGHTS RESERVED BY THE COMMONWEALTH.

- 6. Rights reserved by commonwealth.
- 7. Commonwealth may take railroad.

SPECIAL CHARTERS.

- 8. Petition for charter to be accompanied by report of engineer, map, etc.
- 9. Plans, etc., to be deposited in state library.
- 10. Petition not to be acted upon until notice, etc.
- 11. Railroad to be within limits specified.
- 12. Chartered railroads to be located, etc., under this chapter.

INCORPORATION UNDER GENERAL LAWS.

- 13. Incorporation of railroad corporations.
- 14. Agreement of association, corporate name, etc.
- 15. Associates' authority.
- 16. Publication of agreement of association.
- 17. Certificate of public convenience and necessity.
- 18. Map of route, report of engineer and estimates.
- 19. Submission of map, etc., to board of aldermen, etc.
- 20. Route may be agreed upon.
- 21. Proceedings on failure to agree.
- 22. Spurs and branches.
- 23. Certificate, map and report to be deposited with department.
- 24. Certificate of compliance. Filing. Certificate of incorporation. Form of certificate. Certificate to be recorded.
- 25. Increase and reduction of capital stock. Change of gauge regulated.
- 26. Proceedings void.

SECT.

- 27. Limit of time for construction of railroad.
- 28. Capital stock of narrow gauge railroads.

ORGANIZATION.

- 29. First meeting of incorporators.
- 30. Organization.

OFFICERS.

- 31. Officers.
- 32. Election of officers.

MEETINGS.

- 33. Meetings of stockholders; notice, quorum, etc.
- 34. Special meetings.
- 35. Voting rights of corporation upon its own stock.
- 36. Voting rights of stockholders.
- 37. Meetings of directors.

CAPITAL STOCK.

- 38. Stock certificates.
- 39. Assessments upon shares.
- 40. Collection of assessment.
- 41. Purposes for which capital stock may be increased.
- 42. Forfeiture for unauthorized increase of capital stock.
- 43. Preferred stock, issue of.
- 44. Designation of preferred stock, etc.
- 45. Preferred stock; voting power, limitation on amount.
- 46. Preferred stock to be offered to stockholders, etc.

ISSUE OF STOCK, BONDS, ETC.

- 47. Issue of capital stock, bonds, coupon notes, and other evidences of indebtedness.
- 48. Approval of issue of bonds, coupon notes and other evidences of indebtedness. Penalty.

BONDS AND MORTGAGES.

- 49. Registered bonds.
- 50. Securities collectible.
- 51. Trustees entitled to possession may contract with corporation to operate railroad.
- 52. Trustees in possession to call annual meetings.
- 53. Election and confirmation of trustees.

SECT.		SECT.	
54.	Equity jurisdiction of supreme judicial court.	76.	Prerequisites to use of land for railroad.
55.	Rights of purchaser under foreclosure.	77.	Location not to be within three miles of state house.
	<i>STOCK AND SCRIP DIVIDENDS.</i>		<i>Purchase of Land.</i>
56.	Stock or scrip dividends forbidden, when.	78.	What may be purchased.
57.	Liability of directors.	79.	Location of purchased land.
	<i>CONNECTING RAILROADS.</i>		<i>Taking by Eminent Domain.</i>
58.	Connecting railroad companies may use each other's roads.	80.	Filing of location.
59.	Compensation for drawing cars.	81.	Change of location to avoid grievous damage.
60.	Determination of rates for drawing cars, etc.	82.	Taking of land for location of tracks.
61.	Connecting roads chartered by other roads.	83.	Taking of property for other purposes.
62.	Connecting companies may contract that one shall perform all transportation for the other.	84.	Taking land of other railroad, etc.
63.	Term of lease not to exceed ninety-nine years.		<i>Change of Location.</i>
	<i>TAKING SECURITIES OF OTHER CORPORATIONS.</i>	85.	Improvement of alignment.
64.	Taking securities of other corporations.	86.	Direction of road may be varied.
65.	Stock in a telegraph company.		<i>Miscellaneous.</i>
66.	Guaranty of bonds of steamship companies.	87.	Land outside limit taxable.
67.	Railroad corporation may become associate in grain elevator corporation.	88.	No prescriptive right in land of corporation.
68.	Connecting roads may guarantee each other's bonds.	89.	Rules as to form, etc., of records, etc.
69.	Railroad corporations may aid in construction of branches, etc.		<i>Embankments, Fences, etc.</i>
70.	May invest in securities of terminal companies and certain express companies.	90.	Fencing.
	<i>AUXILIARY SERVICES.</i>	91.	Construction, etc., of embankments may be ordered.
70A.	May acquire, operate, etc., steamship companies, docks, motor vehicles, etc.	92.	Enforcement of order.
	<i>CONSOLIDATION OF RAILROAD COMPANIES RESTRAINED.</i>	93.	Fences.
71.	Corporations owning, etc., railroad not to acquire stock in domestic railroad.	94.	Cost of fencing, how recovered from person liable.
72.	Department to pass on consolidation and report to general court.		<i>Crossings.</i>
73.	Rates not to be increased or facilities diminished by consolidation.	95.	Separation of grade crossings by agreement.
74.	Penalties.	96.	Crossings of one railroad with another, or over navigable waters.
	<i>LOCATION AND CONSTRUCTION OF RAILROAD.</i>	97.	Railroad crossing a highway not to obstruct the same.
	<i>Conditions Precedent.</i>	98.	Space under bridge regulated.
75.	Establishing method for crossing highways.	99.	Agreements with cities and towns as to wearing surfaces of bridges and approaches.
		100.	Highway may be raised or lowered under direction of county commissioners.
		101.	Course of highway may be altered.
		102.	Crossing public way at a level.
		103.	Rails to be protected at highway crossing.
		104.	When highway may be laid out across a railroad.
		105.	Alterations of canals.
		106.	Obstructions and repairs at crossings.
		107.	Repairs of bridges, etc.
		108.	County commissioners to have jurisdiction of obstructions.

- SECT.
 109. Severance of private land by crossing.
 110. Access to land cut off by railroad.
 111. Appeal from decision of county commissioners.
 112. Same subject. Proceedings thereon.
 113. Same subject. Hearing; powers of department.
 114. Right of crossing not acquired by prescription.

BRANCHES AND EXTENSIONS.

115. Branches and extensions.
 116. Switch connections.
 117. Switch connection, control by department.

OPENING RAILROAD FOR USE.

118. Road not to be opened for public use until, etc.
 119. When road is opened for public use, map, etc., to be filed.

EQUIPMENT AND OPERATION.

Drawbridges.

120. Draw tender.
 121. Drawbridges to be kept closed, except.
 122. Passage of vessels, how regulated.
 123. Drawbridge signals.
 124. Drawbridge gates.
 125. Engineer to see that drawbridge is closed.
 126. Penalty on corporations, etc., for neglect.
 127. Penalties.

Stations.

128. Abandonment of passenger stations regulated.
 129. Relocation of stations and freight depots.
 130. Way stations to be indicated by signs.
 131. Compensation for joint occupation.

Switches, Bridge Guards, etc.

132. Safety switches.
 133. Blocked switches.
 134. Bridge guards.

Signals, etc., at Crossings.

135. Stopping of trains at grade crossings.
 136. Department may prescribe rules for crossings.
 137. Interlocking signals.
 138. Bell to be rung or whistle sounded.
 139. Sounding of whistles regulated.
 149. Signboards at crossings of ways.
 141. Signboards at crossings of traveled places.

- SECT.
 142. Warning signs to be erected by counties, etc.
 143. Warning signs furnished by railroads.
 144. When signs impracticable.
 145. Penalties.
 146. Penalty for removing, etc., sign.
 147. Gates, etc., at crossings.
 148. Penalty.
 149. Signals at overhead crossings.
 150. Removal of standing wood at crossings.
 151. Penalty on corporation for obstructing highways, etc.
 152. Occupation of ways by cars regulated.

EQUIPMENT OF ENGINES AND CARS.

153. Electricity a motive power.
 154. Brakes and brakemen.
 155. Brake appliances on trains.
 156. Safety couplers on freight cars.
 157. Automatic couplers on cars.
 158. Grab irons on cars.
 159. Standard height of draw bars for freight cars.
 160. Penalty.
 161. Limitation of preceding sections.
 162. Extension of time for equipment.
 163. Tools to be carried on trains.
 164. [Repealed.]
 165. Heating of cars regulated.
 166. Passenger cars not to be lighted by explosive oils.
 167. Platform gates.
 168. Testing of locomotive boilers.
 169. Mufflers with vacuum brakes.
 170. Mufflers for safety valves.
 171. Penalties.
 172. Reasonable accommodations.
 173. Women, etc., in smoking cars.
 174. Drinking water.
 175. Penalty.
 176. Further appliances.

EMPLOYEES.

177. Uniform caps and badges for employees.
 178. Color blindness, examination for.
 179. Experience required of locomotive engineer.
 180. Experience required of conductor.
 181. Promoting, etc., violation of two preceding sections forbidden.
 182. Exceptions.
 183. Penalty.
 184. Rest days required for certain employees.
 185. Department to regulate train crews.

FARES, TOLLS, CHARGES, ETC.

186. Rates of fare, how established and revised.

SECT.	SECT.
TRANSPORTATION OF PASSENGERS.	
187.	Conveyance of passengers at reduced rates.
188.	Extra fares regulated.
189.	Mileage tickets, coupons to be detached.
190.	Commutation tickets between Boston and stations within fifteen miles.
191.	Deposit of season tickets.
192.	Reimbursing season ticket holder for fare paid.
193.	Season tickets for express messengers.
194.	Baggage checks.
195.	Storage of baggage from Friday to Monday.
196.	Bicycles as baggage.
197.	Cheap morning and evening trains.
198.	Workingmen's trains.
198A.	Sale of certain tickets regulated. Penalty.
199.	Free passes to state officers forbidden.
200.	Passes to former employees.
TRANSPORTATION OF MAILS.	
201.	Mails to be transported on request.
202.	Compensation for carrying mails.
203.	Confirmation of rates.
TRANSPORTATION OF MERCHANDISE.	
204.	Receipts to shippers of merchandise.
205.	Equal facilities for transportation.
206.	Equal facilities to local expressmen.
207.	Merchandise to be forwarded promptly.
208.	Charges for transportation of freight.
209.	Penalties on corporations.
210.	Freight differential against Boston forbidden.
211.	Discrimination in freight rates forbidden.
TRANSPORTATION OF MILK.	
212.	Transportation of milk.
213.	Tariff for milk.
214.	Penalties.
CHANGE OF NAME.	
215.	Change of name.
216.	Certificate of vote to be filed with secretary.
217.	Rights and liabilities under new name.
OFFENCES AND PENALTIES.	
218.	Walking on track.
219.	Loitering in station.
220.	Unlawful riding upon locomotive, etc.
221.	Fees of officers.
222.	Riding or driving beasts on railroad.
223.	Negligence in permitting beast on railroad.
224.	Neglect to close gates at private crossing.
225.	Malicious injury to railroad, etc.
226.	Obstructing engine or car, etc.
227.	Wilfully stopping train.
228.	Tampering with tools.
ACCIDENTS.	
229.	Liability to town for personal injury.
230.	Penalty on engineer, etc., for negligence.
231.	Penalty for gross negligence in management of trains.
232.	Liability for damages in case of collision at grade crossings, etc.
233.	Non-liability for acts of expressmen.
FIRES.	
234.	Loss by fire caused by engine.
235.	Spark arresters.
236.	Clearing land adjoining track.
237.	Engineer, etc., to give notice of fire.
238.	Employees to extinguish fires.
239.	Employees to be instructed and provided with means to fight fires.
240.	Railroad not to enter public park.
241.	Liability to city or town for fire.
BOOKS AND RETURNS.	
242.	Books, accounts and annual returns.
243.	Quarterly returns.
244.	Lessee of railroad to make returns required of lessor.
RAILROADS FOR PRIVATE USE.	
245.	Railroads for private use.
246.	Regulation of crossings.
CORPORATIONS TO CONSTRUCT RAILROADS IN FOREIGN COUNTRIES.	
247.	Corporations to construct railroads in foreign countries.
248.	Agreement of association.
249.	Certificate of compliance with requirements.
250.	Increase or reduction of capital stock.
251.	Statutes governing such corporation.
252.	Enforcement.

Definitions.
1874, 372, § 2.
P. S. 112, § 1.
1892, 110
1898, 578, § 1.
1901, 503
R. L. 111, § 1.

SECTION 1. The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

"Board of aldermen" or "selectmen" includes the board or other authority exercising the powers of a board of aldermen or of selectmen;

1
2
3
4

5 but nothing herein shall be construed as affecting the veto power of a
6 mayor of any city.

1906, 463, 11,
§§ 1, 258.
1913, 784, § 1.
1919, 350,
§ 117.
190 Mass. 123.
196 Mass. 329.
200 Mass. 551.
273 Mass. 522.

7 "Department", the department of public utilities.

8 "Public way", any way laid out by public authority.

9 "Railroad", a railroad or railway of the class usually operated by
10 steam power.

11 "Railroad corporation", the corporation which lays out, constructs,
12 maintains or operates a railroad of the class usually operated by steam
13 power.

14 "Railroads and railways", all railroads and railways except tramways
15 in mines and marine railways.

1 SECTION 2. The duties imposed by this chapter upon county com-
2 missioners as a tribunal of original jurisdiction relative to the fixing of
3 routes or to the location, construction, maintenance and operation of
4 railroads shall, in Boston, unless it is otherwise expressly provided, de-
5 volve upon the city council of said city. The duties imposed upon the
6 county commissioners by reference or appeal from the board of aldermen
7 shall, in cases arising in Boston, devolve upon the department.

Application to
certain matters
arising in
Boston.
1874, 372, § 5.
1881, 91, § 1.
P. S. 112, § 2.
1885, 194, § 2.
R. L. 111, § 2.
1906, 463,
11, §§ 2, 258.
1909, 486, § 1.

CORPORATIONS SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

1 SECTION 3. Railroad corporations established in the commonwealth
2 shall be subject to this chapter and chapter one hundred and fifty-nine
3 which, so far as inconsistent with charters granted since March eleventh,
4 eighteen hundred and thirty-one, shall be an alteration and amendment
5 thereof; but this section shall not impair the validity of any special
6 power heretofore conferred by charter or other special act upon a particu-
7 lar railroad corporation which had exercised such power before February
8 first, eighteen hundred and seventy-five, or prevent the continued exer-
9 cise thereof conformably, so far as may be, to this chapter and chapter
10 one hundred and fifty-nine.

Corporations
subject to this
chapter.
R. S. 39, § 45.
G. S. 63, § 1.
1874, 372, § 4.
P. S. 112, § 3.
R. L. 111, § 3.
1906, 463,
11, §§ 3, 258.
174 Mass. 379.

1 SECTION 4. A railroad corporation chartered by the concurrent legis-
2 lation of this and other states shall, as regards any portion of its rail-
3 road lying within this commonwealth, be entitled to all the benefits
4 and be subject to all the liabilities of the railroad corporations of this
5 commonwealth.

Corporation
chartered by
concurrent
legislation.
1874, 372,
§ 169.
P. S. 112, § 4.

R. L. 111, § 4.

1906, 463, 11, §§ 4, 258.

1 SECTION 5. If a railroad which has been laid out and constructed
2 by one corporation is lawfully maintained and operated by another cor-
3 poration, the latter corporation shall be subject to the provisions of this
4 chapter and chapter one hundred and fifty-nine respecting or arising
5 from the maintenance and operation of such railroad, as if such railroad
6 had been laid out and constructed by it. If a railroad is lawfully main-
7 tained and operated by trustees, they shall in like manner be subject
8 to the provisions of law respecting or arising from the maintenance and
9 operation of such railroad which apply to the corporation for whose
10 stockholders or creditors they are trustees.

Corporation or
trustees oper-
ating railroads
of other corpo-
rations.
1874, 372, § 3.
P. S. 112, § 5.
R. L. 111, § 5.
1906, 463,
11, §§ 5, 258.
174 Mass. 379.

RIGHTS RESERVED BY THE COMMONWEALTH.

Rights reserved by commonwealth.
 R. S. 39, § 84.
 G. S. 63, § 138.
 1872, 53, § 18.
 1874, 372,
 §§ 178, 180.
 P. S. 112,
 §§ 6, 7.
 R. L. 111, § 6.
 1906, 463,
 II, §§ 6, 258.

SECTION 6. This chapter and chapter one hundred and fifty-nine shall not impair the rights of the commonwealth as asserted or reserved in previous statutes, and the commonwealth may, at any time during the continuance of the charter of a railroad corporation after the expiration of twenty years from the opening of its railroad for use, purchase of the corporation its railroad and all its franchise, property, rights and privileges by paying therefor such amount as will reimburse to it the amount of capital paid in, with a net profit thereon of ten per cent a year from the time of the payment thereof by the stockholders to the time of the purchase.

Commonwealth may take railroad.
 1870, 325, § 2.
 1874, 372, § 181.

SECTION 7. The commonwealth may, at any time after one year's written notice to a railroad corporation, take its railroad, franchise and other property by eminent domain under chapter seventy-nine.

P. S. 112, § 8. R. L. 111, § 7 1906, 463, II, §§ 7, 258.

SPECIAL CHARTERS.

Petition for charter to be accompanied by report of engineer, map, etc.
 1833, 176.

SECTION 8. A petition to the general court for a charter for a railroad corporation shall not be acted upon, unless accompanied by such a map of the route and by such a report of a competent engineer, as is specified in section eighteen.

R. S. 39, § 46.
 1848, 327, § 1
 1849, 131, § 2.

G. S. 63, § 13
 P. S. 112, § 29

R. L. 111, § 30
 1906, 463, II, §§ 8, 258.

Plans, etc., to be deposited in state library.
 1848, 140.
 G. S. 63, § 14.

SECTION 9. Plans and profiles presented to a committee of the general court in the hearing of a petition for such a charter shall be deposited by it in the state library.

P. S. 112, § 30. R. L. 111, § 31 1906, 463, II, §§ 9, 258

Petition not to be acted upon until notice, etc.
 1833, 176.
 R. S. 39, § 47.
 G. S. 63, § 15.
 P. S. 112, § 31.
 R. L. 111, § 32.

SECTION 10. Such petition shall not be acted upon, until notice thereof has been published according to law, designating the route with such certainty as to give reasonable notice to all persons interested therein that their rights may be affected by the granting of the petition, and that they may have an opportunity to appear and object thereto.

1906, 463, II, §§ 10, 258

Railroad to be within limits specified
 R. S. 39, § 48.
 G. S. 64, § 16.
 P. S. 112, § 32.
 R. L. 111, § 33.
 1906, 463, II,
 §§ 11, 258

SECTION 11. Every charter shall confine the railroad within the limits indicated by the notice required in the preceding section, shall specify the several cities and towns through which the railroad may pass, and shall otherwise designate the route thereof with as much certainty as the nature of the case will admit.

Chartered railroads to be located, etc., under this chapter
 1874, 372, § 33
 P. S. 112, § 33.
 1882, 265, § 3
 R. L. 111, § 34.
 1906, 463, II,
 §§ 12, 258.

SECTION 12. The route of the railroad of a corporation established by special charter, and of its branches and extensions, shall be fixed according to sections twenty and twenty-one except so far as they may have been fixed by special statute; and such railroad, branches and extensions shall be located and constructed according to the provisions of this chapter regulating the location and construction of railroads by cor-

7 porations incorporated under general laws, except that section seventeen
8 shall not apply, if authority so to locate and construct has been granted
9 by special act of the general court.

INCORPORATION UNDER GENERAL LAWS.

1 SECTION 13. Fifteen or more persons may associate themselves by a
2 written agreement of association with the intention of forming a railroad
3 corporation.

1872, 53, § 1.
1874, 372, § 19.

P. S. 112, § 34.
R. L. 111, § 35.

1906, 463, II, §§ 13,
258.

Incorporation
of railroad
corporations.

1 SECTION 14. The agreement of association shall state:

2 (a) That the subscribers thereto associate themselves with the inten-
3 tion of forming a railroad corporation.

4 (b) The corporate name assumed, which shall be one not in use by any
5 other railroad corporation in the commonwealth, or, in the judgment of
6 the department, so similar thereto as to be likely to be mistaken for it,
7 and which shall contain the words, "railroad corporation", at the end
8 thereof.

9 (c) The termini of the railroad.

10 (d) The length of the railroad, as nearly as may be.

11 (e) The name of each county, city and town where the railroad is to be
12 located.

13 (f) The gauge of the railroad, which shall be either four feet eight and
14 one half inches, or three feet.

15 (g) The total amount of the capital stock of the corporation, which
16 shall be not less than ten thousand dollars for each mile, if the gauge is
17 four feet eight and one half inches, and not less than five thousand dollars
18 for each mile, if the gauge is three feet.

19 (h) The par value of the shares, which shall be one hundred dollars.

20 (i) The names and residences of at least five persons, who shall be sub-
21 scribers to the agreement of association, to act as directors until others
22 are chosen and qualified in their stead.

23 Each associate shall subscribe to the agreement of association his name,
24 residence, post office address, and the number of shares of stock which
25 he agrees to take; but no subscriber shall be bound to pay more than
26 ten per cent of the amount of his subscription unless a corporation is
27 incorporated.

Agreement of
association,
corporate
name, etc.
1872, 53,
§§ 2-4.
1874, 298;
372, §§ 20, 21.
1878, 236, § 1.
P. S. 112,
§§ 35, 36.
1891, 257, § 1.
R. L. 109, § 8;
111, §§ 36, 37.
1906, 463, II,
§§ 14, 258.

1 SECTION 15. The associates may from time to time, at a meeting called
2 therefor, reduce the amount of the capital stock, but not below the limit
3 prescribed in the preceding section; and they may, in like manner, change
4 the gauge of their railroad to the other gauge allowed by said section.
5 The directors shall appoint a clerk and a treasurer, who shall hold their
6 respective offices until a clerk and a treasurer of the corporation are chosen
7 and qualified in their stead. The directors shall fill any vacancy in their
8 board, or in the office of clerk or treasurer, before the organization of the
9 corporation.

Associates'
authority
1872, 53, § 4.
1874, 372,
§ 21.
P. S. 112, § 36.
R. L. 111, § 37.
1906, 463, II,
§§ 15, 258.

1 SECTION 16. The directors, before fixing the route of the railroad as
2 hereinafter provided, shall publish a copy of the agreement of association
3 in a newspaper, if any, published in each of the cities and towns where
4 the railroad is to be located, and if, in any county, a newspaper is pub-
5 lished in none of said cities and towns therein, in such newspaper pub-

Publication of
agreement of
association.
1872, 53, § 5.
1874, 372, § 22.
P. S. 112, § 37.
R. L. 111, § 38.
1906, 463, II,
§§ 16, 258.

lished in said county as shall be designated by the department, at least once in each of three successive weeks; and, three weeks before fixing said route, shall also post a copy of said agreement in two or more public places in each of said cities and towns where said railroad is to be located; and the sworn certificate of the clerk shall be conclusive evidence of such publication and posting.

Certificate of public convenience and necessity
1882, 265, § 1.
R. L. 111, § 40.
1906, 463, 11, §§ 18, 258.

SECTION 17. After compliance with the provisions of sections thirteen to sixteen, inclusive, and within thirty days after the first publication of notice of the agreement of association therein required, the directors therein named shall apply to the department for a certificate that public convenience and necessity require the construction of a railroad as proposed in such agreement. If the department refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of such refusal.

Map of route, report of engineer and estimates
1872, 53, § 6;
180, § 3
1874, 372, § 23.
P. S. 112, § 38.
R. L. 111, § 39.
1906, 463, 11, §§ 17, 258.

SECTION 18. The directors shall prepare a map of the route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale, and shall procure the report of a competent engineer, based on actual examination and survey, showing the kind and amount of excavation, filling, bridging and masonry required, the grades, the number of public ways and of other railroads, and of navigable streams and tide waters, to be crossed, and the manner of crossing the same, the general profile of the surface of the country through which the railroad is to pass, the feasibility of the route, the manner of constructing the railroad, and a detailed estimate of the cost of construction.

Submission of map, etc., to board of aldermen, etc.
1873, 121, § 2.
1874, 372, § 24.
P. S. 112, § 39.
R. L. 111, § 41.
1906, 463, 11, § 19, 258.

SECTION 19. The directors shall submit said map and report to the board of aldermen of every city and to the selectmen of every town named in the agreement of association, who shall thereupon appoint a time and place for a hearing, of which notice shall be given by publication in a newspaper published in said city or town, or if none is published therein, in such newspaper published in the county where said city or town is situated as shall be designated by the department, at least once in each of two successive weeks, the last publication to be at least two days before the hearing; and by posting copies of said notice in two or more public places in said city or town at least two weeks before such hearing.

Route may be agreed upon.
1872, 53, § 7;
180, § 3
1874, 372, § 25.
P. S. 112, § 40.
R. L. 111, § 42.
1906, 463, 11, §§ 20, 258.

SECTION 20. If the board of aldermen of a city or the selectmen of a town named in the agreement of association, after such notice, exhibition of the map and the hearing, agree with the directors as to the said route or as to any route of the railroad in said city or town, they shall in such agreement fix the route, and sign and give to the directors a certificate setting it forth.

Proceedings on failure to agree.
1872, 53, § 8;
180, § 3
1874, 372, § 26.
P. S. 112, § 41.
R. L. 111, § 43.
1906, 463, 11, § 21, 258.

SECTION 21. If they fail so to agree, the directors may petition the department to fix the route in said city or town; and the department, after notice to said board of aldermen or selectmen, shall hear the parties, and fix the route in such city or town, and make a certificate setting forth the route as fixed by it, which shall be certified by its clerk to the directors. The costs of the petition shall be paid by the

7 directors. All variations from the route first proposed shall be made
8 upon the map.

1 SECTION 22. The route fixed under the two preceding sections may
2 include such spurs, branches and connecting and terminal tracks in any
3 city or town as may be necessary to enable the corporation conveniently
4 to collect and deliver passengers and freight therein; but no such
5 branches, spurs or connecting or terminal tracks shall be laid longi-
6 tudinally within the limits of a public way without the consent of the
7 board of aldermen or the selectmen, who, in giving such consent, may
8 impose such conditions as to the location, construction and use thereof
9 as may be agreed upon between themselves and the directors. A cor-
10 poration which owns or operates any such tracks so laid longitudinally
11 in a public way shall, in respect to the same, be liable to the city or town
12 for all loss or damage caused to it by the construction and use of such
13 tracks and by the negligence or default of the agents or workmen of
14 such corporation on such way.

Spurs and
branches
1873, 121, § 3.
1874, 372, § 27.
P. S. 112, § 12.
R. L. 111, § 44.
1906, 463, 11,
§§ 22, 258.

1 SECTION 23. When the amount of capital stock named in the agree-
2 ment of association has been subscribed in good faith by responsible
3 persons, and ten per cent of the par value of each share has been actu-
4 ally paid in cash to the treasurer, the directors, clerk and treasurer shall
5 annex to the agreement of association their certificate setting forth
6 these facts, and that it is intended in good faith to locate, construct,
7 maintain and operate the railroad upon the route fixed, shall also annex
8 to said agreement the certificate of publication specified in section six-
9 teen, and the several certificates fixing the route, shall present the same
10 for inspection to the department, and shall at the same time deposit in
11 the office of the department the report of the engineer and the map.

Certificate,
map and re-
port to be
deposited with
department.
1872, 53, § 9.
1874, 372, § 28.
P. S. 112, § 43.
R. L. 111, § 45.
1906, 463, 11,
§§ 23, 258.

1 SECTION 24. When it is shown to the satisfaction of the department
2 that the requirements of this chapter preliminary to the incorporation
3 of a railroad corporation have been complied with, the clerk of the de-
4 partment, upon its order, shall annex to the agreement of association a
5 certificate stating that such requirements have been complied with.
6 The directors shall thereupon file the agreement of association, with all
7 the certificates annexed thereto, in the office of the state secretary, who,
8 upon the payment to him of a fee of fifty dollars, shall receive and pre-
9 serve the same in form convenient for reference and open to public in-
10 spection, and shall thereupon issue a certificate of incorporation sub-
11 stantially in the following form:

Certificate of
compliance.
Filing.
Certificate of
incorporation
1872, 53, § 10.
1874, 372, § 29.
1881, 161.
P. S. 112, § 44.
R. L. 111, § 46.
1906, 463,
II, §§ 24, 258.
184 Mass 310.

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (names of the subscribers to the agreement of
association) have associated themselves with the intention of forming a corpo-
ration under the name of the (name of the corporation), for the purpose of
locating, constructing, maintaining and operating a railroad (description of the
railroad as in the agreement of association), and have complied with the
statutes of this commonwealth in such cases made and provided: Now, there-
fore, I, _____, secretary of the commonwealth of Massachusetts, do
hereby certify that the persons aforesaid, their associates and successors, are
legally established as a corporation under the name of the (name of the cor-
poration), with all the powers and privileges, and subject to all the duties, li-
abilities and restrictions, set forth in all general laws which now are or hereafter
may be in force relating to railroad corporations.

Form of
certificate

In witness whereof, I have hereunto subscribed my official signature, and affixed the great seal of said commonwealth, this _____ day of _____, in the year _____.

Certificate to be recorded.

The state secretary shall sign the certificate of incorporation, and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The state secretary shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

Increase and reduction of capital stock. Change of gauge regulated. 1872, 53, § 15. 1873, 121, § 1. 1874, 372, § 30. 1879, 156. P. S. 112, § 45. R. L. 111, § 48. 1906, 463, II, §§ 25, 258.

SECTION 25. If the capital stock fixed in the agreement of association is found to be insufficient for the construction and equipment of the railroad, the corporation at a meeting called therefor may, subject to section forty-seven, increase the same, from time to time, to the amount necessary for those purposes. It may, at a meeting called therefor, reduce the amount of the capital stock, but not below the limit prescribed in section fourteen. It may, also, in like manner, change the gauge to the other authorized gauge; but a corporation organized to construct its railroad on a gauge of three feet shall not change such gauge to four feet eight and one half inches without complying with all provisions of law relative to the capital stock of railroads of the broad gauge; and the fact that such provisions have been complied with shall be shown to the satisfaction of the department, and endorsed by its clerk upon the certificate of such change of gauge before it is filed in the office of the state secretary. A certificate of the increase or reduction of capital or change of gauge shall, within thirty days thereafter, be filed in the office of the state secretary.

Proceedings void. 1882, 265, § 2. R. L. 111, § 47. 1906, 463, II, §§ 26, 258.

SECTION 26. The agreement of association, and all proceedings thereunder, including the fixing of the route, shall be void, unless the certificate of incorporation is issued within one year after the time the route is fixed as provided in section twenty or twenty-one.

Limit of time for construction of railroad. 1872, 53, § 16. 1874, 372, § 30. P. S. 112, § 45. R. L. 111, § 48. 1906, 463, II, §§ 27, 258.

SECTION 27. If a corporation does not begin the construction of its railroad and expend thereon at least ten per cent of the amount of its original capital stock within two years after the date of its certificate of incorporation, and does not complete and open its railroad for use within four years after said date, its corporate powers and existence shall cease.

Capital stock of narrow gauge railroads. 1874, 298; 372, § 31.

SECTION 28. A corporation which has a railroad of the gauge of three feet shall not begin running its trains, until its paid-up capital stock is equal to one half of its cost, including equipment.

P. S. 112, § 45.

R. L. 111, § 48.

1906, 463, II, §§ 28, 258.

ORGANIZATION.

First meeting of incorporators. 1872, 53, § 11. 1874, 372, § 30. P. S. 112, § 45. R. L. 111, § 48. 1906, 463, II, §§ 29, 258.

SECTION 29. Upon the issue of such certificate of incorporation, the first meeting of the incorporators shall be called by a notice signed by a majority of the directors; and such notice shall state the time, place and purposes of the meeting. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or

8 usual place of business, and another copy thereof, and an affidavit of the
 9 clerk that the notice has been duly served, shall be recorded with the
 10 records of the corporation. If all of the incorporators shall in writing
 11 waive such notice, and fix the time and place of the meeting, no notice
 12 shall be required.

1 SECTION 30. At such first meeting, or at any adjournment thereof, Organization.
 2 the incorporators shall organize by the adoption of by-laws, and by the 1851, 133,
 3 election, by ballot, of not less than five directors. The clerk appointed by §§ 4, 5,
 4 the directors under section fifteen shall make and attest a record of the G. S. 61, § 5,
 5 proceedings until the clerk has been chosen and sworn, including a record 1870, 224, § 10,
 6 of such choice and qualification. P. S. 109, § 20,
R. L. 110, § 19,
1906, 463, 11,
§§ 30, 258.

OFFICERS.

1 SECTION 31. The business of every corporation shall be managed Officers.
 2 and conducted by a president, a board of not less than five directors, a 1831, 72,
 3 clerk, a treasurer and such other officers and such agents as the corpora- R. S. 39, § 49,
 4 tion by its by-laws shall authorize. G. S. 63, § 2,
1869, 50.
1874, 372, § 43. R. L. 111, § 58. 16 Gray, 407.
P. S. 112, § 55. 1906, 463, 11, §§ 31, 258. 117 Mass. 226.

1 SECTION 32. The directors shall be elected annually by the stock- Election of
 2 holders by ballot, and the president shall be elected annually by and officers.
 3 from the board of directors, and the treasurer and the clerk annually 1831, 72,
 4 by said board. Every director, unless the by-laws otherwise provide, R. S. 39, § 49,
 5 shall be a stockholder. The treasurer may be required to give a bond G. S. 63, § 2,
 6 for the faithful performance of his duty in such sum and with such sureties 1869, 50,
 7 as the by-laws may prescribe. The clerk, who shall be a resident of the 1873, 226,
 8 commonwealth, shall be sworn, and shall record all votes of the corpora- §§ 1-3,
 9 tion in a book to be kept for that purpose. The officers of a corporation 1874, 372, § 43,
 10 shall hold office for one year and until their successors are qualified. All P. S. 112,
 11 other agents and officers shall be chosen or appointed, and all vacancies §§ 27, 28, 55,
 12 filled, in the manner prescribed by the by-laws, or, in default of such R. L. 111,
 13 by-law, by the board of directors. §§ 28, 29, 58,
1906, 463,
11, §§ 32, 258,
1918, 257,
§ 365,
1919, 5,
1920, 2.

MEETINGS.

1 SECTION 33. There shall be an annual meeting of the stockholders, Meetings of
 2 and the time and place of holding it, and the manner of conducting it, stockholders;
 3 shall be fixed by the by-laws. All meetings of stockholders shall, unless notice, quorum,
 4 the by-laws otherwise provide, be held in the commonwealth; and shall etc.
 5 be called, and notice thereof given, in the manner provided in the by-laws R. S. 39, § 51,
 6 of the corporation; or, if the by-laws make no provision therefor, shall G. S. 63, § 4,
 7 be called by the president, and a written notice, stating the place, day 1863, 212,
 8 and hour thereof, given by the clerk, at least seven days before such 1868, 106,
 9 meeting, to each stockholder by leaving such notice with him or at his 1874, 323; 372,
 10 residence or usual place of business, or by mailing it, postage prepaid, and § 40,
 11 addressed to each stockholder at his address as it appears upon the books P. S. 112, § 51
 12 of the corporation. Unless the by-laws otherwise provide, a majority in R. L. 111, § 55,
 13 interest of all stock issued and outstanding and entitled to vote shall 1906, 463,
 14 constitute a quorum, but if at any annual meeting or at any other meet- 11, §§ 33, 258,
 15 ing held for the purpose of electing officers less than a majority of the 1907, 585, § 2.
 16 stock is represented, no election of officers shall take place.
 17 Notices of all meetings of stockholders shall state the purposes for
 18 which the meetings are called. No notice of the time, place or purpose

of any regular or special meeting of the stockholders shall be required, if every stockholder, or his attorney thereunto authorized, by a writing filed with the records of the meeting, waives such notice.

Special meetings. 1876, 201. P. S. 112, § 52. R. L. 111, § 56. 1906, 463, II, §§ 35, 258.

SECTION 34. A special meeting of the stockholders shall be called, and a written notice thereof, stating the time, place and purpose of the meeting, given by the clerk, upon written application of three or more stockholders entitled to vote, and holding at least one tenth of the capital stock.

Voting rights of corporation upon its own stock. 1843, 68, § 2. G. S. 63, § 5. 1874, 372, § 41. P. S. 112, § 53. R. L. 111, § 57. 1906, 463, II, §§ 36, 258.

SECTION 35. A railroad corporation shall not, directly or indirectly, vote upon any share of its own stock.

Voting rights of stockholders. R. S. 39, § 50. 1843, 68, § 1. 1858, 76. G. S. 63, §§ 5, 6. 1874, 372, §§ 41, 42. P. S. 112, §§ 53, 54. R. L. 111, § 57. 1906, 463, II, §§ 37, 258.

SECTION 36. Stockholders entitled to vote shall have one vote for each share of stock owned by them. Stockholders may vote either in person or by proxy. No proxy dated more than six months before the meeting named therein shall be accepted, and no such proxy shall be valid after the final adjournment of such meeting.

Meetings of directors. 1906, 463, II, §§ 39, 258.

SECTION 37. Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board of directors shall be a legal meeting without notice, if each director, who is absent, by a writing filed with the records of the meeting, waives such notice.

CAPITAL STOCK.

Stock certificates. 1906, 463, II, § 40.

SECTION 38. Each stockholder shall be entitled to a certificate, which shall be signed by the president and by the treasurer of the corporation, or by such other officers authorized by the by-laws, shall be sealed with its seal, and shall certify the number of shares owned by him in such corporation.

Assessments upon shares. R. S. 39, § 53. 1852, 303. G. S. 63, §§ 8-10. 1874, 372, § 45. P. S. 112, § 57. R. L. 111, § 60. 1906, 463, II, §§ 45, 258. 9 Cus-h 5. 1 Gray, 544. 2 Gray, 277. 4 Gray, 61. 5 Gray, 329. 8 Gray, 596. 107 Mass. 507. 119 Mass. 213. 113 Mass. 79.

SECTION 39. The directors may from time to time assess upon each share such amounts, not exceeding in all one hundred dollars on a share, or the price fixed under section fifty of chapter one hundred and fifty-nine, as they think proper, and may direct the same to be paid to the treasurer, who shall give notice thereof to the subscribers. If a subscriber has made no payment upon his shares, the directors, thirty days after an assessment has become due, may declare them forfeited, and may transfer them to any responsible person who subscribes for them and pays the assessments then due. If a subscriber neglects, for thirty days after notice from the treasurer, to pay an assessment upon his shares, the directors may order the treasurer, after giving notice of the sale, to sell such shares by public auction to the highest bidder, and, upon the payment by him to the corporation of the unpaid assessments, of interest to the date of sale and of the charges of sale, the shares shall be transferred to him. If within thirty days after the sale the purchaser does not make said payment to the corporation, the sale shall be cancelled, and the subscriber shall be liable to the corporation for the unpaid assessments, interest thereon and charges of sale. If the amount so paid by the purchaser to the corporation is more than the amount for

20 which the shares were sold, the subscriber shall be liable to the purchaser
 21 for the deficiency; if it is less, the purchaser shall be liable to the sub-
 22 scriber for the surplus.

1 SECTION 40. If a subscriber neglects to pay his assessment for thirty
 2 days as provided in the preceding section, the directors may elect to
 3 proceed at law against said delinquent subscriber to recover all amounts
 4 due and payable by him with interest. If a judgment rendered in an
 5 action against a subscriber remains unsatisfied for thirty days, all
 6 amounts previously paid by him shall be forfeited to the company and
 7 the directors may offer such shares for sale as provided in said section.

Collection of
 assessment,
 1906, 463,
 11, § 45

1 SECTION 41. A railroad corporation, for the purpose of building a
 2 branch or extension, or of aiding in the construction of another railroad,
 3 or of taking stock in a grain elevator corporation in the organization of
 4 which it is an associate, or of erecting and operating grain elevators
 5 within the commonwealth, or of building depots, or of abolishing grade
 6 crossings, or of making permanent investments or improvements, or of
 7 funding its floating debt, or of refunding its funded debt, or for the pay-
 8 ment of money borrowed for any lawful purpose, or for other necessary
 9 and lawful purposes, may, from time to time, in accordance with sections
 10 forty-seven and forty-eight, increase its capital stock or bonds beyond
 11 the amounts fixed and limited by its agreement of association or its
 12 charter, or by any special law.

Purposes for
 which capital
 stock may be
 increased
 1874, 351, § 2;
 372, § 48.
 384, § 1
 P. S. 112, § 60
 1894, 502
 R. L. 111, § 61.
 1906, 463,
 11, §§ 46, 258.

1 SECTION 42. If a railroad corporation owning a railroad in this com-
 2 monwealth and consolidated with a corporation owning a railroad in
 3 another state increases its capital stock, or the capital stock of such
 4 consolidated corporation, except as authorized by this chapter or chap-
 5 ter one hundred and fifty-nine, without authority of the general court,
 6 or without such authority extends its line of railroad, or consolidates
 7 with any other corporation, or makes a stock dividend, the charter and
 8 franchise of such corporation shall be subject to forfeiture.

Forfeiture for
 unauthorized
 increase of
 capital stock.
 1871, 389.
 1874, 372,
 § 177
 P. S. 112, § 61.
 R. L. 111, § 62.
 1906, 463,
 11, §§ 47, 258.
 109 Mass. 99.

142 Mass. 146.

1 SECTION 43. A railroad corporation organized under the laws of this
 2 commonwealth, or organized under the laws of this commonwealth and
 3 of any other state or states may, by vote of two thirds in interest of its
 4 common stockholders, at a meeting duly called therefor, with the ap-
 5 proval of the department, issue and from time to time increase preferred
 6 stock of one or more classes for any lawful purposes for which railroad
 7 corporations are authorized to issue or increase their capital stock. Each
 8 class of preferred stock shall be entitled to the preferences and rights
 9 and shall be subject to the restrictions and limitations fixed by such vote,
 10 as approved by the department. Such stock shall be issued subject to
 11 all the provisions of the laws of this commonwealth governing the issue
 12 of capital stock by railroad corporations.

Preferred
 stock, issue of.
 1902, 441, § 1.
 1915, 299,
 §§ 1, 4

1 SECTION 44. Each class of preferred stock issued under authority of
 2 the preceding section shall be designated by a name approved by the
 3 department to distinguish it from all other classes of stock of the cor-
 4 poration. A certified copy of the vote creating, and of the order of the
 5 department approving the creation of, any class of preferred stock shall
 6 be filed in the office of the department and in the office of the commis-

Designation of
 preferred stock,
 etc.
 1902, 441, § 2.
 1915, 299,
 §§ 2, 4.
 1919, 350,
 §§ 52, 53.

sioner of corporations and taxation. Every certificate of stock issued by a railroad corporation after the approval by the department of the creation by it of preferred stock shall contain a reference to all votes creating preferred stock and a brief description of the respective preferences, rights and restrictions of each class of said stock.

Preferred stock; voting power, limitation on amount. 1915, 299, § 3.

SECTION 45. Any preferred stock issued under authority of section forty-three shall have the same voting power as the common stock, except that, in any case, there may be such limitations of the voting power of the preferred stock as the department approves and finds to be consistent with the adequate protection of the public interest. The aggregate amount at par of preferred stock of all classes issued by a railroad corporation shall at no time exceed twice the amount at par value of its outstanding common stock, and no class of preferred stock shall be created which is not, in a manner approved by the department, made subordinate in respect to dividends or to participation in the proceeds of liquidation to the preferences of every previously created class of preferred stock.

Preferred stock to be offered to stockholders, etc. 1915, 299, § 3.

SECTION 46. Upon any issue of preferred stock the new shares shall, unless the common stockholders shall, with the approval of the department, otherwise provide, first be offered to the common stockholders in the manner prescribed in sections fifty and fifty-one of chapter one hundred and fifty-nine, including the holders of such of its evidences of indebtedness outstanding as on their face entitle the holders thereof to participate in the right to subscribe to such shares; and any shares of the preferred stock which shall not have been duly subscribed and paid for by the common stockholders or their assigns and by holders of such evidences of indebtedness, and all of the preferred shares, if the common stockholders so determine and the department approves, may be sold in the manner and subject to section fifty-one of chapter one hundred and fifty-nine, or in any other manner, at not less than par, which the department may approve. In case of any increase in the common stock of the corporation, holders of preferred stock shall be entitled to have offered to them shares of the new stock in the manner provided in sections fifty and fifty-one of chapter one hundred and fifty-nine, whenever the vote creating such preferred stock as approved by the department shall so provide.

ISSUE OF STOCK, BONDS, ETC.

Issue of capital stock, bonds, coupon notes, and other evidences of indebtedness. 1854, 286, §§ 1, 3, 4. G. S. 63, §§ 120, 121, 123. 1869, 131, § 1. 1874, 372, §§ 49, 51. 1875, 58. 1876, 170. P. S. 112, §§ 62, 64. 1887, 191. 1889, 316, § 2. 1897, 337. R. L. 109, § 25; 111, §§ 63, 65.

SECTION 47. A railroad corporation may issue shares of capital stock, bonds, notes or other evidences of indebtedness, for the purpose of funding its floating debt or for any other lawful purpose, and may mortgage or pledge as security for the payment of such indebtedness a part or all of its railroad, equipment and franchise and a part or all of its real and personal property, including property to be afterward acquired. Any mortgage executed by a railroad company shall secure, on equal terms with any other indebtedness secured by such mortgage, all bonds, notes and other evidences of indebtedness previously issued and then outstanding of which such corporation is the maker or which it has assumed through merger or consolidation with the original and principal obligor, except outstanding bonds, notes or other evidences of indebtedness while and so long as the same are, in accordance with any promise con-

14 tained therein, secured by another direct mortgage; but the term
 15 "mortgage" as used herein shall not include or apply to the pledge of
 16 securities deposited with a trustee as collateral to secure the repayment
 17 of a loan. Its bonds, notes or other evidences of indebtedness, payable
 18 at periods of more than one year from the date thereof, may be issued
 19 by any such corporation to an amount which, when added to the amount
 20 of all its then outstanding bonds, notes or other evidences of indebted-
 21 ness, payable at periods of more than one year from the date thereof, of
 22 which it is the maker or which it has assumed, shall not cause the aggre-
 23 gate amount of all such bonds, notes and other evidences of indebted-
 24 ness to exceed the amount of the capital stock of the corporation actually
 25 paid in at the time, as determined under section fifty-three of chapter
 26 one hundred and fifty-nine, unless any excess above such amount shall
 27 have been previously approved by the department as consistent with the
 28 public interest, taking into consideration the fixed charges of such cor-
 29 poration, the amount and character of its contingent liabilities and other
 30 pertinent conditions; but in no event shall the aggregate amount of all
 31 bonds, notes or other evidences of indebtedness of which it is the maker
 32 or which it has assumed exceed twice the amount of said capital stock as
 33 determined as aforesaid; but such of the bonds issued or to be issued
 34 under a mortgage as are deposited to retire, at or before maturity, bonds
 35 or other evidences of indebtedness previously issued and outstanding at
 36 the date of such mortgage, while so deposited, shall not be taken into
 37 account in applying these limitations. No bonds, coupon notes or other
 38 evidences of indebtedness payable at periods of more than one year from
 39 the date thereof shall be issued unless authorized by a vote of the stock-
 40 holders at a meeting called for the purpose, and no such bonds, coupon
 41 notes or other evidences of indebtedness shall be issued unless counter-
 42 signed and authenticated by a person or trust company appointed by
 43 the corporation for that purpose.

1906, 463,
 II, §§ 48,
 50, 66, 258
 1912, 725,
 II, §§ 4, 5
 1913, 784,
 §§ 15, 16
 1915, 303
 10 Allen, 448
 157 Mass. 37
 216 Mass. 432.

1 SECTION 48. Before any railroad corporation shall issue any shares
 2 of capital stock or any bonds, notes or other evidences of indebtedness
 3 payable at periods of more than one year after the date thereof, it shall
 4 apply to the department for its approval of the proposed issue to such
 5 amount as the department shall determine to be reasonable and proper
 6 for the purpose of funding its floating debt properly incurred for lawful
 7 purposes, or reasonable and proper for any other lawful purpose set
 8 forth in the application for such approval. The department shall render
 9 a written decision assigning its reasons therefor upon such an applica-
 10 tion within thirty days after the final hearing thereon. Any order of the
 11 department approving any such issue of stock, bonds, notes or other
 12 evidences of indebtedness may provide for the application of the pro-
 13 ceeds thereof to such particular uses as the department shall by that
 14 order or by some subsequent order specify, and the corporation shall not
 15 apply such proceeds otherwise than as thus specified in such orders.
 16 The decision of the department as to the amount of stock reasonably
 17 necessary for the purpose for which such stock is proposed to be issued
 18 shall be based upon the price at which such stock is to be issued, and the
 19 department shall refuse to approve any particular issue of stock, if, in
 20 its opinion, the price at which it is proposed to be issued is so low as to
 21 be inconsistent with the public interest. This section shall not require
 22 a railroad corporation incorporated under the laws of one or more other
 23 states or foreign countries, as well as under the laws of this common-

Approval of
 issue of bonds,
 coupon notes
 and other
 evidences of
 indebtedness
 Penalty
 1891, 462,
 §§ 1, 2
 1897, 337, § 1.
 R. L. 109,
 §§ 24, 27
 1906, 463,
 II, §§ 65, 68,
 258.
 1912, 725,
 II, § 4
 1913, 784, § 16.
 199 Mass. 352
 214 Mass. 529
 216 Mass. 432.
 222 Mass. 35.

wealth, to apply to the department for approval of the issue of shares of 24
 capital stock or of bonds, notes or other evidences of indebtedness for the 25
 sole ultimate purpose of providing funds for additions to or improvements 26
 of property of such corporation or of any corporation controlled by it 27
 through lease or stock ownership, if such property has a situs in another 28
 state or country by the laws of which such railroad corporation is author- 29
 ized to operate a railroad therein and to make such additions to or 30
 improvements of such property, nor to apply to the department for 31
 approval of the issue of shares of capital stock, bonds, notes or other evi- 32
 dences of indebtedness for paying, funding or refunding indebtedness 33
 incurred for such ultimate purpose; but all such proposed issues and the 34
 authority therefor shall, before the issue of such securities, be reported 35
 to the department. Except for such ultimate purpose, such a railroad 36
 corporation shall not, without the approval of the department, issue any 37
 shares of capital stock, or any bonds, notes or other evidences of in- 38
 debtedness payable at periods of more than one year after the date 39
 thereof, in exchange for or to pay for shares of capital stock, notes, bonds 40
 or other evidences of indebtedness of any other corporation which are 41
 acquired or contracted for; but if the acquisition or holding of such 42
 securities by such railroad corporation shall be authorized by the laws 43
 of any state or country where it has been incorporated, and shall also be 44
 permitted by the laws of the state or country where such other corpora- 45
 tion has been incorporated, the department may authorize the acquisi- 46
 tion of such securities by such railroad corporation, and may approve 47
 the issue of shares of capital stock, bonds, notes or other evidences of 48
 indebtedness by such railroad corporation in exchange for or to pay for 49
 such securities, provided that the department shall find that such acqui- 50
 sition and the terms thereof are consistent with the public interest. 51
 A director, treasurer or other officer or agent of a railroad corporation, 52
 who knowingly votes to authorize the issue of, or knowingly signs, cer- 53
 tifies or issues stock or bonds contrary to this or the preceding section, 54
 or who knowingly votes to authorize the application, or knowingly 55
 applies the proceeds of such stock or bonds contrary to any provision of 56
 said sections, or who knowingly votes to assume or incur, or knowingly 57
 assumes or incurs in the name or behalf of such corporation, any debt 58
 or liability except for the legitimate purposes of the corporation, shall 59
 be punished by a fine of not more than one thousand dollars or by im- 60
 prisonment for not more than one year, or both. 61

BONDS AND MORTGAGES.

Registered
 bonds.
 1869, 131,
 §§ 2-4
 1874, 372, § 50.
 P. S. 112, § 63.
 R. L. 111, § 64
 1906, 463,
 11, §§ 49, 258.

SECTION 49. At the request of the owner or holder of any coupon 1
 bonds lawfully issued, the railroad corporation issuing them may issue 2
 registered bonds in exchange therefor, upon such terms and under such 3
 regulations as its directors may prescribe, and with the consent and ap- 4
 proval of the trustees, if any, to whom a mortgage or pledge has been 5
 executed; and such registered bonds shall, with the exception of the 6
 coupons, correspond in all respects with the coupon bonds for which they 7
 are exchanged, and shall be in conformity with all laws authorizing the 8
 issue of said coupon bonds. Such exchange shall not affect a mortgage or 9
 pledge given as security for the payment of such coupon bonds, and such 10
 mortgage or pledge shall remain in full force as security for such registered 11
 bonds; and the coupon bonds shall be cancelled and destroyed at the 12
 same time that the registered bonds are issued in exchange therefor. 13

1 SECTION 50. All bonds or notes issued by a railroad corporation shall
 2 be valid and binding, although negotiated and sold by it or its agents at
 3 less than par.

1874, 372, § 52. P. S. 112, § 65. R. L. 111, § 66. 1906, 463, II, §§ 51, 258.

Securities collectible. 1854, 286, § 5. G. S. 63, § 122.

1 SECTION 51. If a railroad corporation, having executed a mortgage
 2 of its property, rights and privileges, or of a part thereof, to trustees for
 3 the benefit of its general creditors, or of a particular class of creditors,
 4 makes default in the performance of the condition of the mortgage, so
 5 that the trustees or their successors are entitled to the actual possession
 6 and usufruct of the property, rights and privileges therein conveyed, in
 7 trust for the purposes specified in the mortgage, the trustees, after entry,
 8 instead of retaining actual possession of the mortgaged premises and
 9 operating the railroad, may contract with the corporation or other compe-
 10 tent party to take or retain for them the possession of the mortgaged
 11 premises, and to use and operate the same on its own responsibility,
 12 accounting with the trustees for the earnings and income, and paying
 13 over the profits and net income periodically, when and as far as neces-
 14 sary for the performance of the conditions of the mortgage, if a majority
 15 in interest of the bondholders or creditors under the mortgage shall so
 16 vote, in person or by proxy, at a meeting called therefor, notice of which
 17 shall be published ten days before said meeting in two or more daily news-
 18 papers published in Boston, and in at least one newspaper published in
 19 each county where the railroad is located. All liabilities incurred by the
 20 corporation or other party in operating the railroad under such contract
 21 shall be held as claims against and be paid out of the income, in the same
 22 manner and to the same extent as if the property had remained in the
 23 actual possession of the trustees and been operated by them.

Trustees entitled to possession may contract with corporation to operate railroad. 1857, 178, § 1. G. S. 63, § 124. P. S. 112, § 66. R. L. 111, § 67. 1906, 463, II, §§ 52, 258.

1 SECTION 52. Trustees in possession of a railroad under a mortgage
 2 shall annually call a meeting of the bondholders or creditors for whose
 3 security they hold the railroad in trust, to be held in December, of which
 4 notice shall be given by publication, at least ten days before such meeting,
 5 in two or more daily newspapers in Boston, and in at least one news-
 6 paper in each county where the railroad is located; and at such meeting
 7 they shall submit a report for the year, similar to the annual report of
 8 railroad directors to stockholders. If they fail to call such a meeting,
 9 five or more bondholders or creditors, whose claims secured by the
 10 mortgage amount to not less than ten thousand dollars, may in the same
 11 manner call such meeting, to be held in the January following said
 12 December.

Trustees in possession to call annual meetings. 1857, 178, §§ 2, 3. G. S. 63, §§ 125, 126. P. S. 112, §§ 67, 68. R. L. 111, § 68. 1906, 463, II, §§ 53, 258.

1 SECTION 53. At the annual meeting held under the preceding section,
 2 the bondholders or creditors, by a majority in interest vote, may, in
 3 person or by proxy, elect three trustees under the mortgage for the ensu-
 4 ing year, and until others are chosen and qualified. And the trustees or
 5 any of them or a bondholder or creditor may submit the proceedings of
 6 the meeting for confirmation to a justice of the supreme judicial court,
 7 in court or at chambers, first giving notice of their intention so to do to
 8 the former trustees under the mortgage, to the trustees of all other exist-
 9 ing mortgages upon the railroad, and to the corporation, seven days at
 10 least before the hearing thereon; which notice may be served by an of-
 11 ficer or disinterested person. The justice may hear the parties, ratify

Election and confirmation of trustees. 1857, 178, § 4. G. S. 63, § 127. P. S. 112, § 69. R. L. 111, § 69. 1906, 463, II, §§ 54, 258.

the election, and enter such decree as he may find necessary to transfer the property to the new trustees; which decree shall be filed in the office of such clerk of the court as the justice may direct.

Equity jurisdiction of supreme judicial court.
 1857, 178, § 5.
 G. S. 63, § 128.
 P. S. 112, § 70.
 R. L. 111, § 70.

SECTION 54. The supreme judicial court shall have jurisdiction in equity of all cases arising under the two preceding sections, and of all questions arising out of railroad mortgages, and may summarily remove a trustee under a railroad mortgage, whether he is in possession of the railroad or not, and appoint a new trustee in his stead.

1906, 463, 11, §§ 55, 258. 127 Mass. 43. 171 Mass. 239. 218 Mass. 367.

Rights of purchaser under foreclosure.
 1886, 142, § 1.
 R. L. 111, § 74.
 1906, 463, 11, §§ 56, 258.

SECTION 55. A purchaser of a railroad at a sale under a valid foreclosure of a legal mortgage thereof, and his successors in title, shall, relative to the construction, maintenance and operation of said railroad, be subject to all the duties, liabilities and restrictions, and have all the powers and rights, which the mortgagor was subject to and had at the time of said sale.

STOCK AND SCRIP DIVIDENDS.

Stock or scrip dividends forbidden, when.
 1868, 310, § 1.
 1871, 389.
 1874, 372, § 177.
 P. S. 112, § 61.
 1894, 350, § 1.
 R. L. 109, § 20.
 1906, 463, 11, §§ 63, 258.
 214 Mass. 529.

SECTION 56. A railroad corporation shall not declare any stock or scrip dividend or divide the proceeds of the sale of stock or scrip among its stockholders; nor shall any such corporation issue any share of stock to any person unless the par value of the shares so issued is first paid in cash to its treasurer; nor shall it without authority of the general court increase its capital stock beyond the maximum amount fixed by its act of incorporation, or fixed under sections forty-one, forty-seven and forty-eight.

Liability of directors.
 1868, 310, § 2.
 P. S. 112, § 19.
 1894, 350, § 2.
 R. L. 109, § 21.
 1906, 463, 11, §§ 64, 258.
 1918, 257, § 366.
 1919, 5.
 1920, 2.

SECTION 57. A certificate of stock or scrip issued in violation of the preceding section shall be void; and each director of the corporation issuing it shall be liable to a penalty of one thousand dollars, to be recovered by indictment in the county where he resides, or, if he resides in no county, in the county where he is commorant, or the offence was committed; but if any such director proves, that, before such issue, he filed his written dissent thereto with the clerk, and at no time voted therefor, he shall not be so liable.

CONNECTING RAILROADS.

Connecting railroad companies may use each other's roads.
 1845, 191, §§ 1, 2.
 1857, 204, §§ 1, 3.
 G. S. 63, §§ 118, 119.
 1872, 53, § 12; 180, § 3.
 1874, 372, § 165.
 1876, 182.
 P. S. 112, § 216.
 R. L. 111, § 272.
 1906, 463, 11, §§ 205, 258.
 12 Gray, 393.

SECTION 58. If a railroad constructed after April eighth, eighteen hundred and seventy-two, meets another railroad which terminates in the same city or town, or lawfully crosses another railroad at the same level therewith, the corporation by which either of said railroads is owned may enter its railroad upon, unite the same with and use the railroad of the other; if a railroad constructed after said date meets another railroad which passes through the same city or town, the corporation by which either of said railroads is owned may, with the written consent of the department and upon such terms as the department upon hearing prescribes, enter its railroad upon, unite the same with and use the railroad of the other; and if a railroad corporation whose railroad was constructed prior to said date is specially authorized to enter its railroad upon, unite the same with and use the railroad of another cor-

14 poration, each of such corporations may enter upon, unite its railroad
 15 with and use the railroad of the other; but no locomotive engine or other
 16 motive power not owned and controlled by the corporation owning or
 17 lawfully operating the railroad shall be allowed to run upon a railroad
 18 except with the consent of such corporation.

1 SECTION 59. If two corporations are authorized as in the preceding
 2 section each to enter its railroad upon, unite the same with and use the
 3 railroad of the other, each of them shall at reasonable times and for a
 4 reasonable compensation draw over its railroad the passengers, merchan-
 5 dise and cars of the other, and each of them shall for a reasonable
 6 compensation provide upon its railroad convenient and suitable station
 7 accommodations for the passengers and merchandise of the other cor-
 8 poration passing to and over it, and shall receive and deliver the same
 9 in the manner in which it receives and delivers its own passengers and
 10 freight.

Compensation
for drawing
cars.
1845, 191, § 2
1857, 291,
§§ 1, 3
G. S. 63, § 117.
1874, 372,
§ 166
P. S. 112, § 217.
R. L. 111,
§ 273
1906, 463,
11, §§ 206, 258.
14 Allen, 462.

1 SECTION 60. If the corporations cannot agree upon the stated periods
 2 at which the cars of one shall be drawn over the railroad of the other,
 3 and upon the compensation to be paid therefor, or upon the terms and
 4 conditions upon which accommodations shall be furnished for the pas-
 5 sengers and merchandise of the other, or if two corporations operating
 6 railroads of different gauges cannot agree as to the requisite terminal
 7 accommodations, or as to the manner in which freight and passengers
 8 shall be transferred from one railroad to the other and forwarded, the
 9 department, upon the petition of either party and after notice to the
 10 other, shall hear the parties, and determine, having reference to the con-
 11 venience and interest of the corporations and of the public to be accom-
 12 modated thereby, the stated periods for drawing cars, the compensa-
 13 tion therefor, the terms and conditions for passengers and merchandise,
 14 or the requisite terminal accommodations and manner of transferring
 15 passengers and freight as aforesaid; and, upon the application of either
 16 party, shall determine all questions between the parties relative to the
 17 transportation of freight and passengers and other business upon and
 18 connected with said railroads in which they are jointly interested and
 19 the manner in which the business shall be done, and shall apportion to
 20 the corporations their respective shares of the expenses, receipts and in-
 21 come of the same; and the award of the department shall be binding
 22 upon the respective corporations for one year and thereafter until the
 23 department revises the same; and the compensation of the department
 24 for services and expenses under this section shall be paid by the respec-
 25 tive corporations in such proportions as the department shall determine
 26 and set forth in its award. Upon the written request of a party affected
 27 thereby, filed with the department within thirty days after the render-
 28 ing thereof, the award shall be filed in the supreme judicial court which
 29 shall have jurisdiction to revise it as if it had been made by a commission
 30 appointed by said court.

Determination
of rates for
drawing cars,
etc.
1845, 191,
§§ 2-4
1857, 291, § 2.
1858, 10
G. S. 63,
§§ 117, 118
1869, 408, § 5.
1872, 180, § 4.
1874, 372,
§ 167.
P. S. 112, § 218.
R. L. 111,
§ 274
1906, 463,
11, §§ 207, 258.
9 Cush. 369,
14 Gray, 253,
266.

1 SECTION 61. A railroad corporation created by the laws of another
 2 state shall have all the rights and privileges relative to connecting rail-
 3 roads, under the three preceding sections, of a corporation created by
 4 the laws of this commonwealth.

Connecting
roads chartered
by other roads.
1860, 201,
1874, 372,
§ 168.

P. S. 112, § 219.

R. L. 111, § 275.

1906, 463, 11, §§ 208, 258.

Connecting companies may contract that one shall perform all transportation for the other.
 1838, 99, §§ 1-3.
 G. S. 63, §§ 115, 116.
 1872, 180, § 1.
 1873, 361.
 1874, 372, § 170.
 1880, 205, § 1.
 P. S. 112, §§ 220, 221.
 1894, 506, § 1.
 R. L. 111, § 276.
 1906, 463, II, §§ 209, 258.
 1907, 585, § 8.
 10 Gray, 103.
 8 Allen, 438.
 114 Mass. 127.
 233 Mass. 411.
 1 Op A. G. 118.

SECTION 62. Two railroad corporations, incorporated under the laws of the commonwealth, and whose railroads enter upon or connect with each other, may contract that either corporation shall perform all the transportation upon and over the railroad of the other; and any such corporation may lease its railroad to any other such corporation; but the facilities for travel and business on either of the railroads of said corporations shall not thereby be diminished. Such leases shall be upon such terms as the directors agree, and as a majority in interest of the stockholders of both corporations at meetings called therefor approve, subject to section fifty-four of chapter one hundred and fifty-nine. The income arising from such contracts or leases shall be subject to the provisions of law relative to the right of the commonwealth to purchase the railroads of the railroad corporations or to reduce their tolls, in the same manner as that arising from the use of the railroads. Copies of such contracts or leases shall be deposited with the department, and full statements of the facts shall be set forth in the next annual return of such corporations. This section shall not authorize a lease or contract between two railroad corporations, each of which has a terminus in Boston. The railroads of two railroad corporations shall be considered to enter upon or connect with each other, within the meaning of this section, if one of such railroads enters upon, connects with, or intersects a railroad leased to the other or operated by it under a contract as herein authorized.

Term of lease not to exceed ninety-nine years.
 1880, 205, § 2.
 P. S. 112, § 222.
 R. L. 111, § 277.
 1906, 463, II, §§ 210, 258.

SECTION 63. A railroad corporation shall not lease or contract for the operation of its railroad for a period of more than ninety-nine years without the consent of the general court; but this section shall not render invalid a lease approved by the stockholders of a corporation before July first, eighteen hundred and eighty.

TAKING SECURITIES OF OTHER CORPORATIONS.

Taking securities of other corporations.
 1868, 347, § 1.
 1872, 53, § 17.
 180, § 2.
 1874, 372, § 53.
 P. S. 112, § 74.
 R. L. 111, § 77.
 1906, 463, II, §§ 57, 258.
 197 Mass. 194.
 198 Mass. 413.
 201 Mass. 370.
 208 Mass. 544.
 233 Mass. 502.

SECTION 64. A railroad corporation, unless authorized by the general court or by the six following sections, shall not directly or indirectly subscribe for, take or hold the stock or bonds of or guarantee the bonds or dividends of any other corporation; and the amount of the bonds of one or more other corporations subscribed for and held by a railroad corporation, or guaranteed by it conformably to special authority of the general court or the authority given in said sections, with the amount of its own bonds issued in conformity with sections forty-seven and forty-nine, shall not exceed at any time the amount authorized by said section forty-seven, computed as provided in section fifty-three of chapter one hundred and fifty-nine.

Stock in a telegraph company.
 1849, 93, § 8.
 G. S. 63, § 12.
 1874, 372, § 54.
 P. S. 112, § 75.

SECTION 65. A railroad corporation may hold stock in a telegraph company, whose telegraph connects two or more places on the railroad, to an amount not exceeding two hundred dollars for each mile of railroad so connected.

R. L. 111, § 78.

1906, 463, II, §§ 58, 258.

Guaranty of bonds of steamship companies.
 1868, 347, § 2.

SECTION 66. A railroad corporation may guarantee, to an amount not exceeding five per cent of its capital stock, the bonds of any corporation incorporated in the commonwealth for the purpose of carrying

4 freight, passengers and mails between any port of this commonwealth 1874, 372, § 55.
 5 and Europe; or, upon adequate security therefor, may issue its own P. S. 112, § 76.
 6 bonds to the same amount, conformably to the provisions of sections R. L. 111, § 79
 7 forty-seven and forty-eight. 1906, 463,
 11, §§ 59, 258

1 SECTION 67. A railroad corporation may become an associate under Railroad
 2 chapter one hundred and fifty-six in the formation of a corporation for corporation
 3 the purpose of erecting and operating a grain elevator within the com- may become
 4 monwealth, and may take stock in any elevator corporation so organ- associate in
 5 ized, and, at all meetings, and in all transactions of such elevator grain elevator
 6 corporation, the president of the railroad corporation, or in his absence any corporation. 1874, 384,
 7 officer appointed by its board of directors, may represent, act and vote §§ 1, 2
 8 in the name of such railroad corporation. P. S. 112,
 1906, 463,
 11, §§ 77, 78,
 R. L. 111, § 80

1 SECTION 68. If two corporations own and operate connecting rail- Connecting
 2 roads, which are wholly constructed, either corporation may guarantee roads may
 3 the bonds of the other, upon such terms and to such an extent as may guarantee
 4 be authorized at a meeting called therefor, if the bonds so guaranteed each other's
 5 are issued in conformity with law. bonds 1870, 325, § 4
 1871, 354
 1874, 372, § 56.
 P. S. 112, § 79
 R. L. 111, § 81.
 1906, 463, 11, §§ 61, 258.

1 SECTION 69. A railroad corporation may aid in the construction of Railroad
 2 any branch or connecting railroad within the limits of the common- corporations
 3 wealth, whether connecting by a railroad or steamboat line, by sub- may aid in
 4 scribing for shares of stock in such corporation, or by taking its notes or construction
 5 bonds secured by mortgage or otherwise, and may vote on all shares of of branches,
 6 stock so subscribed for and held; but a corporation shall not so subscribe etc. 1874, 351, § 4.
 7 to an amount in excess of two per cent of its paid-up capital stock, or 372, § 57.
 8 mortgage its property to secure the loans or subscriptions made by any P. S. 112, § 80
 9 other corporation under this section, except by a vote of a majority in R. L. 111, § 82.
 10 interest of the stockholders at a meeting called therefor. 1906, 463,
 11, §§ 62, 258.
 171 Mass. 239
 249 Mass. 451

1 SECTION 70. A railroad corporation may acquire, hold, vote, sell May invest
 2 and negotiate the stock and securities of terminal companies organ- in securities
 3 ized under the laws of the commonwealth, and of express companies of terminal
 4 operating in whole or in part on its lines, and may guarantee the bonds companies and
 5 of such companies. certain express 1912, 725, 11,
 § 6.
 1925, 125, § 2
 1929, 76

AUXILIARY SERVICES.

1 SECTION 70A. A railroad corporation may acquire, hold, main- May acquire,
 2 tain and operate steamship companies, ferries, ferryboats and docks and, operate, etc.,
 3 with the approval of the department, motor vehicles not running upon steamship
 4 rails or tracks, for the transportation of passengers or freight, to be companies,
 5 operated upon such routes as public convenience and necessity, in the docks, motor
 6 opinion of the department, may require, subject, in respect to the trans- vehicles, etc. 1925, 125, § 1
 7 portation of freight, to the provisions of section thirty-one A of chapter 1931, 498, § 3A
 8 ninety. Any such railroad corporation, in maintaining and operating
 9 such vehicles, shall be subject to all other provisions of chapter ninety
 10 and to all other laws applicable to motor vehicles and the operation
 11 thereof; to the provisions of chapter one hundred and fifty-nine in
 12 respect to rates, fares and charges for services performed, and, in respect

to the transportation of passengers, to chapter one hundred and fifty- 13
 nine A. This section shall not be construed to affect any right or privi- 14
 lege derived from the constitution or laws of the United States. 15

CONSOLIDATION OF RAILROAD COMPANIES RESTRAINED.

Corporations
 owning, etc.,
 railroad not
 to acquire
 stock in
 domestic
 railroad.
 1907, 585,
 §§ 1, 2.
 253 Mass. 144.

SECTION 71. No corporation owning, leasing or operating a railroad 1
 wholly or partly in the commonwealth, nor any person or corporation 2
 acting in its interest shall, directly or indirectly, acquire, or attempt to 3
 acquire by purchase, exchange of shares, or in any other way, any shares 4
 of the capital stock of any domestic railroad company not lawfully 5
 leased, owned or operated by it prior to May first, nineteen hundred 6
 and seven, except under specific authority provided by law. No such 7
 domestic railroad company, or any officer, director, servant or agent 8
 thereof, shall permit or suffer the said corporation or any of its officers 9
 or agents to exercise any control whatsoever over the corporate acts of 10
 such domestic company, except as hereinafter provided. 11

Department
 to pass on
 consolidation
 and report to
 general court.
 1907, 585, § 3.

SECTION 72. The presidents, or a majority of the boards of directors, 1
 or the holders of not less than one third in interest of the capital stock of 2
 two or more railroad corporations, may apply to the department for its 3
 determination as to whether the consolidation of the railroads of such 4
 corporations is consistent with the public interest. If the department, 5
 after public notice and hearing, shall find that such consolidation is con- 6
 sistent with the public interest, it shall report its findings to the general 7
 court, together with drafts of a law or laws to authorize such consolida- 8
 tion upon the agreement of the corporations to be consolidated, and after 9
 ratification by a vote of not less than two thirds in interest of the stock- 10
 holders in each, and under terms and conditions which will effectually 11
 prevent any decrease in the facilities for transportation on the railroad 12
 of either of such corporations or any increase in the rates for passengers 13
 or freight by the said consolidation, and which will, in the opinion of 14
 the department, secure to the commonwealth adequate control over the 15
 organization, conduct, and management of the said corporations and 16
 railroads, and upon such other terms and conditions as may seem to the 17
 department desirable and proper. 18

Rates not to
 be increased
 or facilities
 diminished by
 consolidation.
 1907, 585, § 4.

SECTION 73. In case of any lease, purchase and sale or consolidation 1
 as authorized by the preceding section, no rate, fare or charge for trans- 2
 portation of passengers or property shall be increased, and no facilities 3
 for transportation shall be diminished thereby, nor in connection there- 4
 with or as a result thereof shall there be any increase in the aggregate 5
 outstanding capital stock or indebtedness of the contracting companies. 6

Penalties.
 1907, 585, § 9.

SECTION 74. A railroad corporation, which violates any provision of 1
 section seventy-one or seventy-two, shall be punished by a fine of ten 2
 thousand dollars; and any officer or agent of such railroad corporation 3
 who procures, aids or abets such corporation in any violation of said sec- 4
 tions, and any partnership, trustee or other person who procures, aids or 5
 abets in any violation thereof, shall be punished by a fine of one thou- 6
 sand dollars or by imprisonment for not less than six months nor more 7
 than one year, or both. 8

LOCATION AND CONSTRUCTION OF RAILROAD.

Conditions Precedent.

1 SECTION 75. No railroad corporation shall purchase or take by emi-
 2 nent domain or enter upon or use, except for making surveys, any land
 3 or other property for the construction of its railroad or of any branch or
 4 extension thereof until the county commissioners of the county where
 5 such land or other property is situated, after hearing the parties, have
 6 determined the manner in which the railroad shall cross the highways
 7 and other ways within such county, nor until it has obtained from the
 8 department the consent required by sections ninety-seven and one hun-
 9 dred and two in all cases in which the county commissioners adjudge
 10 that public necessity requires the crossing at the same level; and notice
 11 of such hearing shall be given by publication for three successive weeks
 12 in one or more newspapers published in such county, the last publication
 13 to be at least seven days before the hearing.

Establishing
 method for
 crossing high-
 ways.
 1881, 111, § 1.
 P. S. 112, § 94.
 R. L. 111, § 98.
 1906, 463,
 11, §§ 82, 258.
 7 Cusb. 506.

1 SECTION 76. No railroad corporation shall take by eminent do-
 2 main or enter upon or use, except for making surveys, land or other
 3 property for the construction of its railroad or any branch or exten-
 4 sion thereof until a sworn estimate of the total cost of constructing the
 5 same, prepared by its chief engineer, has been submitted to the depart-
 6 ment and approved by it; nor until the department is satisfied that an
 7 amount of the capital stock of the corporation equal to at least fifty per
 8 cent of such estimated cost has been actually subscribed by responsible
 9 parties without any condition which invalidates the subscription, and
 10 that twenty per cent of the par value of each share has been actually
 11 paid in, and that the authority and consent required by the preceding
 12 section have been obtained; nor until the clerk of the department, upon
 13 its order, has filed a certificate with the state secretary that this section
 14 has been complied with; nor until the corporation has paid to the state
 15 secretary a fee of fifty dollars for filing such certificate. The certificate
 16 of a master in chancery or a justice of a court of record for the county
 17 where a subscriber resides that he owns property in his own name equal
 18 in value, above all encumbrances, to the amount of his subscription shall
 19 be conclusive evidence of his responsibility. If the department refuses
 20 its approval to an estimate or a subscription list so submitted, it shall
 21 in writing state its reasons therefor in detail at the time and shall include
 22 them in its next annual report.

Prerequisites
 to use of land
 for railroad.
 1852, 303, § 1.
 G. S. 63, § 7.
 1871, 333.
 1878, 215,
 §§ 1, 2.
 1881, 111, § 2.
 P. S. 112,
 §§ 85, 86.
 R. L. 111, § 88.
 1906, 463,
 11, §§ 71, 258.

1 SECTION 77. No railroad or part thereof which is operated by steam
 2 power shall be located or constructed within three miles of the state
 3 house without the previous written consent of the department, and of
 4 the board of aldermen of any city or of the selectmen of any town where
 5 the location is sought.

Location not
 to be within
 three miles of
 state house.
 1882, 265, § 4.
 R. L. 111, § 89.
 1906, 463, 11,
 §§ 72, 258.

Purchase of Land.

1 SECTION 78. A railroad corporation may purchase land for the loca-
 2 tion of its railroad within the limits of the route fixed under section
 3 twenty or twenty-one, and may also purchase so much more land as may
 4 be reasonably necessary for the proper construction and security of the
 5 railroad and the convenient operation thereof, for one or more new tracks

What may be
 purchased.
 R. S. 39, § 54.
 1853, 351, § 1.
 G. S. 63,
 §§ 17, 19.
 1874, 372, § 58.
 P. S. 112, § 88.
 R. L. 111, § 90.

1906, 463, 11,
§§ 73, 258.
1912, 725,
11, § 2.
1915, 157, § 1.
9 Met. 353.
4 Gray, 301.

adjacent to other land occupied by it by a track or tracks already in use, 6
and for the purpose of cuttings, embankments, and for procuring stone 7
and gravel, and for stations, car houses, roundhouses, freight houses, 8
yards, docks, wharves, elevators and other structures. 9

113 Mass. 277.
118 Mass. 391.

161 Mass. 387.
213 Mass. 40.

214 Mass. 8.

Location of
purchased land.
1895, 356.
R. L. 111, § 92.
1906, 463, 11,
§§ 75, 258.
185 Mass. 186.

SECTION 79. The corporation may, within one year after it has 1
purchased land for railroad purposes, file with the commissioners of 2
each county where such land is situated a description thereof, defining 3
the courses, distances and boundaries of such land and certified by the 4
clerk of the department in such form and with such other particulars 5
as the rules of the department may require. 6

Taking by Eminent Domain.

Filing of
location.
1912, 725,
11, § 3.

SECTION 80. If a railroad corporation is not able to obtain by agree- 1
ment with the owner any land necessary for the location of its rail- 2
road, it may file with the department a description of such location, 3
which shall not be more than five rods wide unless authorized by the 4
department under section eighty-three. Such description shall define the 5
courses, distances and boundaries and shall be in such form and shall 6
contain such plans and particulars as may be required by the rules of the 7
department. Within ten days after the filing of such description with 8
the department, the corporation shall submit to the board of aldermen of 9
every city, and to the selectmen of every town through which the route 10
of the proposed railroad passes, a copy, duly certified by the clerk of the 11
department, of so much of the said location as applies to that part of the 12
said railroad which lies within the limits of such city or town. The board 13
of aldermen or the selectmen shall thereupon appoint a time and place 14
for a hearing in the manner provided by section nineteen. 15

If the board of aldermen or the selectmen, after notice and hearing 16
as aforesaid, shall agree with the directors as to said location, or as to any 17
location of the said railroad in their city or town, they shall in such 18
agreement fix the location, and sign and give to the directors a certificate 19
setting it forth, and shall make report of their action to the department 20
within sixty days after the said copy has been submitted to them as 21
hereinbefore provided. If they fail so to agree within sixty days after 22
said corporation has submitted the location to the board of aldermen 23
or to the selectmen, the directors shall, within sixty days, petition the 24
department to fix the location in that city or town, and the department, 25
after notice to the board of aldermen or to the selectmen, shall forthwith 26
hear the parties and, within ninety days, fix the location in that city or 27
town, and shall make a certificate setting forth the location so fixed, which 28
shall be certified by its clerk to the board of directors. The costs of 29
the petition shall be paid by the corporation. The department shall by 30
order finally fix the location of the said railroad in accordance with the 31
original location as varied in the said certificate, subject to the provi- 32
sions of the following section. 33

Change of
location to
avoid grievous
damage.
R. S. 39, § 60.
1848, 327, § 2.
G. S. 63, § 45.

SECTION 81. If a railroad corporation is not able to obtain by agree- 1
ment with the owner any land necessary for the location of its railroad, 2
it shall furnish a plan of the land to the owner. An owner of land ag- 3
grieved by the location of a railroad crossing his land in such manner 4

5 as to be of grievous damage, which could be avoided without serious
 6 injury to others, may, within thirty days after receiving the plan of his
 7 land, as provided herein, petition the department, who shall give notice
 8 and hear the parties. If it appears that such location will greatly and
 9 unnecessarily damage the petitioner, and that it can be so changed as
 10 entirely or partly to avoid such damage without material detriment to
 11 the line of the railroad and without great injury to other parties, the
 12 department shall change such location accordingly. It shall give to each
 13 party a certificate of its determination within sixty days after receiving
 14 the petition. The necessary expenses of the department and the costs
 15 of the petition shall be paid by the corporation; but if the department
 16 decides that the petition was frivolous, such expenses and costs shall
 17 be paid by the petitioner.

1872, 53, § 13;
 180, § 3
 1871, 372,
 §§ 70, 71,
 P. S. 112,
 §§ 102, 103
 R. L. 111,
 §§ 106, 108
 1906, 463, 11,
 §§ 90, 92, 258,
 1912, 725,
 II, § 3
 145 Mass. 150,
 146 Mass. 194.

1 SECTION S2. After the location of the railroad has been finally
 2 determined under the two preceding sections, the corporation may
 3 take any land within such location by eminent domain under chapter
 4 seventy-nine.

Taking of land
 for location of
 tracks.
 1833, 187, § 1.
 1835, 148, § 3.

R. S. 39, §§ 55, 56, 76. 1874, 372, § 63. 1906, 463, 11, §§ S3, 258.
 1849, 153. P. S. 112, § 95. 1912, 725, 11, § 3.
 G. S. 63, §§ 19, 21, 39. R. L. 111, § 99.

1 SECTION S3. If a railroad corporation requires land for any of the
 2 purposes specified in section seventy-eight other than for the location of
 3 its railroad not more than five rods wide as provided in the three pre-
 4 ceeding sections, and is unable to obtain it by agreement with the owner,
 5 it may apply to the department, which, after notice to the owner and a
 6 hearing, may prescribe the limits within which it may be taken without
 7 his permission; and the corporation may, within one year after the decree,
 8 take such property by eminent domain under chapter seventy-nine.

Taking of
 property for
 other purposes.
 1835, 148, § 3.
 R. S. 39, § 55.
 1853, 351, § 1.
 G. S. 63, § 19.
 1874, 355, § 1;
 872, § 60.
 P. S. 112, § 91.
 1884, 134.
 R. L. 111, § 95.
 1906, 463, 11,
 §§ 78, 258.

1915, 157, § 2. 141 Mass. 481. 213 Mass. 17.
 119 Mass. 516. 185 Mass. 186.

1 SECTION S4. A railroad corporation may purchase, or take in the
 2 manner provided in the preceding section, from time to time, any lands
 3 or rights belonging to any other railroad or other public service cor-
 4 poration not necessary for the business of such corporation at such
 5 time or in the reasonably near future, provided that this section shall
 6 not authorize it to acquire by eminent domain any part of the location
 7 or right of way of any other railroad or street railway company except
 8 such lands or rights as the department adjudges necessary for the support,
 9 construction and repair of bridges or other methods of crossing such rail-
 10 road or street railway.

Taking land of
 other railroad,
 etc.
 1912, 725,
 II, § 1.

Change of Location.

1 SECTION S5. A railroad corporation, with the written approval of
 2 the department, obtained upon petition, and after notice to all persons
 3 interested, and a hearing, may, for the purpose of improving the align-
 4 ment of its railroad, change its location, subject to the provisions of this
 5 chapter relative to the fixing of the route of railroads, and may take land
 6 for such new location by eminent domain under chapter seventy-nine.

Improvement
 of alignment.
 1887, 430.
 R. L. 111, § 94.
 1906, 463, 11,
 §§ 77, 258.

1 SECTION S6. A railroad corporation, having taken land for its rail-
 2 road, may vary the direction of said railroad in the city or town where
 3 such land is situated; but it shall not locate any part thereof outside the

Direction of
 road may be
 varied.
 1833, 187, § 7.
 R. S. 39, § 73.

G. S. 63, § 38.
 1874, 372, § 59.
 P. S. 112, § 90.
 R. L. 111, § 93.
 1906, 463, II,
 §§ 76, 258.
 1912, 725,
 II, § 3.
 1 Gray, 340.
 109 Mass. 527.

limits of the route fixed under section twenty or twenty-one, without the written consent of the board of aldermen or selectmen, if it was fixed under section twenty, or of the department, if it was fixed under section twenty-one. If the board of aldermen or the selectmen, whose consent is required to such change of direction, shall neglect or refuse to give such consent within sixty days after the railroad company has in writing requested the same, the directors may petition the department for leave to make such change of direction.

The corporation may take land for such new location by eminent domain under chapter seventy-nine, and in so far as said new location as finally fixed shall differ from the location originally taken, the original location shall be held to be abandoned, and the rights of all persons interested in so much of the original location as is included within the abandoned part shall revive as if no taking had been made. Any person who has suffered loss or been put to expense by having his lands, buildings, rights or other property included in the original taking, but not included in the final taking, shall be entitled to have his damages therefor assessed under chapter seventy-nine, but the value to him of the use of the land between the time of said taking and the abandonment thereof shall be taken into consideration in determining the sum to which he is entitled.

Miscellaneous.

Land outside limit taxable.
 1853, 351, § 3.
 G. S. 63, § 20.
 1874, 372, § 62.

SECTION 87. Land, outside the location of the railroad five rods in width, taken or purchased for railroad, depot or station purposes shall not be exempt from taxation.

P. S. 112, § 92.	4 Met. 564.	185 Mass. 114.
1895, 356.	8 Cush. 237.	186 Mass. 128.
R. L. 111, § 96.	151 Mass. 69.	267 Mass. 343.
1906, 463, II, §§ 79, 258.		

No prescriptive right in land of corporation.
 1861, 100.
 1874, 372, § 107.
 P. S. 112, § 215.

SECTION 88. No length of possession or occupancy of land, which belongs to a railroad corporation, by an owner or occupier of adjoining land shall create in him or in a person claiming under him a right to such land of the corporation.

R. L. 111, § 271.	146 Mass. 268.	212 Mass. 421.
1906, 463, II, §§ 80, 258.	147 Mass. 118.	226 Mass. 286.
135 Mass. 107.	161 Mass. 283.	255 Mass. 402.
145 Mass. 433.	211 Mass. 174.	

Rule as to form, etc., of records, etc.
 1878, 135, § 2.
 P. S. 112, § 93.
 R. L. 111, § 97.
 1906, 463, II, §§ 81, 258.

SECTION 89. The department shall, from time to time, prescribe rules relative to the form in which all descriptions of locations of railroads shall be made, the particulars to be contained therein and the manner in which such descriptions shall be uniformly kept for preservation and convenient reference in the offices of the clerks of the commissioners of the several counties. No such description shall be filed until the clerk of the department certifies thereon that it has been prepared in conformity with the rules of the department.

Embankments, Fences, etc.

Fencing.
 1848, 327, § 2.
 G. S. 63, § 45.
 1874, 372, § 70.
 P. S. 112, § 102.

SECTION 90. After a railroad corporation has taken land in the manner hereinbefore authorized, it shall, before constructing the railroad, and, upon request of the owner or occupant, fence it.

R. L. 111, § 106.	1906, 463, II, §§ 90, 258.
-------------------	----------------------------

1 SECTION 91. At the time of awarding damages to land owners under
 2 chapter seventy-nine, the county commissioners shall in addition thereto
 3 order the corporation to construct and maintain such embankments, cul-
 4 verts, walls, fences or other structures as they judge reasonable for the
 5 security and benefit of such owners, and shall prescribe the time and
 6 manner of making or repairing them, and it shall not be competent for
 7 a jury to reverse such order.

1906, 463, II, §§ 101, 258.

141 Mass. 407.

154 Mass. 314.

Construction,
 etc., of em-
 bankments may
 be ordered.
 1841, 125,
 §§ 1, 3.
 G. S. 63, § 40
 1874, 372, § 81
 P. S. 112, § 113
 R. L. 111,
 § 118.

1 SECTION 92. If the corporation neglects to comply with such order,
 2 the supreme judicial court, upon application of the land owner interested
 3 in its execution, or his assigns, shall have jurisdiction in equity to enforce
 4 the specific performance thereof. Or if the corporation, for more than
 5 forty-eight hours after written notice of such neglect, given to the presi-
 6 dent or superintendent, fails to begin the work required to be done, or
 7 thereafter unreasonably delays to complete it, the person so interested
 8 may recover in tort double the damages sustained by him by reason of
 9 the neglect.

Enforcement
 of order.
 1841, 125, § 2.
 G. S. 63, § 41.
 1874, 372, § 82
 P. S. 112, § 114
 R. L. 111,
 § 119.
 1906, 463,
 II, §§ 102, 258.
 6 Cush. 420
 1 Gray, 614.

1 SECTION 93. Every railroad corporation shall erect and maintain
 2 suitable fences, with convenient bars, gates or openings therein, upon
 3 both sides of the entire length of its railroad, except at the crossings of a
 4 public way or in places where the convenient use of the railroad would
 5 be thereby obstructed, and except at places where, and so long as, it is
 6 specially exempted from so doing by the department. Such an exemp-
 7 tion granted prior to August first, eighteen hundred and eighty-two
 8 shall not be revoked except upon new proceedings had under this section,
 9 notice of which shall be given to the corporation, and published once
 10 in each of three successive weeks in a newspaper published in each county
 11 where the land lies. The corporation shall also construct and maintain
 12 sufficient barriers, where necessary and practicable so to do, to prevent the
 13 entrance of cattle upon the railroad. A corporation which unreason-
 14 ably neglects to comply with this and the following section shall, for
 15 every such neglect, forfeit not more than two hundred dollars for every
 16 month during which the neglect continues, and upon such neglect the
 17 supreme judicial court may restrain and prohibit it from crossing a pub-
 18 lic way, or from using any land until said sections are complied with.

Fences.
 1846, 271,
 §§ 3, 4.
 G. S. 63,
 §§ 43, 44.
 1874, 372, § 84.
 1879, 205, § 1
 P. S. 112, § 115.
 1882, 162.
 R. L. 111,
 § 120.
 1906, 463,
 II, §§ 103, 258
 12 Cush. 605.
 1 Allen, 16.
 98 Mass. 560
 107 Mass. 411
 115 Mass. 458,
 564.
 121 Mass. 118.
 132 Mass. 28
 134 Mass. 4.
 157 Mass. 297.
 181 Mass. 322
 194 Mass. 35.
 207 Mass. 12
 210 Mass. 170

1 SECTION 94. If a person other than a railroad corporation is required
 2 by law or contract to erect or maintain fences along a part of the line of
 3 the railroad, the corporation shall erect such fences or keep them in
 4 repair as provided in the preceding section, and may recover in contract
 5 the reasonable cost thereof from such person. If he is an owner of land
 6 adjoining such line, the corporation shall also have a lien upon said land
 7 for labor performed and furnished and all materials furnished and used
 8 by it in erecting and repairing such fences upon such land, and for the
 9 costs which may arise in enforcing it; and it shall be enforced in the
 10 manner provided for enforcing liens for labor in chapter two hundred
 11 and fifty-four.

Cost of fencing,
 how recovered
 from person
 liable.
 1879, 205, § 2.
 P. S. 112, § 116.
 R. L. 111,
 § 121.
 1906, 463,
 II, §§ 104, 258
 132 Mass. 24
 228 Mass. 274

Crossings.

1 SECTION 95. If two or more railroad corporations whose tracks cross
 2 each other at the same level agree to separate the grades, they may apply
 3 to the department which shall thereupon determine when, in what man-

Separation of
 grade crossings
 by agreement.
 1881, 120
 P. S. 112, § 117.

R. L. 111, § 122, 1906, 463, II, §§ 105, 258.

ner and by which corporation said work and each portion thereof shall be done, and shall apportion all charges and expenses caused by making such alterations and all future charges for keeping the necessary structures connected therewith in repair, among said corporations. For said purposes, the corporations may, under the direction of the department, make all necessary changes in the location, grade and construction of said railroads, and, so far as necessary, may take additional land therefor by eminent domain under chapter seventy-nine and may raise, lower or otherwise change any and all public ways; and in the exercise of said powers said corporations, and any person who sustains damage thereby, shall have all the rights, privileges and remedies, and be subject to all the duties, liabilities and restrictions provided by law in the case of land taken by railroad corporations.

Crossings of one railroad with another, or over navigable waters 1872, 53, § 12; 180, § 3. 1873, 121, § 4. 1874, 372, § 85. 1881, 156. P. S. 112, § 118. R. L. 111, § 123. 1906, 463, II, §§ 106, 258. 1916, 288, §§ 1, 2. 1919, 350, § 111.

SECTION 96. A railroad shall not be constructed across another railroad at the same level without the written consent of the department, nor across navigable or tide waters without the written consent of the department of public works, and in such manner as said departments, respectively, shall prescribe, nor across any portion of the deep channel of Boston harbor below the bridges existing on March thirtieth, eighteen hundred and eighty-one, without special legislative authority. Any littoral proprietor whose access to the sea is obstructed or interrupted by the location and construction, after said date, of any railroad across tide water, otherwise than by a bridge with a suitable draw, may recover of the corporation whose railroad is so located all damages, caused by such location and construction, under chapter seventy-nine, but this provision as to damages shall not apply to any railroad constructed under chapter two hundred and fifty-two of the acts of eighteen hundred and eighty. Associates for the purpose of constructing a railroad under section thirteen, or a corporation which proceeds to construct its railroad or branch or extension thereof, shall not take proceedings which involve a new crossing of one railroad by another at the same level, unless such crossing is first approved in writing by the department; and every preliminary approval of a plan for such crossing shall be subject to revision by the department.

Railroad crossing a highway not to obstruct the same. R. S. 39, § 66. 1846, 271, § 1. G. S. 63, §§ 46, 47. 1874, 372, § 86. 1876, 73. P. S. 112, § 119. R. L. 111, § 124.

SECTION 97. A railroad laid out across a public way shall be so constructed as not to obstruct the same; and, unless the county commissioners and the department authorize a crossing at the same level as provided in section one hundred and two, it shall be constructed so as to pass either over or under the way, as prescribed in the following section, and conformably to any decree which may be made by the county commissioners under section one hundred.

1906, 463, II, §§ 107, 258. 114 Mass. 350. 220 Mass. 569. 14 Gray, 379. 195 Mass. 299. 246 Mass. 292. 14 Allen, 444. 202 Mass. 394.

Space under bridge regulated. 1846, 271, § 1. G. S. 63, § 47. 1874, 372, § 87. P. S. 112, § 120. R. L. 111, § 125. 1906, 463, II, §§ 108, 258. 130 Mass. 361. 176 Mass. 145.

SECTION 98. If the railroad is constructed to pass over the way, a sufficient space shall be left under the railroad conveniently to accommodate the travel on the way. If the railroad is constructed to pass under the way, the railroad corporation shall build such bridges, with their abutments and suitable approaches thereto, as will accommodate the travel upon the way; but no bridge for any purpose shall be constructed over a railroad at a height less than eighteen feet above the track of such railroad, except with the written consent of the department.

1 SECTION 99. Cities and towns may make agreements with railroad
 2 corporations in regard to the kind of material, form of construction and
 3 payment of the cost of the wearing surface of bridges and approaches
 4 over or under a public way, wherever the railroad company is required
 5 by law to maintain such surface.

Agreements
 with cities and
 towns as to
 wearing sur-
 faces of bridges
 and approaches.
 1914, 200

1 SECTION 100. A railroad corporation may raise or lower a public way
 2 to permit its railroad to pass over or under the same; but before pro-
 3 ceeding to cross or to alter or excavate for the purpose of crossing the
 4 way, it shall obtain from the county commissioners a decree prescribing
 5 what alterations may be made in the way, and what structures erected
 6 at the crossing, and the manner and time of making or erecting the
 7 same; and before entering upon, excavating or altering the way, it shall
 8 give to the city or town where the crossing is situated security, sat-
 9 isfactory to the commissioners, that it will faithfully comply with the
 10 requirements of the decree to their acceptance, and will indemnify the
 11 city or town against all damages and charges by reason of a failure
 12 so to do.

Highway may
 be raised or
 lowered under
 direction of
 county com-
 missioners
 1833, 187, § 5,
 R. S. 39, § 67,
 1855, 350,
 §§ 1, 3,
 G. S. 63,
 §§ 48, 50,
 1874, 372,
 §§ 88, 103,
 P. S. 112,
 §§ 121, 136,
 R. L. 111,
 §§ 126, 141
 1906, 463, 11,
 §§ 109, 118,
 258,
 9 Cush. 1,
 246 Mass. 292.

13 If, upon the petition of the board of aldermen or selectmen, it appears
 14 that such corporation has excavated or altered a public way without
 15 obtaining the decree and giving the security required by this section, or
 16 has neglected for fifteen days to give security as required by section one
 17 hundred and six, the supreme judicial court may enjoin it from entering
 18 upon, altering, excavating or crossing the way until such decree has been
 19 obtained or such security given.

1 SECTION 101. A railroad corporation may alter the course of a public
 2 way to facilitate the crossing thereof by its railroad or to permit its rail-
 3 road to pass at the side thereof without crossing, if, after notice to the
 4 city or town where the way is situated, and a hearing, the county com-
 5 missioners decide that such alteration will not essentially injure the way,
 6 and make a decree prescribing the time and manner of such alteration.
 7 If it is necessary to take land for such alteration, the county commis-
 8 sioners shall take the same by eminent domain under chapter seventy-
 9 nine on behalf of the county, city or town having jurisdiction over the
 10 alteration of such way, and before entering upon, excavating or altering
 11 such way the corporation shall give to such county, city or town security
 12 satisfactory to the commissioners that it will indemnify such county, city
 13 or town for all damages and charges which it is obliged to pay by reason
 14 of such taking.

Course of
 highway may
 be altered.
 1833, 187, § 6,
 R. S. 39, § 70,
 1849, 159,
 G. S. 63, § 55,
 1874, 372, § 89,
 P. S. 112, § 122,
 R. L. 111,
 § 127,
 1906, 463,
 11, §§ 110, 258,
 1918, 257,
 § 206, 285,
 1919, 5,
 1920, 2.

1 SECTION 102. If a railroad is laid out across a public way, the county
 2 commissioners, upon the application of the railroad corporation, or of
 3 the board of aldermen of the city or selectmen of the town where the
 4 crossing is situated, after notice to all persons interested and a hearing,
 5 may adjudge that public necessity requires the crossing at the same
 6 level, and may, if the department also consents in writing to such cross-
 7 ing at the same level, make a decree specially to authorize and require
 8 the corporation so to construct its railroad, in such manner as shall be
 9 prescribed in the decree, and the commissioners may modify such decree
 10 or may revoke it at any time before the construction of the railroad at
 11 such crossing.

Crossing public
 way at a level.
 1864, 152,
 §§ 2, 5, 6,
 1865, 239, § 1,
 1874, 372, § 90,
 1876, 73,
 P. S. 112, § 123,
 R. L. 111,
 § 128,
 1906, 463,
 11, §§ 111, 258,
 246 Mass. 292.

Rails to be protected at highway crossing.
1857, 287, § 6.
G. S. 63, § 60.
1874, 372, § 91.
P. S. 112, § 124.
R. L. 111, § 129.
1906, 463, II, §§ 112, 258.
140 Mass. 84.

SECTION 103. A railroad corporation whose railroad is crossed by a public way at the same level shall, at its own expense, so guard or protect its rails by plank, timber or otherwise as to secure a safe and easy passage across its railroad; and if, in the opinion of the county commissioners, any subsequent alteration of the highway or other way or additional safeguards are required at the crossing, they may make a decree ordering the corporation to establish the same as provided in section one hundred.

147 Mass. 453, 505.
164 Mass. 393.

211 Mass. 573.
217 Mass. 312.

220 Mass. 532.
246 Mass. 292.

When highway may be laid out across a railroad.
R. S. 39, § 69.
1857, 287, §§ 1-5.
G. S. 63, §§ 57-59.
1874, 372, § 92.
1876, 73.
P. S. 112, § 125.
R. L. 111, § 130.
1906, 463, II, §§ 113, 258.
II Gray, 512.
I Allen, 324.
7 Allen, 523.
140 Mass. 87.
159 Mass. 283.

SECTION 104. A public way may be laid out across a railroad previously constructed, if the county commissioners adjudge that public necessity and convenience so require; and in such case, after notice to the railroad corporation and a hearing of all parties interested, they may thus lay out or authorize a city or town, upon petition of the board of aldermen or selectmen thereof, to lay out a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with sections ninety-seven and ninety-eight, but they shall not permit it to cross at a level with the railroad unless public necessity so requires, and the department consents thereto in writing, in which case the county commissioners may give special authority for such crossing as provided in section one hundred and two.

173 Mass. 12.

Alterations of canals.
1837, 226, §§ 1, 4.
G. S. 63, § 56.
1874, 372, § 93.
P. S. 112, § 126.
R. L. 111, § 131.
1906, 463, II, §§ 114, 258.

SECTION 105. A railroad corporation may, with the consent of a canal corporation, alter the course of a canal or of a feeder to a canal, which interferes with the convenient location of its railroad. If it is necessary to take land for such alteration, the railroad corporation may take the same under chapter seventy-nine and shall immediately convey the property so taken to the canal corporation.

1918, 257, § 207; 285.

1919, 5

1920, 2.

Obstructions and repairs at crossings.
1855, 350, § 2.
G. S. 63, § 49.
1874, 372, § 94.
P. S. 112, § 127.
R. L. 111, § 132.
1906, 463, II, §§ 115, 258.
195 Mass. 299.
198 Mass. 584.
220 Mass. 569.
239 Mass. 127.

SECTION 106. If, upon application to the county commissioners by the board of aldermen or selectmen, and after notice to the corporation which owns or operates a railroad, and a hearing, it appears that the railroad so crosses a public way as to obstruct it, contrary to section ninety-seven, or to a decree made under section one hundred, or that the corporation refuses or neglects to keep a bridge or other structure required or necessary at such crossing in proper repair, the county commissioners may make a decree prescribing what repairs shall be made by the corporation at the crossing, and the time within which they shall be made, and shall make a decree ordering the corporation to pay the costs of the application. They may further order the corporation to give security, as provided in section one hundred, for the faithful performance of the requirements of the decree and for the indemnity of the city or town upon a failure in such performance.

Repairs of bridges, etc.
R. S. 39, § 72.
1846, 271, § 1.
1851, 88.
1855, 350, § 4.
G. S. 63, §§ 61, 67, 69.
1872, 262, § 6.
1874, 372, § 95.
P. S. 112, § 128.

SECTION 107. Every railroad corporation shall, except as provided in sections sixty-five to eighty-two, inclusive, of chapter one hundred and fifty-nine, at its own expense, construct, maintain and keep in repair all bridges, with their approaches and abutments, which it is authorized or required to construct over or under a canal or public way; and a city or town may recover of the railroad corporation whose railroad crosses a

7 public way therein all damages, charges and expenses incurred by such
 8 city or town by reason of the neglect or refusal of the corporation to erect
 9 or keep in repair all structures required or necessary at such crossing;
 10 but if, after the laying out and building of a railroad, the county com-
 11 missioners authorize a public way to be laid out across the railroad, all
 12 expenses of and incident to constructing and maintaining the way at
 13 such crossing shall be borne by the county, city, town or other owner of
 14 the same, unless otherwise determined by an award of a commission,
 15 under proceedings in accordance with sections fifty-nine to sixty-four,
 16 inclusive, of chapter one hundred and fifty-nine.

R. L. 111,
 § 133
 1906, 463,
 II, §§ 116, 258
 1907, 315
 7 Cush. 490
 12 Allen, 254.
 97 Mass. 430.
 138 Mass. 454
 139 Mass. 525.

1 SECTION 108. County commissioners shall have original jurisdiction
 2 of questions relative to obstructions to public ways caused by the con-
 3 struction or operation of railroads.

County com-
 missioners to
 have juris-
 diction of
 obstructions.

1849, 222, § 4
 G. S. 63, § 62.
 1874, 372, § 102.
 P. S. 112, § 135.

R. L. 111, § 140.
 1906, 463, II,
 §§ 117, 258.
 4 Cush. 63.

2 Gray, 54.
 141 Mass. 17.
 155 Mass. 16
 195 Mass. 299.

1 SECTION 109. If a railroad lawfully laid out through land without the
 2 consent of the owner thereof separates a portion of such land from an-
 3 other or from a public way, and the owner, having a right to cross the
 4 railroad, cannot agree with the corporation as to the place or manner in
 5 which he shall cross, or if a crossing is inconvenient, either party, in a
 6 case which does not involve the abolition of a crossing at grade, may
 7 apply to the county commissioners, who, after taking a recognizance
 8 from the applicant to the county, with sureties to their satisfaction, for
 9 the payment of costs and expenses according to their order, and after
 10 notice to the other party and a hearing, may make an order relative to
 11 such crossing and to the costs of the application; but they shall not
 12 order the corporation to construct or maintain a crossing without its
 13 consent, unless it is liable by law or by agreement to construct a crossing
 14 for the owner of the land, or is the applicant.

Severance of
 private land
 by crossing.
 1857, 213.
 §§ 1-4
 G. S. 63,
 §§ 64-66.
 1874, 372,
 § 105.
 P. S. 112, § 135.
 1897, 264.
 R. L. 111,
 § 143.
 1906, 463,
 II, §§ 120, 258.
 103 Mass. 1
 135 Mass. 107.

1 SECTION 110. If by the laying out of a railroad, or the widening
 2 thereof, a person is cut off from access to land owned by him, and has
 3 neither received compensation nor made an agreement with the corpora-
 4 tion relative thereto, the department, after notice to the parties and a
 5 hearing, may order a crossing to be made and maintained at the expense
 6 of the railroad corporation, specifying definitely the character thereof
 7 and when it may be used. If the railroad corporation neglects for ninety
 8 days after the date of such order to comply therewith, it shall forfeit
 9 five dollars for every day thereafter during which such neglect continues,
 10 which shall be recovered by the person aggrieved. The amount recovered
 11 shall be equally divided between the plaintiff and the county where the
 12 crossing was ordered to be maintained.

Access to land
 cut off by
 railroad.
 1892, 171.
 R. L. 111,
 § 144.
 1906, 463,
 II, §§ 121, 258.
 162 Mass. 81
 165 Mass. 514.

1 SECTION 111. A party aggrieved by a decision or order of the county
 2 commissioners in any matter or proceeding arising under section one
 3 hundred and nine, or section fifty-nine of chapter one hundred and fifty-
 4 nine, or by their unreasonable refusal or neglect to announce a decision
 5 in any such matter or proceeding for sixty days after the first day fixed
 6 for a hearing thereon, may appeal to the department by filing a notice
 7 of appeal with the county commissioners within ten days after the de-
 8 sion or order appealed from, or in case of a refusal or neglect to announce

Appeal from
 decision of
 county com-
 missioners.
 1882, 135,
 §§ 1-3.
 R. L. 111,
 § 145.
 1906, 463,
 II, §§ 122, 258
 141 Mass. 208.

a decision, within ten days after the expiration of sixty days from the first day fixed for a hearing thereon. The proceedings before the county commissioners in which the appeal is taken shall thereupon be stayed.

Same subject.
Proceedings
thereon.
1882, 135,
§§ 4, 5
R. L. 111,
§ 146.
1906, 463,
11, §§ 123, 258.

SECTION 112. The appellant, to perfect the appeal, shall, within twenty days after filing the notice thereof, file with the clerk of the department a petition stating the reasons for the appeal, and shall, within ten days after filing the petition, cause a certified copy thereof to be served upon the county commissioners. An appeal may be waived at any time before a hearing thereon by written agreement of the parties, filed with the county commissioners and the department. If the appellant fails to perfect the appeal, or if the appeal is waived, the matter may proceed before the county commissioners as if no appeal had been taken.

Same subject
Hearing;
powers of
department.
1882, 135,
§§ 6, 7.
R. L. 111,
§ 147.
1906, 463,
11, §§ 124, 258.

SECTION 113. The department shall hear the appeal in the county where it is taken, unless the parties in writing otherwise agree. Upon such appeal, the department shall have the same powers and perform the same duties as county commissioners in like matters and proceedings, and shall be governed by the provisions of law relative to hearings and determinations by, and decisions and orders of, the county commissioners in such matters and proceedings.

Right of
crossing not
acquired by
prescription.
1892, 275.
R. L. 111, § 148.
1906, 463, 11,
§§ 125, 258.

SECTION 114. No right of way across any railroad track or location which is in use for railroad purposes shall be acquired by prescription. This section shall not apply to rights of way which existed on June fifth, eighteen hundred and ninety-two.

163 Mass. 330.
176 Mass. 359.

210 Mass. 243.
213 Mass. 91.

246 Mass. 292.
260 Mass. 407.

BRANCHES AND EXTENSIONS.

Branches and
extensions.
1874, 351,
§§ 1, 3, 5; 372,
§§ 31, 32.
1875, 110.
1878, 215, § 4.
P. S. 112,
§§ 139, 140.
1882, 265,
§§ 1, 3.
R. L. 111,
§ 161.
1906, 463,
11, §§ 126, 258
124 Mass. 368

SECTION 115. A railroad corporation, after having finished the construction of its railroad and put it in operation, may build a branch or extension thereof in accordance with this chapter, if an amount of additional capital stock, applicable solely to the construction of such branch or extension, has been subscribed, and a certificate of the department that public necessity and convenience require the construction of the branch or extension has been obtained, and a certificate of the clerk of the department has been filed according to section seventy-six; and it may build such branch or extension without additional capital stock, if its indebtedness is not thereby increased; but this section shall not invalidate a lease or contract between railroad corporations made pursuant to law. Upon the filing of such certificate, fifty dollars shall be paid to the state secretary. If the construction of such branch or extension is not begun, and ten per cent of the additional capital stock is not expended thereon within two years after the date of the certificate required by section seventy-six and the branch or extension completed and put in operation within four years after said date, the power of the railroad corporation to construct the same shall cease.

Switch
connections.
1907, 585, § 5.
272 Mass. 372.

SECTION 116. A railroad corporation, upon the application of any shipper tendering freight for transportation, shall construct, maintain and operate upon reasonable terms switch connections with a lateral

4 line of railroad or private side track owned, operated or controlled by
 5 such shipper and shall, upon the application of any shipper, provide
 6 upon its own property a side track and switch connection with its line
 7 of railroad, whenever such side track and switch connection are reason-
 8 ably practicable, can be put in with safety, and the business therefor is
 9 sufficient to justify the same.

1 SECTION 117. If any railroad corporation fails to install or operate
 2 any such switch connection with a lateral line of railroad or any such
 3 side track and switch connection as aforesaid, after written application
 4 therefor has been made to it, any person interested may present the
 5 facts to the department by written petition, and the department shall
 6 investigate the matters stated in such petition, and give such hearing
 7 thereon as it may deem necessary or proper. If the department deems
 8 it safe and practicable to have a connection, substantially as prayed for,
 9 established or maintained, and that the business to be done thereon
 10 justifies the construction and maintenance thereof, it shall make an
 11 order directing the construction and establishment thereof, specifying
 12 the reasonable compensation to be paid for the construction, establish-
 13 ment and maintenance thereof, and may in like manner upon the appli-
 14 cation of the railroad corporation order the discontinuance of such switch
 15 connection.

Switch connec-
 tion, control
 by department
 1907, 585, § 6
 272 Mass. 372.

OPENING RAILROAD FOR USE.

1 SECTION 118. A railroad or branch or extension thereof shall not be
 2 opened for public use until the department, after an examination, certi-
 3 fies that all laws relative to its construction have been complied with,
 4 and that it appears to be in a safe condition for operation.

Road not to
 be opened for
 public use
 until, etc.
 1874, 223;
 372, § 120.

P. S. 112, § 141.

R. L. 111, § 162.

1906, 463, II, §§ 127, 258.

1 SECTION 119. When a railroad or a branch or extension thereof is
 2 finished and opened for public use, the corporation by which it was con-
 3 structed shall, within one year, file in the office of the state secretary
 4 a map and profile thereof, with tables of grade and curvature and a
 5 statement of the other characteristics of the railroad, certified by its
 6 president and engineer in such form as the department may prescribe.

When road is
 opened for
 public use,
 map, etc., to
 be filed.
 1872, 53, § 14.
 180, § 3.
 1874, 372, § 34
 P. S. 112, § 142
 R. L. 111,
 § 163.

1906, 463, II, §§ 128, 258.

EQUIPMENT AND OPERATION.

Drawbridges.

1 SECTION 120. Every railroad corporation shall provide for each
 2 drawbridge upon the line of its railroad an experienced draw tender, who
 3 shall have full control of the passing of vessels through the draw; and
 4 the corporation shall make and enforce regulations for each drawbridge
 5 conformable to the seven following sections.

Draw tender.
 1855, 434,
 §§ 1, 2.
 G. S. 63, § 73.
 1863, 131, § 1.
 1874, 372,
 § 108.

P. S. 112, § 145.

R. L. 111, § 170.

1906, 463, II, §§ 129, 258.

1 SECTION 121. Every such drawbridge shall be kept closed at all times,
 2 except while open for the actual passage of vessels. The draw tender
 3 shall at all hours of the day and night be ready to open the draw; shall
 4 decide, having regard to the convenient and secure passage of engines
 5 and trains and the state of the tide, when and in what order vessels may

Drawbridges
 to be kept
 closed, except.
 1855, 434,
 §§ 2, 3.
 G. S. 63, § 74
 1863, 131, § 2.
 1874, 372,
 § 109

P. S. 112, § 149. pass, allowing no unnecessary detention; and shall give all the necessary 6
 R. L. 111, advice and furnish proper facilities for such passing. 7
 § 171. 1906, 463, II, §§ 130, 258.

Passage of SECTION 122. The master of a vessel applying to pass such draw shall 1
 vessels, how give to the draw tender a true report of his vessel's draught, and of any- 2
 regulated, thing projecting below such vessel's draught, and shall be governed by 3
 1855, 434, §§ 3, 4, him as to priority of right if two or more vessels apply at the same time 4
 G. S. 63, to pass. In passing, he shall, unless otherwise directed by the draw 5
 §§ 75, 76, tender, go to the right according to the tide, if practicable, and shall so 6
 1874, 372, place his warping-lines, anchors, cables and other rigging and equip- 7
 § 110. ment as neither to interfere with other vessels nor obstruct or injure the 8
 P. S. 112, § 150. bridge; and he shall be allowed a reasonable time for his vessel to pass. 9
 R. L. 111, A railroad train shall be allowed fifteen minutes to cross a draw before 10
 § 172. and after it is due by its time table, and any approaching train shall be 11
 1906, 463, allowed a further reasonable time to pass. 12
 II, §§ 131, 258.
 127 Mass. 7.
 146 Mass. 621.

Drawbridge SECTION 123. Every drawbridge shall be equipped with conspicuous 1
 signals. day and night signals, which shall be displayed at all times in such man- 2
 1863, 131, § 3. ner as clearly to indicate to the engineer of an approaching train whether 3
 1874, 372, the draw is open or closed. 4
 § 111.
 P. S. 112, § 151.
 R. L. 111, § 173. 1906, 463, II, §§ 132, 258.

Drawbridge SECTION 124. The railroad corporation may erect, at a distance of 1
 gates. five hundred feet from every drawbridge, or at such other distance as 2
 1863, 131, § 4. may on its application be prescribed by the department, and on each side 3
 1874, 372, thereof, a substantial barrier, so constructed and connected with the 4
 § 112. draw by suitable mechanism, that the draw, when in position for the 5
 P. S. 112, § 152. passage of trains, cannot be opened or moved until the barriers have 6
 R. L. 111, § 174. been closed across the track in such manner as to be a warning to any 7
 1906, 463, train which approaches in either direction. 8
 II, §§ 133, 258

Engineer to SECTION 125. If a drawbridge is not furnished with such barriers, and 1
 see that draw- in all cases if by reason of darkness or otherwise the barriers or signals 2
 bridge is closed connected with a drawbridge are not visible from the engine of an ap- 3
 1863, 131, § 5. proaching passenger train, the engineer of such train shall bring it to a 4
 1874, 372, full stop at a distance of not less than three hundred nor more than eight 5
 § 113. hundred feet from the drawbridge, and, before proceeding, shall positively 6
 P. S. 112, § 153. ascertain that the draw is properly closed for the passage of trains; 7
 R. L. 111, § 175. except that if the drawbridge is between two railroad crossings at grade, 8
 1906, 463, within six hundred feet of each other, one stop only shall be required for 9
 II, §§ 134, 258. such crossings and drawbridge. 10

Penalty on cor- SECTION 126. A railroad corporation which neglects to comply with 1
 porations, etc., sections one hundred and twenty-three and one hundred and twenty- 2
 for neglect. five shall forfeit one hundred dollars for each day such neglect is con- 3
 1863, 131, § 6. tinued; and an engineer or draw tender who violates any provision of 4
 1874, 372, said sections or any regulation established in conformity therewith for 5
 § 114. such drawbridge by the corporation by which he is employed shall forfeit 6
 P. S. 112, § 154. one hundred dollars for each offence, which shall be recovered in the 7
 R. L. 111, § 176. county where the offence is committed, to the use of the informer. 8
 1906, 463, II, §§ 135, 258.

Penalties. SECTION 127. Whoever violates any provisions of the seven preced- 1
 1855, 434, ing sections, shall, unless otherwise therein provided, forfeit not less than 2
 §§ 5-7.

3 three nor more than fifty dollars. Whoever wilfully injures or defaces
 4 any such drawbridge or wharf or pier appurtenant thereto, or any rail-
 5 road bridge, wharf or pier, shall forfeit not less than three nor more than
 6 fifty dollars. Whoever, without the consent of the draw tender, opens
 7 or wilfully obstructs the draw, or wilfully makes fast or moors any scow,
 8 raft or other vessel in such manner as to obstruct passage to or through
 9 said draw, or wilfully hinders a draw tender in the performance of his
 10 duties, shall forfeit not less than fifty nor more than one hundred dollars.

G. S. 63,
 §§ 78-80
 1874, 372,
 § 115
 P. S. 112, § 155
 R. L. 111,
 § 177
 1906, 463,
 II, §§ 136, 258
 127 Mass. 7.

Stations.

1 SECTION 128. A railroad corporation which has established and
 2 maintained a passenger station throughout the year for five consecutive
 3 years at any point upon its railroad shall not abandon such station, unless
 4 it is relocated under the following section, nor substantially diminish the
 5 accommodation furnished by the stopping of trains thereat as compared
 6 with that furnished at other stations on the same railroad, except with
 7 the written approval of the department after notice posted in and on said
 8 station for a period of thirty days immediately preceding a public hearing
 9 thereon.

Abandonment
 of passenger
 stations
 regulated.
 1865, 175
 1874, 372,
 § 116
 P. S. 112, § 156
 R. L. 111,
 § 178
 1906, 463,
 II, §§ 137, 258
 1922, 116.
 Op. A. G.
 (1920) 229.

1 SECTION 129. A railroad corporation may relocate passenger sta-
 2 tions and freight depots, with the written approval of the department
 3 and of the board of aldermen of the city or the selectmen of the town
 4 where such stations or depots are situated.

Relocation
 of stations
 and freight
 depots.
 1872, 162.

1874, 372, § 117. 1906, 463, II, 158 Mass. 104
 P. S. 112, § 157 §§ 138, 258. Op. A. G. (1920) 229.
 R. L. 111, § 179. 137 Mass. 45.

1 SECTION 130. Every railroad corporation shall indicate to its passen-
 2 gers the name of each way station by placing at or near the station a
 3 proper and conspicuous sign or signs, and shall forfeit fifty dollars for
 4 each violation of this section.

Way stations
 to be indicated
 by signs.
 1879, 106.
 P. S. 112, § 158.

R. L. 111, § 180. 1906, 463, II, §§ 139, 258.

1 SECTION 131. If one railroad corporation occupies or uses, or has a
 2 right to occupy, enter upon and use, a station, railroad or grounds of
 3 another, or any portion thereof, the department, upon petition of either
 4 party, and after notice to the other, and a hearing, shall determine the
 5 compensation to be paid for such occupancy and use. Its award shall
 6 be binding upon the parties thereto for five years, and thereafter until
 7 it is revised or altered by the department, and upon the written request
 8 of a party affected thereby, filed within thirty days after the rendering
 9 thereof, the award shall be filed in the supreme judicial court which shall
 10 have jurisdiction to revise the same as if the award had been made by a
 11 commission appointed by said court.

Compensation
 for joint
 occupation.
 1893, 142.
 R. L. 111,
 § 181.
 1906, 463,
 II, §§ 140, 258.
 232 Mass. 358.

Switches, Bridge Guards, etc.

1 SECTION 132. Every switch laid in a railroad track used by passen-
 2 ger or mixed trains shall be a safety switch of a type approved in writing
 3 by the department. For each switch laid in violation of this section,
 4 the railroad corporation shall forfeit two hundred dollars, and the further
 5 sum of five dollars for each day such switch is maintained.

Safety
 switches.
 1871, 24
 1874, 372,
 § 118.
 P. S. 112, § 159.
 R. L. 111,
 § 182.

1906, 463, II, §§ 141, 258.

Blocked
switches.
1886, 120.
1894, 41.
R. L. 111,
§ 183.
1906, 463.
II, §§ 142, 258.
155 Mass. 261.

SECTION 133. The frogs, switches and guard rails, except guard rails on bridges, which are in or connected with the railroad tracks operated or used by any railroad corporation shall be kept so blocked by some method approved by the department as to prevent employees from being caught therein. A railroad corporation which violates this section shall be punished by a fine of not less than ten nor more than one hundred dollars.

Bridge guards.
1869, 308.
§§ 2, 3.
1870, 276.
1874, 226;
372, § 119.
1881, 68.
P. S. 112, § 160.
R. L. 111,
§ 184.
1906, 463.
II, §§ 143, 258.
1913, 161.
175 Mass. 150.

SECTION 134. Every railroad corporation, at every bridge or other structure, any portion of which crosses the railroad above the track, shall erect and maintain, in a manner prescribed by the department, suitable bridge guards, of a type approved by the department, except at places where, and so long as, it is specially exempted from so doing by the department. A corporation which neglects to comply with this section shall forfeit fifty dollars for each month's neglect. Whoever wilfully destroys or breaks any such bridge guard shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one month.

Signals, etc., at Crossings.

Stopping of
trains at grade
crossings.
1855, 452, § 1.
1859, 39;
126, § 1.
G. S. 63,
§§ 93, 94.
1872, 313.
1874, 372,
§ 121.
P. S. 112, § 161.
R. L. 111,
§ 185.
1906, 463.
II, §§ 144, 258.

SECTION 135. If two railroads cross each other at the same level, the engineer of every freight train and, if both railroads are used for passenger traffic, of every passenger train, upon approaching such crossing, shall stop his engine within five hundred feet therefrom, and shall not resume his course until signalled so to do, when he shall pass slowly over the crossing; but one stop shall be sufficient for all such crossings within six hundred feet of each other upon the same railroad. Every engineer who fails so to stop his engine shall forfeit one hundred dollars; and the corporation on whose railroad the offence is committed shall forfeit the further amount of three hundred dollars.

Department
may prescribe
rules for
crossings.
1874, 372,
§ 122.
1881, 143.
P. S. 112, § 162.
R. L. 111,
§ 186.
1906, 463.
II, §§ 145, 258.

SECTION 136. The department shall make general regulations for all such crossings or special regulations for such particular crossing as it may designate, and in such detail as it may consider expedient; and the supreme judicial court may issue any processes necessary to secure the enforcement of such regulations, or, upon the petition of the department, may enjoin the running of trains on a railroad upon which any regulation relative to such crossing is not exactly observed. The approval of the department shall be required for a system of signals to be established and maintained in concert by corporations operating railroads which cross each other; but no such regulation or system of signals shall exempt a railroad upon or across which passenger trains are run from the requirements of the preceding section, unless a system of interlocking or automatic signals, approved in writing by the department, is adopted by both corporations.

Interlocking
signals.
1885, 85.
R. L. 111,
§ 187.
1906, 463.
II, §§ 146, 258.

SECTION 137. The department may, on the application of a railroad corporation whose railroad crosses another railroad at the same level, after notice to the parties and a hearing, authorize the applicant at its own expense, to establish and maintain a system of interlocking or automatic signals at any crossing of said railroad, and to erect and maintain the necessary wires, rods, signal posts and signals, in such manner as the department shall prescribe. Such corporation, after the system has been

8 established and approved in writing by the department, shall be exempt
 9 as to such crossing from the requirements of section one hundred and
 10 thirty-five so long as the department continues its approval. Upon pay-
 11 ment to such corporation by the corporation owning or operating the
 12 other railroad at such crossing of so much of the cost of establishing such
 13 system of signals as, upon petition of the latter corporation and a hearing,
 14 is awarded by the department, both railroad corporations shall, as to that
 15 crossing, be exempted from the requirements of said section. Until such
 16 payment the latter corporation shall semi-annually contribute toward
 17 the expense of operating said signals an amount equal to the cost to it
 18 of operating the signals used by it at said crossing before the establish-
 19 ment of the signals herein provided for. After the payment of such
 20 award, the expense of maintaining and operating such system of signals
 21 shall be borne by the two railroad corporations according to the propor-
 22 tions fixed by the award for paying the original cost of the signals. So
 23 much of the award as relates to the cost of maintaining and operating
 24 said signals may, at the request of either party, be revised at the expira-
 25 tion of five years from the original award or from any revision thereof.

1 SECTION 138. Every railroad corporation shall cause a bell of at
 2 least thirty-five pounds in weight, and a steam whistle, to be placed on
 3 each locomotive engine passing upon its railroad; and such bell shall be
 4 rung or at least three separate and distinct blasts of such whistle sounded
 5 at the distance of at least eighty rods from the place where the railroad
 6 crosses upon the same level any public way or traveled place over which a
 7 signboard is required to be maintained as provided in sections one hun-
 8 dred and forty and one hundred and forty-one; and such bell shall be
 9 rung or such whistle sounded continuously or alternately until the engine
 10 has crossed such way or traveled place. This section shall not affect
 11 the authority conferred upon the department by the following section.

Bell to be rung
 or whistle
 sounded.
 1835, 148, § 4.
 R. S. 39, § 78.
 1859, 125, § 3.
 G. S. 63, § 83.
 1862, 81, § 1.
 1874, 372,
 § 123.
 P. S. 112,
 § 163.
 1890, 173.
 R. L. 111,
 § 188.
 1906, 463,
 II, §§ 147, 258.
 2 Cush. 539
 10 Cush. 562.

113 Mass. 366.	196 Mass. 192, 554.	242 Mass. 188.
153 Mass. 57.	200 Mass. 441.	251 Mass. 255.
157 Mass. 336.	208 Mass. 137, 451.	260 Mass. 28.
162 Mass. 132.	210 Mass. 179, 305.	261 Mass. 29.
183 Mass. 393.	234 Mass. 95, 415.	263 Mass. 87, 529.
186 Mass. 474.	235 Mass. 510.	271 Mass. 101.
187 Mass. 217.	237 Mass. 441.	273 Mass. 522.

1 SECTION 139. The department, upon petition, and after notice to
 2 the railroad corporation and a public hearing, may, for good cause shown,
 3 recommend to such railroad corporation such changes as it considers
 4 proper in the manner of making up and shifting freight trains or freight
 5 cars, and of sounding of whistles on locomotives, and it may by written
 6 order forbid or regulate the sounding of whistles on the locomotives of
 7 such corporation at any specified grade crossings of the tracks of such
 8 corporation with any public way. The corporation which is subject to
 9 such order shall, until the order has been modified or annulled by the
 10 department, conform in all respects to the terms thereof.

Sounding of
 whistles
 regulated.
 1885, 334.
 1891, 204.
 R. L. 111,
 § 189.
 1906, 463,
 II, §§ 148, 258.
 260 Mass. 28.

1 SECTION 140. Every railroad corporation shall cause boards, sup-
 2 ported by posts or otherwise at such height as to be easily seen by trav-
 3 elers, and not obstructing travel, containing on each side in capital
 4 letters at least nine inches long the following inscription, — RAILROAD
 5 CROSSING — LOOK OUT FOR THE ENGINE. — to be placed and constantly
 6 maintained across each public way where it is crossed by the railroad
 7 at the same level; or the corporation may substitute therefor warning

Signboards at
 crossings of
 ways.
 1835, 148, § 4.
 R. S. 39, § 79.
 1849, 222, § 2.
 1859, 125, § 1.
 G. S. 63, § 84.
 1862, 81, § 2.
 1872, 191.
 1874, 372,
 § 124.

1875, 219. boards on each side of the crossing, of such form, size and description as 8
 1878, 68. the department approves. 9
 P. S. 112, § 164.

R. L. 111, § 190. 153 Mass. 51. 170 Mass. 430.
 1906, 463, II, §§ 149, 258. 162 Mass. 132. 196 Mass. 192.

Signboards
 at crossings
 of traveled
 places.
 1859, 125, § 2.
 G. S. 63, § 85.
 1874, 372,
 § 125.
 P. S. 112, § 165.
 R. L. 111,
 § 191.
 1906, 463,
 II, §§ 150, 258.
 7 Gray, 98.
 140 Mass. 238.
 159 Mass. 32.

SECTION 141. The board of aldermen of a city or the selectmen of a 1
 town where a traveled place is crossed by a railroad at the same level, 2
 if of opinion that it is necessary for the better security of the public that 3
 boards such as are described in the preceding section should be main- 4
 tained at such traveled place, may in writing request the railroad cor- 5
 poration to erect and maintain them. If it refuses or neglects so to do, 6
 they may apply to the department. If the department, after public 7
 notice and a hearing, decides that such erection is necessary for the better 8
 security of the public, the corporation shall comply with such decision. 9

170 Mass. 430.
 [Penalty, § 148.]

Warning signs
 to be erected
 by counties,
 etc.
 1917, 246, § 1;
 344, I, § 1.
 1919, 350,
 § 111.
 1926, 270.
 [Penalty, § 145.]

SECTION 142. Every county, city and town shall, except as herein- 1
 after provided, and the department of public works shall, unless in any 2
 case it deems it unnecessary or impracticable so to do, place and main- 3
 tain warning signs on every public way subject to its jurisdiction, where 4
 the way crosses the tracks of a railroad at grade. The signs shall consist 5
 of a metal disc twenty-four inches in diameter, the field thereof to be 6
 enamelled yellow, with an enamelled black border line one inch wide, 7
 and with an enamelled black perpendicular and horizontal crossline two 8
 and one half inches wide; the reverse side of the disc to be colored yellow. 9
 In each of the upper quarterings shall appear, in black enamel, the letter 10
 "R", five inches high, three and three quarter inches wide, the lines to 11
 be of one inch stroke. The said signs shall be placed in conspicuous situ- 12
 ations beside the public way, on each side of the crossing, and at a dis- 13
 tance of not less than three hundred feet from the nearest rail of the 14
 crossing. 15

Warning signs
 furnished by
 railroads.
 1917, 246, § 2;
 344, I, § 1.
 1919, 350,
 § 111
 [Penalty, § 145.]

SECTION 143. Every railroad corporation shall, within four months 1
 after receiving a written request therefor, furnish to any county, city or 2
 town in the commonwealth, or to the department of public works, as the 3
 case may be, a sufficient number of such warning signs to enable such 4
 county, city or town, or the said department, from time to time to com- 5
 ply with the preceding section. The said signs shall be furnished, as 6
 aforesaid, without charge, unless they are to be used for replacement 7
 purposes, in which case the railroad corporation may require the pay- 8
 ment of the net cost thereof. 9

When signs
 impracticable.
 1917, 246, § 4.

SECTION 144. When it appears that the placing of the signs prescribed 1
 by section one hundred and forty-two is impracticable or unnecessary, 2
 the department of public utilities, on petition, may release the county, 3
 city or town, as the case may be, from compliance with said section. 4

Penalties.
 1917, 246, § 5.

SECTION 145. If any county, city or town shall neglect, for sixty days, 1
 to comply with the requirements of section one hundred and forty-two, 2
 unless released therefrom by order of the department of public utilities, 3
 or unless prevented by the failure of any railroad corporation to comply 4
 with the requirements of section one hundred and forty-three, or if any 5
 railroad corporation shall neglect, for sixty days after the expiration of 6
 the four months prescribed in section one hundred and forty-three, to 7

8 comply with the requirements thereof, it shall forfeit one dollar for each
 9 day during which such neglect continues, to be recovered in an action of
 10 tort brought in the name and for the use of the commonwealth by the
 11 attorney general or by the district attorney of the district where the
 12 violation occurred.

1 SECTION 146. Any person who unlawfully removes, throws down, Penalty for
 2 injures or defaces any such sign shall be punished by a fine of not more removing, etc.,
 3 than ten dollars, to the use of the county, city or town placing and main- sign
 4 taining the sign, or of the commonwealth, if the sign is placed and main- 1917, 246, § 6;
 5 tained by the department of public works. 344, 1, § 1.
 1919, 350,
 § 111

1 SECTION 147. The department, after notice to a railroad corporation Gates, etc., at
 2 whose railroad crosses a public way or traveled place at the same level, crossings.
 3 and a hearing, may direct in writing that gates shall be erected at said 1835, 148,
 4 crossing across said way or place and that an agent be stationed thereat §§ 4, 6.
 5 to open and close such gates when an engine or train passes, or that a R. S. 39, § 80.
 6 flagman be stationed at the crossing, who shall display a flag when an 1849, 222,
 7 engine or train passes, or that such crossing shall be provided with such §§ 1-3.
 8 an electric signal as the department determines the better security of 1851, 317
 9 human life or the convenience of public travel requires, and the corpo- 1854, 491.
 10 ration shall comply with such order. 1856, 245.
 G. S. 63,
 §§ 86-89, 92
 1864, 152, § 3.
 1865, 239, § 2.
 1874, 372,
 § 126.

P. S. 112, § 166.	1906, 463, II, §§ 151.	188 Mass. 416.
1883, 117.	258.	208 Mass. 137.
1888, 240.	129 Mass. 364.	230 Mass. 431.
R. L. 111, § 192.	186 Mass. 249	
	[Penalty, § 148.]	

1 SECTION 148. A railroad corporation which unreasonably neglects to Penalty.
 2 comply with an order or decision made under section one hundred and 1835, 148, § 5.
 3 forty-one or one hundred and forty-seven shall forfeit not more than one R. S. 39, § 81.
 4 thousand dollars. G. S. 63, § 90.
 1864, 152, § 4.

1874, 372, § 128.	R. L. 111, § 193.
P. S. 112, § 168.	1906, 463, II, §§ 152, 258.

1 SECTION 149. The department may require a railroad corporation Signals at
 2 whose railroad crosses a highway by a crossing above the level of the overhead
 3 highway to give such signal as the department may designate of the crossings.
 4 approach of trains to such crossing. The department may in each case 1891, 129.
 5 determine the nature of the signal to be given, and, in its discretion, R. L. 111,
 6 may require an automatic signal. § 194.
 1906, 463,
 II, §§ 153, 258

1 SECTION 150. If the view of a railroad crossing or highway at grade Removal of
 2 is obstructed by standing wood in woodlands, the railroad corporation standing wood
 3 or ten citizens of a town may petition the county commissioners for the at crossings.
 4 county where such crossing is situated for the removal of such standing 1889, 371
 5 wood; and the commissioners, after notice and a hearing, shall make such R. L. 111,
 6 orders as to such removal as the public safety demands. They shall also § 195.
 7 prescribe the limits within which such standing wood shall be taken, and 1906, 463,
 8 shall determine the damage sustained. Such damage and the expense II, §§ 154, 258.
 9 incident thereto may be recovered from the railroad corporation under
 10 chapter seventy-nine.

1 SECTION 151. A railroad corporation, or receiver or assignee thereof, Penalty on
 2 or its or his servant or agent, shall not wilfully or negligently obstruct corporation for
 3 unnecessarily or unreasonably use or occupy a public way, or in any case obstructing
 highways, etc.
 1854, 378.

G. S. 63, § 68. obstruct, use or occupy it with cars or engines for more than five minutes 4
 1871, 83; 316. at one time; and if a public way has been thus used or occupied with 5
 1874, 372, cars or engines, the railroad corporation, or receiver or assignee thereof, 6
 § 129. shall not again use or occupy it with the cars or engines of a freight train, 7
 P. S. 112, § 169. 1895, 173. until a sufficient time, not less than three minutes, has been allowed for 8
 R. L. 111, § 196. the passage across the railroad of such travelers as were ready and wait- 9
 1906, 463, II, §§ 155, 258. ing to cross when the former occupation ceased. A railroad corporation, 10
 112 Mass. 412. receiver or assignee thereof, who violates this section, shall forfeit one 11
 135 Mass. 550. hundred dollars. 12
 156 Mass. 159.
 202 Mass. 394.
 206 Mass. 417.
 219 Mass. 410.

230 Mass. 431.

Occupation of SECTION 152. Upon an application to the department, according to 1
 ways by cars regulated. section twenty-four of chapter one hundred and fifty-nine, stating that 2
 1885, 110, § 1. a crossing of a railroad with a public way at the same level is improperly 3
 R. L. 111, used by a railroad corporation with its freight engines, freight cars or 4
 § 197. freight trains to the unreasonable inconvenience or danger of the public, 5
 1906, 463, the department, after notice, shall hear the parties; and, if public con- 6
 II, §§ 156, 258. venience or safety so requires, it may direct that after a date to be fixed 7
 by it such railroad corporation shall not use such crossing or any part 8
 thereof for making up, connecting or disconnecting freight trains, or the 9
 engines or cars of such trains, or for the purpose of distributing freight or 10
 freight cars; and to prevent the same may prescribe such changes to be 11
 made in the construction of side tracks, branches and connections, in 12
 proximity to such crossings, and such regulations limiting the use of such 13
 crossings, as may be necessary. The department may at any time modify 14
 its order after a hearing and for cause shown. 15

EQUIPMENT OF ENGINES AND CARS.

Electricity a SECTION 153. A railroad corporation may operate its railroad by 1
 motive power. electricity, or by such other power as may duly be approved by the 2
 1892, 110, department. 3
 R. L. 111, § 198.

1906, 463, II, §§ 157, 258.

1910, 355.

Brakes and brakemen. SECTION 154. Every railroad corporation shall cause a sufficient 1
 1837, 226, § 8. brake to be attached to every car used upon its railroad for the transpor- 2
 1849, 161. tation of passengers, and to every car used for the transportation of 3
 G. S. 63, freight, except four-wheel cars used only for freight; and shall cause at 4
 §§ 81, 82. least one brakeman for every two cars in a passenger train to be stationed 5
 1869, 426. thereon, and one brakeman for the last car of every freight train to be 6
 1874, 372, stationed thereon. A corporation which violates this section shall forfeit 7
 § 130. not more than one hundred dollars. 8
 P. S. 112, § 170.
 R. L. 111, § 200.
 1906, 463, II, §§ 158, 258.

194 Mass. 489.

206 Mass. 557.

269 Mass. 60.

Brake appli- SECTION 155. A railroad corporation, in moving traffic between points 1
 ances on trains- in the commonwealth, shall not use any locomotive not equipped with a 2
 1895, 362, § 1. power driving wheel brake and appliances for operating the train brake 3
 R. L. 111, system; nor run any train in such traffic unless a sufficient number of 4
 § 201. cars in it are so equipped with power or train brakes that its speed can 5
 1906, 463, II, §§ 159, 258. be controlled by the engineer of the locomotive which is drawing such 6
 [Penalty, § 160.] train, without the use of the common hand brakes by the brakeman. 7
 When such corporation has equipped a sufficient number of its cars with 8
 such power or train brakes, it may lawfully refuse to receive from con- 9

10 meeting lines of railroad any cars used in such traffic which are not suf-
 11 ficiently equipped with such power or train brakes as will work and
 12 readily interchange with the brakes in use on its own cars.

1 SECTION 156. A railroad corporation shall cause to be placed upon
 2 both ends of every freight car owned by it and which it may lawfully
 3 use such automatic or other safety coupler as the department, after an
 4 examination and test, may prescribe, and the department may annul
 5 any such requirement made by it.

Safety couplers
 on freight cars.
 1884, 222, § 1.
 R. L. 111,
 § 202.
 1906, 463,
 II, §§ 160, 258.

1 SECTION 157. A railroad corporation, in moving traffic between
 2 points in the commonwealth, shall not haul or use, or permit to be hauled
 3 or used, on its lines any car which is not equipped with couplers coupling
 4 automatically by impact, and which do not require men to go between
 5 the cars to uncouple them.

Automatic
 couplers on
 cars.
 1895, 362, § 2.
 R. L. 111,
 § 203.
 1906, 463,
 II, §§ 161, 258.

182 Mass. 348.

188 Mass. 390.

196 Mass. 471.

[Penalty, § 160.]

1 SECTION 158. A railroad corporation, in moving traffic between points
 2 in the commonwealth, until otherwise ordered by the department, shall
 3 not use any car, except flat cars equipped with automatic couplers, which
 4 is not provided with secure grab irons or hand holds on the ends and sides
 5 for greater security to men in coupling and uncoupling cars.

Grab irons
 on cars.
 1895, 362, § 3.
 R. L. 111,
 § 204.
 1906, 463,
 II, §§ 162, 258.

[Penalty, § 160.]

1 SECTION 159. The standard height of draw bars for freight cars,
 2 measured perpendicularly from the level of the top of the rails to the
 3 centres of the draw bars, shall be thirty-four and one half inches for
 4 standard gauge railroads and twenty-six inches for narrow gauge railroads,
 5 with a maximum variation from such standard height, in either case, of
 6 three inches between the draw bars of empty and loaded cars; and no
 7 freight car with draw bars which do not comply with the above stand-
 8 ard, whether loaded or unloaded, shall be used in moving traffic between
 9 points in the commonwealth.

Standard
 height of
 draw bars for
 freight cars.
 1895, 362, § 4.
 R. L. 111,
 § 205.
 1906, 463,
 II, §§ 163, 258.
 [Penalty, § 160.]

1 SECTION 160. A railroad corporation which violates any provision of
 2 sections one hundred and fifty-five, one hundred and fifty-seven, one hun-
 3 dred and fifty-eight and one hundred and fifty-nine, shall forfeit one
 4 hundred dollars, to be recovered in an action of tort brought in the
 5 name and for the use of the commonwealth by the attorney general or
 6 the district attorney for the district where the offence was committed.

Penalty.
 1895, 362, § 5.
 R. L. 111,
 § 206.
 1906, 463,
 II, §§ 164, 258.

1 SECTION 161. Sections one hundred and fifty-five and one hundred
 2 and fifty-seven to one hundred and sixty, inclusive, shall not apply to
 3 trains composed of four-wheel cars, or to locomotives used in hauling
 4 such trains.

Limitation of
 preceding
 sections.
 1895, 362, § 5.
 R. L. 111,
 § 207.

1906, 463, II, §§ 165, 258.

1 SECTION 162. The department may from time to time, after hearing
 2 and for good cause, exempt, until a date fixed by it, any railroad corpo-
 3 ration from the requirements of sections one hundred and fifty-five, one
 4 hundred and fifty-seven, one hundred and fifty-eight and one hundred
 5 and fifty-nine.

Extension of
 time for equip-
 ment.
 1895, 362, § 6.
 R. L. 111,
 § 208.
 1906, 463,
 II, §§ 166, 258.

Tools to be
carried on
trains.
1870, 372.
1871, 7.
1874, 372,
§ 131.
P. S. 112, § 171.
1882, 54, § 1.

SECTION 163. Every railroad corporation shall equip each of the trains and cars owned or operated by it, for use in case of accident and for safety purposes, with such tools and devices as the department in writing shall order. A corporation which violates this section shall forfeit five hundred dollars.

R. L. 111, § 210.
1906, 463, 11, §§ 168, 258.

1917, 41.
1930, 211, § 1.

SECTION 164. [REPEALED, 1930, 211, § 2.]

Heating of
cars regulated.
1887, 362.
1891, 249.
R. L. 111,
§ 212.
1906, 463,
11, §§ 170, 258.

SECTION 165. A passenger, mail or baggage ear shall not be heated by a stove or furnace kept in the ear or suspended therefrom unless it is temporarily necessary by reason of an accident or other emergency, and no method of heating such cars nor heater shall be used until it shall have been approved in writing by the department; but the department may from time to time grant such exemptions from the requirements of this section as may seem to it necessary or reasonable, and may grant permission to any railroad corporation to make such experiments in heating its passenger cars as the department determines is proper. A corporation which violates this section shall forfeit not more than five hundred dollars.

Passenger cars
not to be
lighted by ex-
plosive oils.
1868, 286.
1872, 276.
1874, 372,
§ 132.
P. S. 112, § 172.

SECTION 166. A passenger car on a railroad shall not be lighted by naphtha, nor by an illuminating oil or fluid made in part of naphtha or which will ignite at a temperature of less than three hundred degrees Fahrenheit. A corporation which violates this section shall forfeit not more than five hundred dollars.

R. L. 111, § 213.

1906, 463, 11, §§ 171, 258.

Platform gates.
1900, 223.
R. L. 111,
§ 214.
1906, 463,
11, §§ 172, 258.
186 Mass. 521.

SECTION 167. Every passenger, baggage, mail and express car, owned or regularly used on any railroad in the commonwealth shall be provided at each end thereof with platform gates of a pattern approved by the department. A railroad corporation which hauls or uses, or permits to be hauled or used, on its railroad any car in violation of this section shall forfeit one hundred dollars to the use of the commonwealth, and the attorney general or the district attorney for the district where such violation occurred shall bring an action therefor.

Testing of
locomotive
boilers
1882, 73.
R. L. 111,
§ 218.
1906, 463,
11, §§ 173, 258.
1909, 348.

SECTION 168. The department may make and revise regulations for testing boilers of locomotives used by railroad corporations, by other corporations, and by persons, firms or associations upon any railroad or railway within the commonwealth, and every person, firm, association and corporation other than a railroad corporation, so using a locomotive, shall inform the department in writing on or before June thirtieth of each year of the number of locomotives so used by him or it, together with the length of track of such railroad or railway, its location and uses, and such other information as the department may require. This section shall apply to railroads for private use authorized by section two hundred and forty-five of this chapter. Tests under regulations made as aforesaid shall, if possible, be made by the master mechanic of the corporation, association, person or firm which constructs, repairs or uses the boiler of the locomotive, and the report of such tests shall be in form satisfactory to the department. A corporation, association, firm or person using a locomotive in the commonwealth the boiler of which has

17 not been tested in accordance with this section shall be punished by a
 18 fine of twenty dollars for every day after notice by the department dur-
 19 ing which such use continues.

1 SECTION 169. A railroad corporation using any vacuum brake shall
 2 provide and use on every locomotive equipped therewith a muffler
 3 or other appliance, approved in writing by the department, for deadening
 4 the noise incident to the operation of such brake; but any other appli-
 5 ance may be used upon any locomotive for the purpose of experiment
 6 only, for not more than thirty days, but not upon more than two loco-
 7 motives of the same corporation at any one time. Every application
 8 to the department for approval of such appliances shall be in writing;
 9 and such approval may be revoked by the department by written notice
 10 to the corporation.

Mufflers with vacuum brakes. 1879, 284, §§ 1, 3; P. S. 112, §§ 173, 174. R. L. 111, § 215. 1906, 463, II, §§ 171, 258.

1 SECTION 170. A railroad corporation using upon its locomotives a
 2 pop or other safety valve shall provide and use therewith a suitable and
 3 sufficient appliance for deadening the sound made by steam escaping
 4 therefrom, and, if it materially retards the escape of steam or increases
 5 the pressure upon the boiler, the corporation shall use an additional
 6 safety valve without such appliance, set at a higher point than the other
 7 but below the point at which explosion is likely to occur.

Mufflers for safety valves. 1879, 284, § 2; P. S. 112, § 175. R. L. 111, § 216. 1906, 463, II, §§ 175, 258.

1 SECTION 171. A corporation which violates any provision of the two
 2 preceding sections shall forfeit not less than one hundred nor more than
 3 three hundred dollars for every locomotive used by it in violation thereof,
 4 and a further sum of five dollars for each day upon which such locomo-
 5 tive shall be run in violation thereof.

Penalties. 1879, 284, § 4; P. S. 112, § 176. R. L. 111, § 217. 1906, 463, II, §§ 176, 258.

1 SECTION 172. Every railroad corporation shall furnish reasonable
 2 accommodations for the convenience and safety of passengers; and for
 3 every wilful neglect to provide the same shall forfeit not less than five nor
 4 more than twenty dollars.

Reasonable accommodations. 1849, 191, § 2; G. S. 63, § 110.

1874, 372, § 133.
 P. S. 112, § 177.

R. L. 111, § 219.
 1906, 463, II, §§ 177, 258.

210 Mass. 164.

1 SECTION 173. A railroad corporation shall not require women or chil-
 2 dren to ride in smoking cars. For a violation of this section the corpora-
 3 tion, or any officer or employee thereof, shall be punished by a fine of
 4 not less than ten nor more than fifty dollars.

Women, etc., in smoking cars. 1888, 176. R. L. 111, § 235. 1906, 463, II, §§ 191, 258.

1 SECTION 174. Every railroad car, except private cars, sleeping cars,
 2 dining cars, parlor cars, and the smoking, buffet and observation cars
 3 used in connection with the same, while in use for the transportation
 4 of passengers, upon a train running thirty miles or more, shall be pro-
 5 vided with a sufficient quantity of pure drinking water in such place
 6 in the car as will be convenient for the passengers, and with individual
 7 drinking cups accessible to the passengers. Said cups shall be in a
 8 proper receptacle near the water tank, and said receptacle shall be so
 9 placed as to be easily seen and shall be plainly marked as follows:

Drinking water. 1911, 491, § 1. 1912, 581. 1914, 792, § 1. 1919, 350, § 96.

DRINKING CUPS
 FOR USE
 ONLY IN THIS CAR
 FREE

such words to occupy a space not less than two inches wide by three inches long, and to be in clear black letters on a white background. No charge shall be made for the water or for the drinking cups. The water and cups supplied shall be subject to the supervision and approval of the department of public health, which shall enforce this and the following section.

Penalty. SECTION 175. Violations of the preceding section shall be punished by a fine of not less than twenty-five dollars for each trip made by a car used for transporting passengers and not provided with water and utensils for its distribution in accordance with the preceding section.

Further appliances. SECTION 176. The department may require a railroad corporation to equip its cars with such other appliances as, in the judgment of the department, are necessary for the further protection of life in all passenger trains used in the commonwealth.

EMPLOYEES.

Uniform caps and badges for employees. SECTION 177. Every railroad corporation shall provide a uniform hat or cap and distinguishing badge, which shall be worn by all its employees whose duties relate immediately to the transportation of passengers or their baggage. A corporation neglecting to provide such uniform hat or cap and badge shall forfeit one hundred dollars for each week of such neglect; and if such an employee neglects to wear the same when on duty, the corporation which employs him shall for each case of such neglect forfeit twenty-five dollars; and no employee, unless wearing his uniform hat or cap and badge, shall be permitted to exercise any authority or to perform any of the duties of his office.

Color blindness, examination for. SECTION 178. A railroad corporation shall not employ any person or keep him in its employ in a position requiring the employee to distinguish form or color signals, unless he has been examined for color blindness or other defective sight by a competent person employed by the corporation and has received a certificate that he is not disqualified for such position by color blindness or other defective sight. A railroad corporation which violates this section shall forfeit one hundred dollars.

Experience required of locomotive engineer. SECTION 179. No person shall act as a locomotive engineer unless he has been employed two years as a locomotive fireman or as an engineer's helper, or was employed as a locomotive engineer before June tenth, nineteen hundred and eleven.

Experience required of conductor. SECTION 180. No person shall act as a conductor on a railroad train unless he has been employed as a brakeman for two years, or was employed as a conductor on a railroad train before June tenth, nineteen hundred and eleven.

Promoting, etc., violation of two preceding sections forbidden. SECTION 181. No person shall knowingly engage, promote, require, persuade, prevail upon, or cause any person to act in violation of either of the two preceding sections.

1 SECTION 182. The three preceding sections shall not apply to the
 2 operating of locomotive engines by engine hostlers in or around engine
 3 houses, or to any railroad other than a standard gauge railroad. In the
 4 event of the disability of an engineer or conductor on the road, railroad
 5 companies may employ persons without the qualifications prescribed by
 6 sections one hundred and seventy-nine and one hundred and eighty,
 7 but only for the purpose of reaching a terminal station.

Exceptions.
 1911, 539,
 §§ 4, 6.

1 SECTION 183. Any violation of any provision of the four preceding
 2 sections shall be punished by a fine of not more than five hundred dollars
 3 or imprisonment for not more than one year, or both, and each day's
 4 violation shall constitute a separate offence.

Penalty.
 1911, 539, § 5.

1 SECTION 184. Every person employed as signalman, towerman, lever-
 2 man, agent, train despatcher, telegrapher or telephone operator in a rail-
 3 road signal tower or railroad station, and every other person employed
 4 by a railroad in the operating of trains by the use of the telegraph, tele-
 5 phone or signal and interlocking switching machines shall be allowed two
 6 days of twenty-four hours each in every month for rest with regular
 7 compensation, except in a case of extraordinary emergency caused by
 8 accident, fire, flood, or danger to life or property, when the said period
 9 of rest shall be allowed after the emergency is past. Any violation of
 10 this section shall be punished by a fine of not less than one hundred
 11 dollars.

Rest days re-
 quired for cer-
 tain employees
 1914, 723.

1 SECTION 185. Whenever the department is of opinion, after a hear-
 2 ing had upon its own motion or upon complaint, that the number of
 3 men forming a train crew of any train is not sufficient to operate said
 4 train for the safety of the public and the employees of the railroad, it
 5 shall thereupon order such changes as it deems necessary.

Department to
 regulate train
 crews.
 1913, 784, § 24.

FARES, TOLLS, CHARGES, ETC.

1 SECTION 186. A railroad corporation may establish for its sole bene-
 2 fit fares, tolls and charges upon all passengers and property conveyed or
 3 transported on its railroad, at such rates as may be determined by its
 4 directors, and may from time to time by its directors regulate the use
 5 of its railroad; but such fares, tolls and charges, and such regulations,
 6 shall be subject to revision and alteration by the general court, or by
 7 such officers or persons as it may appoint for the purpose, anything in
 8 the charter of the railroad corporation to the contrary notwithstanding.

Rates of fare,
 how established
 and revised.
 R. S. 39, § 83
 G. S. 63, § 112.
 1870, 325, § 1.
 1874, 372,
 § 179.
 P. S. 112, § 180.
 R. L. 111,
 § 225.
 1906, 463,
 II, §§ 181, 258,
 12 Gray, 180.

210 Mass. 159, 553.

TRANSPORTATION OF PASSENGERS.

1 SECTION 187. A railroad corporation may make contracts for the
 2 conveyance of passengers upon designated trains for a specific distance
 3 at fixed times, at such reduced rates of fare as the parties may agree
 4 upon. Tickets may be issued for such passengers, upon which shall be
 5 plainly printed the terms upon which they may be used. Such tickets
 6 shall not be transferable without the consent of the corporation, nor shall
 7 they entitle the holder to ride upon a train not therein designated.

Conveyance of
 passengers at
 reduced rates.
 1871, 143,
 1874, 372,
 § 135.
 P. S. 112, § 181.
 R. L. 111,
 § 228.
 1906, 463,
 II, §§ 184, 258.

Extra fares regulated.
1883, 32.
1900, 151.
R. L. 111, § 226.
1906, 463, 11, §§ 182, 258.

SECTION 188. A railroad corporation shall not demand or receive for any single ticket bought or fare paid on a train or elsewhere than at its ticket offices more than ten cents in excess of the tariff rates charged at its ticket offices. When such excess is received, the conductor or other person receiving it shall give to the passenger a printed certificate which shall entitle him to receive the excess so paid at any station of the corporation in exchange for such certificate. A railroad corporation violating any provision hereof shall be punished by a fine of not less than ten nor more than fifty dollars.

Mileage tickets, coupons to be detached.
1908, 649, § 1.

SECTION 189. Every railroad corporation issuing mileage tickets shall, upon presentation of such a ticket by a passenger, detach therefrom one coupon and no more for each mile and fraction thereof actually traveled; provided, that for distances less than three miles three coupons may so be detached. Distances to or from the station known as Back Bay on the New York, New Haven and Hartford railroad, and the stations known as Trinity Place and Huntington Avenue on the Boston and Albany railroad, shall be computed as if to or from the Boston terminal station.

Commutation tickets between Boston and stations within fifteen miles.
1900, 395.
R. L. 111, § 227.
1906, 463, 11, §§ 183, 258.
1908, 649, §§ 2, 3.
1913, 784, § 29.
224 Mass. 463.

SECTION 190. Every railroad corporation having a terminus in Boston, except the Boston, Revere Beach and Lynn Railroad Company, shall sell a commutation ticket good for not more than twelve rides between Boston and each station on its lines within fifteen miles of its terminal station in Boston. The said tickets, before issuance, shall be subject to approval by the department both as to the rate of fare and the conditions named therein. So far as is practicable, the rates of fare on all roads for like distances from their terminal stations shall be equal.

Deposit of season tickets.
1911, 508, § 1.

SECTION 191. All railroads issuing season tickets between points within the commonwealth shall, at the request and on the presentation of a season ticket by the holder thereof, place the same on deposit for not less than one week and reissue the ticket at the request of the owner, extending the period for which the ticket was issued by a number of days equal to the number during which it remained on deposit; provided, that no ticket shall be deposited more frequently than at the rate of once in three months; and a holder shall have such further privileges as the department approves.

Reimbursing season ticket holder for fare paid.
1911, 508, § 2.

SECTION 192. All railroads issuing season tickets between points within the commonwealth shall, at the request of a holder of a season ticket, reimburse said holder for the cost of the fares paid by said holder between the stations named on the ticket whenever said holder fails to present the season ticket for fare. The holder of a season ticket in order to be entitled to reimbursement must, within one week, present to the proper officer of the railroad company the certificate given at the time of paying the fare together with the coupon from the season ticket.

Season tickets for express messengers.
1894, 469, § 2.
R. L. 111, § 233.
1906, 463, 11, §§ 189, 258.
201 Mass. 564.

SECTION 193. Every railroad corporation shall sell to an express messenger or to a person conducting a local express business, as provided in section two hundred and six, in its trains or cars within the commonwealth, a season ticket for his personal transportation, at a price not exceeding that at which similar tickets are sold to passengers, upon receiving from him a release of all right, to whomsoever accruing, to damages

7 or compensation for death or for any personal injury received by him
8 while riding on such ticket.

1 SECTION 194. Every railroad corporation shall, upon request, give
2 checks to passengers for their baggage when delivered for transportation,
3 and shall re-deliver the baggage to the passengers upon the surrender
4 of such checks. A corporation violating this section shall forfeit ten
5 dollars.

R. L. 111, § 230.
1906, 463, 11,
§§ 186, 258.

15 Gray, 447.
7 Allen, 329
183 Mass. 175.

199 Mass. 586
209 Mass. 598
215 Mass. 440.

Baggage
checks.
1854, 23.
C. S. 63, § 111.
1871, 372,
§ 136
P. S. 112, § 182.

1 SECTION 195. No charge shall be made by railroad corporations for
2 the care or storage of baggage left at or arriving in railroad stations upon
3 Friday, for the period of time between Friday and twelve o'clock noon
4 of the following Monday.

1908, 504.

Storage of
baggage from
Friday to
Monday.
1907, 287.

1 SECTION 196. A railroad corporation which owns or operates a rail-
2 road of standard gauge shall check and transport between stations within
3 the limits of the commonwealth, as baggage, and subject to the same
4 charges, terms and liabilities as other baggage, one bicycle for each
5 passenger who pays by a mileage book, by a ticket other than a season
6 ticket, or in cash, the established fare, if it is not less than ten cents,
7 exclusive of rebate. The weight of the bicycle shall be included in deter-
8 mining the total weight of the baggage to be transported for such pas-
9 senger. Such corporation shall not require such bicycle to be crated,
10 covered or otherwise protected.

Bicycles as
baggage
1900, 318.
R. L. 111,
§ 229.
1906, 463,
11, §§ 185, 258

1 SECTION 197. Every railroad corporation having a terminus in Boston
2 shall, upon the application of two hundred or more persons therefor,
3 furnish on each week day a morning train in and an evening train out
4 for distances not exceeding fifteen miles, or suitable cars attached to other
5 trains, and reaching and leaving Boston at about six o'clock in the fore-
6 noon and afternoon, or at such hours as may be fixed by the department;
7 and for such trains, shall furnish season tickets good once a day each way
8 for six days in the week, at a rate not exceeding, for yearly tickets, three
9 dollars a mile and for quarterly tickets, one dollar a mile.

Cheap morning
and evening
trains.
1872, 348.
P. S. 112, § 183.
R. L. 111,
§ 231.
1906, 463,
11, §§ 187, 258.

1 SECTION 198. Every railroad corporation having a terminus in
2 Boston shall furnish such number of workingmen's trains, not less than
3 two each way, as the department, upon a petition for such trains filed
4 with it, shall in each case order. Such trains shall arrive at Boston
5 between six and half past seven o'clock in the morning and leave Boston
6 between the same hours in the evening and special cars may be provided
7 therefor. Season tickets, good once a day each way for six days in the
8 week, shall be furnished for such trains at a rate not exceeding, for yearly
9 tickets, three dollars a mile, and for quarterly tickets, one dollar a mile.

Workingmen's
trains.
1900, 298.
R. L. 111,
§ 232.
1906, 463,
11, §§ 188, 258

1 SECTION 198A. Whoever, except a person authorized so to do by the
2 railroad corporation issuing the same, or a bona fide passenger in actual
3 transit, sells or offers for sale any railroad ticket or portion of such a
4 ticket entitling the holder or any specified person or persons to pas-
5 sage wholly within the commonwealth on any railroad passenger train
6 or trains, such ticket or portion of a ticket having been put out by the

Sale of certain
tickets
regulated.
Penalty.
1925, 216.

railroad corporation issuing the same at a price less than the rate of a full one way fare for such passage under the tariff provisions then in force, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one month, or both.

Free passes to state officers forbidden. 1892, 59, §§ 1-3. R. L. 111, § 234. 1906, 463, II, §§ 190, 258.

SECTION 199. Any person who, being governor, lieutenant governor, member of the council, member or member-elect of the general court, justice of the supreme judicial court, justice of the superior court, judge of probate, justice of a district court or a county commissioner, who requests, for himself or another, accepts or uses any free pass upon a railroad, or any ticket entitling him to transportation upon a railroad, for which he has paid a less price than is demanded of the public generally, and an officer, agent or employee of a railroad corporation who issues, delivers or offers to any person hereinbefore mentioned or to or for any other person at the request, solicitation or procurement of any such person, except as otherwise provided by the following section or section fifteen of chapter one hundred and fifty-nine, a free pass or any ticket entitling him to transportation at a less rate of fare than is demanded of the public generally, shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Passes to former employees 1912, 488, 227 Mass. 493.

SECTION 200. Railroad corporations may issue passes for free transportation to former employees who have been injured in the service of the corporation issuing the pass. The pass shall state the nature of the injury, shall not be transferable, and shall be forfeited if used, or attempted to be used, in violation of the conditions of the pass, or if it was obtained by misrepresentation.

TRANSPORTATION OF MAILS.

Mails to be transported on request. 1867, 351, § 1. P. S. 112, § 184. R. L. 111, § 236.

SECTION 201. Every railroad corporation shall, upon request of the postmaster general or of an authorized agent of the post office department, carry the mails at such times and upon such trains as may be desired by him upon the terms provided in the two following sections.

1906, 463, II, §§ 192, 258.

Compensation for carrying mails. 1867, 351, § 2. P. S. 112, § 185. R. L. 111, § 237. 1902, 544, § 13. 1906, 463, II, §§ 193, 258.

SECTION 202. A corporation which cannot agree with the postmaster general or other proper officer of the United States as to the compensation to be paid for such transportation may notify the postmaster general of its unwillingness to carry the mails upon the terms proposed; and after the expiration of three months from the depositing of such notice in a post office in the commonwealth, addressed to the postmaster general, such corporation shall be absolved from the duty imposed in the preceding section, unless he or some officer or agent of the post office department within that time has filed a petition in the supreme judicial court in any county, praying for the appointment of three commissioners to fix the price to be paid to the corporation for such service; and the court, after notice to the corporation, shall appoint three commissioners to hear the parties and determine such compensation, the award of a majority of whom, being made to and confirmed by said court, shall be final as to all past service and for a period of two years after such confirmation.

1 SECTION 203. Upon application to said court by either party to such
 2 proceedings at any time after the expiration of two years from the con-
 3 firmation of such award, the matter may be reopened, and the same or
 4 other commissioners shall rehear the parties, and the award of said com-
 5 missioners or of a majority of them, when made to and confirmed by
 6 said court, shall be binding on the parties for two years after such con-
 7 firmation, when like proceedings may again be had on petition of either
 8 party.

Confirmation
 of rates.
 1867, 351, § 3.
 P. S. 112, § 186.
 R. L. 111,
 § 238.
 1906, 463, II,
 §§ 194, 258.

TRANSPORTATION OF MERCHANDISE.

1 SECTION 204. A railroad corporation shall, upon request, without
 2 additional charge, give a receipt describing articles, packages or com-
 3 modities not extra hazardous delivered to it for transportation. A cor-
 4 poration which refuses to give such receipt shall forfeit fifty dollars to
 5 the person entitled thereto.

Receipts to
 shippers of
 merchandise.
 1872, 308.
 1874, 372,
 § 137.
 P. S. 112, § 187.

R. L. 111, § 239.

1906, 463, II, §§ 195, 258.

1 SECTION 205. Every railroad corporation shall, subject to the pro-
 2 visions of section two hundred and eleven, give to all persons reasonable
 3 and equal terms, facilities and accommodations for the transportation
 4 upon its railroad of themselves, their agents and servants, and of their
 5 merchandise and other property and for the use of its depot and other
 6 buildings and grounds; and, at any point where its railroad connects
 7 with another railroad, it shall give reasonable and equal terms and faci-
 8 ties of interchange.

Equal facili-
 ties for trans-
 portation.
 1867, 339.
 1874, 372,
 § 138.
 P. S. 112, § 188.
 R. L. 111,
 § 240.
 1906, 463, II,
 §§ 196, 258.
 115 Mass. 416.

128 Mass. 326.

147 Mass. 35, 255.

165 Mass. 398.

235 Mass. 199.

1 SECTION 206. The preceding section shall apply to all persons en-
 2 gaged only in a local express business for the forwarding of express matter
 3 between points within the commonwealth in the trains or cars of any
 4 railroad corporation, and to persons desiring to engage therein who ob-
 5 tain the recommendation of the department therefor, and who agree in
 6 writing to indemnify the corporation against all loss of and damage to any
 7 property carried by them on its trains. Such recommendation shall be
 8 given only after notice to all parties interested and a hearing thereon, and
 9 with regard, among other considerations, to the public interest. Such
 10 corporation may contract with one or more persons for the express serv-
 11 ice over its railroad or system, subject to the rights of such persons as
 12 may then be engaged in, or shall have obtained the recommendation afore-
 13 said to conduct such local express business thereon between points within
 14 the commonwealth under this section; and the terms, facilities and ac-
 15 commodations provided for such last named persons shall not be unrea-
 16 sonable or unequal, having regard to the amount and character of the
 17 service and also to such reasonable regulation of said business as may be
 18 for the public interest and the efficient operation of the railroad. This
 19 section shall not deprive any railroad corporation of any right which it has
 20 under its charter or under general laws, to perform all the transportation
 21 of property upon its railroad.

Equal facili-
 ties to local
 expressmen.
 1894, 469.
 §§ 1, 6.
 R. L. 111,
 § 241.
 1906, 463, II,
 §§ 197, 258.
 165 Mass. 398.
 201 Mass. 564.
 235 Mass. 199.

1 SECTION 207. Every railroad corporation shall promptly forward
 2 merchandise consigned to or directed to be sent over another railroad
 3 connecting with its railroad, according to the directions contained thereon

Merchandise
 to be for-
 forwarded
 promptly.
 1859, 209, § 1.

G. S. 63, § 114. 1874, 372, § 139. P. S. 112, § 189. R. L. 111, § 242.	or accompanying the same, and shall not receive and forward over its railroad merchandise consigned to or directed to be sent by a different route.	4 5 6
--	---	-------------

1906, 463, II, §§ 198, 258.

Charges for transportation of freight.
 1871, 363.
 1874, 372,
 § 140.
 P. S. 112, § 190
 R. L. 111,
 § 243.
 1906, 463, II,
 §§ 199, 258.
 124 Mass. 561.

SECTION 208. A railroad corporation shall not charge or receive for the transportation of freight to any station on its railroad a greater amount than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its railroad in the same direction. Two or more railroad corporations whose railroads connect shall not charge or receive for the transportation of freight to any station on the railroad of either of them a greater amount than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the railroad of either of them in the same direction. In construing this section, the amount charged or received for the transportation of freight shall include all terminal charges; and the railroad of a corporation shall include all the railroad in use by it, whether owned or operated under a contract or lease.

Penalties on corporations.
 1859, 209, § 2.
 G. S. 63, § 114.
 1873, 240.
 1874, 372,
 § 141.
 1880, 258
 P. S. 112, § 191.
 R. L. 111,
 § 244.
 1906, 463, II,
 §§ 200, 258.

SECTION 209. A railroad corporation violating any provision of the four preceding sections, in addition to liability for all damages sustained by reason of such violation, shall forfeit two hundred dollars, to be recovered in tort to his own use by the party aggrieved, or to the use of the commonwealth by the attorney general or the district attorney of the district where such violation was committed; but no such action shall be maintained unless brought within one year after the date of such violation.

Freight differential against Boston forbidden.
 1912, 725,
 II, § 7.

SECTION 210. A railroad corporation shall not, at any time, charge, demand or receive a greater sum for transportation by it of freight from any point of origin, for the same distances and under like conditions, on any lines operated by it or in connection with it, to the port of Boston for export to foreign countries, than is at the time received by it for transportation of the like class and quantity of freight to any other port reached by its lines for export to foreign countries; or charge, demand or receive, a greater sum for transportation for the same distance and under like conditions from the port of Boston of freight from foreign countries through said port of Boston to any point on any lines operated by it or in connection with it than is at the time received by it for transportation of the like class and quantity of freight through any other port on its lines to the same point; provided, that if the aforesaid provisions of this section shall conflict with any regulations made by act of congress this section shall be null and void so far as it conflicts therewith; and provided, further, that nothing herein contained shall justify the charging of the same rate for freight for export or import through any other port reached by its lines where the mileage from the point of receipt or delivery is less to the port of Boston than to the port in question, in which case the rate through Boston shall be proportionately less.

Discrimination in freight rates forbidden.

SECTION 211. A railroad corporation shall not in its charges for the transportation of freight or in the conduct of its freight business, make or

3 give any undue or unreasonable preference or advantage to or in favor 1882, 94; 225.
 4 of any person, nor subject any person to any undue or unreasonable R. L. 111,
 5 prejudice or disadvantage. § 245.

1906, 463, II, §§ 201, 258.

227 Mass. 197.

TRANSPORTATION OF MILK.

1 SECTION 212. A railroad corporation shall not receive, forward or de- Transportation
 2 liver milk in large quantities over any portion of its line, or permit others of milk:
 3 so to do, under contract, lease or hiring of cars or otherwise, without at 1879, 206,
 4 the same time providing, as regards time, care and preservation of the §§ 1, 3.
 5 milk and the return of the empty cans, equal facilities and advantages P. S. 112, § 192.
 6 for receiving, forwarding and delivering milk by the can over the same 1893, 210, § 1.
 7 portion of its line; nor without establishing a tariff for the milk by the R. L. 111,
 8 can which is the same rate which it charges or receives as aforesaid for § 245.
 9 milk in large quantities. 1906, 463, II,
 §§ 202, 258.
 1910, 633, § 1.

1 SECTION 213. Upon the petition of one or more persons who desire Tariff for milk.
 2 to forward milk by the can over any railroad or any portion thereof, the 1879, 206, § 2.
 3 department, after notice to the railroad corporation and a hearing, shall P. S. 112, § 193.
 4 ascertain and compare the tariff established as aforesaid for milk by the 1893, 210, § 2.
 5 can with the rate charged or received as aforesaid for milk in large quan- R. L. 111,
 6 tities over such railroad or such portion thereof; and if the former is, in § 247.
 7 the judgment of the department, higher than the latter, the department 1906, 463, II,
 8 shall revise said tariff and shall fix such rate for milk by the can as it finds §§ 203, 258.
 9 to be the rate for milk in large quantities, including in both cases the same 1910, 633, § 2.
 10 care and preservation of the milk and the return of the empty cans, as 158 Mass. 1.
 11 aforesaid; and shall notify the corporation in writing of the rate by the
 12 can so fixed over such railroad or such portion thereof; but the rates by
 13 the can so fixed shall not be higher than the rates charged by the same
 14 railroad corporation for a longer distance on any part of its system.

1 SECTION 214. A railroad corporation which refuses or neglects to Penalties.
 2 receive, forward or deliver milk by the can over its railroad or any portion 1879, 206, § 3.
 3 thereof at the tariff rate therefor, as provided in the preceding section, P. S. 112, § 194.
 4 shall forfeit to the person tendering the same five dollars for every can 1893, 210, § 3.
 5 of milk which it so refuses to receive or neglects to forward and deliver R. L. 111,
 6 at the said tariff rate. § 248.
 1906, 463, II,
 §§ 204, 258.

CHANGE OF NAME.

1 SECTION 215. On application of any railroad corporation, authorized Change of
 2 by a vote of two thirds of the shares present and voting at a meeting name.
 3 called therefor, the department may, after public notice and a hearing, 1891, 360,
 4 authorize such corporation to change its name. §§ 1, 2.
 1892, 198,
 R. L. 109, § 9.
 1906, 463, II, §§ 223, 258.

1 SECTION 216. A certified copy of such authorization and a certificate Certificate of
 2 of the vote of the corporation, signed and sworn to by the president, vote to be
 3 treasurer and a majority of the directors, shall be filed in the office of filed with
 4 the state secretary. The department shall require public notice to be secretary.
 5 given of the change so authorized; and, upon receipt of proof thereof, 1891, 360, § 3.
 6 the state secretary may grant a certificate of the name which the cor- R. L. 109, § 10.
 7 poration shall bear, which, subject to the provisions of section fourteen, 1906, 463, II,
 8 shall thereafter be its legal name. §§ 224, 258.

Rights and liabilities under new name. 1891, 360, § 4. R. L. 109, § 11. 1906, 463, II, §§ 225, 258.

SECTION 217. A railroad corporation shall have the same rights, powers and privileges, and be subject to the same duties, obligations and liabilities, under its new name as before its name was changed, and may sue and be sued by its new name; but any action brought against it by its former name shall not be defeated on that account, and, on motion of either party, the new name may be substituted therefor.

OFFENCES AND PENALTIES.

Walking on track. 1853, 414, § 4. G. S. 63, § 102. 1874, 372, § 148.

SECTION 218. Whoever without right knowingly stands or walks on a railroad track shall forfeit not less than five nor more than fifty dollars.

P. S. 112, § 195. 1906, 463, II, §§ 232, 258. R. L. 111, § 249. 145 Mass. 433. 226 Mass. 522.

Loitering in station. 1874, 372, § 149. 1878, 180, § 1. P. S. 112, § 196. R. L. 111, § 250. 1904, 59.

SECTION 219. Whoever without right loiters or remains within a station house of a railroad corporation, or of the Boston Terminal Company, or upon the platform or grounds adjacent to such station, after being requested to leave the same by a police officer or by a railroad police officer, shall forfeit not less than two nor more than twenty dollars.

1905, 210. 1906, 463, II, §§ 233, 258.

Unlawful riding upon locomotive, etc. 1905, 208. 1906, 463, II, §§ 234, 258. 1909, 233.

SECTION 220. Whoever, without right, rides or attempts to ride upon a locomotive engine, tender, freight car, caboose, or other conveyance not a part of a passenger train, upon a railroad or upon the property of the Boston Terminal Company, shall be punished by a fine of not more than fifty dollars or imprisonment for not more than six months. A sheriff, deputy sheriff, constable, police officer, railroad police officer, or officer appointed with the powers of a railroad police officer, upon view of such an offence, may, without warrant, arrest the offender and make complaint against him therefor.

This section shall not apply to employees while in the discharge of their duties.

Fees of officers. 1914, 745.

SECTION 221. Except in Suffolk county, the fees and expenses of officers in the apprehension, trial or commitment of a person arrested or tried for violation of the preceding section shall be paid by the county where the offence was committed.

Riding or driving beasts on railroad. R. S. 39, § 85. G. S. 63, § 103. 1874, 372, § 151. P. S. 112, § 198. R. L. 111, § 252.

SECTION 222. Whoever, without the consent of a railroad corporation, or its agent, rides, drives, or leads a horse, or other beast, on the railroad opened for use of such corporation, except in the proper use of a public or other way, or of a traveled place at a crossing of such railroad therewith upon the same level, shall forfeit not more than one hundred dollars and be liable for any damage resulting therefrom.

1906, 463, II, §§ 235, 258.

Negligence in permitting beast on railroad. R. S. 39, § 86. G. S. 63, § 104. 1874, 372, § 152.

SECTION 223. The person through whose fault or negligence a horse or other beast goes at large within the limits of a railroad opened for use, shall forfeit not more than twenty dollars, and be liable for any damage resulting therefrom.

P. S. 112, § 199. R. L. 111, § 253. 1906, 463, II, §§ 236, 258.

1 SECTION 224. Whoever enters upon or crosses a railroad at a private
 2 way closed by gates or bars, and neglects to close them securely, shall
 3 forfeit not less than two nor more than ten dollars, and be liable for any
 4 damage resulting therefrom.

1874, 372, § 183.
 P. S. 112, § 200

R. L. 111, § 254
 1906, 463, II, §§ 237, 258.

Neglect to
 close gates at
 private
 crossing.
 1862, 123.

1 SECTION 225. Whoever maliciously injures a railroad, or anything
 2 pertaining thereto, or any materials or implements for the construction
 3 or use thereof, or aids or abets in such trespass, shall be punished by a
 4 fine of not more than one thousand dollars or by imprisonment in jail
 5 for not more than one year, or both, and shall for each offence forfeit
 6 to the use of the corporation treble the amount of damages which it has
 7 sustained thereby.

1906, 463, II, §§ 238, 258.

Malicious
 injury to rail-
 road, etc.
 R. S. 39, § 77
 G. S. 63, § 105.
 1874, 372,
 § 154
 P. S. 112, § 201.
 R. L. 111,
 § 255.

1 SECTION 226. Whoever wilfully obstructs, or aids or abets in ob-
 2 structing, or wilfully does or causes to be done anything with the intent
 3 to obstruct, the passing of an engine or car upon a railroad, or wilfully
 4 endangers, or aids or abets in endangering, or wilfully does or causes to
 5 be done anything with the intent to endanger, the safety of persons con-
 6 veyed in or upon the same, shall be punished by a fine of not more than
 7 one thousand dollars or by imprisonment in the state prison for not
 8 more than twenty years, or both, and shall for each offence forfeit to
 9 the use of the corporation treble the amount of damages which it has
 10 sustained thereby.

105 Mass. 53.

109 Mass. 345.

Obstructing
 engine or
 car, etc.
 R. S. 39, § 77
 1859, 44.
 1852, 186.
 G. S. 63,
 §§ 105-108.
 1874, 372,
 §§ 154-157.
 P. S. 112,
 §§ 201-204.
 1890, 332.
 R. L. 111,
 §§ 255-258.
 1906, 463, II,
 §§ 239, 258.

1 SECTION 227. Whoever wilfully and maliciously stops a train on a
 2 railroad or causes it to be stopped for the purpose of entering, leaving or
 3 wantonly delaying the same shall be punished by a fine of not more than
 4 one hundred dollars or by imprisonment for not more than one month.

1906, 463, II, §§ 240, 258.

Wilfully stop-
 ping train.
 1879, 177.
 P. S. 112, § 205.
 R. L. 111,
 § 259.

1 SECTION 228. Whoever unlawfully uses, removes or tampers with
 2 any tools or appliances carried on the cars of a railroad corporation as
 3 required by section one hundred and sixty-three shall be punished by a
 4 fine of not more than one hundred dollars or by imprisonment for not
 5 more than three months, or both.

Tampering
 with tools.
 1882, 54, § 2.
 R. L. 111,
 § 261.
 1906, 463,
 II, §§ 241, 258.

ACCIDENTS.

1 SECTION 229. If, upon the trial of an action against a city or town,
 2 the plaintiff recovers damages for an injury to his person or property
 3 caused by reason of a defect in a highway, within the location of a rail-
 4 road, and if the corporation owning the railroad is liable for such dam-
 5 ages, and has had reasonable notice to defend the action, the city or
 6 town may recover from the corporation such damages and the costs of
 7 both plaintiff and defendant in the action.

Liability to
 town for per-
 sonal injury.
 1874, 372,
 § 160.
 P. S. 112, § 209
 R. L. 111,
 § 264.
 1906, 463, II,
 §§ 242, 258.

1 SECTION 230. If an engineer, fireman or other agent of a railroad
 2 corporation is guilty of negligence whereby an injury is done to a person,
 3 he shall be punished by a fine of not more than one thousand dollars or
 4 by imprisonment for not more than twelve months.

P. S. 112, § 210.

R. L. 111, § 265.

1906, 463, II, §§ 243, 258.

Penalty on en-
 gineer, etc., for
 negligence.
 1837, 226, § 7.
 G. S. 63, § 95.
 1874, 372,
 § 161.

Penalty for gross negligence in management of trains.
 1853, 418.
 G. S. 63, § 96.
 1874, 372, § 162.
 P. S. 112, § 211

SECTION 231. Whoever, having the management or control of a railroad train while being used for the common carriage of persons, is guilty of gross negligence in or in relation to the management or control thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than three years.

R. L. 111, § 266.

1906, 463, II, §§ 244, 258.

Liability for damages in case of collision at grade crossings, etc.
 1871, 352.
 1874, 372, § 164.
 1881, 199, §§ 2, 5, 6.
 P. S. 112, § 213.
 R. L. 111, § 268.
 1906, 463, II, §§ 245, 258.
 1931, 135, § 1
 120 Mass. 372.
 129 Mass. 440.
 133 Mass. 383, 491.
 136 Mass. 6.
 145 Mass. 386.
 146 Mass. 241.
 154 Mass. 402, 524.
 159 Mass. 493.
 163 Mass. 132.
 172 Mass. 98.

SECTION 232. If a person is injured in his person or property by collision with the engines or cars or rail-borne motor cars of a railroad corporation at a crossing such as is described in section one hundred and thirty-eight, and it appears that the corporation neglected to give the signals required by said section or to give signals by such means or in such manner as may be prescribed by orders of the department, and that such neglect contributed to the injury, the corporation shall be liable for all damages caused by the collision, or to a fine recoverable by indictment as provided in section three of chapter two hundred and twenty-nine, or, if the life of a person so injured is lost, to damages recoverable in tort, as provided in said section three, unless it is shown that, in addition to a mere want of ordinary care, the person injured or the person who had charge of his person or property was, at the time of the collision, guilty of gross or wilful negligence, or was acting in violation of the law, and that such gross or wilful negligence or unlawful act contributed to the injury.

173 Mass. 136.
 183 Mass. 393.
 186 Mass. 474.
 187 Mass. 84.
 188 Mass. 127.
 194 Mass. 181.
 196 Mass. 192, 554.
 200 Mass. 8.
 203 Mass. 453.

208 Mass. 137, 451.
 210 Mass. 179, 305.
 212 Mass. 596.
 220 Mass. 526.
 223 Mass. 444, 550.
 228 Mass. 487.
 230 Mass. 370.
 234 Mass. 415.

235 Mass. 469.
 237 Mass. 441.
 238 Mass. 392.
 251 Mass. 255.
 260 Mass. 28.
 263 Mass. 87.
 271 Mass. 101.
 273 Mass. 522.

Non-liability for acts of expressmen.
 1894, 469, § 3.
 R. L. 111, § 269.
 1906, 463, II, §§ 246, 258.

SECTION 233. A railroad corporation shall not be liable to any person for personal injuries caused by the acts or omissions of any persons or companies doing an express business over its railroad or of their servants or agents.

170 Mass. 464.

201 Mass. 564

FIRES.

Loss by fire caused by engine.
 1837, 226, §§ 9, 10.
 1840, 85, § 1.
 G. S. 63, § 101.
 1864, 229, § 34.
 1871, 381, § 45.
 1874, 372, § 166.
 P. S. 112, § 214.
 1895, 293.
 R. L. 111, § 270.
 1906, 463, II, §§ 247, 258.
 13 Met. 99.
 4 Cush. 288.
 16 Gray, 71.

SECTION 234. Every railroad corporation shall be liable in damages to a person whose buildings or other property may be injured by fire communicated by its locomotive engines, and shall have an insurable interest in the property upon its route for which it may be so held liable, and may procure insurance thereon in its own behalf. If held liable in damages, it shall be entitled to the benefit of any insurance effected upon such property by the owner thereof, less the cost of premium and expense of recovery. The money received as insurance shall be deducted from the damages, if recovered before they are assessed; and if not so recovered, the policy of insurance shall be assigned to the corporation held liable in damages, and it may maintain an action thereon.

2 Allen, 331.
 6 Allen, 87.
 8 Allen, 438.
 98 Mass. 414.
 103 Mass. 583.
 118 Mass. 543.
 121 Mass. 124
 145 Mass. 129, 132.

147 Mass. 606.
 169 Mass. 398.
 171 Mass. 245.
 179 Mass. 524.
 181 Mass. 551.
 184 Mass. 150.
 196 Mass. 329.
 208 Mass. 16.

210 Mass. 465.
 211 Mass. 549.
 213 Mass. 9.
 225 Mass. 538.
 230 Mass. 370.
 252 Mass. 432.
 260 Mass. 535.
 273 Mass. 567.

1 SECTION 235. Every corporation operating a steam railroad shall, Spark
 2 subject to the approval of the department, install and maintain a spark arresters.
 3 arrester on every engine in its service in which wood, coke or coal is used 1907, 431, § 1.
 4 as fuel, and shall, between April first and December first in each year, 1919, 350,
 5 keep the full width of all of its locations over which such engines are §§ 39, 42.
 6 operated, to a point two hundred feet distant from the centre line on
 7 each side thereof, clear of dead leaves, dead grass, dry brush or other
 8 inflammable material, and shall not at any time leave any deposit of
 9 fire, hot ashes or live coals upon its locations in the immediate vicinity
 10 of woodlands or grass lands, and shall post in stations and other con-
 11 spicuous places within its location and right of way such notices and
 12 warning placards as are furnished to it for the purpose by the state
 13 forester; provided, that this section shall not prohibit any railroad cor-
 14 poration from piling or keeping upon its location or right of way cross-ties
 15 or other material necessary for the maintenance and operation of its
 16 railroad.

1 SECTION 236. Any railroad corporation may, upon giving notice as Clearing land
 2 herein provided, enter upon unimproved land adjoining any location or adjoining track
 3 right of way upon which it operates engines burning wood, coke or coal, 1907, 431, § 2;
 4 and may there, at its own expense and subject to the direction of the 475, § 5.
 5 forest warden, or the officer or board having his powers, in the city or
 6 town where the land lies, clear such land of dead leaves, dead grass and
 7 dead wood to a distance of one hundred feet from the tracks, without
 8 thereby becoming liable for trespass; provided, that no railroad corpora-
 9 tion shall, under this section, do any acts on unimproved land outside
 10 its location or right of way, unless it has within two months given four-
 11 teen days' written notice by mail or otherwise to the occupant of the
 12 land, and to the owner thereof, if he resides or has a usual place of busi-
 13 ness in the city or town where it lies, and if the land is unoccupied and
 14 the owner does not reside or have a usual place of business in the city or
 15 town, then, unless the railroad corporation has within two months pub-
 16 lished notice of its purpose once in three successive weeks in a news-
 17 paper published in the county where the land lies, and unless it has
 18 within three days given at least twenty-four hours' notice to the forest
 19 warden, or the officer or board having his powers, in the city or town
 20 where the land lies of the location of the land which it intends to enter
 21 under this section, and of the time at which it intends to enter the same;
 22 and provided, further, that no notice hereby required shall be valid
 23 unless it sets forth the provisions of this section.

1 SECTION 237. Any engineer, conductor or other employee on a train Engineer, etc.,
 2 discovering a fire burning uncontrolled on lands adjacent to the tracks to give notice
 3 shall forthwith cause a fire signal to be sounded from the engine, which of fire.
 4 shall consist of one long and three short whistle blasts repeated several 1907, 431, § 3.
 5 times, and shall notify the next sectionmen whom the train passes, and
 6 the next telegraph station, of the existence and location of the fire.
 7 This section shall not affect the authority conferred upon the depart-
 8 ment by section one hundred and thirty-nine.

1 SECTION 238. Sectionmen or other employees of a railroad corpora- Employees to
 2 tion receiving notice of the existence and location of a fire burning on extinguish
 3 land adjacent to the tracks shall forthwith proceed to the fire and shall fires.
1907, 431, § 4.

use all reasonable efforts to extinguish it; provided, that they are not at the time employed in labors immediately necessary to the safety of tracks or to the safety and convenience of passengers and the public.

Employees to be instructed and provided with means to fight fires.

SECTION 239. Railroad corporations shall inform their employees as to their duties under the four preceding sections and shall furnish them with the appropriate facilities for reporting and extinguishing such fires.

Railroad not to enter public park. 1907, 431, § 6.

SECTION 240. The five preceding sections shall not authorize any railroad corporation to enter upon, or to interfere in the management or care of, any public park or reservation.

Liability to city or town for fire. 1909, 394.

SECTION 241. Any railroad corporation which, by its servants or agents, negligently, or in violation of law, sets fire to grass lands or forest lands shall be liable to any city or town where such fire occurs, for the reasonable and lawful expense incurred by such city or town in the extinguishment of the fire.

Cities and towns may recover in contract in the superior court sums to which they are entitled under this section.

BOOKS AND RETURNS.

Books, accounts and annual returns. R. S. 39, § 82. 1837, 226, § 5. 1838, 99, § 2. 1841, 69. 1849, 191, §§ 1, 4. 1851, 102, §§ 1, 2. 1854, 423. 1856, 165. 1857, 40, §§ 5, 6; 168; 240, § 2. 1858, 46, § 8. G. S. 63, §§ 132-135. 1862, 135, §§ 1, 2. 1863, 224. 1864, 167, § 4. 1869, 419. 1870, 307, § 1; 383. 1871, 381, § 52. 1873, 194. 1874, 372, §§ 171, 174. 1876, 173; 185, § 1. P. S. 112, §§ 81, 81. 1889, 328, § 1. R. L. 111, §§ 83, 87. 1906, 463, 11, §§ 248, 258. 1909, 502. 1910, 558. 1917, 122, §§ 1, 3, 5.

SECTION 242. A railroad corporation shall at all times submit its books to the inspection of any committee of the general court authorized to inspect them. The directors of every railroad corporation shall annually within the time prescribed by section thirty-two of chapter one hundred and fifty-nine transmit to the department a return of the corporation for the year ending on December thirty-first preceding which shall be sworn to by the treasurer and the chief accounting officer of the corporation. Such return shall state whether any fatal accident or serious injury has occurred to a passenger or other person upon the railroad during the year, and, if so, the cause of such accident or injury and the circumstances under which it occurred; shall set forth copies of all contracts or leases made with other railroad corporations during the year, and specify the receipts and expenditures under the same; and shall include a detailed statement of all particulars relative to the railroad, its business, receipts and expenditures during the year, in the form to be prescribed by the department under said section thirty-two. The books of each corporation shall be so kept that returns may be made in exact conformity with the form so prescribed; and the accounts shall be closed on December thirty-first in each year, so that a balance sheet of that date can be taken therefrom and included in the return. Every railroad corporation, neglecting to make said annual return within the time prescribed as aforesaid, or to amend said return within fifteen days, when required by the department as provided in said section thirty-two, shall forfeit fifty dollars for each day during which such neglect continues; and if such corporation unreasonably refuses or neglects to make said return, it shall forfeit not more than five thousand dollars.

Quarterly returns. 1889, 241. 1893, 131. R. L. 111, § 85. 1906, 463, 11, §§ 249, 258.

SECTION 243. Every railroad corporation shall, within fifty days after the expiration of each quarter of the year, transmit to the department a quarterly statement of its business and financial condition, in such form and with such detail as the department requires, which shall at reasonable

5 times be open to public inspection. A railroad corporation neglecting to
6 comply with this section shall forfeit fifty dollars for each day during
7 which such neglect continues.

1 SECTION 244. Every railroad corporation shall, during the contin-
2 uance of any lease which it has taken of the railroad of another cor-
3 poration, make all the returns required of the lessor; and during the
4 continuance of such lease, the lessor shall not be required to make
5 such returns, if, when requested by the lessee, the lessor furnishes all
6 the information in its possession needed to make such returns; but if a
7 railroad in this commonwealth is leased to a lessee in another state,
8 the lessors in this commonwealth shall make the annual return.

Lessee of rail-
road to make
returns re-
quired of lessor
1861, 167, § 3.
1867, 127.
1874, 372,
§ 175.
P. S. 112, § 83.
R. L. 111, § 86.
1906, 463,
11, §§ 250, 258.

RAILROADS FOR PRIVATE USE.

1 SECTION 245. A person or corporation may construct a railroad for
2 private use in the transportation of freight; but shall not take or use
3 lands or other property therefor without the consent of the owner thereof.
4 No such railroad shall be connected with the railroad of another corpo-
5 ration without its consent; nor shall it be constructed across or upon a
6 public way or traveled place without the consent of the board of alder-
7 men or selectmen, nor except in a place and manner approved by them.
8 If the board of aldermen or selectmen consent, they shall from time to
9 time make such regulations relative to motive power, rate of speed,
10 and time and manner of using the railroad over and upon such way or
11 traveled place, as in their judgment the public safety and convenience
12 require, and they may order such changes to be made in the track as are
13 rendered necessary by the alteration or repair of such way. If they allow
14 steam power to be used on such railroad, the provisions of this chapter
15 and chapter one hundred and fifty-nine relative to the crossing of ways
16 and traveled places by railroad corporations shall apply to such rail-
17 road, and to the person constructing or operating the same.

Railroads for
private use.
1871, 232.
1874, 372,
§§ 175, 176.
P. S. 112,
§§ 223, 224.
R. L. 111,
§ 279.
1906, 463,
11, §§ 251, 258,
156 Mass. 159,
178 Mass. 363,
239 Mass. 235.

1 SECTION 246. If the consent of the department is required for the
2 crossing of a way or traveled place by a railroad for private use, it may
3 limit the number of tracks, and may impose other conditions relative to
4 the use of the crossing by said railroad, and may modify such limitations
5 and conditions. The department may, upon the complaint of any party
6 interested, or upon its own motion, exercise supervisory powers over all
7 railroads for private use with regard to the character and condition of
8 the roadbed, tracks, crossings, rolling stock, machinery, equipment and
9 appliances used in or in connection with the operation of such railroads,
10 so far as is reasonable and expedient to promote the security of persons
11 employed in the maintenance and operation of the same and of the
12 public.

Regulation of
crossings.
1890, 382.
R. L. 111,
§ 280.
1906, 463,
11, §§ 252, 258.
1912, 375
Op. A. G.
(1919) 114.

CORPORATIONS TO CONSTRUCT RAILROADS IN FOREIGN COUNTRIES.

1 SECTION 247. Fifteen or more persons, a majority of whom are in-
2 habitants of this commonwealth, may associate themselves by a written
3 agreement of association, with the intention of forming a corporation to
4 construct and operate a railroad, or railroad and telegraph, in any foreign
5 country, but in accordance with the laws of such country; and, upon
6 complying with section two hundred and forty-nine, shall, with their

Corporations to
construct rail-
roads in foreign
countries.
1879, 274, § 1.
P. S. 112, § 225
R. L. 111,
§ 281
1906, 463,
11, §§ 253, 258
192 Mass. 129

associates and successors, be a corporation for the purpose aforesaid, 7
 with the powers necessary and incident thereto, and with such powers 8
 and privileges, and subject to such duties, liabilities and restrictions, 9
 as to the location, construction, maintenance and operation of its rail- 10
 road, or railroad and telegraph, and the transfer of its property by 11
 mortgage, lease or otherwise, as may be fixed by such country. 12

Agreement of
 association.
 1879, 274, § 2
 P. S. 112, § 226.
 R. L. 111,
 § 282.
 1906, 463,
 II, §§ 254, 258.

SECTION 248. The agreement of association shall state: 1
 (a) That the subscribers thereto associate themselves with the in- 2
 tention of forming a railroad corporation, or a railroad and telegraph 3
 corporation. 4
 (b) The corporate name assumed. 5
 (c) The termini of the railroad, or the railroad and the telegraph. 6
 (d) The total amount of the capital stock of the corporation. 7
 (e) The names and residences of at least five persons, who shall be 8
 subscribers to the agreement of association, to act as directors until 9
 others are chosen and qualified in their stead. 10

Each associate shall subscribe to the agreement of association his 11
 name, residence, post office address, and the number of shares of stock 12
 which he agrees to take; but no subscriber shall be bound to pay more 13
 than ten per cent of the amount of his subscription, unless a corporation 14
 is chartered. 15

Certificate of
 compliance
 with require-
 ments.
 1879, 274, § 3.
 P. S. 112, § 227.
 R. L. 111,
 § 283.
 1906, 463,
 II, §§ 255, 258.

SECTION 249. When it is shown to the satisfaction of the depart- 1
 ment that the requirements of the two preceding sections have been 2
 complied with, the clerk of the department, upon its order, shall annex 3
 to the agreement of association a certificate setting forth that fact. The 4
 directors shall thereupon file the agreement of association and certificate 5
 in the office of the state secretary, who, upon receipt of fifty dollars, shall 6
 receive and preserve the same in form convenient for reference and open 7
 to public inspection; and shall thereupon issue a certificate of incorpora- 8
 tion substantially in the following form: 9

COMMONWEALTH OF MASSACHUSETTS.

Be it known, that whereas (names of the subscribers to the agreement of
 association) have associated themselves with the intention of forming a cor-
 poration, under the name of the (name of the corporation), for the purpose of
 locating, constructing, maintaining and operating a railroad (or railroad and
 telegraph) (description of the railroad or railroad and telegraph as in the agree-
 ment of association), and have complied with the statutes of this commonwealth
 in such cases made and provided: Now, therefore, I, _____, secretary
 of the commonwealth of Massachusetts, do hereby certify that the persons afore-
 said, their associates and successors, are legally established as a corporation, under
 the name of the (name of the corporation), with all the powers and privileges,
 and subject to all the duties, liabilities and restrictions, set forth in the general
 laws applicable to such corporations.

In witness whereof, I have hereunto subscribed my official signature, and
 affixed the great seal of said commonwealth, this _____ day of _____,
 in the year _____.

The state secretary shall sign the certificate of incorporation and cause 10
 the great seal of the commonwealth to be thereto affixed, and such cer- 11
 tificate shall have the force and effect of a special charter. The state sec- 12
 retary shall also cause a record of the certificate of incorporation to be 13
 made, and such certificate, or such record, or a certified copy thereof, 14
 shall be conclusive evidence of the existence of such corporation. 15

1 SECTION 250. The corporation may from time to time, at a meeting
 2 of directors called therefor, reduce the amount of the capital stock, or
 3 increase it for the purpose of constructing and equipping its railroad and
 4 extensions or branches thereof. If such increase or reduction is made, a
 5 certificate of the fact, signed by the president of the corporation, shall,
 6 within thirty days thereafter, be filed in the office of the state secretary.
 7 Such corporation may, by vote at a meeting of its directors, purchase,
 8 acquire or lease the property, stocks, bonds or securities of any railroad
 9 corporation whose line is located in the foreign country named in the
 10 original agreement of association of such corporation or any amendment
 11 thereof made as hereinafter provided, or of any steamship company as-
 12 sociated in transportation or business with such corporation, upon such
 13 terms and for such consideration as shall be determined by such vote, and
 14 in like manner may appoint an executive committee from the members
 15 of its board, and delegate to such committee such power and authority
 16 as by such vote shall be provided, and in like manner may divide the di-
 17 rectors into classes as nearly equal as possible for the prescribed number
 18 of classes, and prescribe the tenure of office of the several classes, but no
 19 class shall be elected for a shorter period than one year or for a longer
 20 period than five years, and the term of office of at least one class shall
 21 expire at the next annual meeting and thereafter at the end of each
 22 year, and at each annual meeting after such division directors shall be
 23 elected only to fill the place of those whose terms of office shall then ex-
 24 pire as so provided and shall hold office for the period so prescribed, and
 25 all directors shall hold office until their successors are chosen and quali-
 26 fied; and such corporation may, by vote at an annual or a special meeting
 27 of its stockholders, called therefor, amend its agreement of association
 28 to provide for constructing and operating a railroad in any other foreign
 29 countries in accordance with the laws of such countries, and shall file
 30 such amendment in the office of the state secretary and pay him fifty
 31 dollars, and thereupon such corporation shall have the same powers
 32 and privileges, and be subject to the same duties, liabilities and restric-
 33 tions, in all respects, as if its agreement of association had originally
 34 contained such amendment.

Increase or
 reduction of
 capital stock.
 1879, 274, § 4
 P. S. 112, § 228.
 R. L. 111,
 § 284
 1904, 169, § 1.
 1906, 463,
 11, §§ 256, 258

1 SECTION 251. Such corporation shall be subject to sections twenty-
 2 nine to forty, inclusive, and sixty-five, except as otherwise provided in
 3 the four preceding sections.

Statutes
 governing such
 corporation.

1879, 274, §§ 5, 6. R. L. 111, § 285. 1906, 463, 11, §§ 257, 258.
 P. S. 112, § 229. 1904, 169, § 2. 192 Mass. 129

1 SECTION 252. The supreme judicial court shall have jurisdiction in
 2 equity on petition of the attorney general, of the railroad corporation,
 3 of any public body or of any other party interested to compel the observ-
 4 ance of and to restrain the violation of all laws which govern railroad
 5 corporations and of all orders, rules and regulations made in accordance
 6 with the provisions of this chapter by any public body or by the depart-
 7 ment and to review, annul, modify or amend the rulings of any state
 8 department relative to such corporations as law and justice may require.
 9 The superior court shall have such jurisdiction concurrent with the
 10 supreme judicial court to enforce the provisions of sections forty-eight,
 11 one hundred and ninety-three and two hundred and six.

Enforcement.
 1849, 222, § 5.
 1855, 350,
 §§ 3, 5.
 G. S. 63,
 §§ 41, 50, 63.
 1874, 122, 372,
 §§ 84, 85, 103,
 128.
 1875, 219.
 1879, 205, § 1.
 1881, 111, § 4;
 120, § 1.
 P. S. 112,
 §§ 115, 117,
 118, 120, 136,
 164, 168.
 1881, 222, § 2.
 1885, 110, § 2.

1891, 129. 1906, 463, 11, §§ 67, 71. 1907, 585, § 10.
 1894, 462, § 3; 469, § 5. 82, 103, 105, 106, 108. 1913, 784, § 16
 R. L. 109, § 27; 111, §§ 88, 118, 152, 153, 156, 160, 246 Mass. 292.
 98, 120, 122, 123, 125, 141, 189, 197, 258. 256 Mass. 600.
 193, 194, 197, 202, 233, 241

CHAPTER 161.

STREET RAILWAYS.

SECT.	SECT.
	30. Enforcement.
	31. Penalties.
	32. Issue of preferred stock.
	33. Exchange of common for preferred.
	34. Form of certificates, etc.
	35. Preferred stock; voting powers, issue, etc.
	STOCK AND SCRIP DIVIDENDS.
	36. Stock and scrip dividends forbidden.
	37. Liability of directors.
	CORPORATE POWERS.
	38. Powers to cease if railway is not built within eighteen months after date of incorporation, unless, etc.
	39. Extension of corporate authority to operate railway.
	40. Connecting location.
	41. Real and personal estate; stock and bonds of other street railway companies.
	42. Pleasure resorts.
	43. Motive power.
	44. May acquire and use motor cars.
	45. Power to manufacture and transmit electricity.
	46. Connecting companies, joint use of tracks.
	47. Regulation of interchange of traffic and cars.
	48. Use of railroad tracks.
	49. Street sprinkling cars.
	50. Gravel, etc., cars.
	51. Coal and other supplies.
	52. Carriers of mail.
	53. Companies may become common carriers of freight, etc.
	LAND.
	54. Private land.
	55. Location by purchase or lease on private land.
	56. Same subject. Regulation.
	57. Law applicable to locations on private land.
	58. Location by eminent domain on private land.
	59. Same subject.
	60. Same subject.
	61. Same subject.
	LEASE OR SALE OF RAILWAY.
	62. Railway not to be leased or sold, except, etc.
	63. Sale or consolidation.
SECT.	MATTER OF CONSTRUCTION.
1.	Definitions.
2.	Companies subject to this chapter.
	FORMATION.
3.	Formation of street railway company.
4.	Agreement of association.
5.	Clerk and treasurer. Vacancies.
6.	Publication of agreement of association.
7.	Location.
8.	Certificates to be presented to department.
9.	Certificate of incorporation.
	ORGANIZATION.
10.	First meeting of incorporators.
11.	Organization.
	OFFICERS.
12.	Officers.
13.	Election of officers.
	MEETINGS.
14.	Meetings of stockholders.
15.	Special meetings.
16.	Voting rights of company upon its own stock.
17.	Voting rights of stockholders; proxies.
18.	Meetings of directors.
	CAPITAL STOCK AND BONDS.
19.	Stock certificates.
20.	Shares to be issued at par.
20A.	Changes of par value of shares regulated.
21.	Assessments upon capital stock.
22.	Collection of assessments.
23.	Subscriptions to full capital stock and payment of fifty per cent before construction.
24.	Liability of directors before stock paid in.
25.	Increase of capital stock and issue of bonds for certain purposes.
26.	Increase of stock and issue of bonds to provide working capital.
27.	Reduction of capital stock.
28.	Issue of capital stock, bonds, coupon notes and other evidences of indebtedness.
29.	Limit of issue of bonds, coupon notes and other evidences of indebtedness.

- SECT.
64. Increase of capital stock, and issue of bonds.
65. Powers and duties of consolidated company.
66. Operating contracts and leases.
67. Powers under contracts or leases.
68. Proceeds of sale not to be used for dividends.
69. Purchase of connecting lines.
- EXTENSION OF LOCATION.
70. Extension of location.
- ALTERATION OF LOCATION.
71. Alteration of location.
- TEMPORARY LOCATIONS.
72. Temporary locations.
73. Same in case of the alteration, etc., of bridges.
74. Application to department.
75. Termination of temporary location.
76. Cost of temporary tracks reckoned as part of expense of alteration of grade crossing.
- REVOCATION OF LOCATION.
77. Revocation of location.
- WIDENING OF PUBLIC WAY.
78. Public way widening.
79. Alteration or change in grade of public way.
80. Betterments.
- STATE HIGHWAYS.
81. Location upon state highways.
82. Supervision by the department.
- OPERATION.
83. Opening for use conditional upon certificate of department.
84. Rules as to rate of speed, etc.
85. Clearing snow from tracks.
86. Voluntary discontinuance of use of tracks.
87. Temporary discontinuance of use of tracks.
88. Taking up, alteration or discontinuance of ways.
89. Repair of ways and bridges.
90. Liability of company for defective ways and bridges.
91. Guards upon bridges and draws.
92. Cars to stop at railroad crossings.
93. Notice of approach of cars.
94. Obstruction of tracks.
95. Loitering within stations, etc.
96. Obstruction of ways by companies.
97. Sales by children upon cars.

- SECT.
98. Fenders, wheel guards, brakes, etc.
99. Emergency lifting jack.
100. Heating of cars.
101. Enclosed platforms.
102. Penalty.
103. Day's work of employees.
- FARES AND ACCOMMODATIONS.
104. Reasonable accommodations.
105. Additional accommodations.
106. Companies shall not require passengers riding on platform to do so at their own risk.
107. Special service cars, free passes, etc.
108. Special rates for school pupils.
109. Regulation of fares.
110. Withdrawal of free checks and free transfers.
111. Public notice of change of service.
112. Notice to cities and towns of proposed changes in street railway rates.
113. Penalty for misuse of transfer checks.
114. Transportation of milk and cream.
- SERVICE AT COST.
115. Companies may provide service at cost.
116. What included in cost of service. Definitions.
117. Reserve fund.
118. Unfunded debt. Interest charges.
119. Use of reserve fund.
120. Schedules of grades of fare. Approval and modification.
121. Changes in grades of fare.
122. Improvement fund.
123. Obligation of company to sell to state or municipality.
124. Appointment of directors by governor.
125. Reports by companies. Supervision and investigation by department.
126. Acceptance of §§ 115-128 by companies.
127. Disposing of useless property.
128. Revising orders of department.
- RAILROAD CROSSINGS.
129. Abolition of grade crossings.
130. Construction of tracks outside public ways.
131. Structures within limits of public ways or state highways.
- CHANGE OF NAME.
132. Change of name.
133. Certificate of change to be filed with state secretary.
134. Rights and liabilities under new name.

<p>SECT.</p> <p style="text-align: center;">SALE BY RECEIVERS.</p> <p>135. Sale of railway by receivers.</p> <p>136. Agreement of association of new company.</p> <p>137. Organization.</p> <p style="text-align: center;">BOOKS, RETURNS AND REPORTS.</p> <p>138. Returns.</p> <p>139. Tables and abstracts of returns.</p> <p>140. Lessee of street railway to make same report to lessor.</p> <p>141. Records of proceedings before departments, etc.</p> <p style="text-align: center;">ADDITIONAL REMEDY.</p> <p>142. Enforcement of laws.</p> <p style="text-align: center;">TRANSPORTATION AREAS.</p> <p>143. Establishment of transportation area.</p> <p>144. Preliminary agreement.</p>	<p>SECT.</p> <p>145. Acceptance by voters.</p> <p>146. Trustees, appointment, compensation.</p> <p>147. Powers.</p> <p>148. Officers of board, etc.</p> <p>149. Taking of street railway.</p> <p>150. Contribution by cities and towns.</p> <p>151. Finances.</p> <p>152. Borrowing by cities and towns.</p> <p>153. Extension of lines, etc.</p> <p>154. Exclusion of city or town from transportation area, etc.</p> <p>155. Rentals, etc.</p> <p>156. Fare zones and fares.</p> <p>157. Termination of lease, etc.</p> <p>158. Taxation.</p> <p>159. Boston Elevated Railway not affected by §§ 143-158.</p> <p>160. Cities and towns which acted under 1920, 599.</p> <p>161. Contributions by cities and towns toward cost of street railway service therein regulated.</p>
---	--

MATTER OF CONSTRUCTION.

Definitions.
 1874, 372, § 2.
 P. S. 112, § 1.
 1892, 110.
 1898, 578, § 1.
 R. L. 111, § 1.
 1906, 463,
 111, § 1.
 178 Mass. 300.
 196 Mass. 329.
 200 Mass. 551.
 227 Mass. 547.
 261 Mass. 556.

SECTION 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

“Board of aldermen”, or “selectmen”, includes the board or other authority exercising the powers of a board of aldermen or of selectmen, but nothing in this chapter shall affect the veto power of a mayor of a city.

“Company”, a street railway company.

“Department”, department of public utilities.

“Extension”, any railway constructed by a street railway company in a city or town in addition to that authorized by its original location therein.

“Location”, as applied to a street railway, the grant to a street railway company of the right to construct, maintain and operate a street railway in a public way or place.

“Original”, as applied to a street railway location in a city or town, the first location granted to the company in such city or town.

“Public way”, any way laid out by public authority.

“Street railway” or “railway”, a railway, including poles, wires or other appliances and equipment connected therewith, of the class operated by motive power other than steam, and usually constructed upon public ways and places.

Companies subject to this chapter.
 1864, 229,
 §§ 1, 44.
 1871, 381,
 §§ 1, 58.
 1874, 29, § 1.
 P. S. 113, § 1.
 R. L. 112, § 1.
 1906, 463,
 111, §§ 2, 158.
 259 Mass. 564.
 261 Mass. 556.

SECTION 2. Street railway companies shall be subject to this chapter and chapter one hundred and fifty-nine. Companies which have been specially chartered shall continue to exercise and enjoy the powers and privileges granted and be subject to all the liabilities imposed by their respective charters, except as modified and controlled by amendments thereof, or by this chapter or chapter one hundred and fifty-nine. All street railway companies whether organized under general or special laws shall be subject to any other general laws applicable thereto.

FORMATION.

1 SECTION 3. Fifteen or more persons may associate themselves by a written agreement of association with the intention of forming a company.

1874, 29, § 1.
P. S. 113, § 2.

R. L. 112, § 2
1906, 463, III, §§ 3, 158.

261 Mass. 556.

Formation of street railway company.

1 SECTION 4. The agreement of association shall state:

2 (a) That the subscribers thereto associate themselves with the in-
3 tention of forming a street railway company.

4 (b) The corporate name assumed, which shall be one not in use by
5 any other such company in the commonwealth, or, in the judgment of
6 the department, so similar thereto as to be likely to be mistaken for
7 it, and which shall contain the words, "street railway company", at
8 the end thereof.

9 (c) The termini of the railway.

10 (d) The length of the railway, as nearly as may be.

11 (e) The name of each county, city and town where the railway is to
12 be located.

13 (f) The gauge of the railway, which shall be four feet eight and one
14 half inches.

15 (g) The total amount of the capital stock of the company, which
16 shall be not less than ten thousand dollars for each mile, unless the
17 railway is to be wholly outside of a city, in which case said stock shall
18 be not less than five thousand dollars for each mile.

19 (h) The par value of the shares, which may be one hundred dollars,
20 fifty dollars or twenty-five dollars as the department shall authorize.

21 (i) The names and residences of at least five persons, who shall be
22 subscribers to the agreement of association, to act as directors until
23 others are qualified in their stead.

24 Each associate shall subscribe to the agreement of association his
25 name, residence, post office address, and the number of shares of stock
26 which he agrees to take; but no subscriber shall be bound to pay more
27 than ten per cent of the amount of his subscription unless a company
28 is incorporated.

Agreement of association

1863, 100
1864, 229, § 21.
1871, 381, § 27.
1874, 29,
§§ 2, 3, 7.
1877, 105.
P. S. 113,
§§ 3, 4
R. L. 111, § 36;
112, §§ 3, 4.
1906, 463,
III, §§ 4, 158.
1923, 491, § 1.
261 Mass. 556.

1 SECTION 5. The directors shall appoint a clerk and a treasurer who
2 shall hold their respective offices until a clerk and a treasurer of the com-
3 pany are qualified in their stead. The directors shall fill any vacancy in
4 their board, or in the office of clerk or treasurer, before the organization
5 of the company.

Clerk and treasurer. Vacancies.
1874, 29, § 4.
P. S. 113, § 5.
R. L. 112, § 5.
1905, 80.

1906, 463, III, §§ 5, 158.

1 SECTION 6. The directors, before applying for locations for a railway,
2 shall cause a copy of the agreement of association to be published in a
3 newspaper, if any, published in each of the cities and towns where the
4 railway is to be located, and, if, in any county, a newspaper is published
5 in none of said cities and towns therein, in such newspaper published in
6 said county as shall be designated by the department, at least once in
7 each of three successive weeks; and the sworn certificate of the clerk
8 shall be conclusive evidence of such publication.

Publication of agreement of association.
1874, 29, § 5.
P. S. 113, § 6.
R. L. 112, § 6.
1906, 463,
III, §§ 6, 158.

1 SECTION 7. The board of aldermen of a city or the selectmen of a
2 town, upon petition executed in accordance with the by-laws or a vote

Location.
1864, 229, § 14.
1871, 381, § 14.

1874, 29, § 6.
 P. S. 113, § 7.
 1898, 578, § 43.
 R. L. 112, § 7.
 1902, 395; 396;
 399.
 1906, 463.
 111, §§ 7, 158.
 1909, 417, § 1.
 1924, 209.
 161 Mass. 416.
 178 Mass. 300.
 179 Mass. 419.
 181 Mass. 583.
 182 Mass. 220.
 184 Mass. 294.
 185 Mass. 183.
 188 Mass. 180.
 250.
 192 Mass. 106.
 194 Mass. 228.
 199 Mass. 279.
 209 Mass. 213.
 213 Mass. 103.
 245 U. S. 574.

of the directors of a company organized or in process of organization 3
 under this chapter, or organized under a special act, for an original 4
 location of tracks in such city or town, shall give fourteen days' notice 5
 of the time and place for a hearing on such petition by publication 6
 thereof in one or more newspapers, if any, published in said city or town; 7
 otherwise, in such newspapers published in the county where the city 8
 or town is situated as shall be designated by the board of aldermen or 9
 the selectmen thereof. They shall also give like notice in writing of the 10
 time and place of such hearing to all members of the general court 11
 representing the district or districts in which such city or town lies, 12
 but the validity of the proceedings shall not be affected by failure to 13
 give notice to such members. If, after a hearing, they deem that public 14
 necessity and convenience so require, they may grant said location, or 15
 any portion thereof, and may prescribe how the tracks shall be laid, 16
 and the kind of rails, poles, wires and other appliances which shall be 17
 used, and, in addition to the general provisions of law governing such 18
 companies, and in respect of matters not treated of in such provisions, 19
 impose such other terms, conditions and obligations, incidental to and 20
 not inconsistent with the objects of a street railway company, as they 21
 deem the public interests may require; but no such location shall be 22
 valid, until the department after public notice and a hearing shall certify 23
 that such location is consistent with the public interest. 24

If the department requires an alteration in such location before certi- 25
 fying that the same is consistent with the public interest, it shall notify 26
 the board of aldermen or selectmen granting such location of such altera- 27
 tion; and thereafter said board of aldermen or selectmen may amend 28
 such location accordingly; provided, that, if such alteration involves a 29
 change in the route of the railway, public notice and a hearing shall be 30
 given as provided in the case of an original application for a location; 31
 and thereafter the department may, as a part of the original proceed- 32
 ings before it, certify that such location so amended is consistent with 33
 the public interest. A location so certified to be consistent with public 34
 interest, shall be the true location, if, within sixty days after the issue 35
 of notice of said certification to the company, it shall file a written 36
 acceptance of such location, executed in accordance with its by-laws 37
 or a vote of its directors, with the board of aldermen or selectmen. A 38
 location granted by a board of aldermen or selectmen, but refused 39
 certification hereunder by the department, or not accepted as herein 40
 provided, shall be void. Such location shall also be void, if the certifi- 41
 cate of incorporation of the street railway company is not issued, and 42
 its organization is not completed, within eighteen months after the issue 43
 of notice of certification, or if application for said certification is not 44
 made to the department within thirty days after the grant of said 45
 location by the board of aldermen or selectmen. If in any city or town 46
 the original location of a company expires, is revoked, or otherwise 47
 becomes void, this section shall apply to a new petition for an original 48
 location therein. 49

Certificates to
 be presented to
 department.
 1874, 29, § 7.
 P. S. 112, § 43;
 113, § 8.
 1898, 578, § 27.
 R. L. 111, § 45;
 112, § 8.
 1906, 463.
 111, §§ 8, 158.

SECTION 8. When the amount of capital stock named in the agree- 1
 ment of association has been subscribed in good faith by responsible per- 2
 sons, and ten per cent of the par value of each share has been paid in 3
 cash to the treasurer, the directors, clerk and treasurer shall annex to the 4
 agreement of association their certificate setting forth these facts, and 5
 that it is intended in good faith to locate, construct, maintain and operate 6

7 the railway as described in said agreement, shall annex to said agree-
8 ment the certificate of publication specified in section six and the several
9 certificates of location, and shall present the same for inspection to the
10 department.

1 SECTION 9. When it is shown to the satisfaction of the department
2 that the requirements of this chapter preliminary to the incorporation
3 of a company have been complied with, and that locations have been
4 obtained for a railway between the termini and substantially over the
5 route set forth in the agreement of association, the clerk of the depart-
6 ment, upon its order, shall annex to the agreement of association a
7 certificate stating such fact. The directors shall thereupon file the
8 agreement of association, with all the certificates annexed thereto, in-
9 cluding the plan, if any, required by the department, in the office of the
10 state secretary, who, upon receipt of fifty dollars, shall receive and
11 preserve the same in form convenient for reference and open to public
12 inspection; and shall thereupon issue a certificate of incorporation sub-
13 stantially in the following form:

Certificate of
incorporation.
1874, 29, § 8.
1881, 161.
P. S. 112, § 44;
113, § 8.
1898, 578, § 27.
R. L. 111, § 46;
112, § 8.
1906, 463,
111, §§ 9, 158.

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of the (name of company), for the purpose of locating, constructing, maintaining and operating a street railway (description of the railway as in the agreement of association), and have complied with the statutes of this commonwealth in such cases made and provided: Now, therefore, I, _____, secretary of the commonwealth of Massachusetts, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation under the name of the (name of the company), with all the powers and privileges, and subject to all the duties, liabilities and restrictions, set forth in all general laws which now are or hereafter may be in force relating to street railway companies.

In witness whereof, I have herunto subscribed my official signature, and affixed the great seal of said commonwealth, this _____ day of _____, in the year _____.

14 The state secretary shall sign the certificate of incorporation, and
15 cause the great seal of the commonwealth to be thereto affixed, and
16 such certificate shall have the force and effect of a special charter. He
17 shall also cause a record of the certificate of incorporation to be made,
18 and such certificate, or such record, or a certified copy thereof, shall be
19 conclusive evidence of the existence of such corporation.

ORGANIZATION.

1 SECTION 10. Upon the issue of such certificate of incorporation, the
2 first meeting of the incorporators shall be called by a notice, signed by a
3 majority of the directors, stating the time, place and purposes of the
4 meeting. A copy of such notice shall, seven days at least before the day
5 appointed for the meeting, be given to each incorporator or left at his
6 residence or usual place of business, or deposited in the post office, postage
7 prepaid, and addressed to him at his residence or usual place of business,
8 and another copy thereof, and an affidavit of the clerk that the notice
9 has been duly served, shall be recorded with the records of the company.
10 If all the incorporators shall in writing waive such notice and fix the time
11 and place of the meeting, no notice shall be required.

First meeting of incorpo-
rators.
1874, 29, § 9.
P. S. 112, § 45;
113, § 8.
R. L. 111, § 48;
112, § 8.
1906, 463,
111, §§ 10, 158.

Organization.
1906, 463,
III, § 11.

SECTION 11. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the adoption of by-laws, and by the election, by ballot, of not less than five directors. The clerk appointed by the directors under section five shall make and attest a record of the proceedings until the clerk of the company has been chosen and sworn, including a record of such choice and qualification.

OFFICERS.

Officers.
1864, 229, § 2.
1871, 381, § 2.
P. S. 113, § 9.
R. L. 112, § 15.
1906, 463, III,
§§ 12, 158.

SECTION 12. The business of every company shall be managed and conducted by a president, a board of not less than five directors, a clerk, a treasurer and such other officers and such agents as the company by its by-laws shall authorize.

Election of
officers.
1864, 229, § 2.
1871, 381, § 2.
1874, 29, § 4.
P. S. 113,
§§ 5, 9.
R. L. 112,
§§ 5, 15.
1905, 80.
1906, 463, III,
§§ 13, 158.
1909, 417, § 5.
1918, 257,
§ 367.
1919, 5.
1920, 2.
167 Mass. 161.

SECTION 13. The directors shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors, and the treasurer and the clerk annually by said board. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of the commonwealth, shall be sworn, and shall record all votes of the company in a book kept therefor. The officers of a company shall hold office for one year and until their successors are qualified. All other agents and officers shall be chosen or appointed, and all vacancies filled, in the manner prescribed by the by-laws, or, in default of such by-law, by the board of directors. Any requirement in the general laws of action to be taken or instruments to be signed by the president, directors, or a majority of the directors, of a company, relative to grants, extensions, alterations, and revocations of location, abolition of grade crossings and rights in state highways, shall be sufficiently and legally complied with if such action is taken by a vote, or if such instrument is executed in accordance with, and by the persons designated in, a vote of the directors of such company, at a meeting duly and properly held, at which a quorum of the board is present.

MEETINGS.

Meetings of
stockholders
1864, 229, § 3.
1871, 381, § 3.
P. S. 113, § 10.
R. L. 112, § 16.
1906, 463, III,
§§ 14, 158.

SECTION 14. There shall be an annual meeting of the stockholders, and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws. All meetings of stockholders shall be held in the commonwealth, and shall be called, and notice thereof given, in the manner provided in the by-laws of the company; or, if the by-laws make no provision therefor, shall be called by the president, and a written notice, stating the place, day and hour thereof, shall be given by the clerk, at least seven days before such meeting, to each stockholder by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to each stockholder at his address as it appears upon the books of the company. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular or special meeting of the stockholders shall be required if every stockholder, or his attorney thereunto authorized, by a writing filed with the records of the meeting, waives such notice.

1 SECTION 15. A special meeting of the stockholders shall be called,
 2 and a written notice thereof, stating the time, place and purpose of the
 3 meeting, given, by the clerk upon written application of three or more
 4 stockholders entitled to vote, holding at least one tenth part in interest of
 5 the capital stock.

Special
 meetings
 1876, 201
 P. S. 112, § 52
 1897, 99
 R. L. 111, § 56
 1906, 463, III,
 §§ 16, 158

1 SECTION 16. A company shall not directly or indirectly vote upon
 2 any share of its own stock.

1864, 229, § 4 P. S. 113, § 11. 1906, 463, III,
 1871, 381, § 4. R. L. 112, § 17. §§ 17, 158.

Voting rights
 of company
 upon its own
 stock

1 SECTION 17. Stockholders entitled to vote shall have one vote for
 2 each share of stock owned by them. Stockholders may vote either in
 3 person or by proxy. No proxy dated more than six months before the
 4 meeting named therein shall be accepted, and no such proxy shall be
 5 valid after the final adjournment of such meeting.

P. S. 113, §§ 11, 12. R. L. 112, § 17
 1889, 219. 1906, 463, III, §§ 18, 158.

Voting rights of
 stockholders,
 proxies
 1864, 229,
 §§ 4, 5
 1871, 381,
 §§ 4, 5.

1 SECTION 18. Meetings of the board of directors may be held within
 2 or without the commonwealth. Any meeting of the board of directors
 3 shall be a legal meeting without notice, if each director who is absent,
 4 by a writing filed with the records of the meeting, waives such notice.

Meetings of
 directors
 1906, 463, III,
 § 20

CAPITAL STOCK AND BONDS.

1 SECTION 19. Each stockholder shall be entitled to a certificate which
 2 shall be signed by the president and by the treasurer of the company, or
 3 by such other officers as may be authorized by the by-laws, shall be
 4 sealed with its seal, and shall certify the number of shares owned by
 5 him in such company.

Stock
 certificates
 1906, 463, III,
 § 21

1 SECTION 20. Certificates of stock shall not be issued by a company
 2 until the par value thereof shall have been paid in cash.

1871, 381, § 7 R. L. 109, § 20, 141 Mass. 496
 P. S. 113, § 13. 112, § 18 1 Op. A. G. 659
 1894, 350, § 1. 1906, 463, III, §§ 26, 158

Shares to be
 issued at par.
 1864, 229, § 6.

1 SECTION 20A. Every corporation subject to this chapter may, at a
 2 meeting duly called for the purpose, by the vote of a majority of all of
 3 its stock or, if two or more classes of stock have been issued, of a ma-
 4 jority of each class outstanding and entitled to vote, authorize a change of
 5 the par value of the shares of its capital stock in accordance with para-
 6 graph (h) of section four or paragraph (i) of section one hundred and
 7 thirty-six; but such change shall not be effective unless the department
 8 shall approve the same on an application of the corporation filed within
 9 thirty days after the passage of such vote. The aggregate par value of
 10 the outstanding shares shall not be increased by a change in the par
 11 value thereof.

Changes of
 par value of
 shares regu-
 lated
 1923, 491, § 3.

1 SECTION 21. The directors may assess upon all the shares subscribed,
 2 but not paid in, such amounts, not in excess of their par value, as they
 3 think proper, and may direct the same to be paid to the treasurer, who
 4 shall give written notice thereof to the subscribers. If a subscriber fails
 5 to pay his assessment for thirty days after such notice, the directors may
 6 transfer the rights under such subscription to any person who subscribes
 7 for the same and pays the assessments due, or may order the treasurer,

Assessments
 upon capital
 stock
 1864, 229,
 §§ 8, 9
 1871, 381, § 9
 P. S. 113, § 17
 R. L. 112, § 25.
 1906, 463, III,
 §§ 27, 158

after giving notice of the sale, to sell such shares by public auction to the highest bidder, and, upon the payment by him to the company of the unpaid assessments, of interest to the date of sale and of the charges of the sale, the shares shall be transferred to him. If, within thirty days after the sale, the purchaser does not make said payment to the company, the sale shall be cancelled, and the subscriber shall be liable to the company for the unpaid assessments, the interest thereon, and the charges of sale. If the amount so paid by the purchaser to the company is more than the amount for which the shares were sold, the subscriber shall be liable to the purchaser for the deficiency; if it is less, the purchaser shall be liable to the subscriber for the surplus.

Collection of assessments
1906, 463, III,
§ 27.

SECTION 22. If a subscriber fails to pay his assessment for thirty days, as provided in the preceding section, the directors may elect to proceed by an action at law against said delinquent subscriber to recover all amounts due and payable by him with interest. If a judgment rendered in an action against a subscriber remains unsatisfied for thirty days, all amounts previously paid by him shall be forfeited to the company, and the directors may offer such shares for sale as above provided.

Subscriptions to full capital stock and payment of fifty per cent before construction
1864, 229, § 6.
1871, 381, § 6.
P. S. 113, § 19.
R. L. 112, § 27.
1906, 463, III,
§§ 28, 158.

SECTION 23. A company shall not begin to build its railway until it shall have filed in the office of the state secretary a certificate, signed and sworn to by its president, treasurer, clerk and a majority of its directors, stating that the amount of its capital stock has been unconditionally subscribed for by responsible parties, and that fifty per cent of the par value of each share thereof has been paid in cash.

141 Mass. 496.

Liability of directors before stock paid in
1864, 229, § 6.
1871, 381, § 7.
P. S. 113, § 14.
R. L. 112, § 19.
1906, 463, III,
§§ 29, 158.
194 Mass. 590.
195 Mass. 571.

SECTION 24. The directors of a company shall be jointly and severally liable, to the extent of its capital stock, for all its debts and contracts, until the whole amount of its capital stock as originally fixed by its agreement of association, or if a chartered company, by its directors, and authorized by the department, shall have been paid in, and until a certificate stating the amount thereof so fixed and paid in shall have been signed and sworn to by its president, treasurer, clerk and a majority of its directors, and filed in the office of the state secretary.

Increase of capital stock and issue of bonds for certain purposes.
1864, 229, § 7.
1871, 381, § 8.
1874, 29, § 15.
P. S. 113, § 5.
1887, 366.
1889, 316, §§ 1, 2, 4.
1892, 192.
1895, 316, § 3.
1896, 409.
1898, 578, § 22.
R. L. 112,
§§ 20, 21, 23,
76.
1902, 370.
1906, 463, III,
§§ 103, 158.
1910, 536.
218 Mass. 367.
253 Mass. 304.

SECTION 25. A company, for the purpose of building an extension, or acquiring land for pleasure resorts, or acquiring or building power houses or car houses or park buildings, or acquiring or equipping additional rolling stock, or changing its motive power, or furnishing electricity to a town for light, or abolishing grade crossings, or paying betterment assessments for widening or otherwise altering streets, or complying with any requirements lawfully imposed, or making permanent investments or improvements, or acquiring any additional real or personal property necessary or convenient for its corporate objects, or refunding its funded debt, or paying money borrowed or indebtedness incurred for any of the foregoing purposes, or other similarly necessary and lawful purposes, may, in accordance with sections twenty-eight and twenty-nine of this chapter, sections fifty to fifty-two, inclusive, of chapter one hundred and fifty-nine and sections forty-seven to fifty-five, inclusive, of chapter one hundred and sixty, increase its capital stock or issue bonds, secured by mortgage or otherwise, to such an amount, beyond the amounts fixed

17 and limited by its agreement of association or its charter, or by any
 18 special law, as the department shall determine will realize the amount
 19 which has been properly expended or will be properly required, and as
 20 the department shall approve for such of the purposes aforesaid as are
 21 set out in its petition to the department.

22 The department, in authorizing the issue of any bonds under this
 23 section, may prescribe the minimum price at which such bonds shall be
 24 sold, and may modify such price from time to time, as it deems proper.
 25 Whenever it authorizes or has approved the issue or sale of bonds of a face
 26 value in excess of the amount determined by it to have been properly ex-
 27 pended or to be properly required, it may, in its order of approval, or at
 28 any time thereafter, require the company issuing such bonds to establish
 29 a sinking fund, estimated to realize at the maturity of said bonds a sum
 30 equal to the difference between the amounts for which such bonds were
 31 authorized or approved, and the face value of the bonds so authorized
 32 or approved therefor, and may designate a domestic trust company as
 33 trustee and custodian of such fund, and may from time to time change
 34 such trustee. Any agreement relative to said sinking fund, made between
 35 the street railway company and the trust company selected as such
 36 trustee, shall not be valid until approved by the department.

1 SECTION 26. In addition to the purposes for which a company may
 2 increase its capital stock or issue bonds, as provided in the preceding sec-
 3 tion, a company to supply itself with working capital may, in accordance
 4 with sections twenty-eight, twenty-nine and thirty-one of this chapter
 5 or sections fifty to fifty-two, inclusive, of chapter one hundred and
 6 fifty-nine, in the case of companies to which said last named sections
 7 are applicable, and of sections forty-seven to fifty-five, inclusive, of
 8 chapter one hundred and sixty, increase its capital stock to an amount
 9 not exceeding five per cent of the par value thereof then outstanding, or
 10 may issue bonds, secured by mortgage or otherwise, to such an amount,
 11 beyond the amounts fixed and limited by its agreement of association,
 12 or by any general or special law, and not more than the department
 13 shall determine will be properly required therefor, as the department
 14 shall approve as being consistent with the interest of the public and of
 15 the stockholders of such company and as not unreasonably reducing the
 16 security of any bond previously issued.

Increase of
 stock and
 issue of bonds
 to provide
 working
 capital
 1909, 185.

1 SECTION 27. On petition of a company for authority to reduce its
 2 capital stock, presented in accordance with a vote of the stockholders at
 3 a meeting called therefor, the department may, after a hearing and such
 4 examination of the financial condition of the company as it considers
 5 necessary, authorize such reduction, if it appears to be consistent with
 6 the public interest and with the limitations imposed by general or special
 7 laws. A certificate of the amount of the reduction and of any terms and
 8 conditions imposed shall be forthwith filed by the department in the
 9 office of the state secretary. When such reduction is made, no money or
 10 other property shall be paid or transferred to the stockholders unless
 11 specially authorized by the department, and by vote of the directors
 12 of the company taken by yeas and nays at a meeting called therefor.
 13 The directors voting therefor shall be jointly and severally liable for
 14 the debts or contracts of the company existing when the capital stock
 15 is reduced, to the extent of the money or property paid or transferred
 16 to the stockholders.

Reduction of
 capital stock.
 1890, 326.
 R. L. 112, § 22.
 1906, 463, 411,
 §§ 104, 158.
 187 Mass. 536.

Issue of capital stock, bonds, coupon notes and other evidences of indebtedness. 1894, 462, § 1. 1897, 337, § 1. R. L. 109, § 24. 1906, 463, 111, §§ 107, 158. 199 Mass. 352. 214 Mass. 529. 216 Mass. 432. Op. A. G. (1919) 54. [Penalty, § 31.]

SECTION 28. A company shall issue only such amounts of stock and bonds, coupon notes and other evidences of indebtedness payable at periods of more than one year after the date thereof, as the department may from time to time determine to be reasonably necessary for the purpose for which such issue of stock or bonds has been authorized. The department shall render a written decision upon an application for such issue within thirty days after the final hearing thereon, assigning the reasons therefor, and shall, if authorizing such issue, specify the respective amounts of stock, bonds, coupon notes or other evidences of indebtedness as aforesaid, which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied, and the decision shall, within seven days after it has been rendered, be filed in the office of the department. A certificate of the decision shall, within three days after it has been rendered and before the stock, bonds, coupon notes or other evidences of indebtedness as aforesaid are issued, be filed in the office of the state secretary, and a duplicate thereof delivered to the company. Such company shall not apply the proceeds of such stock, bonds, coupon notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate.

Limit of issue of bonds, coupon notes and other evidences of indebtedness. 1889, 316, § 2. 1897, 337, §§ 2, 3. R. L. 109, § 25. 1906, 463, 111, §§ 108, 158. 1914, 671. 222 Mass. 35. [Penalty, § 31.]

SECTION 29. A company, unless expressly authorized by its charter or by special law, shall not issue bonds, coupon notes or other evidences of indebtedness payable at periods of more than one year after their date to an amount which, including the amount of all such securities previously issued and outstanding, computed as provided in section fifty-three of chapter one hundred and fifty-nine, exceeds in the whole the amount of its capital stock at the time actually paid in; but this limitation shall not apply to an issue of bonds for the purpose of paying and refunding at maturity bonds lawfully issued prior to June second, eighteen hundred and ninety-seven; nor shall it apply to such of the bonds issued or to be issued under a mortgage as are deposited to retire at or before maturity bonds or other evidences of indebtedness previously issued and outstanding at the date of such mortgage, and as do not exceed the par value of the funded or other debt so to be retired; nor shall it apply to bonds, coupon notes or other evidences of indebtedness payable at periods of more than one year after their date, in addition to, and not exceeding twenty per cent of, the amount so computed, which shall be authorized as consistent with the public interest by the department, and which shall be subject to such requirement as to a sinking fund or other method of retiring said evidences of indebtedness within a period not exceeding ten years, as the department may prescribe, to provide means for, or to fund, the actual cost of replacement or reconstruction of any existing property; and such company shall not issue the securities specified in this section unless authorized by a vote of its stockholders at a meeting called therefor.

Enforcement. 1894, 462, § 3. R. L. 109, § 27. 1906, 463, 111, §§ 109, 158.

SECTION 30. The supreme judicial or superior court shall have jurisdiction in equity, upon the application of the department, the attorney general, any stockholder, or any interested party, to enforce the two preceding sections and all lawful orders and decisions, conditions or requirements of said department made in pursuance thereof.

Penalties. 1894, 462, § 2. R. L. 109, § 28.

SECTION 31. A director, treasurer or other officer or agent of a company who knowingly votes to authorize the issue of, or knowingly signs,

3 certifies or issues, stock or bonds contrary to any provision of section 1906, 463, 111,
 4 twenty-eight or twenty-nine, or who knowingly votes to authorize the §§ 110, 158.
 5 application, or knowingly applies the proceeds, of such stock or bonds
 6 contrary to any provision of said sections, or who knowingly votes to
 7 assume or incur, or knowingly assumes or incurs in the name or behalf of
 8 such company, any debt or liability except for legitimate purposes of
 9 the company shall be punished by a fine of not more than one thousand
 10 dollars or by imprisonment for not more than one year, or both.

1 SECTION 32. A company organized under the laws of the common- Issue of
 2 wealth may, by vote of two thirds in interest of its common stockholders stock.
 3 at a meeting duly called therefor, with the approval of the department, 1902, 441, § 1,
 4 and subject to section twenty-eight of this chapter and section fifty- 1913, 764,
 5 two of chapter one hundred and fifty-nine, issue, and from time to time §§ 1, 5,
 6 increase, preferred stock of one or more classes, for any lawful purposes 211 Mass. 424.
 7 for which such companies may issue or increase their capital stock.
 8 Each class of preferred stock shall be entitled to the preferences and
 9 rights and subject to the restrictions and limitations fixed by such vote
 10 as approved by the department.

1 SECTION 33. Any such company may, upon such terms and in such Exchange of
 2 manner as shall be determined by vote of two thirds in amount of its common for
 3 outstanding common capital stock and as shall be approved by the preferred.
 4 department, issue in lieu of outstanding common shares preferred shares 1913, 764, § 2.
 5 to such number, of such par value and with such preferences, rights,
 6 restrictions and limitations and entitled to such rate of preferred divi-
 7 dend as shall so be determined and approved; provided, that the aggre-
 8 gate par value of such preferred stock shall not exceed the aggregate
 9 par value of the common stock in exchange for which it is issued.

1 SECTION 34. Each class of preferred stock issued under sections Form of cer-
 2 thirty-two to thirty-five, inclusive, shall be designated by a name ap- tificates, etc.
 3 proved by the department to distinguish it from all other classes of 1902, 441, § 2.
 4 stock of the company. A certified copy of the vote creating, and of the 1913, 764,
 5 order of the department approving, the creation of any class of preferred §§ 3, 5.
 6 stock shall be filed in the office of the department and in the office of the
 7 commissioner of corporations and taxation. Every certificate of stock
 8 issued by such company after the approval by the department of the
 9 creation by it of preferred stock shall contain a reference to all votes
 10 creating preferred stock and a brief description of the respective pref-
 11 erences, rights and restrictions of each class of such stock.

1 SECTION 35. Preferred stock issued under sections thirty-two to Preferred
 2 thirty-five, inclusive, shall have the same voting power as the common stock; voting
 3 stock, except that, in any case, there may be such limitations of the voting powers, issue,
 4 power of said preferred stock as the department approves and finds con- etc.
 5 sistent with public interest. The aggregate amount at par of preferred 1902, 441, § 1,
 6 stock of all classes issued by a company shall at no time exceed twice 1913, 764,
 7 the amount at par value of its outstanding common stock, and no class of §§ 4, 5.
 8 preferred stock shall be created which is not, in a manner approved by the
 9 department, made subordinate in respect to dividends or to participa-
 10 tion in the proceeds of liquidation to the preferences of every previously
 11 created class of preferred stock. Upon any issue of preferred stock the
 12 new shares shall, unless the common stockholders with the approval of

the department otherwise provide, first be offered to the common stock- 13
 holders in the manner prescribed in sections fifty to fifty-two, inclusive, 14
 of chapter one hundred and fifty-nine, and any shares of the preferred 15
 stock not duly subscribed and paid for by the common stockholders or 16
 their assigns shall be offered in the same manner to the holders of preferred 17
 stock of the same class; and any of such preferred shares then 18
 remaining untaken, and all of the preferred shares if the common stock- 19
 holders so determine and the department approves, may be sold in the 20
 manner provided by and subject to section fifty-one of chapter one hun- 21
 dred and fifty-nine. In case of any increase in the common stock of the 22
 company, holders of preferred stock shall be entitled to have offered to 23
 them shares of the new stock in the manner provided in sections fifty to 24
 fifty-two, inclusive, of chapter one hundred and fifty-nine, whenever the 25
 vote creating such preferred stock as approved by the department shall 26
 so provide. 27

STOCK AND SCRIP DIVIDENDS.

Stock and scrip dividends forbidden. 1894, 350, § 1. SECTION 36. A company shall not declare any stock or scrip dividend or divide the proceeds of the sale of stock or scrip among its stockholders. 1 2 3

R. L. 109, § 20. 1906, 463, III, §§ 105, 158. 214 Mass. 529.

Liability of directors. 1894, 350, § 2. R. L. 109, § 21. 1906, 463, III, §§ 106, 158. 1918, 257, § 368. 1919, 5. 1920, 2. SECTION 37. A certificate of stock or scrip issued in violation of the preceding section shall be void; and each director of the company issuing it shall be liable to a penalty of one thousand dollars, to be recovered by indictment in the county where he resides, or, if he resides in no county in the commonwealth, in the county where he is commorant, or the offence was committed; but if any such director proves that, before such issue, he filed his written dissent thereto with the clerk, and at no time voted therefor, he shall not be so liable. 1 2 3 4 5 6 7 8

CORPORATE POWERS.

Powers to cease if railway is not built within eighteen months after date of incorporation, unless, etc. 1857, 198. G. S. 63, § 140. 1864, 229, § 12. 1871, 381, § 12. P. S. 113, § 20. R. L. 112, § 28. 1906, 463, III, §§ 30, 158. SECTION 38. A company, incorporated under the laws of the commonwealth, may, subject to this chapter and chapter one hundred and fifty-nine, construct, maintain and operate a street railway, but, if such company does not build and put in operation its railway within eighteen months after the date of its certificate of incorporation, its corporate powers shall cease, unless the department, after public notice and a hearing, shall extend said time by a certificate, stating that in its judgment due diligence has been exercised by the company, and that public necessity and convenience require such extension. 1 2 3 4 5 6 7 8 9

Extension of corporate authority to operate railway. 1896, 501. R. L. 112, § 92. 1906, 463, III, §§ 31, 158. SECTION 39. A company, which, by its charter or certificate of incorporation, or by special act, is authorized to construct, maintain and operate a street railway in any city or town in the commonwealth, and which has constructed its railway therein, may, subject to the provisions of the general laws relative to the location, construction and operation of street railways, extend its railway into such other cities and towns in the commonwealth as the department shall, on application of such company, and after public notice and a hearing, certify that the public necessity and convenience require. An attested copy of such certificate 1 2 3 4 5 6 7 8 9

10 shall, within three days after it is granted, be filed by the department in
 11 the office of the state secretary.

1 SECTION 40. A company whose petition for a location, necessary, in
 2 the judgment of the department, to furnish proper transportation facili-
 3 ties between two cities, or two towns, or a city and town, has in whole or
 4 in part been granted or refused, or has been neither granted nor refused
 5 within three months after the filing thereof, may, within thirty days of
 6 such grant or refusal of a location, or the expiration of said three months,
 7 apply to the department for such location. If it shall appear at a hearing
 8 on said application, after such notice to the board of aldermen or the
 9 selectmen, and to all persons who own real estate abutting upon any way
 10 in which such location was asked for, by publication or otherwise, as the
 11 department orders, that the company has already been granted and has
 12 accepted locations for a street railway in two cities, or two towns, or a
 13 city and town, adjoining the city or town where such location has been
 14 asked for, or has already been granted and has accepted locations for a
 15 street railway in two adjoining cities, or two adjoining towns, or an ad-
 16 joining city and town, and that a location is necessary to connect such
 17 existing locations, the department may, if it finds that public necessity
 18 and convenience so require, enter a decree granting a connecting location.
 19 In granting the location the department may prescribe the appliances
 20 and impose the conditions and obligations which are specified or referred
 21 to in section seven relative to the granting of original locations. Such
 22 location shall be the true location, if, within thirty days after the issue of
 23 notice to the company of the entry of said decree, the directors shall file
 24 a written acceptance of such location with the department; otherwise,
 25 said location shall be void.

Connecting
 location.
 1898, 378, § 11
 R. L. 112, § 11
 1906, 463, 111,
 §§ 32, 158

1 SECTION 41. A company may purchase and hold real and personal
 2 estate necessary or convenient for the operation of its railway; but it
 3 shall not, except as provided in section sixty-four, directly or indirectly,
 4 subscribe for, take or hold stock or bonds of any such company organized
 5 under general laws unless specially so authorized by the general court.

Real and per-
 sonal estate;
 stock and
 bonds of other
 street railway
 companies.
 1864, 229, § 13.
 1871, 381, § 13.
 1874, 29, § 10.

P. S. 113, § 18.
 R. L. 112, § 26.

1906, 463, 111, §§ 33, 158.
 187 Mass. 536.

1 SECTION 42. A company may, except in Boston, acquire, hold, main-
 2 tain and equip land for purposes of recreation and for pleasure resorts,
 3 provided that the department shall find that the acquisition, equipment
 4 and maintenance of such land for such purposes and the cost thereof and
 5 other circumstances relating thereto are consistent with the public inter-
 6 est. Such recreation and pleasure resorts shall be subject in the same
 7 manner as other places of amusement to the supervision and regulation of
 8 the local authorities of the cities or towns where situated, and shall be
 9 subject to such further restrictions as the department may from time to
 10 time impose. No company shall sell intoxicating liquors or allow them to
 11 be sold within the limits of any resort held or maintained by it; nor shall it
 12 sell without the approval of the department any land so acquired. No
 13 company shall contribute, directly or indirectly, by payment of money
 14 or otherwise, except in such cases and to such extent as the department
 15 shall first approve, to the establishment, equipment or maintenance of
 16 any recreation park or pleasure resort not owned by such company.

Pleasure
 resorts.
 1895, 316,
 §§ 1, 2, 4
 R. L. 112, § 76.
 1906, 463, 111,
 §§ 34, 158.
 1915, 133.
 212 Mass. 583

Motive power. 1864, 229, § 34. SECTION 43. A company may use electricity, or such other motive power, other than steam, as the department may permit. 1 2
 1871, 381, § 44. R. L. 112, § 51. 188 Mass. 250.
 P. S. 113, § 39. 1906, 463, 111, §§ 35, 158. 196 Mass. 329.

May acquire and use motor cars. 1918, 226, § 1. SECTION 44. Any company, with the approval of the department, may acquire, own and operate, for the transportation of passengers or freight, motor vehicles not running upon rails or tracks, but in such operation shall be subject to chapter one hundred and fifty-nine A, so far as applicable. 1 2 3 4 5
 1919, 371, §§ 4, 7.
 1931, 408, § 4.
 254 Mass. 28.

Power to manufacture and transmit electricity. 1911, 442. SECTION 45. A company may, for all purposes necessary or reasonably incident to the construction, maintenance or operation of its railway, generate, manufacture, use and transmit electricity in any city or town where authorized to operate its railway, and may erect and maintain therefor, as a part of its railway, and subject to sections seven, seventy, seventy-one and seventy-seven, relative to the grant and revocation of authority therefor, poles and trolley, feed and stay wires, and other proper devices for, or used in connection with, the transmission of electricity, of materials and workmanship prescribed in the grant of authority therefor, in, over and under any ways and bridges in any such city or town; provided, that authority to erect and maintain the same is granted by the board of aldermen of the city or selectmen of the town, respectively; and may also erect and maintain such poles, wires and other devices upon and over any private land, with the consent of the owners thereof. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

Connecting companies, joint use of tracks. 1888, 278, § 1. SECTION 46. A company may permit another street railway company to operate cars over its tracks to such extent and under such rules and regulations as the department deems consistent with the public safety. 1 2 3
 R. L. 112, § 78. 1906, 463, 111, §§ 36, 158.

Regulation of interchange of traffic and cars. 1863, 223, §§ 1-5. SECTION 47. The department may, on petition of a company or of any interested party, after notice and a public hearing, determine the reasonable conditions which shall govern the interchange of traffic and cars between companies, and may, wherever it is reasonable and consistent with the public interest, order such company to receive and convey over its tracks the cars of another such company at such times and over such routes and upon such terms, including reasonable compensation, as the department may prescribe; provided, that a company shall have control of and responsibility for the management and operation of all cars while upon its railway as fully as if it owned them. The department may also recommend such joint rates, fares and charges as are consistent with the provisions of any special charter of any company, specifying at the same time and in every instance the part of the joint rate, fare or charge to which each company affected thereby shall be entitled, and may make such other recommendations as seem appropriate to the circumstances of each particular case. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16
 1864, 229, §§ 29-31.
 1871, 381.
 1874, 29, §§ 12-14.
 P. S. 113, §§ 48-52, 55.
 1888, 278, § 1.
 R. L. 112, §§ 77-81, 84.
 1911, 487.

Use of railroad tracks. 1910, 596. SECTION 48. A company, with the consent of a railroad corporation owning tracks, may, to such extent and subject to such terms and regulations as the department may approve or prescribe, operate cars upon and over such tracks of said railroad corporation as are equipped for opera- 1 2 3 4

5 tion by the electric system of motive power, and may connect its own
6 tracks with the tracks of such railroad in such manner as may be agreed
7 upon by the two companies and approved by the department.

1 SECTION 49. A company may allow street sprinkling cars or similar
2 apparatus to be used upon its tracks, may furnish the motive power and
3 use of tracks or other facilities, and may make contracts therefor; but
4 this section shall be operative only to such extent and subject to such
5 regulations and restrictions as the department, having regard to the
6 necessities of public travel, may approve.

Street
sprinkling
cars.
1897, 315.
R. L. 112, § 54.
1906, 463, III,
§ 37, 158.

1 SECTION 50. A company may, with the consent of the board of
2 aldermen or the selectmen, convey in cars over its tracks snow, ice, stones, of
3 gravel, dirt, or street sweepings, taken from any street or way over or
4 through which its tracks are located, in order to keep said street or way
5 in proper condition for travel, or may convey to any point on its line,
6 or deliver to any connecting line or any other such company, necessary
7 material for use in constructing, grading, repairing or improving any
8 street or way in any city or town, or any state highway, whether on the
9 line of any such company or not, and may make contracts with cities,
10 towns, the department of public works, and with other such companies
11 for the transportation of such material.

Gravel, etc.,
cars.
1898, 328.
R. L. 112, § 55.
1902, 288, § 1.
1906, 463, III,
§§ 38, 158.
1931, 394,
§ 103
190 Mass. 527.

1 SECTION 51. A company may convey in cars over its tracks coal and
2 other supplies for its own use.

Coal and
other supplies.

1906, 463, III, § 39.

190 Mass. 527.

1 SECTION 52. A company may carry the United States mail.

Carriers
of mail.

1901, 254.

R. L. 112, § 75.

1906, 463, III, §§ 40, 158.

1 SECTION 53. A company, on petition of any interested party, may
2 become a common carrier of newspapers, baggage, express matter and
3 freight, upon such parts of its railway and subject to such orders, rules
4 or regulations as may from time to time be made, established or pre-
5 scribed by the board of aldermen or the selectmen, in this section called
6 the licensing authorities. Any such petitioner or any company, aggrieved
7 by such orders, rules or regulations, or in case of failure of the licensing
8 authorities of any city or town to act upon such petition within thirty
9 days of its presentation, may appeal to the department, whose decision,
10 after public notice and hearing, shall be made within thirty days of the
11 said appeal and shall be final. All orders, rules or regulations made,
12 established or prescribed as aforesaid shall be enforced in the manner
13 provided in section forty of chapter one hundred and fifty-nine. Any
14 company acting under the authority herein granted shall be subject to
15 all laws relating to common carriers in so far as consistent herewith. The
16 authority conferred upon any company by said licensing authorities by
17 virtue of this section may be revoked at any time by said licensing au-
18 thorities if, after public notice and hearing, they determine that the
19 public interest so requires; provided, that any company or interested
20 party, aggrieved at such revocation, may appeal to the department,
21 whose decision, after public notice and hearing, shall be made within
22 thirty days of the said appeal and shall be final and shall be enforceable
23 as provided in section forty of chapter one hundred and fifty-nine.

Companies
may become
common
carriers of
freight, etc.
1901, 254.
R. L. 112, § 75.
1903, 202.
1904, 441.
1906, 463, III,
§§ 41, 158.
1907, 402.
1918, 238.

LAND.

Private land.
1901, 503,
§§ 3, 4
R. L. 112, § 29.
1906, 463, 111,
§§ 42, 158.
1910, 551.

SECTION 54. Except as provided in this chapter or chapter one hundred and fifty-nine or one hundred and sixty, and except for the purpose of reaching its car barns or repair shops, and of reaching and providing convenient terminals in parks and pleasure resorts situated upon the line of its railway, and of reaching its freight yards and terminals, and of maintaining spurs and sidings, and for other purposes incident to performing the business authorized by the preceding section, a company shall not, unless authorized by special act of the general court, construct or operate any part of its railway outside the limits of a public way or bridge; but such a company which, prior to June fourteenth, nineteen hundred and one, without special legislative authority therefor constructed any part of its railway upon private land, with the consent of the owners thereof, or upon land leased or purchased by such company, or which prior to said date purchased or leased land for the purpose of constructing its railway thereon, or which prior to said date after public notice and a hearing obtained the approval of the board of aldermen of a city or of the selectmen of a town to the construction of a part of its railway upon private land within such city or town, and prior to said date actually with the consent of the owners of the land began, or obtained their consent to begin, such construction, may construct, maintain and operate its railway upon such private land, subject to the provisions of this chapter conferring upon the department control over street railways constructed upon private land.

Location by
purchase or
lease on
private land.
1901, 503, § 1.
R. L. 112, § 9.
1906, 463, 111,
§§ 43, 158.

SECTION 55. A company, organized, or in process of organization, under the laws of the commonwealth, having first obtained the approval of the board of aldermen of the city or of the selectmen of the town where private land is situated to the construction of its railway thereon, may, for the purpose of avoiding grades and curves in public ways, and for such other purposes incidental to the use of such ways, as the department may in the manner hereinafter provided approve, petition the department for authority to construct and maintain parts of its railway or extension thereof upon such private land outside the limits of such ways. The company in such petition shall set forth the purpose for which such authority is desired in each case, and shall file with the petition a plan, in such form and upon such scale as the department prescribes, of the railway or extension, and of the localities where it is desired to construct the same upon private land, and the department, after public notice and a hearing, if satisfied that public necessity and convenience demand that parts of the railway or extension should be built outside the limits of such ways, substantially on the private land selected, and that the approval of the board of aldermen or the selectmen of the city or town where the land is situated has been obtained as aforesaid, may authorize the petitioner to construct and operate its railway or extension upon and over private land, and for that purpose to purchase or lease private land or rights therein and thereover, in such cases and to such extent as the department deems public necessity and convenience in the construction and operation of the railway or extension require. The department in granting such authority may determine the kind of construction to be used, the grade and alignment of the tracks, and may order such special appliances to be furnished and such safeguards to be adopted in the con-

28 struction and operation of the railway or extension upon private land as
 29 it deems public necessity, convenience and safety demand.

1 SECTION 56. A street railway constructed upon private land shall not
 2 be opened for public use until the department, after examination, certifies
 3 that all laws relative to its construction and all requirements of the de-
 4 partment have been complied with, and that it appears to be in a safe
 5 condition for operation. The department may, at any time after the
 6 opening of a street railway for public use, order such changes and im-
 7 provements to be made in the construction and operation of any
 8 part thereof upon private land as it deems necessary for public safety
 9 in the use thereof; and such order shall be complied with by such
 10 company.

Same subject.
 Regulation
 1901, 503, § 2.
 R. L. 112, § 10.
 1906, 463, III,
 §§ 14, 158.

1 SECTION 57. A company, whose railway is constructed in part outside
 2 the limits of public ways, shall, in respect of the equipment, use and
 3 operation of its railway and transportation thereon, be subject to the laws
 4 relative to street railway companies, as fully as if its railway were located
 5 wholly within the limits of public ways.

Law applicable
 to locations on
 private land.
 1898, 404, § 5.
 R. L. 112, § 60.
 1906, 463, III,
 §§ 45, 158.

1 SECTION 58. A domestic company may apply to the board of aldermen
 2 of a city or to the selectmen of a town where it desires to take land, for
 3 an adjudication that public necessity and convenience require that cer-
 4 tain land, or interests in land, as described in its petition, and for the
 5 specific purpose therein stated, be taken by such company, to enable it,
 6 in constructing its street railway, or extension thereof, to avoid dangerous
 7 curves or grades existing in the highways, or for other similar purposes
 8 incident to and not inconsistent with its corporate franchise of operating
 9 a railway to accommodate public travel in public ways. If the board to
 10 which such application is made finds in favor of the petitioner, after the
 11 notice and hearing required by law in the case of the grant of locations for
 12 street railways in public ways, the company may, upon complying with
 13 the provisions prescribed for railroad corporations by section eighteen
 14 of chapter one hundred and sixty, apply to the department for a certificate
 15 that public necessity and convenience require the construction of the
 16 railway between the termini and substantially upon the route fixed by
 17 the agreement of association in case of a company organized under the
 18 general laws and by the charter of a company created by special statute,
 19 or of the extension substantially on the locations already granted therefor,
 20 and for approval of the adjudication of the board of aldermen or of the
 21 selectmen as to the necessity and reasons for taking land or rights in land
 22 in every city or town where such adjudication has been made. If the
 23 department, after public notice and a hearing, at which all persons or
 24 corporations alleging that they would be injured by the construction of
 25 the railway shall be deemed to be interested parties and entitled to be
 26 heard, grants the certificate as prayed for, the petitioner may take by
 27 eminent domain under chapter seventy-nine any land or rights in land
 28 the taking of which has so been approved by the department.

Location by
 eminent do-
 main on
 private land.
 1903, 476, § 1.
 1906, 463, III,
 §§ 46, 158.
 213 Mass. 54.

1 SECTION 59. A company acting under authority of the preceding
 2 section shall be subject to sections seventy-five, seventy-six, eighty,
 3 eighty-one, eighty-six, ninety to ninety-three, inclusive, ninety-six and
 4 two hundred and fifty-two of chapter one hundred and sixty, and, if its
 5 railway crosses a public way or another street railway, except where its

Same subject.
 1903, 476, § 2.
 1906, 463, III,
 §§ 47, 158.

railway is constructed within the limits of another public way crossing 6
 such way or street railway, it shall also be subject to sections ninety-seven 7
 to one hundred and three, inclusive, one hundred and forty, one hundred 8
 and forty-one, and one hundred and forty-seven to one hundred and 9
 fifty, inclusive, of said chapter; provided, that wherever by said sections 10
 any jurisdiction is conferred upon a board of county commissioners, 11
 the same shall in the case of a company be exercised by the board of 12
 aldermen of the city or by the selectmen of the town where the land or 13
 other property proposed to be taken is situated. 14

Same subject,
 1903, 476, § 3,
 1906, 463, III,
 §§ 48, 158.

SECTION 60. A company authorized to construct its railway at grade 1
 across a public way in any place where such crossing is not a part of the 2
 crossing of such way by another public way, and incident to the construc- 3
 tion of the street railway longitudinally within the limits of such other 4
 public way, shall, in any proceedings for the abolition of such grade 5
 crossing, be considered as a railroad corporation under sections sixty-five 6
 to eighty-two, inclusive, of chapter one hundred and fifty-nine if such 7
 company has taken any land or other property under authority of the 8
 two preceding sections; and it may bring a petition, or be made a re- 9
 spondent to any petition brought by any of the other parties named in 10
 said sections, in the same way and be subject to the same liabilities as if 11
 it were a railroad corporation. 12

Same subject,
 1903, 476, § 4,
 1906, 463, III,
 §§ 49, 158.

SECTION 61. The three preceding sections shall not enlarge the extent 1
 or purposes for which a street railway may be constructed or operated 2
 outside the limits of public ways as defined and limited in sections fifty- 3
 four and fifty-five. 4

LEASE OR SALE OF RAILWAY.

Railway not
 to be leased or
 sold, except,
 etc.
 1864, 229, § 24.
 1871, 381, § 31.
 P. S. 113, § 56.
 1897, 213, § 3.
 R. L. 112, § 85.
 1906, 463, III,
 §§ 51, 158.

SECTION 62. A company shall not lease or contract for the operation 1
 of its railway for a period of more than ninety-nine years without the con- 2
 sent of the general court, nor, except as provided in the three following 3
 sections and in section one hundred and twenty-three, shall it sell its 4
 railway unless authorized so to do by its charter or by special act of the 5
 general court. 6

11 Allen, 65.
 173 Mass. 286.

191 Mass. 522.
 206 Mass. 215.

Op. A. G. (1919) 20.

Sale or con-
 solidation
 1897, 269, § 1.
 R. L. 112, § 86.
 1906, 463, III,
 §§ 52, 158.
 1911, 357.
 209 Mass. 213.

SECTION 63. A domestic company may sell and convey the whole 1
 or a part of its franchise and property to, or may consolidate with, any 2
 other such company whose railway connects with, intersects or forms 3
 a continuous line with its own, if the facilities for travel on the railway 4
 of each of said companies shall not be thereby diminished, or the rates of 5
 fare increased, and such other company may purchase of or consolidate 6
 with it as aforesaid; but such purchase and sale or consolidation shall 7
 not be valid or binding until its terms have been agreed to by a majority 8
 of the directors, and have been approved, at meetings called therefor, by 9
 a vote of two thirds in interest of the stockholders of each of the 10
 contracting companies, and by the department as required by section fifty- 11
 four of chapter one hundred and fifty-nine. Whenever a company sells 12
 and conveys the whole or a part of its franchise and property to, or con- 13
 solidates with, any other company, every stockholder of both the purchas- 14
 ing or consolidated company and of the selling company shall be deemed 15

16 to assent to the terms of purchase and sale or of consolidation, when
17 approved by the department in accordance with any provisions of law
18 requiring such approval, unless, within thirty days after the date of such
19 approval, he shall file with the clerk of the department a writing, declar-
20 ing his dissent from said terms and stating the number of shares held by
21 him and the number of the certificates evidencing the same; provided,
22 that, as against any stockholder under any legal incapacity to act for
23 himself and having no legal guardian, said period of thirty days shall not
24 begin to run until the removal of such incapacity by the appointment of
25 a legal guardian, or otherwise. The shares of any stockholder so dissent-
26 ing shall be acquired by the purchasing or consolidated company, and
27 shall be valued, and the value thereof paid or tendered to, or deposited
28 to or for the account of, such stockholder in the manner following: Within
29 sixty days after the filing as aforesaid of his dissent from the terms of such
30 sale or consolidation, the said dissenting stockholder or the purchasing
31 or consolidated company shall file a petition with the supreme judicial
32 court, sitting within and for the county where said stockholder resides
33 or in any county in which said company operates any part of its railway,
34 which petition, if filed by the company in a county other than that of the
35 stockholder's residence, may upon his application be removed to the
36 county where the said stockholder resides, setting forth the material
37 facts and praying that the value of such dissenting stockholder's shares
38 may be determined. Thereupon, after such notice to all parties con-
39 cerned as it deems proper, said court shall make an order requiring such
40 dissenting stockholder's certificates of stocks to be deposited with the
41 clerk of said court, and shall appoint three commissioners to ascertain
42 and report the value of such dissenting stockholder's shares on the day
43 of the approval by the department of the terms of the agreement of
44 purchase and sale or consolidation. Said report shall be made to the
45 court as soon as practicable, and, after due notice to the parties in in-
46 terest, shall be accepted by the court, unless before such acceptance
47 either of the parties to said proceedings shall claim a trial by jury, in
48 which case the court shall order the value of said shares to be tried and
49 determined by a jury in the same manner as other civil cases are tried
50 in said court. The said commissioners' report, or the verdict, when ac-
51 cepted by the court, shall be final and conclusive as to the value of such
52 dissenting stockholder's shares, and the amount so ascertained as such
53 value shall at once be paid or tendered to such stockholder; or, if such
54 payment or tender be impracticable for any cause, shall be paid into
55 court. Upon such payment, tender or deposit, the shares of such dis-
56 senting stockholder and the certificates thereof shall become the property
57 of the purchasing or consolidated company, whose right and title thereto
58 may be enforced by the court by any appropriate order or process. Ex-
59 ceptions may be taken to any ruling or order of said court, to be heard
60 and determined by the full court as in other civil cases; and said court
61 may make all such orders for the enforcement of the rights of any party
62 to the proceedings, for the consolidation of two or more petitions and
63 their reference to the same commissioners, for the consolidation of claims
64 for a jury trial and the trial of two or more cases by the same jury, and
65 for the payment of interest upon the value of a stockholder's share
66 as determined, and the payment of costs by one party to the other, as
67 justice and equity and the speedy settlement of the matters in contro-
68 versy may require.

Increase of capital stock, and issue of bonds.
1897, 269, § 2.
R. L. 112, § 87.
1906, 463, 111,
§§ 53, 158.

SECTION 64. The purchasing or consolidated company may, subject to section twenty-eight, increase its capital stock and issue bonds to an amount necessary for the purposes authorized in the preceding section, and may exchange its securities for those of the selling or merged company, if the aggregate amount of the capital stock and debt of the two contracting companies shall not by reason of such purchase and sale or consolidation be increased.

Powers and duties of consolidated company.
1897, 269, § 3.
R. L. 112, § 88.
1906, 463, 111,
§§ 54, 158.
202 Mass. 298.

SECTION 65. Such purchasing or consolidated company shall have the powers and privileges, and be subject to the duties, liabilities and restrictions, of the company selling or merged, but, except as provided in this chapter or chapter one hundred and fifty-nine, no right to conduct an express business or to be a common carrier of merchandise shall, by reason of any such sale or consolidation, be allowed over any location where it had not been granted prior to April tenth, eighteen hundred and ninety-seven.

Operating contracts and leases.
1897, 213,
§§ 1, 2.
R. L. 112, § 89.
1906, 463, 111,
§§ 55, 158.

SECTION 66. Two domestic companies, whose railways connect with or intersect each other or together form a continuous line, may contract that either company shall perform all the transportation upon and over the whole or any part of the railway of the other; or any such company may lease its franchise, property and railway to any other such company; but the facilities for travel on either of the railways of said companies shall not be thereby diminished or the rates of fare increased. Such contract or lease shall not be valid or binding until its terms have been agreed to by a majority of the directors, and have been approved, at meetings called therefor, by a vote of a majority in interest of the stockholders of each of said companies, and by the department as required by section fifty-four of chapter one hundred and fifty-nine. The income arising from such contracts or leases shall be subject to the provisions of law relative to the reduction of fares in the same manner as that arising from the use of the railways. Such railways shall be considered as connecting with or intersecting each other, or forming a continuous line, if one of them connects with or intersects or forms a continuous line with a railway leased to or operated by the other under a contract authorized by this section.

Powers under contracts or leases.
1897, 213, § 4.
R. L. 112, § 90.
1906, 463, 111,
§§ 56, 158.

SECTION 67. A company which contracts for the operation, or takes a lease, of another railway shall, subject to the terms of such contract or lease, have and enjoy the powers and privileges, and be subject to the duties, liabilities and restrictions of the company owning it; but no right to carry on an express business or to be a common carrier of merchandise shall be allowed, except as provided in this chapter or chapter one hundred and fifty-nine, over any location where it had not been granted prior to March twenty-ninth, eighteen hundred and ninety-seven.

Proceeds of sale not to be used for dividends.
1864, 229, § 39.
1871, 381, § 51.
P. S. 113, § 57.
R. L. 112, § 91.
1906, 463, 111,
§§ 57, 158.

SECTION 68. A company shall not appropriate for the payment of dividends any money received from the sale of any portion of its railway, unless it first reduces its capital stock issued, by an amount which, at its par value, is equal to the amount which such portion of its railway cost said company.

1 SECTION 69. A domestic company may purchase from a street rail-
 2 way company incorporated under the laws of another state so much of
 3 the railway, franchise and property of such other company as is located
 4 or used and exercised within this commonwealth when the railway of
 5 such other company connects with, intersects, or forms a continuous line
 6 with that of the purchasing company; provided, that the facilities for
 7 travel on the railway of each of said companies within this commonwealth
 8 shall not thereby be diminished, or the rates of fare increased; and pro-
 9 vided, that no such purchase shall be valid or binding until the terms
 10 thereof have been approved by the department as required by section
 11 fifty-four of chapter one hundred and fifty-nine.

Purchase of
 connecting
 lines
 1910, 443.

EXTENSION OF LOCATION.

1 SECTION 70. The board of aldermen of a city or the selectmen of a
 2 town, on petition of fifty legal voters, or on petition executed in accord-
 3 ance with the by-laws or a vote of the directors of a company whose
 4 tracks are located in said city or town, after public notice and a hearing
 5 as provided in section seven, may grant a location for the extension of
 6 the tracks of such company, and prescribe how said tracks shall be laid
 7 and the kind of rails, poles, wires and other appliances to be used; but
 8 they shall impose no terms or conditions to such grant in addition to
 9 those imposed by general laws on such companies in force on October first,
 10 eighteen hundred and ninety-eight, or such as may have been imposed in
 11 the grant of original location to such company in such city or town sub-
 12 sequent to said date. No such extension of a location shall be valid,
 13 until the department, after public notice and a hearing, shall certify that
 14 such extension is consistent with the public interest. If the department
 15 requires an alteration in such extension before so certifying, it shall
 16 notify the board of aldermen or selectmen, granting such extension, of
 17 such alteration; and thereafter said board of aldermen or selectmen may
 18 amend such extension in accordance with such alteration; provided,
 19 that, if such alteration involves a change in the route of the railway,
 20 public notice and a hearing shall be given as provided in the case of the
 21 original application for an extension; and thereafter the department
 22 may, as a part of the original proceedings before it, certify that such ex-
 23 tension so amended is consistent with the public interest. An extension,
 24 so certified, shall be a valid location, if, within sixty days after the issue
 25 of notice of said certification to the company, it files a written acceptance
 26 of such extension, executed in accordance with its by-laws or a vote of
 27 its directors, with the board of aldermen or selectmen. An extension
 28 granted by a board of aldermen or selectmen, but refused certification
 29 hereunder by the department, or not accepted as hereinbefore provided,
 30 shall be void.

Extension of
 location
 1874, 29, § 11.
 P. S. 113, § 21.
 1898, 578, § 15.
 R. L. 112, § 39
 1902, 399.
 1906, 463, III.
 §§ 64, 158.
 1909, 417, § 2.
 121 Mass. 485.
 125 Mass. 515.
 175 Mass. 518.
 231 Mass. 549.
 1 Op. A. G.
 392, 489.

ALTERATION OF LOCATION.

1 SECTION 71. The board of aldermen of a city or the selectmen of a
 2 town, on petition executed in accordance with the by-laws or a vote of
 3 the directors of a company whose tracks are located in said city or town,
 4 or on petition of any interested party, after public notice and a hearing
 5 as provided in section seven, may alter the location of the tracks in the
 6 manner prescribed in, and subject to, the preceding section. Such alter-
 7 ation shall be made by such company within such time, and the expense

Alteration of
 location
 1864, 229, § 14.
 1871, 381, § 15.
 P. S. 113, § 22.
 1898, 578, § 16.
 R. L. 112, § 31.
 1902, 399.
 1906, 463, III.
 §§ 65, 158.
 1909, 417,
 §§ 3, 6

1 Op. A. G.
392, 489

thereof shall be borne by such parties and in such proportions, as the board of aldermen or selectmen may determine. No such alteration of a location shall be valid, until the department, after public notice and a hearing, shall certify that such alteration is consistent with the public interest. If the department requires an amendment to such alteration before so certifying, it shall notify the board of aldermen or selectmen of such amendment; and thereafter the board of aldermen or selectmen may amend such alteration in accordance with the said amendment; provided, that, if the amendment involves a change in the route of the railway, public notice and a hearing shall be given as provided in the case of the original application for an alteration; and thereafter the department may, as a part of the original proceedings before it, certify that such alteration so amended is consistent with the public interest. An alteration, so certified, shall be a valid location, if, within sixty days after the issue of notice of said certification to the company, it files a written acceptance of such alteration, executed in accordance with its by-laws or a vote of its directors, with the board of aldermen or selectmen.

TEMPORARY LOCATIONS.

Temporary
locations.
1910, 518.

SECTION 72. The several boards, departments and commissions authorized by law to grant locations to companies may, to enable any such company to avoid interruption of its service, on petition of such company or of any interested party, grant temporary locations for the tracks of the company in any public place or way, or may approve temporary locations upon private land without notice and hearing. The body granting or approving such temporary locations may place a limit of time upon their use, and if unlimited as to time such use shall terminate after such reasonable time as, in the opinion of such body, will permit, without interruption, the restoration of service upon the locations of the company. The department may approve such temporary locations without notice and hearing.

Same in case of
the alteration,
etc., of bridges.
1908, 266,
§§ 1, 3

SECTION 73. If a bridge upon which a company is authorized to lay and use tracks is being or is to be altered, rebuilt, improved or repaired, the board of aldermen of a city or the selectmen of a town on petition of the president or a majority of the directors of such company may grant a temporary location for the extension of the tracks of such company in any public way in such city or town so as to provide such connection between the existing tracks of such company upon either side of such bridge as will prevent any interruption of proper transportation facilities by reason of such alteration, improvement, rebuilding or repair, and may prescribe how said tracks shall be laid and the kind of rails, poles, wires and other appliances to be used. Such location shall not be valid unless the board of aldermen or selectmen file with the clerk of the city or town concerned a certificate that the granting of the location is consistent with the public interest. In no case shall a location be valid unless, within thirty days after the filing of the said certificate or after the entering of a decree by the department, a majority of the directors of the company shall file with the body granting the location a written acceptance thereof.

Application to
department
1908, 266, § 2

SECTION 74. A company whose petition for such temporary location has been refused in whole or in part, or has been neither granted nor

3 refused, within fourteen days after the filing thereof, may apply to the
 4 department for such temporary location. If the department deems public
 5 necessity and convenience require such temporary location, it may enter
 6 a decree granting the same, and may prescribe the use of such appliances
 7 and impose such conditions and obligations as it deems proper.

1 SECTION 75. A company which is granted such temporary location
 2 for the extension of its tracks shall not maintain them nor operate cars
 3 over them beyond the period during which the operation of its cars over
 4 such bridge is interrupted by reason of such alteration, improvement, re-
 5 building or repair, and at the end of such period shall remove its tracks
 6 from the public ways upon and over which such temporary location has
 7 been granted.

Termination
 of temporary
 location
 1908, 266, § 4.

1 SECTION 76. If such bridge is altered, rebuilt, improved or repaired
 2 under sections fifty-nine to sixty-four, inclusive, of chapter one hundred
 3 and fifty-nine, the cost of construction of the tracks upon and over such
 4 temporary location shall be reckoned as a part of the charges and expenses
 5 of the alteration, improvement or repair of the crossing, to be apportioned
 6 by the special commission as provided thereunder.

Cost of tempo-
 rary tracks
 reckoned as
 part of ex-
 pense of alter-
 ation of grade
 crossing
 1908, 266, § 5.

REVOCATION OF LOCATION.

1 SECTION 77. The board of aldermen or selectmen, after the expiration
 2 of one year from the opening for use of a street railway in their city or
 3 town, and after public notice and a hearing as provided in section seven,
 4 if public necessity and convenience in the use of the public ways so re-
 5 quire, may, for good and sufficient reasons to be stated in the order there-
 6 for, revoke the location of a street railway in any public way therein; but
 7 unless, within thirty days after such order of revocation, the company
 8 consents thereto in writing, such order shall not be valid until approved
 9 by the department after public notice and a hearing. Upon the approval
 10 of such order of revocation, the company shall remove the railway in con-
 11 formity with such order and shall put the surface of said ways disturbed
 12 by such removal into as good condition as the adjacent surface of said
 13 ways. If the company fails to comply with such order after thirty days'
 14 notice of the approval thereof, the board of aldermen or selectmen may
 15 cause it to be executed and the work to be done at the expense of the
 16 company, and such expense shall be recovered in tort.

Revocation of
 location
 1864, 229, § 15.
 1871, 381,
 §§ 16, 17.
 P. S. 113, §§ 23,
 24.
 1898, 578, § 17.
 R. L. 112, § 32.
 1906, 463, 111,
 §§ 66, 158.
 111 Mass. 232.
 184 Mass. 566.
 191 Mass. 522.
 199 Mass. 394.
 235 Mass. 95.
 254 Mass. 42.
 245 U. S. 574.

WIDENING OF PUBLIC WAY.

1 SECTION 78. If application is made for a location in a public way
 2 where no street railway tracks are located, and such way is widened
 3 under chapter eighty or eighty-two by an order declaring the widening
 4 to be necessary for public convenience for the purpose of granting such
 5 location of street railway tracks therein, a proportionate share of the
 6 expense of such widening may be assessed upon a company accepting a
 7 location in the way so widened; but the amount of such assessment, in
 8 addition to the amounts assessed on real estate, shall not exceed one half
 9 of the total cost of such widening.

Public way
 widening.
 1898, 578, § 19.
 R. L. 112, § 33.
 1906, 463, 111,
 §§ 67, 158.
 253 Mass. 304.

1 SECTION 79. If a public way where the tracks of a company have
 2 been located for a period of five years is altered, or if the grade thereof is
 3 changed under chapter eighty or eighty-two, the company shall pay such

Alteration or
 change in grade
 of public way.
 1898, 578, § 20.
 R. L. 112, § 34.

1906, 463, III,
§§ 68, 158.
245 Mass. 103.
253 Mass. 304.

proportionate share of the expense thereof, including therein the necessary cost of changing its railway to conform to such alteration or change of grade, as may be assessed upon it, provided that, if betterments are assessed, no such assessment on the company shall exceed the aggregate amount of all the betterments assessed upon real estate, and that in no case shall such assessment exceed one quarter of the total cost of such alteration or change of grade.

Betterments.
1898, 578, § 21.
R. L. 112, § 35.
1906, 463, III,
§§ 69, 158.

SECTION 80. The provisions of chapter eighty relative to the assessment of betterments on real estate, so far as applicable, shall apply to assessments made under the two preceding sections.

253 Mass. 304.

STATE HIGHWAYS.

Location upon state highways.
1901, 414.
R. L. 112, § 38.
1906, 463, III,
§§ 70, 158.
1909, 417,
§§ 4, 6.
1931, 394,
§ 104.
213 Mass. 103.

SECTION 81. If the board of aldermen of a city or the selectmen of a town and a company having a location in a way which said board of aldermen or said selectmen or the county commissioners of the county where said city or town lies have in writing requested the commonwealth to take charge of, make application to the department of public works, and with the application submit satisfactory plans, profiles and cross sections of said way, said department shall indicate on such plans, profiles and cross sections a location and grade for the tracks of said company. If said department considers said way suitable for a state highway, and said department and the company by vote of its directors agree as to the proportionate part of the cost of construction which shall be paid by the commonwealth and by the company, said department may pay, out of the appropriations for the construction and repair of state highways, said proportionate part of the damages sustained by a person whose property may be injured by the construction of such state highway, and of the cost of grading it to the lines established by said department. A way graded under this section shall remain a town way or a highway, subject to all laws relative thereto, until said way is taken charge of as a state highway by the commonwealth.

Supervision by the department.
1898, 578, § 24.
R. L. 112, § 61.
1906, 463,
III, §§ 71, 158.
1925, 236.
1931, 394,
§ 105.

SECTION 82. If a public way in which a street railway location has been granted shall be thereafter laid out, taken charge of or constructed by or under the authority of said department of public works, it shall thereafter, relative to the location and maintenance of a street railway upon such state highway, have the authority conferred by sections seven, seventy, seventy-one, seventy-seven and eighty-nine upon boards of aldermen and selectmen, and shall exercise such authority in the same manner, and subject to the same rights and limitations, except that subject to the approval of the department of public utilities an order of said department of public works for the alteration of a location may be made without the written acceptance of alterations required by said section seventy-one. If the company fails to comply with such order so approved within the time specified therein, said department of public works may carry out the work at the expense of the company, and such expense shall be recovered in contract.

OPERATION.

Opening for use conditional upon certificate of department

SECTION 83. No street railway or portion or extension thereof shall be opened for public use until the department, after an examination,

3 certifies that all laws relative to its construction have been complied with,
 4 and that it appears to be in a safe condition for operation; but this sec-
 5 tion shall not compel the department to grant such certificate until the
 6 entire road included in the location of such railway, portion or extension
 7 has been completed.

1901, 368.
 R. L. 112, § 39.
 1906, 463, 111,
 §§ 73, 158.

1 SECTION 84. The board of aldermen or the selectmen may, subject
 2 to the approval, revision or alteration of the department, establish such
 3 regulations as to the rate of speed, the manner and extent of use of
 4 tracks, and the number and routes of cars which run over such tracks,
 5 within their city or town, as public interest and convenience require;
 6 and a street railway company whose servants or agents wilfully or negli-
 7 gently violate any such regulations shall forfeit not more than five
 8 hundred dollars.

Rules as to
 rate of speed,
 etc.
 1864, 229, § 16.
 1871, 381,
 §§ 18, 19.
 1874, 29, § 13.
 P. S. 113,
 §§ 27-29.
 R. L. 112,
 §§ 40, 42.
 1903, 143.

1905, 376.
 1906, 463, 111, §§ 74, 158.

190 Mass. 527
 222 Mass. 270.

1 SECTION 85. The department of public works, in respect to state
 2 highways, and the superintendent of streets of cities or officers exer-
 3 cising like authority therein and the selectmen in towns in respect to
 4 all other public ways, shall establish regulations for the clearance of
 5 snow from its tracks by any street railway company operating therein,
 6 and for the removal of such snow by said company from the public ways
 7 in which such tracks are located; provided, that no such company
 8 shall be compelled to remove from the public ways in which its tracks
 9 are located an amount of snow greater than it has cleared from between
 10 its rails and between its tracks and from a space eighteen inches wide on
 11 either side of its tracks.

Clearing snow
 from tracks
 1808, 578, § 12.
 R. L. 112, § 41.
 1906, 463, 111,
 §§ 75, 158.
 1923, 482, § 3.
 1931, 394,
 § 106.
 11 Allen, 287.

12 Annually on or before September first the said department of public
 13 works and the local authorities above named shall transmit to the
 14 president or other officer of each company operating its cars in the
 15 public ways subject to regulations established by said department of
 16 public works or local authorities, and to the department of public utili-
 17 ties, a copy of such regulations. Within fourteen days after the receipt
 18 by any company of such regulations, such company may, by its presi-
 19 dent or a majority of its board of directors, petition the department of
 20 public utilities for such amendments thereof as said president or said
 21 board of directors deem reasonable. The department of public utilities
 22 shall, after notice and hearing, within sixty days of the receipt of said
 23 petition, file with the said department of public works or the said local
 24 authorities and with the president of such company its findings upon
 25 said petition, including such amendments of said regulations, if any, as
 26 the department of public utilities deems reasonable, and thereafter
 27 such regulations as amended shall be and remain in force until Septem-
 28 ber first following and until other regulations are established as herein
 29 provided.

1 SECTION 86. If a company voluntarily discontinues the use of any
 2 part of its tracks for a period of six months, the public ways occupied
 3 thereby shall, upon order of the board of aldermen or the selectmen,
 4 forthwith, at the expense of the company, be cleared of said tracks, and
 5 be put into as good condition for public travel as they were in immedi-
 6 ately before being so occupied. If a company without right or lawful excuse
 7 discontinues the use of any track and when requested by the board of

Voluntary
 discontinu-
 ance of use of
 tracks.
 1864, 229, § 19.
 1871, 381, § 25.
 P. S. 113, § 25.
 R. L. 112, § 36.
 1906, 339, 463,
 111, §§ 76, 158.
 199 Mass. 394.

aldermen of the city or by the selectmen of the town where such track is located refuses to operate the same, the mayor of such city, if duly authorized by vote of the city council or the selectmen of such town if duly authorized by vote of the town, may petition the supreme judicial court to compel said company to resume the use of such track and to perform all its corporate duties relating thereto. Such petition shall set forth the facts upon which the petitioner relies and the relief sought, but shall not be defeated for informality, and may be amended at any stage; and said court shall have jurisdiction in equity to determine the cause and enforce its decrees and orders relative thereto. Upon the filing of any such petition said court shall order due notice to be served upon the company and shall advance the cause to speedy hearing and final decision. In case the track, the use of which has been discontinued, is located in two or more cities or towns, any or all of such cities or towns, acting by the officials above named and authorized as hereinbefore provided, may join in such petition. This section shall not be deemed a legislative construction of any existing law or an impairment of any existing right of a company to discontinue the use of tracks.

Temporary discontinuance of use of tracks.
1864, 229, § 20.
1871, 381, § 26.
P. S. 113, § 26.

SECTION 87. The aldermen or selectmen may order a company to discontinue temporarily the use of any tracks within the limits of their city or town, if they determine that public safety or convenience so requires.

R. L. 112, § 37.

1906, 463, III, §§ 77, 158.

Taking up, alteration or discontinuance of ways.
1864, 229, § 17.

SECTION 88. A city or a town which, for any lawful purpose, takes up, alters or discontinues public ways in which the tracks of a company are located, shall not be liable in damages therefor to said company.

1871, 381, § 20.
P. S. 113, § 31.

R. L. 112, § 43
1906, 463, III, §§ 78, 158.

Repair of ways and bridges
1864, 229, § 18.
1866, 286
1871, 381, § 21.
1881, 121.
P. S. 113, § 32.
1898, 578, § 11.
R. L. 112, § 44.
1906, 463, III, §§ 79, 158.
104 Mass. 18.
112 Mass. 55.
116 Mass. 420.
130 Mass. 492.
132 Mass. 178.
149 Mass. 335.
180 Mass. 104, 203.
181 Mass. 205, 587.
182 Mass. 41, 220.
184 Mass. 65, 294.
189 Mass. 254.
191 Mass. 295.
192 Mass. 106.
194 Mass. 80.
213 Mass. 103.
228 Mass. 357, 575.
231 Mass. 540.
249 Mass. 181.
272 Mass. 170.

SECTION 89. A company shall not be required to keep any portion of the surface material of public ways and bridges in repair, but it shall remain subject to all legal obligations imposed in original grants of locations, and may, as incident to its corporate franchise, and without being subject to the payment of any fee or to any other condition precedent, open any such way or bridge in which any part of its railway is located, in order to make repairs or renewals of the railway, or of any part thereof, and the superintendent of streets or other officer exercising like authority, or the board of aldermen or selectmen shall issue the necessary permits therefor in a city or town where such are required. If, during the original construction or subsequent alteration or extension or the making of any such repairs or renewals of any railway or a portion thereof, said surface material is disturbed, the company which owns or operates such railway shall, at its own cost, except as provided in sections seventy-one and eighty-two, replace to the reasonable satisfaction of the said superintendent, or other officer, said surface material with the same form of construction as that which was disturbed, or, by first obtaining the approval thereof by such officer, with a different material and form of construction, and shall restore said way or bridge to as good condition as existed at the time of such disturbance. Such company shall be liable for any loss or injury sustained by any person in the management and use of its tracks and during the construction, alteration, extension, repair or renewal of its railway, or while replacing the surface of any way dis-

24 turbed as aforesaid, and resulting from the carelessness, neglect or mis-
 25 conduct of its agents or servants who are engaged in the prosecution of
 26 such work, if notice of such loss or injury is given to the company and
 27 an action therefor is commenced in the manner provided by section
 28 eighteen of chapter eighty-four. This section shall not affect the obli-
 29 gations of any company in respect of the construction or maintenance of
 30 any bridge or part thereof which any private person or corporation may
 31 be liable, in whole or in part, to construct or maintain.

1 SECTION 90. If, upon the trial of an action against the common-
 2 wealth, a city, town, railroad corporation or bridge corporation, the
 3 plaintiff recovers damages for an injury to his person or property caused
 4 by reason of a defect in a public way or bridge occupied by the tracks
 5 of a company, and such company is liable for such damages under the
 6 preceding section, and has had reasonable notice to defend the action,
 7 the commonwealth, city, town, railroad corporation or bridge corpora-
 8 tion may recover the damages, and all the costs of both plaintiff and
 9 defendant in the action from said company.

Liability of
 company for
 defective ways
 and bridges.
 1866, 286
 1871, 381
 P. S. 113,
 §§ 32, 33
 R. L. 112, § 45.
 1904, 110
 1906, 463, 111,
 §§ 80, 158
 186 Mass. 274.
 197 Mass. 76

1 SECTION 91. Every company shall, in a manner satisfactory to the
 2 department, erect and maintain guards or railings upon every bridge,
 3 or draw of a bridge, crossed by its tracks, to prevent its cars from running
 4 off. If, for sixty days after service on it of an order of the department
 5 relative to such guards or railings, it fails to comply therewith, it shall,
 6 for each month of such failure subsequent to said sixty days, forfeit two
 7 hundred dollars, to the use of the city or town.

Guards upon
 bridges and
 draws.
 1869, 306.
 1871, 381,
 §§ 23, 24
 P. S. 113,
 §§ 34, 35.
 R. L. 112, § 46.
 1906, 463, 111.
 §§ 81, 158

1 SECTION 92. If a street railway crosses at the same level a steam
 2 railroad where locomotive engines are in daily use, every motorman of
 3 a car upon the street railway shall, when approaching the point of inter-
 4 section, stop his car within one hundred feet of the crossing; but the
 5 department may, for such term and under such restrictions as it may
 6 from time to time prescribe, modify or suspend the requirements of this
 7 section with respect to any such crossing by a street railway of a rail-
 8 road built for private use under section two hundred and forty-five of
 9 chapter one hundred and sixty, or of a branch, spur or siding of a rail-
 10 road built or used only for the transportation of freight to the premises
 11 of manufacturing or other industrial plants. For each violation of this
 12 section, the motorman shall forfeit ten dollars, and the company em-
 13 ploying him shall forfeit twenty dollars.

Cars to stop
 at railroad
 crossings.
 1859, 126, § 2.
 G. S. 63, § 142.
 1864, 229, § 36.
 1871, 381,
 §§ 47, 48.
 P. S. 113,
 §§ 41, 42.
 R. L. 112, § 62.
 1906, 463, 111,
 §§ 82, 158
 1911, 290.

1 SECTION 93. The board of aldermen or the selectmen may, subject
 2 to the approval of the department, establish such regulations, requiring
 3 the motorman or conductor to give notice or warning of the approach of
 4 street cars, as they deem will best secure the unobstructed use of the
 5 tracks and the free passage of the cars.

Notice of
 approach
 of cars.
 1864, 229, § 22
 1871, 381, § 28
 P. S. 113, § 36
 R. L. 112, § 47

1906, 463, 111, §§ 83, 158.

1 SECTION 94. Whoever wilfully obstructs a company in the legal use
 2 of a railway track, or delays the passing of its cars thereon, or aids or
 3 abets in such obstruction or delay, shall be punished by a fine of not
 4 more than five hundred dollars or by imprisonment for not more than
 5 three months. Whoever commits any of said acts in such manner as to
 6 endanger the life or safety of persons conveyed in or upon said cars, or

Obstruction
 of tracks.
 1864, 229, § 22
 1871, 381, § 29.
 P. S. 113, § 37.
 1901, 452
 R. L. 112, § 48
 1906, 463, 111,
 §§ 84, 158
 7 Allen, 573.

aids or abets therein, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than ten years.

Loitering within stations, etc. 1905, 134. 1906, 463, III, §§ 86, 158.

SECTION 95. Whoever without right loiters or remains within a station or waiting room of a company, or upon the platform, stairs, grounds or other property owned or controlled by a company, adjacent to such station or waiting room, after being requested to leave the same by a special or other police officer, shall forfeit not less than two nor more than twenty dollars.

Obstruction of ways by companies. 1864, 229, § 23. 1871, 381, § 30. P. S. 113, § 38. R. L. 112, § 49. 1906, 463, III, §§ 88, 158.

SECTION 96. If a company, its agents or servants, wilfully or negligently obstructs a public way or bridge, or hinders the passing of vehicles over the same, or wilfully detains the cars of another company having the lawful right to pass thereon, such company shall be punished by a fine of not more than five hundred dollars; and any such agent or servant shall be punished by a fine of not more than ten dollars or by imprisonment for not more than three months.

Sales by children upon cars. 1889, 229. R. L. 112, § 50. 1906, 463, III, §§ 89, 158.

SECTION 97. If a company, its agent or servant, allows a child under ten years to enter upon or into any of its cars for the purpose of selling newspapers or other articles therein or offering them for sale, it shall forfeit fifty dollars, to be recovered by any person by an action brought within three months after the offence has been committed.

Fenders, wheel guards, brakes, etc. 1890, 364. 1891, 366. 1895, 378, § 1. R. L. 112, § 52.

SECTION 98. A company shall equip its cars, when in use, with such headlights, fenders, wheel guards, brakes, and other safety devices, and shall provide such protection, human or otherwise, at its station platforms, as may be required from time to time by the department.

1903, 134. 1911, 345. 1922, 430. 1906, 463, III, §§ 90, 158. 1913, 357. 262 Mass. 86.

Emergency lifting jack. 1913, 598.

SECTION 99. All street railway cars operated in the commonwealth shall be equipped with an emergency lifting jack and with such other emergency tools as may be approved by the department. Any company, its officers or employees, operating a street railway car in the use of which this section is violated, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Heating of cars. 1895, 136. R. L. 112, § 53. 1906, 463, III, §§ 91, 158. 182 Mass. 598.

SECTION 100. The department shall require every street railway company to heat its cars, when in use for the transportation of passengers, at such times, by such means, and to such extent, as the department shall determine, and the company shall forfeit twenty-five dollars for each trip run by any of its cars not so heated, except in case of accident to the heating process or apparatus, or other unavoidable cause. The state police shall cause this section to be enforced.

Enclosed platforms. 1897, 452, §§ 1, 2. 1900, 414, §§ 1, 3. R. L. 112, §§ 56, 58. 1906, 463, III, §§ 92, 158.

SECTION 101. Every street car in use for the transportation of passengers in December, January, February and March, which, while in motion, requires the constant care or service of an employee upon its platforms or upon one of them, shall have said platforms enclosed in such manner as to protect the motormen, conductors or other employees operating such car from exposure to wind and weather in such manner as the department shall approve.

1 SECTION 102. A company failing to comply with the preceding section
 2 shall be punished by a fine of not more than one hundred dollars for each
 3 day during which such failure continues.

R. L. 112, § 59.

1906, 463, 111, §§ 94, 158.

Penalty
 1897, 452, § 1.
 1900, 411, § 4.

1 SECTION 103. A day's work for all conductors, guards, drivers, motor-
 2 men, brakemen, dispatchers and gatemen employed by or on behalf of
 3 a street railway or elevated railway company shall not exceed nine hours,
 4 and shall be so arranged by the employer that it shall be performed
 5 within eleven consecutive hours. No officer or agent of any such com-
 6 pany shall require from said employēes more than nine hours' work for
 7 a day's labor. Threat of loss of employment or threat to obstruct or
 8 prevent the obtaining of employment by the employees, or threat to
 9 refrain from employing any employee in the future shall be considered
 10 "requiring", within the meaning of this section. But this section shall
 11 not prevent an employee of the character mentioned herein, if he so
 12 desires, from working more hours than those prescribed herein for extra
 13 compensation. A company violating any provision of this section shall
 14 forfeit not less than one hundred nor more than five hundred dollars.

Day's work
 of employes.
 1893, 386.
 1894, 508, § 9.
 R. L. 106, § 22.
 1900, 463, 111,
 § 95, 158.
 1909, 514, § 46.
 1912, 533.
 1913, 833.
 1913, 277.

FARES AND ACCOMMODATIONS.

1 SECTION 104. Every company shall furnish reasonable accommoda-
 2 tions for the conveyance of passengers, and for every wilful neglect to
 3 provide such accommodations shall forfeit not less than five nor more
 4 than twenty dollars; and may establish the rates of fare for all passen-
 5 gers and property conveyed or transported in its cars, subject to the
 6 limitations of its charter or other provisions of law.

1906, 463, 111, §§ 96, 158.

233 Mass. 347.

Reasonable
 accommoda-
 tions.
 1864, 229, § 26.
 1865, 261
 1871, 381, § 33.
 P. S. 113, § 43.
 R. L. 112, § 69.

1 SECTION 105. If the department deems additional accommodations
 2 including waiting rooms, stations, water closets and other sanitary con-
 3 veniences for the traveling public are required upon any street railway,
 4 it may, after due notice to the company and a hearing, make an order
 5 for such additional accommodations, and may alter, renew or revoke the
 6 order. A company which, for more than one week after receiving writ-
 7 ten notice of such order, fails to comply therewith, shall forfeit to the
 8 use of the city or town where such additional accommodations are to be
 9 used, or if they are to be used in more than one city or town, to the use
 10 equally of such cities or towns, one hundred dollars for each day there-
 11 after during which such failure continues.

Additional
 accommoda-
 tions.
 1891, 216.
 R. L. 112, § 70.
 1906, 463, 111,
 § 97, 158.
 1911, 462.
 199 Mass. 394.

1 SECTION 106. No company shall by rule or otherwise require passen-
 2 gers whom it permits to ride upon the platform to do so at their own risk,
 3 and no such passenger shall be prevented from recovering compensation
 4 in damages for any injury by reason of the fact that he is so riding.

1910, 453.
 183 Mass. 96.

191 Mass. 509.
 201 Mass. 114.

202 Mass. 450.

Companies
 shall not re-
 quire passen-
 gers riding on
 platform to
 do so at their
 own risk.

1 SECTION 107. A company may provide cars for special service, and
 2 may make special rates therefor; and may make special rates for working
 3 men and working women on week days between the hours of five and
 4 seven in the morning and five and seven in the evening, and for children
 5 attending school.

Special service
 cars, free
 passes, etc.
 1898, 478, § 18.
 R. L. 112, § 71.
 1906, 463, 111,
 §§ 98, 158.

A company shall not give free tickets or passes to any state, county, city or town official, or to any person in the employ of the commonwealth or of any county, city or town, except policemen, firemen and letter carriers in uniform; but it may give them to a director of the company or to any person who is connected with it in any executive capacity. A company which violates any of the provisions of this section shall forfeit not less than one hundred nor more than five hundred dollars.

Special rates for school pupils
 1900, 197.
 R. L. 112, § 72.
 1906, 463, 111, §§ 99, 158; 479
 1908, 530.
 1910, 567.
 1927, 9, § 1.
 1928, 222.
 185 Mass. 183.
 187 Mass. 436.
 196 Mass. 309.
 199 Mass. 279.
 212 Mass. 82

SECTION 108. The rates of fare charged by street or elevated railway companies for the transportation of pupils of the public day schools or public evening schools, of vocational schools subject to chapter seventy-four, or of private schools, between a given point from or to which it is necessary for them to ride in traveling to or from the schoolhouses in which they attend school and their homes, whether such schoolhouses are located in the city or town where the pupils reside or in another city or town, shall not exceed one half the regular fare charged by such street or elevated railway company for the transportation of other passengers between said points, and tickets for the transportation of pupils as aforesaid, good during the days or evenings on which said schools are in session, shall be sold by said companies in lots of ten each. Upon application of any company alleging abuses in the use of such tickets, the department may impose terms and regulations, not inconsistent herewith, relative to the sale and use of such tickets, and the furnishing of tickets by such company in accordance with the terms and regulations imposed shall be a compliance with the provisions of this section. A railway company violating any provision of this section shall forfeit twenty-five dollars.

Regulation of fares
 1864, 229, § 26.
 1871, 381, § 34.
 P. S. 113, § 44

SECTION 109. All laws relative to changes and regulation of fares upon railroads shall apply to changes and regulation of fares upon street railways.

1898, 578, § 23	1906, 463, 111, §§ 100, 158
1901, 180.	185 Mass. 183
R. L. 112, § 73	199 Mass. 279

Withdrawal of free checks and free transfers.
 1894, 383
 R. L. 112, § 74
 1906, 463, 111, §§ 101, 158.

SECTION 110. A company shall not withdraw or discontinue the use of any free checks or free transfers from one car or line of cars to another without the approval of the department, but may regulate the use thereof to conform to rates of fare established under authority of section one hundred and four.

Public notice of change of service
 1916, 259.

SECTION 111. All companies shall furnish the public with full information, by notice posted for seven consecutive days prior to the date when the same are to take effect in the cars on the lines affected, of any intended change in the running of cars, or the discontinuance of any line, or any change in the general public service of said companies.

The department shall give notice to all such companies of the foregoing provisions.

Notice to cities and towns of proposed changes in street railway rates.
 1918, 144
 232 Mass. 309.

SECTION 112. The department shall forthwith, upon the filing of a petition or schedule for any change in the tariff or rates of any company, give written notice of the proposed change to the mayor or selectmen of all cities and towns where the street railway is operated, or which, in the opinion of the department, would be affected by the proposed change.

1 SECTION 113. Every company shall cause to be printed on the trans-
 2 fer tickets issued by it to passengers the conditions under which such
 3 tickets may be used. Whoever uses a transfer ticket in violation of any
 4 such condition, or whoever uses or attempts to use a transfer ticket not
 5 issued to him, or whoever for value disposes of or attempts to dispose of
 6 to any other person a transfer ticket issued to him, or whoever for value
 7 delivers or attempts to deliver a transfer ticket not issued to him to any
 8 person, shall be punished by a fine of not more than fifty dollars or by
 9 imprisonment for not more than one month.

Penalty for
 misuse of
 transfer
 checks.
 1904, 267
 1906, 463, 411,
 §§ 102, 158

1 SECTION 114. All companies may transport milk and cream over
 2 and upon their respective lines of railway and from and to any point
 3 thereon, subject only to the supervision of and to such regulations as
 4 may be imposed by the department.

Transportation
 of milk
 and cream.
 1908, 275

SERVICE AT COST.

1 SECTION 115. Any company, except the Boston Elevated Railway
 2 Company and the Eastern Massachusetts Street Railway Company, and
 3 the successors of either of the said companies, which accepts sections
 4 one hundred and fifteen to one hundred and twenty-eight, inclusive, as
 5 provided in section one hundred and twenty-six, or has accepted cor-
 6 responding provisions of earlier laws, shall thereafter furnish service to
 7 the public at cost, and shall be subject to said sections, inclusive, with
 8 reference to the matters specified therein, but in all other respects shall
 9 be subject to the general laws relating to street railway companies. The
 10 words "the company" as used in said sections, inclusive, shall mean
 11 any street railway company which has accepted said sections or corre-
 12 sponding provisions of earlier laws.

Companies
 may provide
 service at
 cost.
 1918, 280, § 1.

1 SECTION 116. The cost of the service shall include operating expenses,
 2 taxes, rentals, interest on all indebtedness as hereinafter defined, divi-
 3 dends on preferred stock, an interest return at the rate of six per cent
 4 per annum upon the stock investment as determined by the department
 5 under this section and such allowances for depreciation, obsolescence, and
 6 losses in respect to property sold, destroyed or abandoned as may be
 7 fixed from time to time in the case of each company by the department,
 8 and all other expenditures and charges which, under the classification of
 9 accounts of the interstate commerce commission and under the laws of the
 10 commonwealth, are properly chargeable against income or surplus. The
 11 words "stock investment" as used in said sections shall mean the capital
 12 investment, as hereinafter defined, less the amount paid in for outstand-
 13 ing preferred stock, bonds and other evidences of funded indebtedness.
 14 The words "capital investment" as used in said sections shall mean the
 15 amount of cash or fair value of the property paid in for stock, bonds and
 16 other evidences of funded indebtedness and properly expended for cap-
 17 ital purposes, such amount to be determined by the department; pro-
 18 vided, that if it has approved the issue of any such securities, no further
 19 determination in regard to the capital investment represented by such
 20 securities shall be necessary.

What included
 in cost of
 service.
 Definitions
 1918, 280, § 2.

1 SECTION 117. No company may accept sections one hundred and
 2 fifteen to one hundred and twenty-eight, inclusive, until it has provided
 3 a reserve fund of not less than six, nor more than twelve per cent, of the

Reserve fund.
 1918, 280, § 3.

gross earnings of the preceding year, except as otherwise provided in this section. Such reserve fund may be provided by the issue of either bonds or stock or preferred stock issued under the laws regulating such issues. The reserve fund shall at all times be kept separate and distinct and shall be used only for the purpose of making up a deficiency of income where the income of the company is insufficient to pay the cost of service as provided in the preceding section. Until so used, the reserve fund may be invested in bonds of the United States, or of this commonwealth or any city or town thereof. The reserve fund shall be fully subscribed for upon acceptance of said sections by the company, but shall be paid in, over a period not exceeding two years, at such times and in such amounts as shall be directed by the department. Any company may furnish a larger reserve fund or increase it with the approval of the department. The reserve fund as originally provided for or as later increased shall be considered the normal reserve fund.

Unfunded debt.
Interest
charges.
1918, 280, § 4.

SECTION 118. Any company desiring to accept said sections shall, at the time of its application to the department to determine the amount of its stock investment, apply to it to determine the status of its then unfunded debt. The department shall thereupon disallow any amount thereof which it deems was improperly incurred. Interest charges upon the debt so disallowed shall be borne by the company and charged to the amount which would otherwise be available as a return upon the stock investment. Interest charges upon the residue of the unfunded debt shall be included in the cost of service. Interest charges upon the unfunded debt incurred by the company after its acceptance of said sections shall be included in the cost of service unless the department determines any portion of such debt to be unreasonable or improper. Interest charges upon any portion disallowed shall thereafter be deducted from the return upon the stock investment.

Use of
reserve fund.
1918, 280, § 5.

SECTION 119. Whenever the income of the company is insufficient to meet the cost of service as defined in section one hundred and sixteen, the reserve fund shall be used, so far as necessary, to make up the deficiency, but when the income exceeds the cost of the service, the excess shall be transferred to and become a part of the reserve fund.

Schedules of
grades of fare.
Approval and
modification
1918, 280, § 6.

SECTION 120. A company accepting said sections shall file with its acceptance a schedule of nine different grades of fare and of transfer privileges. One such grade it shall designate as the initial grade which it desires to establish and which will, in its opinion, enable it to earn income sufficient to meet the cost of service. Four of the other grades shall provide for progressive increases and four for progressive decreases in revenue, and each interval of increase or decrease shall be calculated to increase or decrease the reserve fund by thirty per cent of the normal reserve fund. Within thirty days thereafter, after notice and a public hearing, the department shall either approve the schedule so filed or shall establish a schedule similarly designed in place thereof; provided, that if, during any period of sixty days, more than one company shall file its acceptance of said sections and a schedule of proposed grades of fare, the department shall not be required to approve or establish the grades of fare for any such company until thirty days after it has passed upon all schedules previously filed in accordance with this section. Whenever, by reason of any change in the existing rate of fare, there are less

18 than four grades either above or below the rate of fare then in force, the
 19 company shall forthwith file with the department a schedule of additional
 20 grades of fare, so that there will always be both above and below the
 21 existing rate of fare not less than four grades of fare, and the department
 22 shall thereupon, within sixty days thereafter, either approve the schedule
 23 so filed or itself establish in lieu thereof the necessary additional grades of
 24 fare.

25 If at any time it shall appear to be in the interest of the public or of
 26 the company that the said schedule should be changed either with regard
 27 to the method or basis upon which the fares and transfer privileges are
 28 established, or because the steps between the different grades are too
 29 small or too great, or for any other reason, the company, with the ap-
 30 proval of the department, may change the said schedule.

31 Except as above provided, the department may modify such schedule
 32 only after it has been in effect for a period of one year; provided, that
 33 no modification of the schedule which diminishes the rate of return on the
 34 stock investment shall be continued in effect for a period exceeding four
 35 months.

1 SECTION 121. If, as of the last day of any March, June, September
 2 or December, the reserve fund shall exceed by thirty per cent or more the
 3 normal reserve fund, and during the three preceding months the income
 4 shall have exceeded the cost of the service, the company shall, within
 5 thirty days thereafter, put into effect the next lower grade of fare adopted
 6 as aforesaid; and if, as of the last day of any March, June, September or
 7 December, the reserve fund shall be less than seventy per cent of the
 8 normal reserve fund, and during the three preceding months the income
 9 has been less than the cost of service, the company shall, within thirty
 10 days thereafter, put into effect the next higher grade of fare, and the fare
 11 shall continue to be decreased or to be increased, if the amount of the
 12 reserve fund is above or below said limits, as of such quarterly dates.
 13 The company, with the consent of the department, may put into effect
 14 the next higher or lower grade of fare at any time when the reserve fund
 15 is below or above the normal amount.

Changes in
grades of fare.
1918, 280, § 7.

1 SECTION 122. The company shall provide an improvement fund of
 2 an amount required by the department but not exceeding five per cent
 3 of the capital investment. Such fund may be raised by the issue of
 4 bonds or stock or preferred stock. It shall be fully subscribed within
 5 sixty days after determination of the capital investment of the company,
 6 and shall be paid in from time to time, as required, by a plan of gradual
 7 improvement to be approved by the department.

Improvement
fund.
1918, 280, § 8.

1 SECTION 123. Any company accepting said sections shall be bound
 2 thereby to sell its entire property and franchises as a going concern to
 3 the commonwealth or to any city or town at any time for an amount
 4 in cash equal to the stock investment, and the amount of cash paid in
 5 for preferred stock, and the purchaser shall in addition assume all out-
 6 standing bonds, contracts, leases and other liabilities of the company.
 7 Said sections shall not affect the right of the commonwealth or of any
 8 city or town to acquire at any time, by eminent domain under chapter
 9 seventy-nine, the property and franchises of any company accepting
 10 said sections.

Obligation
of company
to sell to state
or municip-
ality.
1918, 280, § 9.

Appointment
of directors
by governor.
1918, 280, § 10.

SECTION 124. The governor, with the advice and consent of the council, shall appoint for terms of three years each three persons to be members of the board of directors of any company which accepts said sections, of whom at least two shall be residents of a city or town served by the company, and none shall be an owner of its stocks or bonds. They shall have and exercise all the power and privileges of the other directors of the company, and shall receive such fees as are paid to the other directors. The by-laws of the company shall be modified so as to permit of the appointment of such persons as directors, and shall also provide for monthly meetings of the board. If any such board shall have an executive committee or a finance committee, or any other standing committee, at least one of the persons appointed by the governor shall be a member of every such committee.

Reports by
companies.
Supervision
and investiga-
tion by de-
partment.
1918, 280, § 11.

SECTION 125. In order that the department may at all times be in a position to take such action as the public interest requires, the companies shall furnish it each month with such statements as it requires, showing the condition of the reserve fund, the income and expenditures of the previous month and such other information as the department may desire. The commonwealth shall be divided by the department into street railway districts, and for each district within which one or more companies has accepted said sections the department shall appoint one or more resident supervisors for terms of three years, their salaries and expense allowance to be fixed by the department and paid by the company as an operating expense, or, if their duties extend to more than one company, their salaries and expenses shall be apportioned among the several companies in respect to which they act, in such manner as the department may determine. Said supervisors shall keep in constant touch with the operation of the companies and inform the department of all complaints and criticism of the service rendered.

If the department deems any special investigation of any company necessary it may order the same at the expense of the company.

The department may require such changes in the management and operation of any company which has accepted said sections as it deems necessary for the efficient conduct of the business of the company in the public interest.

Any foreign company furnishing electric light or power to any street railway company operating under said sections shall file annually with the department a schedule of all rates charged to all its customers for power where the electricity is furnished by a central plant to others than the said railway company and with such other information in such form as the department requires. The department may prohibit the transmission of electricity for either light or power unless such information is filed as requested and the prices charged therefor are determined by it to be fair and reasonable.

Acceptance
of §§ 115-128
by companies.
1918, 280, § 12.

SECTION 126. Any company desiring to accept said sections shall apply to the department to determine the amount of its capital investment and of its stock investment, and upon such determination the company may accept said sections by filing with the department its election so to do, authorized by a vote of not less than a majority of its capital stock, and evidence satisfactory to the department that it has provided or will provide the reserve and improvement funds mentioned in sections one hundred and seventeen and one hundred and twenty-two.

9 The department may permit any company desiring to operate under
 10 said sections to begin operations before the determination of its capital
 11 investment and of its stock investment; provided, that the company
 12 has met all the other requirements of said sections, but no dividends shall
 13 be disbursed to the holders of any common stock until after said deter-
 14 mination has been made.

1 SECTION 127. The department may order any company accepting
 2 said sections to dispose of any property no longer of service to the com-
 3 pany. Any loss thereby incurred it may, with the approval of the de-
 4 partment, distribute over such period, not exceeding ten years, as the
 5 department shall designate, instead of charging the entire amount of
 6 such loss against its earnings or surplus for the year in which such loss
 7 may accrue.

Disposing
 of public
 property.
 1917, Sp. 373,
 24
 1918, 289, § 13.

1 SECTION 128. If a majority of the state directors of a company believe
 2 that a particular order or decision of the department would impair the
 3 ability of the company to pay the six per cent interest return on the
 4 stock investment as provided in section one hundred and sixteen, they
 5 shall so advise the department in writing, and if, after reconsideration,
 6 the department insists upon the order or decision the company may apply
 7 by petition to the supreme judicial court for a reversal or modification
 8 thereof. The court may appoint three commissioners to determine the
 9 facts and questions at issue, and their report, if confirmed by the court,
 10 shall be final.

Revising
 orders of
 department.
 1918, 289, § 14

RAILROAD CROSSINGS.

1 SECTION 129. For the purpose of avoiding or abolishing a crossing of
 2 a railroad by the tracks of a street railway company at grade, the com-
 3 pany may purchase or take by eminent domain under chapter seventy-
 4 nine land necessary therefor, not exceeding fifty feet in width, outside
 5 the limits of a public way; but no land shall be so taken which cannot
 6 lawfully be taken for the laying out of a railroad, nor shall it be so taken
 7 until a plan on an appropriate scale, showing by metes and bounds the
 8 land, and the names of the owners thereof, has, after notice to such
 9 owners, and after such public notice and hearing as is required by section
 10 seven, been approved in writing by the board of aldermen of the city or
 11 the selectmen of the town where such land is situated; nor shall the land
 12 of a railroad corporation or of another street railway company be so
 13 taken without its consent, except with the approval of the department
 14 after notice and a hearing.

Abolition
 of grade
 crossings.
 1898, 404, § 1.
 R. L. 112, § 65.
 1906, 463, 111,
 §§ 113, 158.
 187 Mass. 445.

1 SECTION 130. A company, which has acquired land for such purpose,
 2 may construct its railway over or under a railroad, in the manner agreed
 3 upon by the companies, or, if they do not agree, in the manner prescribed
 4 by the department; but no overhead structure shall be built at a height
 5 of less than eighteen feet above the railroad track without the written
 6 consent of the department.

Construction
 of tracks
 outside
 public ways.
 1898, 404, § 3.
 R. L. 112, § 67.
 1906, 463, 111,
 §§ 115, 158

1 SECTION 131. The board of aldermen of a city or the selectmen of a
 2 town, if a public way, and the department of public works, if a state
 3 highway, may authorize structures or alterations within, or partly within,

Structures
 within limits
 of public ways
 or state
 highways.

1898, 404, § 4. the limits thereof, which are necessary for carrying a street railway over 4
 R. L. 112, § 68. or under a railroad, if such way is not thereby made unsafe for other 5
 1906, 463, III, §§ 116, 158. public travel. 6
 1931, 394, § 107.

187 Mass. 445.

CHANGE OF NAME.

Change of SECTION 132. Upon the application of any company, authorized by 1
 name. a vote of two thirds of the shares present and voting at a meeting called 2
 1891, 360, therefor, the department may, after public notice and a hearing, author- 3
 §§ 1, 2. ize such company to change its name. 4
 1892, 198.
 R. L. 109, § 9.
 1906, 463, III,
 §§ 122, 158.

Certificate of SECTION 133. A certified copy of such authorization and a certificate 1
 change to of the vote of the company, signed and sworn to by the president, treas- 2
 be filed with urer and a majority of the directors, shall be filed in the office of the 3
 state secretary. The department shall require public notice to be given 4
 1891, 360, § 3. of the change so authorized; and upon receipt of proof thereof the state 5
 R. L. 109, § 10. secretary shall grant a certificate of the name which the company shall 6
 1906, 463, III, bear, which, subject to the restrictions of section four, shall thereafter 7
 §§ 123, 158. be its legal name. 8

Rights and SECTION 134. A company shall have the same rights, powers and 1
 liabilities under new name privileges, and be subject to the same duties, obligations and liabilities, 2
 under its new name as before its name was changed, and may sue and be 3
 1891, 360, § 4. sued by its new name; but any action brought against it under its former 4
 R. L. 109, § 11. name shall not be defeated on that account, and, on motion of either 5
 1906, 463, III, party, the new name may be substituted therefor. 6
 §§ 124, 158.

SALE BY RECEIVERS.

Sale of rail- SECTION 135. A receiver of the property of a company may, by order 1
 way by of the court, sell and transfer the railway and property of such company, 2
 receivers. its locations and franchises, on such terms and in such manner as the 3
 1900, 381, court orders. The purchasers from such receiver, and a company organ- 4
 §§ 1, 2, 6. ized under the following section, if such railway has been transferred 5
 R. L. 112, § 12. to it, shall hold and possess said railway, all its rights and franchises 6
 1906, 463, III, and all property acquired in connection therewith, with the same rights 7
 §§ 144, 158. and privileges and subject to the same duties and liabilities as the original 8
 191 Mass. 522. company; but no action shall be brought against such purchasers or 9
 222 Mass. 35. such new company, to enforce any liability incurred by said original 10
 company, except debts and liabilities owing from said original company 11
 to any city or town where the railway is operated and taxes and assess- 12
 ments for which said original company is liable under the laws relating 13
 to street railways, which shall be assumed and paid by said new company. 14
 This section shall not impair the powers of the holders of an outstanding 15
 mortgage to enforce their rights by suit or otherwise. 16

Agreement of SECTION 136. The purchasers at such sale shall, with their associates, 1
 association of to the number of at least fifteen, within sixty days after such sale, organ- 2
 new company. ize a company for the purpose of holding, owning and operating the 3
 1874, 29, § 3. street railway purchased, by filing in the office of the state secretary a 4
 P. S. 113, § 4. written agreement of association, which shall state: 5
 1900, 381, (a) That the subscribers thereto associate themselves with the inten- 6
 §§ 3, 4. tion of forming a street railway company. 7
 R. L. 112, §§ 4, 13, 14.
 1906, 463, III,
 §§ 4, 145, 158.
 1923, 491, § 2.
 184 Mass. 310.

8 (b) The corporate name assumed, which shall be one not in use by 191 Mass. 522
 9 any other street railway company in the commonwealth, or, in the 218 Mass. 367,
 10 judgment of the department, so similar thereto as to be likely to be mis- 222 Mass. 35.
 11 taken for it, and which shall contain the words, "street railway com-
 12 pany", at the end thereof.

13 (c) The corporate name of the company whose property and fran-
 14 chises have been purchased.

15 (d) The termini of the railway.

16 (e) The length of the railway, as nearly as may be.

17 (f) The name of each city and town where the railway is located.

18 (g) The name of the court by which the sale was ordered, the date of
 19 such order, and date of sale.

20 (h) The total amount of the capital stock of the company, which shall
 21 be fixed at an amount approved by the department, but which shall not
 22 exceed the fair cost, as determined by the department, of replacing the
 23 railway and property so acquired, less the amount of any outstanding
 24 mortgages to which said railway and property may be subject in the
 25 hands of the new company.

26 (i) The par value of the shares, which may be one hundred dollars,
 27 fifty dollars or twenty-five dollars as the department shall authorize.

28 (j) The names and residences of at least five persons, who shall be
 29 subscribers to the agreement of association, to act as directors until
 30 others are chosen and qualified in their stead.

31 Each associate shall subscribe to the agreement of association his
 32 name, residence, post office address, and the number of shares of stock
 33 which he agrees to take.

1 SECTION 137. The state secretary shall receive the agreement of as- Organization.
 2 sociation, and preserve it in form convenient for reference and open to 1900, 381.
 3 public inspection, and shall issue a certificate of incorporation in the form §§ 3, 5.
 4 authorized by section nine. Thereupon, the company shall organize in R. L. 112,
 5 the manner provided in this chapter for the organization of a company. §§ 13, 14.
 6 Such company may begin business as soon as it is organized, and shall 1906, 463, 111,
 7 have all the rights and be subject to all the duties of a street railway §§ 146, 158.
 8 company, except as otherwise provided in this and the preceding section. 218 Mass. 367.
 9 If said purchasers fail to organize a company as hereinbefore provided,
 10 all rights and powers to operate said railway shall thereupon cease.

BOOKS, RETURNS AND REPORTS.

1 SECTION 138. The directors of every street railway company shall Returns
 2 annually within the time prescribed by section thirty-two of chapter 1857, 40,
 3 one hundred and fifty-nine transmit to the department a return of the §§ 5, 6; 240.
 4 company for the year ending on December thirty-first preceding which §§ 1, 3.
 5 shall be sworn to by the treasurer and the chief accounting officer of the G. S. 63,
 6 company. Such return shall set forth copies of all leases and contracts §§ 143, 144.
 7 made during the year with other street railway companies, and shall 1864, 229,
 8 contain full and complete information upon the several items contained §§ 40, 41,
 9 in the form prescribed by the department. A company owning a leased 1870, 307,
 10 railway shall be responsible for the completeness and correctness of its §§ 1, 3, 4; 383.
 11 annual return to the same extent as if the railway were in its own 1871, 381,
 12 session. A company which fails to make a return, or to amend it when §§ 52, 53, 56,
 13 notified so to do, shall forfeit twenty-five dollars for each day during 1876, 173
 14 which such failure continues. P. S. 113, § 58,
 R. L. 112, § 93,
 1906, 463, 111,
 §§ 151, 158,
 1917, 122, § 4

Tables and abstracts of returns. 1871, 381, § 55. P. S. 113, § 60.

SECTION 139. The department shall prepare tables and abstracts of the returns of the several companies, and may include in its annual report such of them as it deems expedient.

R. L. 112, § 96. 1906, 463, III, §§ 153, 158.

Lessee of street railway to make same report to lessor. 1864, 229, § 21. 1871, 381, § 32. P. S. 113, § 61.

SECTION 140. The lessee of a street railway shall make to the company which owns it the same annual return on oath of the operations and business of the railway as is required of the company which owns it; and, for failure so to do, shall be liable in tort to said company for all the penalties prescribed by law for failure by it to make its annual return.

R. L. 112, § 97. 1906, 463, III, §§ 154, 158.

Records of proceedings before departments, etc. 1898, 578, § 25. R. L. 112, §§ 98, 1906, 463, III, §§ 155, 158.

SECTION 141. Every state department and commission shall keep a record of its proceedings in any matter considered by it under any laws affecting street railways in which it shall enter every request, made by any party before it, for a ruling of law and of its action upon such request, and the neglect either to grant or refuse such request shall, subject to section five of chapter twenty-five, be taken in any judicial review of such proceedings as a refusal.

ADDITIONAL REMEDY.

Enforcement of laws. 1861, 199, 1. 1864, 229, 13. 1866, 294, 1. 1871, 381, § 57. P. S. 113, §§ 63, 63. 1891, 293. 1898, 578, § 25. R. L. 112, § 100. 1906, 463, III, §§ 157, 158. 1911, 487. 161 Mass. 416. 175 Mass. 518.

SECTION 142. The supreme judicial or superior court shall have jurisdiction in equity, on petition of a company, or of the board of aldermen of a city or the selectmen of a town where the street railway is located, or of any interested party, to compel the observance and to restrain the violation of all laws which govern street railway companies, and of all orders, rules and regulations made in accordance with this chapter by the board of aldermen, selectmen or the department, and to review, annul, modify or amend the rulings of any state department or commission relative to street railways as law and justice may require.

179 Mass. 149. 205 Mass. 94. 231 Mass. 540. 184 Mass. 294, 310. 209 Mass. 213. 254 Mass. 42. 192 Mass. 90, 106. 229 Mass. 399.

TRANSPORTATION AREAS.

Establishment of transportation area. 1920, 599, § 1.

SECTION 143. A city or town may establish, or two or more cities or two or more towns, or two or more cities and towns, may unite for the purpose of establishing, transportation areas for the operation of freight or passenger service, or both, on street railways existing therein. Upon the approval of such an agreement by the department and by the voters, as provided in section one hundred and forty-five, such a transportation area shall be a body corporate or politic, and may become vested with all the rights and powers and shall be subject to all the duties and obligations hereinafter conferred or imposed. All the laws and penalties relating to privately operated street railways within the commonwealth, and such rules and regulations as may from time to time be prescribed by the department shall apply to such an area. The area shall be given a distinctive name by the trustees, hereinafter provided for, which shall include the words "Transportation Area".

Preliminary agreement 1920, 599, § 2.

SECTION 144. A city, by vote of its city council, subject to the provisions of its charter, or a town by vote of its board of selectmen, may make preliminary agreements with one or more companies operating within its territory for the lease or purchase and operation of the prop-

5 erties of said company. For the purposes of this section, a company
6 shall act by a majority of its board of directors.

1 SECTION 145. Upon the acceptance of such a preliminary agreement
2 by a majority in interest of all classes of stock in such a company entitled
3 to vote, and approval by the department after a public hearing of which
4 due notice shall be given, the agreement shall thereupon be binding
5 upon the company, subject to acceptance by the voters as hereinafter
6 provided. The department shall make an appraisal of the property to
7 which the agreement relates, and shall determine the value thereof and
8 the price or rental to be paid therefor by the transportation area. The
9 appraisal shall be on the basis of the actual value at the time of appraisal
10 and not of the cost of replacement. Thereupon the said agreement and
11 appraisal shall be advertised in a newspaper published in every city
12 and town within said area, or in the county as the department may
13 determine, and shall, within sixty days, be submitted to the voters in
14 every such city at a regular or special municipal election, and in every
15 such town at a town meeting called for the purpose, in the form of the
16 following question to be placed upon the official ballot: "Shall the
17 agreement with the _____ company, providing for the operation
18 of its property by a transportation area under sections one hundred
19 and forty-three to one hundred and fifty-eight, inclusive, of chapter one
20 hundred and sixty-one of the General Laws to which the city of
21 _____ (or town of _____) shall be a party, be accepted?"
22 If approved by a majority of the voters voting thereon by ballot in every
23 such city and town, except such as may have been excluded by the depart-
24 ment, acting under section one hundred and fifty-four, the said agreement
25 shall thereupon be binding, but not otherwise, and the mayor and city
26 council and the selectmen shall have authority to execute such further
27 agreements, contracts or leases as may be necessary to effect the purposes
28 and terms of the preliminary agreement.

Acceptance by
voters.
1920, 599, § 3.
1931, 426,
§ 275.

1 SECTION 146. The management and control of a transportation area
2 shall be vested in a board of trustees of whom two shall be chosen by the
3 mayor of each city concerned, with the approval of the city council, and
4 two by the selectmen of each town concerned. The initial appointees
5 shall serve for terms of one and two years, respectively, and their suc-
6 cessors for terms of two years. If a transportation area is established
7 by a single city, or town, its board of trustees shall consist of five members,
8 of whom the initial appointees shall serve for one, two, three, four and
9 five years, respectively, and their several successors for five years each.
10 Each trustee shall be sworn to the faithful performance of his duty, and
11 a certificate thereof shall be recorded in the records of the secretary of
12 the area, and shall serve until his successor is qualified. A trustee may
13 be removed for cause by the appointing authority, and any vacancy shall
14 be filled in the same manner as an original appointment. The trustees
15 shall not be deemed public officers within the meaning of section forty
16 of chapter two hundred and seventy-one, nor shall they incur any personal
17 liability as such. Together with their agents and employees, they shall
18 be deemed agents of the transportation area. The trustees shall receive
19 no stated salaries, but may be paid not more than ten dollars each for
20 every meeting attended, but no trustee shall receive in the aggregate more
21 than three hundred dollars annually. No stockholder in a street railway

Trustees, ap-
pointment,
compensation.
1920, 599, § 5.

company the property of which is leased to a transportation area shall 22
act as a trustee for such area. 23

Powers.
1920, 599, § 6.

SECTION 147. The board of trustees of a transportation area shall 1
have full power to operate the street railway property leased or acquired 2
thereby, or to lease or sublease the same, subject to such conditions as 3
may be approved by the department, and may appoint and remove and 4
fix the compensation of such officers, managers and assistants as may be 5
necessary. 6

Officers of
board, etc.
1920, 599, § 7.

SECTION 148. At the first meeting of the said trustees, and at each 1
annual meeting thereafter, they shall elect from their number a chair- 2
man, vice chairman, treasurer and a secretary who shall perform such 3
duties as the trustees shall prescribe. The treasurer shall give a surety 4
company bond in such amount as the trustees shall fix, and the premium 5
thereon shall be paid as an expense of the area. Each trustee shall be 6
entitled to one vote on all matters calling for the determination of the 7
board. The trustees shall hold such meetings and transact such business 8
as may be necessary for the efficient operation of the transportation area. 9
A majority of the board shall constitute a quorum for the transaction of 10
business and the action of a majority of those present at any meeting 11
shall be deemed the action of the trustees. The trustees shall annually, 12
before February first, report, with a detailed statement of the finances 13
of the area, to the several cities and towns of the area, and the treasurer 14
shall, once in every three months, make a financial report to said cities 15
and towns in such form as the trustees prescribe. 16

Taking of
street railway.
1920, 599,
§§ 8, 17.

SECTION 149. Upon the request of the board of trustees of a trans- 1
portation area established under this chapter the department shall take 2
by eminent domain under chapter seventy-nine on behalf of such trans- 3
portation area the whole property, or any part thereof, of a street rail- 4
way which the company has ceased, for more than ninety days, to 5
operate, provided that the department has determined that public 6
necessity and convenience require the operation of such street railway, 7
or part thereof and approves the taking, and provided also that the 8
proposed taking has been approved by a majority of the voters, voting 9
thereon, substantially in the manner provided by section one hundred and 10
forty-five, in every city and town included within the transportation area. 11

Contribution
by cities and
towns.
1920, 599, § 9.

SECTION 150. The cities and towns comprising a transportation area 1
shall contribute to the discharge of its liabilities and obligations on the 2
basis of one third part according to the single track street railway mileage 3
running in or through their respective limits, one third part according to 4
their population, and one third part according to their assessed valuation. 5
The department shall establish the said basis at least once in three years. 6

Finances
1920, 599, § 10.

SECTION 151. The financial year of a transportation area shall end 1
on the last day of each calendar year. The cities and towns comprising 2
the area shall, in proportion to their respective interests, as defined in 3
the preceding section, contribute to make up any financial deficit result- 4
ing from the operation of the area for any financial year, and the board 5
of assessors of any such city or town, upon receipt from the trustees of 6
a certificate showing the amount so found to be due, shall include said 7
amount in the annual tax levy of the city or town for the year following 8

9 the said financial year. If there is a surplus from such operation for any
 10 financial year, eighty-five per cent thereof shall be distributed by the
 11 trustees among the cities and towns comprising the area in proportion
 12 to their respective interests, and fifteen per cent thereof shall be held
 13 by the trustees to be applied to reduce any deficit in any succeeding year.
 14 In reckoning a profit or a deficit, the trustees shall first charge off as
 15 depreciation not less than three per cent and not more than five per cent
 16 of the book value of the property.

1 SECTION 152. For the purpose of acquiring street railway property
 2 under sections one hundred and forty-three to one hundred and fifty-
 3 eight, inclusive, of operating the same, or of contributing toward the
 4 sums expended by the transportation area for capital purposes, cities
 5 and towns may, with the approval of the department, borrow money in
 6 excess of the statutory limit, but not exceeding the sum of two per cent
 7 of their respective assessed valuation. Boards of trustees of transporta-
 8 tion areas may for current expenses issue from time to time short term
 9 notes for terms not exceeding one year, provided that the notes shall
 10 first have the approval of the department.

Borrowing by
 cities and
 towns.
 1920, 599, § 11.

1 SECTION 153. No extension of lines or trackage shall be made or
 2 additional equipment purchased by a transportation area without the
 3 consent of the department.

Extension of
 lines, etc.
 1920, 599, § 12.

1 SECTION 154. The department may exclude from a transportation
 2 area any city or town, but such exclusion shall not prevent the opera-
 3 tion of street railways in or through its territory. The department may
 4 also exclude any city or town or part thereof, the inclusion of which
 5 would, in its opinion, handicap the efficient operation of a transportation
 6 area. The department may permit the operation of street railways
 7 without the commonwealth by any transportation area which borders
 8 on the boundary line of another state.

Exclusion of
 city or town
 from trans-
 portation area,
 etc.
 1920, 599, § 13.

1 SECTION 155. The amount to be paid as rental under a lease of a
 2 street railway property shall not exceed seven per cent of the price fixed
 3 in any option to purchase the property. Rentals shall be paid to the
 4 owners of street railway property by a transportation area at least once
 5 in six months. No lease shall be made for a term of more than five or
 6 less than two years, but a lease may be renewed if public necessity and
 7 convenience, in the opinion of the department, so require. A renewal
 8 of a lease shall be made in the same manner as a new lease, except that
 9 the transportation area shall give written notice to the owners of the
 10 property at least four months in advance of such renewal. A lease may
 11 be terminated by the consent of a majority in interest of all classes of
 12 stock in such company entitled to vote, and of a majority of the voters
 13 of each city and town comprising the transportation area, voting there-
 14 on upon submission at a regular or special city election or town meeting
 15 upon petition of ten per cent of the registered voters of each city or town
 16 filed with the city or town clerk within thirty days of such election or
 17 meeting.

Rentals, etc.
 1920, 599, § 14.

1 SECTION 156. Subject to the approval of the department, the trustees
 2 shall establish such fare zones and shall fix such rates of fare to be charged
 3 by a transportation area as will reasonably assure sufficient income to

Fare zones
 and fares.
 1920, 599, § 15.

meet the cost of the service, including operating expenses, taxes, rental, interest and the allowance for depreciation required by section one hundred and fifty-one.

Termination of lease, etc. 1920, 599, § 16.

SECTION 157. The trustees shall maintain the street railway property in good operating condition. At the expiration of any lease which is not renewed, a transportation area shall return the property to the owners in as good condition as it was when first taken over, ordinary wear and tear to be taken into consideration. All leases shall be subject to a provision that any question of damages shall, within ninety days from the date of expiration of a lease, be submitted to the department, and its decision or award shall be final, it being understood that fluctuations in the value of the property and equipment shall not be taken into consideration.

Taxation. 1920, 599, § 4.

SECTION 158. Nothing contained in sections one hundred and forty-three to one hundred and fifty-seven, inclusive, shall affect the right of the commonwealth or any subdivision thereof to tax the property owned or leased by a transportation area in the same manner and to the same extent as if the same were under private management, but cities and towns may abate in whole or in part the taxes thereon.

Boston Elevated Railway not affected by §§ 143-158. 1920, 599, § 18.

SECTION 159. Sections one hundred and forty-three to one hundred and fifty-eight, inclusive, shall not apply to any territory served by the Boston Elevated Railway Company.

Cities and towns which acted under 1920, 599.

SECTION 160. Sections one hundred and forty-three to one hundred and fifty-eight, inclusive, so far as applicable, shall apply to any transportation area now established under chapter five hundred and ninety-nine of the acts of nineteen hundred and twenty or now in process of establishment thereunder.

Contributions by cities and towns toward cost of street railway service therein regulated. 1923, 296.

SECTION 161. Any city, except Boston, by vote of its city council, and any town by majority vote of the voters thereof present and voting thereon at a town meeting, may, from time to time, for the purpose of avoiding a reduction or discontinuance of service, enter into an agreement with a street railway company operating a street railway therein to pay any part or all of any excess of the cost of the service on the lines of the company operated in such city or town above the amount of the receipts from such lines arising from the rates and fares in effect thereon during the period covered by any such agreement; provided, that no contribution under said agreement shall in any year exceed in such a city the sum of one dollar, or in such a town the sum of two dollars, for each one thousand dollars of the assessed valuation of the year preceding the date of such agreement, and in no event shall it exceed one thousand dollars in any year unless the payment of any such excess is first approved by the department. The department shall, upon application of any city or town agreeing as aforesaid, determine any question relating to the character or extent of the service rendered or facilities furnished in such city or town in pursuance of said agreement, in the event of differences arising between the street railway company and such city or town in relation thereto. Any such city or town may raise by taxation such amounts as may be necessary to carry out the provisions of this section. This section shall not apply to the Boston Elevated Railway Company.

CHAPTER 162.

ELECTRIC RAILROADS.

- SECT.
1. Definitions.
 2. Chapter to apply to Boynton bicycle railway.
 3. Formation.
 4. Powers.
 5. Agreement of association.
 6. Publication of agreement of association.
 7. Certificate of public exigency.
 8. Proceeding before board of aldermen of cities or selectmen of towns.
 9. Fixing of the route.
 10. Location on public way, etc.
 11. Certificate of incorporation.

- SECT.
12. Powers cease unless construction begun, etc.
 13. Powers to construct extension cease unless construction begun, etc.
 14. Common carriers of baggage and freight.
 15. Certain provisions of street railway law applicable.
 16. Certain sections of railroad law not to apply.
 17. Elevated structure an additional servitude.
 18. Walking on track.

1 SECTION 1. In this chapter, unless the context otherwise requires, the
 2 "department" means the department of public utilities. An "interested
 3 party", in any proceeding under this chapter before the department, the
 4 board of aldermen of any city or the selectmen of any town, shall in-
 5 clude any person whose land is to be taken or whose estate abuts upon
 6 any highway through which the electric railroad is to pass, and any rail-
 7 road corporation or street railway company having a location in any
 8 city or town included within the proposed route of the electric railroad
 9 company.

Definitions.
 1906, 516, § 27,
 1919, 350,
 § 117.

1 SECTION 2. This chapter, so far as applicable, except sections twelve
 2 and thirteen, and laws relative to the taxation of companies organized
 3 under this chapter, shall apply to the form of railway known as the
 4 Boynton bicycle railway.

Chapter to
 apply to Boyn-
 ton bicycle
 railway
 1907, 556, § 1.

1910, 387, § 3.

1 SECTION 3. Fifteen or more persons may associate themselves by a
 2 written agreement of association with the intention of forming an electric
 3 railroad company.

Formation.
 1906, 516, § 1.

1 SECTION 4. Such company may, subject to this chapter, construct,
 2 operate and maintain a railroad or railway, including poles, wires, or
 3 other appliances and equipment connected therewith, of the class oper-
 4 ated by electricity or by any power other than steam, which the depart-
 5 ment approves, and constructed wholly upon private land purchased or
 6 taken by said company under this chapter; or constructed partly upon
 7 such private land and partly upon public ways and places, but at least
 8 one half of which is constructed upon such private land. Such company
 9 shall have all the powers and privileges, and be subject to all the duties,
 10 liabilities and restrictions, relative to railroad corporations, set forth in
 11 chapters one hundred and fifty-nine and one hundred and sixty, except
 12 as is otherwise specially provided in this chapter.

Powers.
 1906, 516, § 2.

1 SECTION 5. The agreement of association shall state —
 2 (a) That the subscribers thereto associate themselves with the inten-
 3 tion of forming an electric railroad company;

Agreement of
 association.
 1906, 516, § 3,
 237 Mass. 284.

(b) The corporate name assumed, which shall be one not in use by any other electric railroad company in the commonwealth, or, in the judgment of the department, so similar thereto as to be likely to be mistaken for it, or for any railroad corporation or street railway company in this commonwealth, and which shall contain the words, "electric railroad company", at the end thereof;

(c) The termini of the railroad;

(d) The length of the railroad, as nearly as may be;

(e) The name of each county, city and town in which the railroad is to be located;

(f) The gauge of the railroad, which shall be four feet eight and one half inches;

(g) The total amount of the capital stock of the company, which shall be not less than ten thousand dollars for each mile;

(h) The par value of the shares, which shall be one hundred dollars;

(i) The names and residences of at least five persons, who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take, but no subscriber shall be bound to pay more than ten per cent of the amount of his subscription unless a company is incorporated.

Publication of agreement of association. 1906, 516, § 4.

SECTION 6. The directors, before applying to the department as hereinafter provided, shall publish a copy of the agreement of association as provided in section six of chapter one hundred and sixty-one, and the sworn certificate of the clerk shall be conclusive evidence thereof.

Certificate of public exigency. 1906, 516, § 5. 205 Mass. 94.

SECTION 7. After compliance with section three and the two preceding sections, and within thirty days after the first publication of notice of the agreement of association therein required, the directors therein named shall apply to the department for a certificate that public convenience and necessity require the construction of a railroad as proposed in such agreement. With such application said directors shall file a map of the railroad showing the cities and towns through which it will pass, the principal highways, railways, railroads, navigable streams and tide waters to be crossed, and the extent to which the route of the railroad will be fixed upon private land or will be located longitudinally upon public ways and places, together with a general profile of the railroad showing the grades, and an estimate showing in reasonable detail the cost of construction. The directors shall also furnish such additional maps and information as the department may require. Prior to the decision of the department the directors may change or modify the route in any city or town in whole or in part either at the suggestion of the department or otherwise. If the department refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of such refusal.

Proceeding before board of aldermen of cities or selectmen of towns. 1906, 516, § 6. 1907, 428, § 1.

SECTION 8. If the department grants the certificate specified in the preceding section, the directors may, within sixty days after the granting thereof, apply to the board of aldermen of each city and to the selectmen of each town where the railroad is to be located to fix the route of the railroad in such city or town, and with such application the directors

6 shall file a copy of the maps and general profile, and, upon request, the
7 other information presented to the department. The board of aldermen
8 and the selectmen shall give fourteen days' notice of the time and place
9 for a hearing on such application by publication thereof in one or more
10 newspapers, if any, published in said city or town; otherwise in such
11 newspaper or newspapers published in the county where the city or town
12 is situated as shall be designated by the department; and written notice
13 of the time and place at which such hearing will be held shall be mailed
14 at least seven days before said hearing by the clerk of the city or town,
15 where the application for locations has been filed, to the owners as
16 determined by the last preceding assessment for taxation of real estate
17 along the public ways or parts of ways upon which it is proposed to con-
18 struct said line and to the owners of private land upon which the route
19 of the railroad is to be fixed; and said clerk shall make and deliver to
20 the directors at the hearing a certificate setting forth the fact that such
21 notice was published and mailed as herein provided, and such certificate
22 shall be conclusive evidence thereof.

1 SECTION 9. If the route designated in the application is agreed to by
2 the board of aldermen or the selectmen, and all requirements in respect
3 of the part of said route located longitudinally upon public ways and
4 places are assented to by the directors, and thereafter are approved in
5 writing by the department, the board of aldermen or the selectmen shall
6 make a certificate setting forth the route as fixed by them, which shall be
7 certified by said board or their clerk to the directors, and no further pro-
8 ceedings shall be necessary, but the route so agreed to shall be the route
9 of said railroad in such city or town, except as hereinafter provided. If
10 the board of aldermen or the selectmen agree with the directors upon a
11 route different from that designated in the application, or fail within
12 ninety days after the date of the filing of the application to agree with
13 the directors upon a route, or as to requirements in respect of the part of
14 the route located longitudinally upon public ways and places which meet
15 with the approval of the department, the directors or the board of alder-
16 men or selectmen, within one hundred days after the date of the filing of
17 the application, may apply to the department, which may, in its discre-
18 tion, after notice to the directors and board of aldermen or selectmen,
19 and after public notice and a hearing, fix the route and determine the
20 grades and method of constructing said railroad in such city or town, and
21 no change shall thereafter be made by the directors in the grades or method
22 of construction so determined without the written approval of the de-
23 partment after notice to the board of aldermen or selectmen and after
24 public notice and a hearing. The department shall thereupon make a cer-
25 tificate setting forth the route as fixed by it, which route shall be certified
26 by its clerk to the directors. In fixing such route the department shall
27 not locate it longitudinally upon any public way or place in such city or
28 town without the consent of the board of aldermen or the selectmen.
29 That part of the route consisting of a location longitudinally upon a
30 public way or place shall not be deemed to be fixed until all require-
31 ments imposed in respect of it by the board of aldermen, or the selectmen,
32 are approved in writing by the department. If the route in any city or
33 town, as fixed either by the board of aldermen or selectmen, or by the
34 department, in the manner hereinbefore provided, is different from the
35 route designated in the application of the directors and if said change of
36 route in the opinion of the directors makes it desirable to change the

Fixing of
the route.
1906, 516, § 7.
1907, 428, § 2.
1908, 450.

route of said railroad in any of the other cities or towns through which 37
the route of said railroad passes, or if the directors deem it desirable to 38
change the route of the railroad so as to pass through any cities or towns 39
not named in the agreement of association of said railroad company or 40
to change the route so as no longer to pass through certain cities or 41
towns where the directors have applied to have the route fixed, then the 42
directors may at any time before the route in all the cities and towns is 43
finally fixed, or within thirty days thereafter, apply to the department 44
for leave to apply again to the board of aldermen or selectmen of any 45
cities or towns to fix a new route other than that originally applied for 46
within such cities or towns or to apply to the board of aldermen or select- 47
men of any cities or towns not named in the agreement of association of 48
said railroad company to fix a route of the railroad passing through such 49
cities or towns, or for leave to abandon the route in any cities or towns 50
where the directors have applied, as aforesaid, to have the route fixed. 51
With such application to the department the directors shall file a map 52
and general profile showing the change in the route as proposed, which 53
map and general profile shall be in the same form as those filed under 54
section seven, and the directors shall also furnish such additional infor- 55
mation as the department may require. The department shall give a 56
public hearing upon such application after giving such notice to the direc- 57
tors and to the board of aldermen or selectmen of such cities or towns 58
as it deems requisite. If the department authorizes the directors to 59
apply to any cities or towns to fix a route other than that designated in 60
the original application, then all proceedings theretofore taken in regard 61
to fixing the route in such cities or towns shall become null and void, and 62
the directors shall, within sixty days thereafter, again apply to the board 63
of aldermen of such cities and to the selectmen of such towns to fix anew 64
the route of the railroad in such cities or towns, and with such application 65
shall file a copy of the maps and general profile of such proposed altered 66
route, and, upon request, the other information presented to the depart- 67
ment. The proceedings thereafter upon such application shall be as 68
provided for an original application. If the department authorizes the 69
directors to apply to any cities or towns not named in said agreement of 70
association to fix a route of the railroad passing through said cities or 71
towns, then the directors shall, within sixty days after the granting of 72
such authority, apply to the board of aldermen or selectmen to fix the 73
route of the railroad in such cities or towns. Said application shall be 74
made in the same manner and the proceedings thereon shall be the same 75
as in an application to fix the route of the railroad to the board of alder- 76
men or selectmen of a city or town originally named in the agreement of 77
association of such railroad company. If the department authorizes the 78
directors to abandon entirely the route in any cities or towns where the 79
directors have applied, as aforesaid, to have the route fixed, then any 80
action taken in regard to fixing the route in such cities or towns shall 81
become null and void, and the railroad company shall be under no obli- 82
gation to construct its railroad therein. The order of the department 83
authorizing the directors to apply for a route of the railroad in any city 84
or town not named in the agreement of association or the order of the 85
department under which the route in any cities or towns is abandoned, 86
shall operate as an amendment to the clauses in said agreement of associ- 87
ation which name the cities or towns where the railroad is to be located, 88
and the termini thereof, and a certified copy of said order shall be at- 89
tached to the agreement of association. 90

1 SECTION 10. If the board of aldermen or the selectmen deem public
 2 convenience and necessity require the railroad to be constructed in part
 3 longitudinally upon a public way or place, they may, in granting or agree-
 4 ing to a location thereon, prescribe how the tracks shall be laid, the kind
 5 of wires, poles, rails and other appliances which shall be used, and may
 6 impose such terms, conditions and obligations incidental to and not
 7 inconsistent with the objects of a street railway company as the public
 8 interests may require, and the department approves.

Location on
 public way,
 etc.
 1906, 516, § 8.

1 SECTION 11. The certificate of incorporation issued by the state sec-
 2 retary to the company shall contain the words, "electric railroad com-
 3 panies", instead of the words, "railroad corporations".

Certificate of
 incorporation.
 1906, 516, § 9.

1 SECTION 12. If an electric railroad company, incorporated under this
 2 chapter, does not begin the construction of its railroad and expend thereon
 3 at least ten per cent of the amount of its original capital stock within two
 4 years after the date of its certificate of incorporation, and does not com-
 5 plete and open its railroad for use within four years after said date, its
 6 corporate powers and existence shall cease, unless the department, after
 7 public notice and a hearing, extends said time by a certificate, stating
 8 that it deems due diligence has been exercised by the corporation, and
 9 that public necessity and convenience require such extension.

Powers cease
 unless con-
 struction
 begun, etc.
 1910, 587, § 1.

1 SECTION 13. If an electric railroad company, incorporated under this
 2 chapter, does not complete and open for use an extension within four years
 3 after the date of the authorization of the extension by the department,
 4 the power of the company to construct and operate the same shall cease,
 5 unless the department after public notice and a hearing, extends said
 6 time by a certificate stating that it deems due diligence has been exercised
 7 by the corporation, and that public necessity and convenience require the
 8 said extension of time.

Powers to
 construct ex-
 tension cease
 unless con-
 struction
 begun, etc.
 1910, 587, § 2.

1 SECTION 14. An electric railroad company shall act as a common
 2 carrier of baggage, express matter and freight in such cases, upon such
 3 parts of its railroad, and to such extent, in any city or town as, after
 4 public notice and a hearing upon the petition of the president or a ma-
 5 jority of the directors of the company or any interested party, the board
 6 of aldermen or the selectmen, or those exercising the powers of such
 7 board or selectmen, in such city or town, shall by order approve; pro-
 8 vided, that a company shall actually engage in the business of a common
 9 carrier under this chapter only in such cases, upon such of the parts of
 10 its railroad, and to such extent, approved as aforesaid, as the depart-
 11 ment shall certify, after public notice and a hearing upon said petition,
 12 that public necessity and convenience require; and provided, that any
 13 company acting under authority hereof shall be subject to such regula-
 14 tions and restrictions as may from time to time be made by the local
 15 authorities aforesaid, with the approval of the department, and shall
 16 also be subject to all laws relating to common carriers so far as consistent
 17 herewith and with said regulations and restrictions.

Common car-
 riers of
 baggage and
 freight
 1906, 516, § 10.

1 SECTION 15. An electric railroad company shall be subject to sections
 2 twenty-five, forty, forty-two, forty-six, forty-nine, fifty, seventy, seventy-
 3 one, seventy-seven to ninety-eight, inclusive, one hundred to one hun-
 4 dred and three, inclusive, one hundred and twenty-nine to one hundred

Certain provi-
 sions of street
 railway law
 applicable
 1906, 516, § 11
 205 Mass. 94

and thirty-one, inclusive, and one hundred and forty-one of chapter one 5
 hundred and sixty-one and section one hundred and two of chapter two 6
 hundred and sixty-six. 7

Certain sec-
 tions of rail-
 road law not
 to apply.
 1906, 516, § 12.
 1907, 428, § 3.

SECTION 16. An electric railroad company shall not be subject to the 1
 following provisions of law relative to railroad corporations contained 2
 in chapter one hundred and sixty: so much of section twenty-two as 3
 refers to tracks laid longitudinally within the limits of a public way; so 4
 much of section forty-one as applies to grain elevators; sections sixty- 5
 five to sixty-seven, inclusive, and sections one hundred and thirty-eight, 6
 one hundred and fifty-one, one hundred and fifty-two, one hundred and 7
 sixty-eight to one hundred and seventy-one, inclusive, and two hundred 8
 and twenty-seven; but the department shall prescribe rules and regula- 9
 tions relative to the equipment of ears, the ringing of bells, the sounding 10
 of whistles and the giving of signals, for the prevention of accidents. 11

Elevated struc-
 ture an addi-
 tional servi-
 tude.
 1907, 448, § 1.
 187 Mass. 445.

SECTION 17. The location, construction, maintenance or operation of 1
 said lines of railroad in so far as the same are located longitudinally 2
 upon an elevated structure upon a public way or place shall be deemed 3
 an additional servitude, and shall entitle parties having an estate in 4
 such public ways or places, or in premises which abut thereon, and who 5
 are damaged by reason of such location, construction, maintenance and 6
 operation, to recover such damages from the electric railroad company 7
 under chapter seventy-nine. 8

Walking on
 track.
 1853, 414, § 4.
 G. S. 63, § 102.
 1874, 372, § 148.

SECTION 18. Whoever without right knowingly stands or walks on 1
 an electric railroad track not within the limits of a highway shall forfeit 2
 not less than five nor more than fifty dollars. 3

P. S. 112, § 195.
 R. L. 111, § 249.

1906, 463, 11, §§ 232,
 258; 516, § 13.

1907, 428, § 4.
 142 Mass. 296.

CHAPTER 163.

TRACKLESS TROLLEY COMPANIES.

SECT.

1. Definition.
2. Use of trolley-motors on public ways,
 etc., permitted.
3. Incorporation of trolley-motor com-
 panies.
4. Agreement of association.
5. General laws governing street railway
 companies apply.

SECT.

6. Corporation must secure permit.
7. To become common carrier.
8. To be subject to laws governing street
 railway companies.
9. Time limit upon erection of poles, etc.
10. May purchase electricity.
11. Real and personal property.

Definition.
 1919, 350,
 § 117.

SECTION 1. In this chapter, unless the context otherwise requires, the 1
 "department" means the department of public utilities. 2

Use of trolley-
 motors on
 public ways,
 etc., permitted.
 1916, 266, § 1.

SECTION 2. Any corporation organized as provided in this chapter, 1
 and any domestic street railway company may, as hereinafter provided, 2
 transport for hire passengers, freight, express parcels and mail over public 3
 ways or over private lands with the consent of the owners thereof by 4
 the system known as trolley-motor or trackless trolley, and may build, 5

6 equip, operate and maintain vehicles for such transportation, and estab-
 7 lish and maintain power houses, poles, wires, conduits or other structures
 8 within the limits of and over or under such public ways or private lands
 9 for the generation and transmission of electricity for the operation of
 10 such vehicles, and the authorities having jurisdiction over such public
 11 ways may grant permits for the operation of the said vehicles over such
 12 ways, and for the erection of poles, wires and other necessary structures
 13 within, over or under such public ways in the manner and to the extent
 14 provided by law for the granting of locations to street railway companies.

1 SECTION 3. Five or more persons may associate themselves by written
 2 agreement of association with the intention of forming a trolleymotor or
 3 trackless trolley company.

Incorporation
of trolley-
motor com-
panies

1916, 266, § 2

1 SECTION 4. The agreement of association shall state —
 2 (a) That the subscribers thereto associate themselves with the inten-
 3 tion of forming a trolleymotor or trackless trolley company;

Agreement of
association
1916, 266, § 3

4 (b) The corporate name assumed, which shall be one not in use by any
 5 other trolleymotor or trackless trolley company, or by any street rail-
 6 way company, or, in the judgment of the department, so similar thereto
 7 as to be likely to be mistaken for it, and shall contain words indicating
 8 the object of the company;

9 (c) The termini of the proposed route;

10 (d) The length of the proposed route as nearly as may be;

11 (e) The name of each county, city and town where the proposed route
 12 is to be situated;

13 (f) The total amount of the capital stock of the company, which shall
 14 not be less than two thousand dollars for each mile, nor in any event less
 15 than twenty thousand dollars;

16 (g) The par value of the shares, which shall be one hundred dollars;

17 (h) The names and residences of at least five persons, who shall be
 18 subscribers to the agreement of association, to act as directors until
 19 others are chosen and qualify in their stead.

20 Each associate shall subscribe to the agreement of association his
 21 name, residence, post office address, and the number of shares of stock
 22 which he agrees to take, but no subscriber shall be bound to pay more
 23 than ten per cent of the amount of his subscription unless the company
 24 is incorporated.

1 SECTION 5. Except as otherwise provided in this chapter, corporations
 2 organized hereunder shall be organized in accordance with the general
 3 laws governing the organization of street railway companies so far as
 4 applicable and consistent with this chapter.

General laws
governing
street railway
companies
apply.

1916, 266, § 4

1 SECTION 6. Every corporation undertaking to perform in public
 2 ways the kind of public service authorized by this chapter shall first
 3 procure a permit from the authorities having jurisdiction over such
 4 public ways in the manner prescribed in and in accordance with section
 5 seven of chapter one hundred and sixty-one, and the granting of such
 6 permit shall be subject to the approval of the department as provided in
 7 said section for the location of street railways. No such approval shall be
 8 given for any line any part of which, in the opinion of the department, is
 9 so nearly contiguous or adjacent to the line of a street railway company

Corporation
must secure
permit
1916, 266, § 5.

that its construction would result in a competitive service injurious to the public and to such street railway company: provided, that the latter is ready and willing and offers to construct and does construct, within such reasonable time as the department may fix, a line of street railway or a line of trolley motor or trackless trolley in the public way described in the petition, which the department deems will serve the public as well as would the proposed line described in the petition; and no such approval shall be granted in any event if the department deems that the granting of the same would be unduly injurious to any street railway or trackless trolley line covering the same or substantially the same territory.

To become
common
carrier
1916, 266, § 6.

SECTION 7. Every corporation undertaking to perform the kind of public service authorized by this chapter shall thereupon become a common carrier, with all the duties and liabilities of common carriers, and the department shall have the same jurisdiction over the operation and the service rendered that it has over street railway companies, except that no corporation shall be required, without its consent, to extend its trackless trolley service beyond that described in its petition under the preceding section or in its offer to the department thereunder, and the department may permit the suspension or curtailment in whole or in part of the trackless trolley service of any corporation operating under authority of this chapter whenever, by reason of weather or traffic conditions, or of the condition of the highways, or the season of the year, such suspension or curtailment may be desirable for the safety of the traveling public or to avoid loss in operation.

To be subject
to laws gov-
erning street
railway com-
panies
1916, 266, § 7.

SECTION 8. Every corporation doing business under this chapter shall be subject to general laws governing street railway companies in respect to the future issue of stocks and bonds, consolidation, leases, revocation of permits and locations; and shall also be subject to the same regulation and supervision, and shall file with the department the same reports and information required of street railway companies, so far as such regulation, supervision and requirements are applicable to corporations doing business under this chapter and are consistent with its provisions.

Time limit
upon erection
of poles, etc.
1916, 266, § 8.

SECTION 9. The right of any corporation to erect poles, wires and other appliances in accordance with any permit granted under section six, and to operate trackless trolley vehicles upon the line designated in such permit, shall cease as to so much thereof as shall not be in operation within two years after the date of approval by the department, or within such further time as it may, after a hearing, grant.

May purchase
electricity.
1916, 266, § 9.

SECTION 10. Any corporation doing business under this chapter may purchase electricity from any person, city or town, engaged in its manufacture or distribution or from any street railway company, on such terms and conditions as the department approves, and, with like approval, may make contracts with any corporation having poles, wires, conduits or other structures or appliances within the limits of public ways or on private lands for the purchase or for the use of such poles, wires, conduits or other structures.

Real and per-
sonal property.
1916, 266, § 10.

SECTION 11. Any corporation doing business under this chapter may purchase and hold personal and real estate necessary or convenient for the operation of its lines.

CHAPTER 164.

MANUFACTURE AND SALE OF GAS AND ELECTRICITY.

SECT.	DEFINITIONS.	SECT.	
1.	Definitions.	31.	Other companies may hold gas stock.
2.	Construction.	32.	Liability of officers.
		33.	Fees.
	CORPORATE RIGHTS AND LIABILITIES.		MUNICIPAL LIGHTING PLANTS.
3.	Corporations governed by this chapter.	34.	City or town may acquire plant.
4.	Application of business corporation law.	35.	Vote of city.
5.	Formation of corporations.	36.	Vote of town.
6.	Agreement of association.	37.	Certification of vote to department.
7.	By-laws.	38.	Certification of subsequent votes, etc.
8.	Changes of par value of shares regulated.	39.	Penalty for failure to certify vote.
9.	Issue and pledge of securities of hydro-electric companies. Acquisition of storage reservoirs, etc.	40.	May incur debt for plant.
9A.	Corporate purposes and purchase, etc., of stock and securities of certain electric companies regulated.	41.	Enlargement of plant.
10.	Increase or reduction of capital stock.	42.	Purchase of existing plant.
11.	Stock or scrip dividends forbidden, etc.	43.	Duties of department in case of disagreement as to such purchase. Proceedings if owner fails to convey after determination by department.
12.	Penalty for stock dividends.	44.	[Repealed.]
13.	Bonds and mortgages of gas or electric companies.	45.	Property in adjoining city or town.
14.	Issue of stock, bonds and evidences of indebtedness by gas and electric companies.	46.	Supply of adjoining city or town.
15.	Disposition of bonds.	47.	Supply by municipal plants to adjoining cities or towns.
16.	Capital impaired to be made good.	48.	[Repealed.]
17.	Penalties.	49.	[Repealed.]
18.	Disposition of new shares of gas or electric companies.	50.	[Repealed.]
19.	Sale of such shares at auction, or to customers or employees, when permitted.	51.	Purchase of gas or electricity.
20.	Capital to be paid in before commencing business.	52.	Certain towns may purchase from street railway company.
21.	Transfer of franchise forbidden.	53.	Delivery of electricity so purchased.
22.	Change of corporate business.	54.	Department to fix price in case of disagreement.
23.	Gas company authorized to sell electricity.	55.	Municipal light board.
24.	Time prescribed for equipping plant.	56.	Manager of municipal lighting: appointment, duties, etc. Expenses of plant, how supervised.
25.	Record of orders for erection of plant and of compliance.	57.	Annual income and expenses.
26.	Purchase of franchise, etc., of electric company.	57A.	Appropriations. Payments in advance of receipts.
27.	Powers and duties of company so authorized.	58.	Price for gas and electricity regulated.
28.	Change of corporate name.	58A.	Advance deposit. Shut-off. Removal of appliances upon default.
29.	Certificate of change of officers to be filed.	59.	Prices to be certified to department.
30.	Change of location.	60.	Compulsory supply.
		61.	Assessment of cost of services, etc.
		62.	Ordinances and by-laws relative to plant.
		63.	Records and return to department. Penalties.
		64.	Liability for injury or damage.
		65.	Application of chapter to plants specially chartered.
		66.	City or town owning plant, subject to general laws, etc.

<p>SECT.</p> <p>67. Revocation of locations restricted.</p> <p>68. Sale of plant.</p> <p>69. Enforcement of certain provisions.</p> <p style="text-align: center;">DISTRIBUTION OF GAS AND ELECTRICITY.</p> <p>70. Street locations for gas mains.</p> <p>70A. Approval by department of connecting locations of gas mains regulated.</p> <p>71. Construction of lines.</p> <p>72. Taking land for transmission lines.</p> <p>72A. Electric companies may enter private lands to make surveys, etc. Liability for damages.</p> <p>73. Construction of pipes, etc., under or over railroads, etc.</p> <p>74. Damages for injuries to persons or property.</p> <p>75. Regulations by local authorities.</p> <p>75A. Installation of automatic shut-offs.</p> <p style="text-align: center;">STATE SUPERVISION.</p> <p>76. General duties of department.</p> <p>77. Annual report by department.</p> <p>78. Violations of law.</p> <p>79. Enforcement of orders of department.</p> <p>80. Office of company where works located. Department to have access to records.</p> <p>81. Form of books and accounts prescribed.</p> <p>82. Form of station records prescribed.</p> <p>83. Form of annual returns prescribed.</p> <p>84. Penalty for failure to make or amend return.</p> <p>85. Department may examine books, etc., of companies or affiliated companies.</p> <p>86. Entry of gas company restricted.</p> <p>87. Entry of electric company, etc., restricted.</p> <p>88. Appeal.</p> <p>89. Right of municipal lighting plant respecting such entry.</p> <p>90. Restrictions upon entry for supplying electricity in bulk.</p> <p>91. Enforcement of such restrictions.</p> <p>92. Supply of gas or electricity enforced.</p> <p>92A. Supply of gas or electricity in bulk enforced.</p> <p>93. Reduction in price or improvement in quality enforced.</p> <p>94. Schedules of rates, prices, etc. Filing, amendment, suspension; special contracts.</p>	<p>SECT.</p> <p>94A. Approval of department of certain contracts for purchase of gas or electricity.</p> <p>94B. Approval of department of certain contracts with affiliated companies.</p> <p>95. Report of accidents.</p> <p>96. Consolidation of gas or electric companies.</p> <p>97. Consolidation of electric and hydro-electric companies.</p> <p>98. Effect of consolidation.</p> <p>99. Increase of capital stock to effect consolidation.</p> <p>100. Consolidations restricted.</p> <p>101. Time for filing applications for consolidations.</p> <p>102. Certain consolidations prohibited.</p> <p style="text-align: center;">INSPECTION OF GAS AND METERS.</p> <p>103. Powers and duties of department.</p> <p>104. Fees for testing gas meters, meter provers, etc.</p> <p>105. Companies to provide photometer.</p> <p>106. Regulation of quality of gas.</p> <p>107. Calorific standard for gas. Exemptions.</p> <p>108. Companies to provide calorimeter.</p> <p>109. Inspection of gas by photometer.</p> <p>110. Penalty for supplying gas below standard.</p> <p>111. Unit of measure for gas.</p> <p>112. Companies, etc., to provide meter provers.</p> <p>113. Penalty for using meters not tested.</p> <p>114. Testing gas meters in use.</p> <p>115. Gas meters to register plainly.</p> <p>116. Entry on premises to examine meters, etc.</p> <p>117. Customers to be given meter reading.</p> <p>118. Electric meters to register plainly.</p> <p>119. Meter rental.</p> <p>120. Testing electric meters in use.</p> <p>121. Inspection of electric meters, expense and registration thereof.</p> <p>122. Penalty for use of incorrect electric meter, etc.</p> <p>123. Use of prepayment meters regulated.</p> <p>124. Gas or electricity may be shut off, when.</p> <p>125. Refusal of supply restricted.</p> <p>125A. Supply of gas or electricity by company to city or town after expiration of contract regulated.</p> <p>126. Penalty for injury to gas meter, etc.</p> <p>127. Penalty for injury to electric meter, etc.</p>
--	--

DEFINITIONS.

Definitions.
1885, 240, § 1.
R. L. 110, § 80.
1908, 529, § 1.
1914, 742, § 1.
§§ 1, 199.

SECTION 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

“Department”, the department of public utilities.

1
2
3

4 "Electric company", a corporation organized under the laws of the
 5 commonwealth for the purpose of making by means of water power,
 6 steam power or otherwise and selling, or distributing and selling, elec-
 7 tricity within the commonwealth, or authorized by special act so to do,
 8 even though subsequently authorized to make or sell gas.

1919, 350,
 § 117
 Op. A. G.
 (1920) 29.

9 "Gas company", a corporation organized under the laws of the com-
 10 monwealth for the purpose of making and selling, or distributing and sell-
 11 ing, gas within the commonwealth, even though subsequently authorized
 12 to make or sell electricity.

13 "Supplying electricity in bulk", engaging in the business of making
 14 and selling or distributing and selling electricity to electric companies,
 15 railroads, street railways or electric railroads, or to municipalities for
 16 municipal use or re-sale to their inhabitants, or to persons, associations
 17 or corporations under limitations imposed by special law or under section
 18 ninety or corresponding provisions of earlier laws.

1 SECTION 2. In construing sections seventy, seventy-one, seventy-four
 2 to eighty-three, inclusive, ninety-two to ninety-five, inclusive, one hun-
 3 dred and three, one hundred and five, one hundred and six, one hundred
 4 and nine, one hundred and twelve to one hundred and fourteen, inclu-
 5 sive, one hundred and sixteen, one hundred and seventeen, one hundred
 6 and nineteen, one hundred and twenty, one hundred and twenty-one,
 7 one hundred and twenty-three to one hundred and twenty-seven, inclu-
 8 sive, unless the context otherwise requires, the terms "corporation",
 9 "gas company" and "electric company" shall include all persons, firms,
 10 associations and private corporations which own or operate works or a
 11 distributing plant for the manufacture and sale or distribution and sale
 12 of gas for heating and illuminating purposes, or of electricity, within
 13 the commonwealth; and in construing sections one hundred and three,
 14 one hundred and five, one hundred and nine, one hundred and twelve
 15 to one hundred and fourteen, inclusive, one hundred and sixteen, one hun-
 16 dred and seventeen, one hundred and twenty, one hundred and twenty-
 17 one, and one hundred and twenty-three to one hundred and twenty-seven,
 18 inclusive, the terms "corporation", "gas company" and "electric com-
 19 pany" shall include municipal corporations which own or may acquire
 20 municipal lighting plants.

Construction.
 1861, 168, § 15.
 P. S. 61, § 19.
 1886, 346, § 7.
 1887, 382, § 6.
 1901, 497, § 4.
 R. L. 58, § 19;
 121, §§ 38, 41.
 1909, 483, § 4.
 1914, 742,
 §§ 198, 199.

CORPORATE RIGHTS AND LIABILITIES.

1 SECTION 3. This chapter shall apply to gas and electric companies or-
 2 ganized or chartered under any general or special laws applicable thereto,
 3 and to the respective officers and stockholders of such corporations.

Corporations
 governed by
 this chapter.
 R. S. 38, § 1.
 G. S. 60, § 1.

1870, 224, §§ 13, 64, 65. P. S. 106, § 3. R. L. 110, § 2. 1914, 742, §§ 2, 199.

1 SECTION 4. Sections four, eight, nine, twenty-one, twenty-two,
 2 twenty-eight, thirty-one and thirty-four of chapter one hundred and
 3 fifty-six shall apply to companies subject to the provisions of this
 4 chapter.

Application of
 business cor-
 poration law.
 1808, 65, § 1.
 1829, 53, § 1.

R. S. 33, §§ 2-5. G. S. 60, §§ 3-6; 61, §§ 5, 15. R. L. 110, §§ 19, 22-24
 1851, 133, §§ 4, 5. 1870, 224, §§ 10, 15-18. 1914, 742, §§ 9, 13-15, 199.
 1855, 146, § 1. P. S. 106, §§ 20, 23-26. 1919, 333, §§ 17, 18.

1 SECTION 5. Three or more persons may associate themselves by an
 2 agreement in writing, with the intention of forming a gas or electric
 3 company, and, upon complying with section nine of chapter one hundred
 4 and fifty-eight, shall be and remain a corporation. Nothing herein con-

Formation of
 corporations.
 1851, 133, § 1.
 1855, 146, § 1.
 G. S. 61, §§ 1, 15.
 1870, 224, §§ 1,
 5, 55-58.

1874, 165.
1879, 202, § 1.
P. S. 106, §§ 6,
11, 14.
1885, 240, § 1.
1891, 189, § 1.
1893, 397.

tained shall authorize the organization of a combined gas and electric company, unless the department, after notice and a public hearing, shall certify to the commissioner of corporations and taxation that it deems the public convenience will be promoted thereby.

R. L. 110, §§ 4, 9, 13. 15 Gray, 211, 494. 1 Op. A. G. 47, 185.
1910, 346. 12 Allen, 273, 362. 2 Op. A. G. 36, 346.
1914, 742, §§ 3, 199. 98 Mass. 98. 3 Op. A. G. 120.
11 Gray, 139. 101 Mass. 381, 385.

Agreement of association.
1851, 133, § 3, 6.
G. S. 61, §§ 1, 2.
1866, 290, § 2.
1870, 224, §§ 5, 7, 8.
1879, 202, § 1.
P. S. 106, §§ 11, 16, 17.
1885, 240, § 1.
1891, 189, § 1.
1893, 397.
R. L. 110, §§ 9, 15, 16.
1902, 441.
1910, 346.
1914, 742, §§ 5, 199.
1922, 354, § 1.
1923, 290, § 1.
1925, 184, § 3.
11 Gray, 139.
97 Mass. 494.
149 Mass. 436.

SECTION 6. The agreement of association shall state:
(a) That the subscribers thereto associate themselves with the intention of forming a gas or an electric company, as the case may be.
(b) The corporate name assumed, which shall contain the words "gas company" or "electric company", as the case may be, at the end thereof.
(c) The name of the town in which it is to be established or situated.
(d) The amount of its capital stock, which shall be not less than one thousand dollars; the number of shares into which the capital stock is to be divided; and, if there are to be preferred shares, the number of such shares, which shall not exceed the number of the common shares, the classes of preferred shares if different classes are to be issued and the number of shares of each class, and a statement of the preferences and voting powers or restrictions or qualifications upon which they are to be issued.
(e) The par value of the shares, which may be one hundred dollars, fifty dollars or twenty-five dollars, as the department shall authorize.
(f) In case of a corporation organized for the purposes set forth in section nine A, the statement described in said section.

By-laws.
1808, 65, § 1.
1829, 53, §§ 1, 15.
1833, 83, § 1.
R. S. 38, §§ 6, 7; 44, § 2.
G. S. 60, §§ 2, 7; 68, § 7.
1870, 224, § 20.
P. S. 105, § 5;
106, § 28.
R. L. 109, § 5;
110, § 26.
1914, 742, §§ 18, 199.
8 Met. 301, 321.

SECTION 7. Every such corporation may by its by-laws, except as is otherwise expressly provided, determine the manner of calling and conducting its meetings; the number of shares which shall entitle a stockholder to one or more votes; what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented, at any meeting, to constitute a quorum; the mode of voting by proxy; the mode of selling shares for the payment of assessments; and, except as provided in section twenty-two of chapter one hundred and fifty-six, the tenure of office of the several officers and agents; and may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offence; but no by-law shall be made by a corporation not consistent with law. If not otherwise so determined, a majority in interest of the stockholders shall constitute a quorum. If not otherwise so determined, each stockholder shall be entitled to one vote for each share owned by him.

Changes of par value of shares regulated.
1914, 742, § 29.
1922, 354, § 2.
1924, 44, § 1.

SECTION 8. Every corporation subject to this chapter may at a meeting duly called for the purpose by the vote of a majority of all its stock, or if two or more classes of stock have been issued of a majority of each class outstanding and entitled to vote, authorize a change of the par value of the shares of its capital stock in accordance with paragraph (c) of section six; but such change shall not be effective unless the department shall approve the same on an application of the corporation filed within thirty days after the passage of such vote and unless the corporation shall, within thirty days after such approval, file in the office of the state secretary a copy of the vote authorizing such change, signed and sworn to by its clerk; and the provisions of sections forty-one and forty-

12 two of chapter one hundred and fifty-eight, in so far as applicable, shall
 13 apply. The aggregate par value of the outstanding shares shall not be
 14 increased by a change in the par value thereof.

1 SECTION 9. An electric company which owns or operates an hydro-
 2 electric plant may, subject to all laws governing the issue of capital stock
 3 by electric companies, issue preferred stock of one or more classes to such
 4 amount, not exceeding twice the amount of the general or common stock
 5 then outstanding, as the department may from time to time approve;
 6 and, in approving, under section fourteen, the issue of stock or bonds by
 7 an hydro-electric company which has theretofore issued and has out-
 8 standing stock or bonds for which the approval of the department or its
 9 predecessors was not required, the department may direct that such new
 10 stock or bonds shall bear some distinctive designation. An electric
 11 company which owns an hydro-electric plant in this commonwealth may
 12 for the purpose of securing refunding mortgage bonds, with the consent
 13 of the department and to such extent and upon such terms as the depart-
 14 ment may approve, pledge, or cause to be pledged, bonds secured by prior
 15 liens upon the property mortgaged to secure such refunding mortgage
 16 bonds, and prior lien bonds so pledged shall not be counted in applying
 17 any limitations of law upon the amount of its outstanding bonds. An
 18 electric company may, with the consent of the department and to such
 19 extent and upon such terms as the department may approve, acquire the
 20 stocks, bonds or other obligations of a corporation, association or person
 21 owning a storage reservoir in the states of Vermont or New Hampshire,
 22 the operation of which will be beneficial to an hydro-electric plant in this
 23 commonwealth owned by such company, or owning an electric system
 24 completed or under construction in another state from which such electric
 25 company derives or has contracted for an amount of electrical energy
 26 which in the opinion of the department is a substantial amount.

Issue and
 pledge of se-
 curities of
 hydro-electric
 companies.
 Acquisition of
 storage reser-
 voir, etc.
 1916, 64
 1921, 269.
 1925, 1-6;
 184, § 4.

1 SECTION 9A. An electric company may, in its agreement of associa-
 2 tion or, in case of a company already organized, at any time and from
 3 time to time, by vote of two thirds in amount of all its stockholders at a
 4 meeting duly called for the purpose, state that it is organized for, or that
 5 thereafter its corporate purpose shall be, the generating and buying of
 6 electricity and the transmitting and selling of the same to two or more
 7 corporations specified in said agreement or vote as engaged in the electric
 8 light or electric power business, or both, in this commonwealth or adjoin-
 9 ing states, including other purposes incidental thereto. Upon the ap-
 10 proval of said statement by the department, such company shall be
 11 limited, in respect to its rights and obligations to transmit and sell elec-
 12 tricity, to the transmission and sale thereof to the corporations specified
 13 as aforesaid upon such terms as the department shall approve; provided,
 14 that such corporations become stockholders in said company as herein-
 15 after provided. With the consent of the department and to such extent
 16 and upon such terms as it may approve, any corporation specified as
 17 aforesaid may subscribe for, acquire, own and dispose of stock, bonds or
 18 other securities of such electric company, and may, with the consent of
 19 the department and upon such terms as it may prescribe, and in com-
 20 pliance with all provisions of law relative thereto, issue and sell its own
 21 stock, bonds or other securities to obtain the capital necessary to acquire
 22 the same.

Corporate
 purposes and
 purchase, etc.,
 of stock and
 securities of
 certain electric
 companies
 regulated.
 1923, 290, § 2.

Increase or
reduction of
capital stock.
1829, 53, §§ 3,
10
R. S. 38, §§ 11,
20
1851, 133, § 8.
1855, 478, § 5.
G. S. 60, §§ 11,
21; 61, § 6.

SECTION 10. Every corporation subject to this chapter, unless otherwise expressly provided, at a meeting called therefor may increase its capital stock from time to time by such amounts as may be authorized by the department in accordance with section fourteen, and may reduce its capital stock, and the number of shares therein, subject to the provisions of this chapter and of chapter one hundred and fifty-eight.

1870, 224, § 24.	P. S. 106, §§ 33-35.	1906, 437.
1871, 110, § 2.	1899, 199, § 2	1908, 534
1873, 39, § 2.	R. L. 110, §§ 31, 32.	1914, 742, §§ 35, 199.

Stock or scrip
dividends for-
bidden, etc.
1868, 310, § 1.
1875, 177, § 2.
P. S. 105, §§ 18;
106, § 48
1894, 350, § 1.
R. L. 109, § 20;
110, § 44.
1914, 742,
§§ 36, 199.
214 Mass. 529.

SECTION 11. No gas or electric company shall declare any stock or scrip dividend or divide the proceeds of the sale of stock or scrip among its stockholders; nor shall any gas or electric company except as provided in this chapter issue any share of stock to any person unless the par value of the shares so issued or the price thereof as fixed and determined under sections eighteen and nineteen is first paid in cash to its treasurer. The conveyance to such company of real or personal property shall be deemed a sufficient paying in of its original capital stock to such amount as may be approved by the department under the provisions of section fourteen.

Penalty for
stock dividends.
1868, 310, § 2.
P. S. 105, § 19.
1894, 350, § 2.
R. L. 109, § 21.
1914, 742,
§§ 37, 199.
1918, 257,
§ 375.
1919, 5.
1920, 2.

SECTION 12. All certificates of stock or scrip issued in violation of the preceding section shall be void; and the directors of the corporation which issues them shall be liable to a penalty of one thousand dollars each, to be recovered by indictment in any county where any of them reside; but if any such director proves that, before such issue, he filed his written dissent thereto with the clerk, and at no time voted therefor, he shall not be so liable.

Bonds and
mortgages of
gas or electric
companies.
1886, 346, § 3.
1890, 371
1894, 450, § 1.
R. L. 121,
§§ 10-12
1914, 742,
§§ 38, 199.
1922, 223.
1924, 173.
159 Mass. 505.

SECTION 13. A corporation subject to this chapter may, by vote of a majority in interest of its stockholders at a meeting called therefor, and subject to the limitations and restrictions of the following section, issue bonds, at not less than par, to an amount not exceeding its capital stock actually paid in at the time of such issue and applied to the purposes of the corporation, increased by all cash premiums paid to the corporation thereon and likewise so applied, and bearing interest at such rate as the department shall approve, and, if issued under a mortgage existing on June second, nineteen hundred and twenty, by the provisions of which the rate of interest on bonds issued thereunder is fixed, at a price and with provisions for amortization of any discount approved by the department as consistent with the public interest; provided, that the terms of the mortgage so permit; and may secure the payment of the principal and interest of said bonds by a mortgage of its franchise and property. All persons who acquire any mains, conduits, poles, wires, fixtures or other apparatus in, over, under or across public ways by virtue of such mortgage shall have the same rights and be subject to the same obligations relative to their erection, care, maintenance and operation as the corporation would have had, or would have been subject to, if the mortgage had not been made.

Issue of stock,
bonds and
evidences of
indebtedness
by gas and
electric com-
panies
1894, 450, § 1.
R. L. 109, § 24.

SECTION 14. Gas and electric companies shall issue only such amount of stock and bonds, and of coupon notes and other evidences of indebtedness payable at periods of more than three years after the date thereof, as the department may from time to time vote is reasonably necessary for the purpose for which such issue of stock, bonds, coupon notes or

6 other evidences of indebtedness has been authorized. The department
 7 may take into consideration any resources of the companies available
 8 or which might have been available for said purpose. The department
 9 shall render a decision upon an application for such issue within thirty
 10 days after the final hearing thereon. The decision shall be in writing,
 11 shall assign the reasons therefor, shall, if approving such issue, specify the
 12 respective amounts of stock, bonds, coupon notes or other evidences of
 13 indebtedness which are approved to be issued for the respective purposes
 14 to which the proceeds thereof are to be applied, and shall, within seven
 15 days after it has been rendered, be filed in the office of the department.
 16 A certificate of the vote of the department shall, within three days after
 17 such decision has been rendered and before the stock, bonds, coupon
 18 notes or other evidences of indebtedness are issued, be filed in the office
 19 of the state secretary, and a duplicate thereof delivered to the corpora-
 20 tion, which shall enter the same upon its records. A company subject
 21 to this section shall not apply the proceeds of such stock, bonds, coupon
 22 notes or other evidences of indebtedness to any purpose not specified in
 23 such certificate. No application for the approval of an issue of stock
 24 shall be made unless authorized by vote of the incorporators, if an
 25 original issue, or of the stockholders if an increase of stock, passed not
 26 more than four months prior to such application; but a vote of the
 27 stockholders to increase the capital stock may be passed before or after
 28 the decision of the department.

1910, 374.
 1914, 742, §§ 39,
 199.
 1916, 64.
 1921, 230, § 1.
 179 Mass. 15.
 199 Mass. 356.
 214 Mass. 529.
 1 Op. A. G. 659.
 2 Op. A. G. 58.

1 SECTION 15. A gas or electric company, under the supervision of
 2 the department, issuing bonds under the two preceding sections, shall
 3 invite proposals for the purchase thereof by advertisements in two or
 4 more newspapers published in the city or town where it is situated, if
 5 there be such, and in two or more newspapers published in Boston. It
 6 may, however, reserve the right to reject any and all bids. If no such
 7 proposal is accepted, it may sell the whole or any part of the bonds to
 8 any persons or corporations in such manner, at such times, and upon
 9 such terms, but in no case at less than the par value thereof to be ac-
 10 tually paid in cash, as its directors shall determine.

Disposition
 of bonds.
 1919, 104, § 1.

1 SECTION 16. If, when the department approves an issue of new stock,
 2 bonds or other securities by a gas or electric company, it determines
 3 that the fair structural value of the plant and of the land of such
 4 company is less than its outstanding stock and debt, it may prescribe
 5 such conditions and requirements as it deems best adapted to make
 6 good within a reasonable time the impairment of the capital stock; or
 7 before allowing an increase, it may require the capital stock to be
 8 reduced by a prescribed amount, not exceeding the amount of such im-
 9 pairment. The amount of impairment and the conditions and require-
 10 ments imposed shall be stated in the annual report of the department.
 11 The supreme judicial or superior court shall have jurisdiction in equity,
 12 on application of the department, the attorney general, any stockholder
 13 or any interested party, to enforce this section and section fourteen and
 14 all orders and decisions, conditions or requirements of the department
 15 made in pursuance thereof.

Capital im-
 paired to be
 made good
 1894, 450, § 3.
 1896, 473.
 R. L. 109,
 §§ 26, 27.
 1914, 742,
 §§ 40, 41, 199.
 1931, 426,
 § 259.
 199 Mass. 352.

1 SECTION 17. A director, treasurer or other officer or agent of a gas
 2 or electric company who knowingly votes to authorize the issue of, or
 3 knowingly signs, certifies or issues, stock, bonds or other securities con-

Penalties.
 1894, 450, § 2.
 R. L. 109, § 28.
 1914, 742,
 §§ 42, 199.

1931, 426,
§ 260.

trary to any provision of section fourteen or sixteen, or who knowingly votes to authorize the application of, or knowingly applies, the proceeds of such stock, bonds or other securities contrary to any said provision, or who knowingly votes to assume or incur, or knowingly assumes or incurs in the name or behalf of such corporation, any debt or liability except for the legitimate purposes of the corporation, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Disposition of new shares of gas or electric companies. 1870, 179. 1873, 39. § 1; 333. P. S. 106, §§ 39-41. 1894, 472, §§ 1, 3. R. L. 109, § 30. 1909, 477, §§ 1, 3. 1910, 374. 1914, 742, §§ 43, 199. 1922, 226, § 1.

SECTION 18. If a gas or electric company increases its capital stock, such new shares shall, except as provided in the following section, be offered proportionately to its stockholders at such price, not less than par, as its directors may fix. The vote of the department, as provided in section fourteen, as to the amount of stock reasonably necessary for the purpose for which such increase has been authorized, shall be based on the price fixed by the directors, unless the department deems that such price is so low as to be inconsistent with the public interest, in which case it may fix the price at which such shares may be issued. If it deems that such new shares cannot be disposed of to the stockholders or others at or above the par value thereof, it may, notwithstanding the provisions of this or any other section, authorize the issue of such new shares at a price less than the par value thereof and with such requirements for the amortization of the discount as it may deem necessary in the public interest. Its determination shall be made part of the vote of the department as provided in section fourteen, and shall be certified and recorded as therein prescribed. The directors, upon the approval of such increase as provided in section fourteen and the fixing of the price as herein provided, shall cause written notice of such increase to be given to every stockholder who was such at the date of the vote to increase, stating the amount of such increase, the number of shares or fractions of shares to which he, according to the proportionate number of his shares at the date of such vote, is entitled, the price at which he may take them, and fixing a time, not less than fifteen days after the date of such determination, within which he may subscribe for such additional stock; provided, that when the capital stock of the corporation consists of preferred and common stock, the agreement or amended agreement of association or the by-laws or amended by-laws of the corporation may provide that the holders of preferred stock only shall be entitled to subscribe for new or additional preferred stock and that the holders of common stock only shall be entitled to subscribe for new or additional common stock, and that notice of such increase as aforesaid need be given only to the stockholders so entitled to subscribe. Every stockholder entitled to subscribe as aforesaid may, within the time limited, subscribe for his portion of the stock, which shall be paid for in cash before the issue of a certificate therefor. All votes and proceedings relative to the increase, and all rights of stockholders to subscribe for the new shares, shall be void unless the directors, after the vote to increase and within sixty days after final action of the department, shall cause written notice of such increase to be given as herein provided, or, if such increase is within the provisions of the following section, shall dispose of the same as therein provided.

Sale of such shares at auction, or

SECTION 19. If an increase subject to the preceding section does not exceed four per cent of the existing stock of the company, the directors,

3 without first offering the shares to the stockholders, may sell them by
 4 auction or by tender to the highest bidder in such manner, at such times
 5 and upon such terms, not less than par to be paid in cash, as the directors
 6 shall determine, or may sell them to customers or employees of the
 7 company upon such terms and subject to such conditions as may be
 8 approved by the department. Any shares heretofore or hereafter
 9 authorized, which, under the provisions of the preceding section, remain
 10 unsubscribed for by the stockholders entitled to take them may be sold
 11 by the directors at public auction, or may be disposed of to customers
 12 or employees of the company or others at such price, not less than par,
 13 or at such price less than par as may have been authorized by the depart-
 14 ment as provided in section eighteen, and upon such terms and in such
 15 manner as the directors may deem advisable, subject to the approval of
 16 the department. Such shares as are sold by auction shall be offered for
 17 sale in Boston or in such other city or town as the department prescribes,
 18 and notice of the time and place of the sale shall be published at least
 19 five times, during the ten days immediately preceding the sale, in each
 20 of three, at least, of such daily newspapers as the department may
 21 prescribe.

to customers
 or employees,
 when per-
 mitted
 1870, 179
 1873, 39,
 § 1, 333
 P. S. 106, § 10
 1894, 472, § 2
 R. L. 109, § 31
 1909, 177,
 §§ 2, 3
 1911, 742,
 § 11, 194
 1921, 246
 1922, 226, § 2,
 1921, 172.

1 SECTION 20. A corporation subject to this chapter shall not begin
 2 business until the whole amount of its capital stock, or such part thereof
 3 as may have been approved by the department, has been paid in and a
 4 certificate of that fact, and of the manner in which it has been paid in,
 5 and, at the time of making the certificate, been invested or voted by the
 6 corporation to be invested, signed and sworn to by the president, treasurer
 7 and a majority of the directors, has been filed in the office of the state
 8 secretary.

Capital to be
 paid in before
 commencing
 business.
 1829, 53, § 6.
 R. S. 38,
 §§ 16, 17.
 1851, 133, § 4.
 1857, 276, § 1.
 G. S. 60,
 §§ 17, 18;
 61, § 8.

1866, 290, § 8	R. L. 110, § 43.	117 Mass. 476.
1870, 224, § 32.	1914, 742, §§ 48, 199.	152 Mass. 428
1875, 177, § 2.	6 Met. 114	179 Mass. 15.
P. S. 106, § 46.	101 Mass. 381.	180 Mass. 325.

1 SECTION 21. A corporation subject to this chapter shall not, except
 2 as otherwise expressly provided, transfer its franchise, lease its works
 3 or contract with any person, association or corporation to carry on its
 4 works, without the authority of the general court.

Transfer of
 franchise
 forbidden.
 1886, 346, § 4
 R. L. 121, § 13

1911, 349.	166 Mass. 217.	Op. A. G. (1920) 29.
1914, 742, §§ 51, 199.	215 Mass. 394.	

1 SECTION 22. A corporation subject to this chapter may, by a vote of
 2 all its stockholders at a meeting duly called for the purpose, alter, add* to
 3 or change the business for which it was incorporated, but it shall not be
 4 empowered thereby to engage in any business not authorized by this
 5 chapter, and if a gas company, it shall not engage in the business of
 6 making or selling electricity unless duly authorized to engage therein
 7 as provided in the following section, and if an electric company, it shall
 8 not engage in the business of making or selling gas. A certificate setting
 9 forth such alteration, addition or change, signed and sworn to by the
 10 president, treasurer and a majority of the directors, shall be filed in the
 11 office of the state secretary.

Change of
 corporate
 business
 1875, 177, § 4
 P. S. 106, § 51.
 1885, 310.
 R. L. 110, § 47.
 1910, 124.
 1911, 742,
 §§ 52, 199.
 1915, 192.

1 SECTION 23. The department, upon written application of a gas com-
 2 pany, may, after notice and a hearing, authorize said company to engage
 3 in the business of generating and furnishing electricity in the territory,

Gas company
 authorized to
 sell electricity.
 1887, 385, § 1.
 R. L. 121, § 14

1914, 742, § 53, 199, 197 Mass. 556.

or any such part thereof as the department may designate, in which it is authorized to supply gas; but it shall not engage in said business unless authorized by vote of two thirds of the stockholders, representing not less than two thirds of the stock, at a meeting duly called therefor. Said company shall file in the office of the state secretary a certificate as provided in the preceding section.

4
5
6
7
8
9

Time prescribed for equipping plant. 1887, 385, § 2, R. L. 121, § 15, 1914, 742, §§ 54, 199.

SECTION 24. The department, when granting such authority, shall prescribe the time, not exceeding six months, within which said company shall acquire a plant for generating the electricity required in the specified territory, and shall designate the minimum capacity of the plant; and if the company fails to acquire said plant within the time prescribed, said authority shall be void and no such authority shall be again granted to it within two years thereafter. The department may, for cause shown, extend the time for erecting and equipping said plant for not more than three months after the expiration of the time first prescribed.

1
2
3
4
5
6
7
8
9

Record of orders for erection of plant and of compliance. 1887, 385, § 3, R. L. 121, § 16, 1914, 742, §§ 55, 199.

SECTION 25. At the expiration of such time or of any extension thereof, the department shall, after such examination as it deems proper, make, in a book kept therefor, a record that its orders relative to the acquisition of said plant have or have not been complied with, which record shall be conclusive evidence of the truth of the matters stated therein.

1
2
3
4
5

Purchase of franchise, etc., of electric company. 1887, 385, § 9, R. L. 121, § 22, 1914, 742, §§ 56, 199.

SECTION 26. Such gas company may, subject to the provisions of sections ninety-six, ninety-eight and ninety-nine, purchase or lease and use the property, licenses, rights, privileges and franchises of any electric company engaged in the business of furnishing electricity in the territory where such gas company may be authorized to furnish such electricity.

1
2
3
4
5

Powers and duties of company so authorized. 1887, 385, § 8, R. L. 121, § 21, 1914, 742, §§ 57, 199.

SECTION 27. Except as otherwise expressly provided in this chapter, such gas company shall, in exercising the powers conferred by the four preceding sections, have all the powers and privileges and be subject to all the duties, restrictions and liabilities of an electric company.

1
2
3
4

Change of corporate name. 1914, 742, § 58.

SECTION 28. If a corporation subject to this chapter changes its name, as provided in section ten of chapter one hundred and fifty-five, the new name shall contain, at the end thereof, the words "gas company", or "electric company", as the case may be.

1
2
3
4

Certificate of change of officers to be filed. 1907, 282, 1908, 180, 1914, 742, §§ 59, 199, 1918, 257, § 376, 1919, 5; 350, § 53, 1920, 2.

SECTION 29. Whenever any change is made in the officers of a corporation subject to this chapter, except at the annual meeting, a certificate of such change, signed and sworn to by the clerk, shall forthwith be filed in the offices of the commissioner of corporations and taxation and of the department. Any such corporation failing to file such certificate within thirty days after such change has been made, or which fails to keep a clerk of the corporation in the commonwealth, shall forfeit not more than five hundred dollars, to be recovered in the manner prescribed by section forty-two of chapter one hundred and fifty-eight.

1
2
3
4
5
6
7
8
9

Change of location. 1877, 67, P. S. 105, § 7, R. L. 109, § 7.

SECTION 30. The department may, after notice and a public hearing, authorize a gas or electric company to carry on its business in any town in the commonwealth other than the town named in its agreement

1
2
3

4 of association or charter, subject to sections eighty-six to eighty-eight,
 5 inclusive, and it may purchase, hold and convey real and personal estate
 6 in such other town necessary for carrying on its business therein.

1910, 197.
 1914, 742.
 §§ 61, 199.
 1919, 111.

1 SECTION 31. A manufacturing or other corporation having its place
 2 of business in a city or town where a gas company proposes to manufac-
 3 ture gas for light may hold not more than ten per cent of the capital
 4 stock of such gas company.

Other com-
 panies may
 hold gas stock.
 1855, 146, § 4.
 G. S. 61, § 18.

1870, 224, § 58. P. S. 106, § 78. R. L. 110, § 79. 1914, 742, §§ 64, 199.

1 SECTION 32. The officers of a corporation subject to this chapter shall
 2 be jointly and severally liable for its debts and contracts in the following
 3 cases, and not otherwise:

Liability
 of officers.
 1821, 38.

1829, 53, §§ 8, 9	1877, 230, § 1	10 Gray, 232, 600.
R. S. 38, §§ 23-25, 28.	P. S. 106, § 60.	15 Gray, 216.
G. S. 60, §§ 17-25, 30	1898, 266	108 Mass. 523.
1862, 218, § 1	R. L. 110, § 58	137 Mass. 516.
1870, 224, § 38	1914, 742, §§ 73, 199.	

4 The president and directors shall be so liable —

5 First, For making or consenting to a dividend if the corporation is or
 6 thereby is rendered insolvent, to the extent of such dividend.

189 Mass. 566.
 190 Mass. 61.

7 Second, For debts contracted between the time of making or assenting
 8 to a loan to a stockholder and the time of its repayment, to the extent of
 9 such loan.

183 Mass. 557.

10 Third, If the debts of a corporation other than bonds heretofore law-
 11 fully issued or other than bonds hereafter approved under section
 12 fourteen exceed its capital, to the extent of such excess existing at the
 13 time of the commencement of the suit against the corporation in which
 14 the judgment was recovered upon which the suit in equity to enforce such
 15 liability is brought as provided in section forty-nine of chapter one hun-
 16 dred and fifty-eight.

5 Allen, 398.
 127 Mass. 563.
 156 Mass. 490.
 173 Mass. 242
 198 Mass. 76.

17 The president, directors and other officers shall be so liable —

18 Fourth, For signing any certificate required by law, knowing it to be
 19 false; but only the officers having knowledge thereof shall be liable.

12 Gray, 203.
 148 Mass. 226
 150 Mass. 264.

182 Mass. 530, 578 190 Mass. 35

20 Fifth, For debts contracted before the original capital has been fully
 21 paid in and the certificate of such payment has been filed in accordance
 22 with section twenty.

193 Mass. 138.
 195 Mass. 461.

[Liability of stockholders, Chap. 158, §§ 45-54]

1 SECTION 33. The fees for filing and recording the copies of the votes
 2 or certificates required by section eight, twenty, twenty-two or twenty-
 3 three to be filed with the state secretary shall be ten dollars for each copy
 4 or certificate.

Fees.
 1863, 231, § 2.
 1865, 76
 1870, 224, § 59.
 1871, 556.

1875, 177, § 4	1866, 369; 523, §§ 1, 2	1915, 92; 264.
1879, 202, § 2	R. L. 110, § 86	1920, 598, §§ 5, 6.
P. S. 106, § 54	1908, 219, 382	1924, 44, § 2.
1887, 225.	1914, 742, §§ 91, 199.	1 Op. A. G. 205, 300.
1895, 169		

MUNICIPAL LIGHTING PLANTS.

1 SECTION 34. A town may, in accordance with this chapter, construct,
 2 purchase or lease, and maintain within its limits, one or more plants for
 3 the manufacture or distribution of gas or electricity for municipal use or
 4 for the use of its inhabitants. Such plants may include suitable land,
 5 structures and machinery and other apparatus and appliances for manu-
 6 facturing, using and distributing gas or electricity for said purposes.

City or town
 may acquire
 plant.
 1891, 370, § 1.
 1894, 533
 R. L. 34, § 1
 1906, 463, 111,
 §§ 59, 158.
 1914, 742,
 §§ 92, 199.

1917, 205, § 2 150 Mass. 592 153 Mass. 129. 155 Mass. 598.

Vote of city. 1891, 370, § 2. 1893, 454, § 7. 1894, 432; 448. R. L. 34, § 2. 1914, 742, §§ 93, 199.	SECTION 35. A city shall not acquire such a plant until authorized by a two thirds vote of its city council, or of a majority of the commissioners if the city government consists of a commission, passed in each of two consecutive municipal years and thereafter ratified by a majority of the voters at an annual or special city election. If such a vote is not ratified, no similar vote shall be submitted for ratification within one year thereafter.	1 2 3 4 5 6 7
Vote of town. 1891, 370, § 3. R. L. 34, § 3. 1914, 742, §§ 94, 199 161 Mass. 432. 163 Mass. 346. 232 Mass. 7.	SECTION 36. A town shall not acquire such a plant until authorized by a two thirds vote, taken by ballot with the use of the voting list, at each of two town meetings called therefor and held at intervals of not less than two nor more than thirteen months. If the first of such votes is favorable and the second unfavorable, or if both such votes are unfavorable, no similar vote shall be passed within two years thereafter.	1 2 3 4 5 6
Certification of vote to department. 1892, 259, § 1. R. L. 34, § 4. 1914, 742, §§ 95, 199.	SECTION 37. After a city or town has voted under section thirty-five or thirty-six, the city or town clerk shall forthwith transmit to the department a certified copy of so much of the records of the city council or of the town as relates to the result of the vote.	1 2 3 4
Certification of subsequent votes, etc. 1892, 259, § 2 R. L. 34, § 5. 1914, 742, §§ 96, 199.	SECTION 38. If a city or town which has authorized the acquisition of such a plant subsequently votes to establish, purchase, reconstruct, extend or enlarge a plant, or to issue bonds, notes or certificates of indebtedness on account thereof, or to regulate the management or conduct thereof, or to adopt an ordinance or by-law relative thereto, the city or town clerk shall, within ten days after such vote, transmit to the department a certified copy thereof.	1 2 3 4 5 6 7
Penalty for failure to certify vote. 1892, 259, § 4. R. L. 34, § 6.	SECTION 39. A city or town clerk failing to comply with any provision of the two preceding sections shall forfeit not more than twenty-five dollars.	1 2 3
	1914, 742, §§ 97, 199.	
May incur debt for plant. 1891, 370, § 4. 1893, 454, § 9. 1894, 182. R. L. 27, § 5; 34, §§ 7, 8.	SECTION 40. A city or town which has duly voted to acquire a municipal lighting plant may incur debt as provided in section eight of chapter forty-four for the purpose of establishing, purchasing, extending or enlarging it within its territorial limits.	1 2 3 4
	1908, 341, §§ 2, 4. 1913, 719, § 6. 1914, 742, §§ 98, 199. 1915, 115.	
Enlargement of plant. 1891, 370, § 5. R. L. 34, § 9 1913, 719, § 6. 1914, 742, §§ 99, 199.	SECTION 41. A city or town owning such a plant shall not, except by a vote taken in the manner prescribed in section eight of chapter forty-four, reconstruct, enlarge or extend the same beyond the necessary and ordinary maintenance, repair and replacement thereof, or the provision of increased appliances necessary to distribute gas or electricity to new consumers.	1 2 3 4 5 6
Purchase of existing plant. 1891, 370, § 12. 1893, 454, § 5. R. L. 34, § 10. 1903, 255. 1914, 742, §§ 100, 199. 1915, 20, § 1. 1929, 379, § 1. 179 Mass. 365. 232 Mass. 7.	SECTION 42. If, when a town votes to establish a municipal lighting plant, any person or municipality was, at the time of the first vote required by section thirty-five or thirty-six, engaged in generating or distributing gas or electricity for sale for lighting purposes in such town, the town may purchase of him or it, at such price and on such terms as may be agreed upon, such portion of his or its plant and property within the limits of such town as such town desires for its use and as can be	1 2 3 4 5 6 7

8 agreed upon, provided, however, that no such purchase shall be con-
 9 summated by a city unless approved by vote of its city council, or of its
 10 commissioners if the city government consists of a commission, or by a
 11 town unless ratified by the voters at a town meeting.

1 SECTION 43. If a town which votes to establish a municipal lighting
 2 plant fails, within one hundred and fifty days from the passage of the
 3 final vote required by section thirty-five or thirty-six, to agree, as to price
 4 or as to the property to be included in the purchase, with any person or
 5 municipality engaged at the time of the first vote required by said section
 6 thirty-five or thirty-six in generating or distributing gas or electricity
 7 for sale for lighting purposes in such town and electing to sell, either such
 8 town or such person or municipality may apply to the department within
 9 thirty days after the expiration of said one hundred and fifty days for a
 10 determination as to what property ought in the public interest to be
 11 included in the purchase and what price should be paid, having in view
 12 the cost of the property less a reasonable allowance for depreciation and
 13 obsolescence, and any other element which may enter into a determina-
 14 tion of a fair value of the property so purchased, but such value shall be
 15 estimated without enhancement on account of future earning capacity
 16 or good will, or of exclusive privileges derived from rights in the public
 17 ways; and thereupon the department, after notice to the parties, shall
 18 give a hearing thereon and make the determination aforesaid. Such
 19 property shall include such portion of the property of such person or
 20 municipality within the limits of such town as is suitable for, and used
 21 in connection with, the generation or distribution of gas or electricity
 22 within such limits; provided, that such purchase shall include both a gas
 23 and electric lighting plant only if a single corporation owns or operates
 24 both such plants. Such price shall include damages, if any, which the
 25 department finds would be caused by the severance of the property pro-
 26 posed to be included in the purchase from other property of the owner.
 27 If any such property is subject to any mortgages, liens or other encum-
 28 brances, the department in making its determination shall provide for the
 29 deduction or withholding from the purchase price, pending discharge, of
 30 such sum or sums as it deems proper.

31 If within thirty days after such determination shall have been made
 32 by the department, the owner shall notify the town of its acceptance of
 33 the determination as made by the department, and within a further period
 34 of thirty days shall tender a good and sufficient deed of conveyance to the
 35 city or town clerk of the property required by the department to be pur-
 36 chased, and shall then place said deed in escrow, the town shall have
 37 sixty days in which to accept or reject said tender, and if it accepts shall
 38 have a further period of sixty days in which to pay to the owner the price
 39 determined as hereinbefore provided. Such acceptance or rejection in
 40 case of a city shall be by vote of its city council, or its commissioners if its
 41 government consists of a commission, and in case of a town shall be by
 42 vote at a town meeting. A rejection of the tender shall operate as a
 43 rescission of all votes theretofore passed for the establishment of a
 44 municipal lighting plant.

45 Should the owner not file such acceptance and tender within the time
 46 so limited, the town may proceed to construct or otherwise acquire a
 47 municipal plant without further attempt to acquire the plant of such
 48 owner or any part thereof, provided, however, that in case of a city such
 49 action is authorized by vote of its city council, or of its commissioners if

Duties of de-
 partment in
 case of dis-
 agreement as
 to such pur-
 chase. Pro-
 ceedings if
 owner fails
 to convey
 after deter-
 mination by
 department.
 1891, 370.
 § § 12, 13.
 1893, 454.
 § § 4, 5.
 1894, 538.
 R. L. 34.
 § § 10, 11.
 1903, 255.
 1905, 410, § 1.
 1914, 742.
 § § 100, 101,
 199.
 G. L. (ed. of
 1920) 164, § 42
 1929, 379, § 2
 161 Mass. 432.
 163 Mass. 346.
 179 Mass. 365.
 232 Mass. 7.

its government consists of a commission, and that in case of a town such action is authorized by vote at a town meeting. 50 51

SECTION 44. [REPEALED, 1929, 379, § 3.] 1

Property in adjoining city or town. 1893, 454, § 1. R. L. 34, § 13. 1914, 742, §§ 103, 199. 1929, 379, § 4. SECTION 45. If a town purchases a gas or electric lighting plant having mains, poles, wires or other distributing apparatus in an adjoining town where there is no private gas or electric lighting company, it may also purchase such mains, poles, wires or other distributing apparatus therein, subject to sections forty-two and forty-three. 1 2 3 4 5

Supply of adjoining city or town. 1893, 454, § 2. R. L. 34, § 14. 1914, 742, §§ 104, 199. 1929, 379, § 5. SECTION 46. A town which has acquired, as hereinbefore provided, mains, poles, wires or other distributing apparatus in an adjoining town may thereafter manufacture, sell and distribute gas or electricity to said adjoining town or to its inhabitants, and shall thereafter have therein the same rights and franchises and be subject to the same limitations and obligations as the vendor from whom such outlying plant was purchased would have had or to which he would have been subject had such purchase not been made. 1 2 3 4 5 6 7 8

Supply by municipal plants to adjoining cities or towns. 1915, 191. 1929, 379, § 6. SECTION 47. The department may, after notice and a public hearing, authorize a town which has acquired a municipal lighting plant to extend its mains or lines into an adjoining town in order to distribute and sell gas or electricity therein, if such town or a private corporation therein is not then supplying such town with gas or electricity, as the case may be. Such authorization shall be upon such terms and with such limitations and restrictions as the department deems for the public interest. A town so authorized shall thereafter have in such adjoining town the same rights and privileges, and be subject to the same limitations and obligations, as it has within its own territorial limits. 1 2 3 4 5 6 7 8 9 10

SECTION 48. [REPEALED, 1929, 379, § 7.] 1

SECTION 49. [REPEALED, 1929, 379, § 7.] 1

SECTION 50. [REPEALED, 1929, 379, § 7.] 1

Purchase of gas or electricity. 1893, 454, § 8. R. L. 34, § 15. 1909, 173. 1914, 742, §§ 108, 199. SECTION 51. A town which has acquired a plant for the manufacture or distribution of gas may purchase gas from another town authorized to sell the same or from any corporation selling gas; and a town which has acquired a plant for the manufacture or distribution of electricity may purchase electricity from another town authorized to sell the same or from any corporation selling electricity, except as provided in the following section. 1 2 3 4 5 6 7

Certain towns may purchase from street railway company. 1902, 449, § 1. 1906, 218; 463. III, §§ 60, 158. 1914, 742, §§ 109, 199. 1919, 350, § 117. SECTION 52. A town in which no person or corporation is engaged in generating or distributing electricity for sale and which has voted or shall vote to construct one or more plants for the manufacture or distribution of electricity for municipal use or for the use of its inhabitants, or for both purposes, may make contracts, for terms not exceeding ten years, with any street railway company operating a street railway in such town, for the purchase of electricity from such company in order to furnish electricity for municipal use or for the use of its inhabitants, or both; and street railway companies may make contracts to furnish 1 2 3 4 5 6 7 8 9

10 electricity as aforesaid to a town, but the contracts shall not become
 11 operative unless the department shall, after a public hearing, approve
 12 the terms thereof as consistent with the public interest. This and the
 13 three following sections shall not apply to cities.

1 SECTION 53. Electricity supplied by a street railway company to a
 2 town shall be delivered to the distributing system of said town at some
 3 specified place or places therein, and the meter or meters by which such
 4 electricity is measured shall be a part of the distributing system.

Delivery of
 electricity so
 purchased.
 1902, 449, § 2.
 1906, 463,
 111, §§ 61, 158.

1914, 742, §§ 110, 199.

1 SECTION 54. If a town voting to purchase electricity from a street
 2 railway company is unable to agree with such company at the expira-
 3 tion of a contract, made in accordance with section fifty-two, upon the
 4 price to be paid for electricity by, or upon the manner in which elec-
 5 tricity is to be furnished to, said town in the future, its selectmen may
 6 apply to the department to fix the price which it shall pay for said elec-
 7 tricity to, and the manner in which electricity shall be furnished by,
 8 said company; and thereupon the department shall set a date for a
 9 public hearing upon such application, giving said company reasonable
 10 notice thereof; and after the hearing the department shall, if it deems
 11 the furnishing of such electricity consistent with the interest of public
 12 travel upon the railway of such company, fix the price which said town
 13 shall pay for electricity to, and the manner in which electricity shall be
 14 furnished by, said company; and said company shall thereupon furnish
 15 to said town electricity at the price and in the manner fixed by the
 16 department.

Department
 to fix price in
 case of dis-
 agreement.
 1902, 449, § 3
 1906, 463,
 111, §§ 62, 158.
 1914, 742,
 § 111.
 1919, 350,
 § 117.

1 SECTION 55. A town which has established or votes to establish a gas
 2 or electric plant may elect a municipal light board consisting of three
 3 citizens of the town, one of whom shall be chosen for one year, one for
 4 two years, and one for three years, and at each annual meeting thereafter
 5 one for a term of three years, who shall have authority to construct, pur-
 6 chase or lease a gas or electric plant in accordance with the vote of the
 7 town and to maintain and operate the same.

Municipal
 light board.
 1893, 454, § 10.
 R. L. 34, § 19
 1914, 742,
 §§ 112, 199.
 272 Mass. 116.

1 SECTION 56. The mayor of a city, or the selectmen or municipal light
 2 board, if any, of a town acquiring a gas or electric plant shall appoint a
 3 manager of municipal lighting who shall, under the direction and control
 4 of the mayor, selectmen or municipal light board, if any, and subject to
 5 this chapter, have full charge of the operation and management of the
 6 plant, the manufacture and distribution of gas or electricity, the purchase
 7 of supplies, the employment of agents and servants, the method, time,
 8 price, quantity and quality of the supply, the collection of bills, and the
 9 keeping of accounts. His compensation and term of office shall be fixed in
 10 cities by the city council and in towns by the selectmen or municipal light
 11 board, if any; and, before entering upon the performance of his official
 12 duties, he shall give bond to the city or town for the faithful performance
 13 thereof in a sum and form and with sureties to the satisfaction of the
 14 mayor, selectmen or municipal light board, if any, and shall, at the
 15 end of each municipal year, render to them such detailed statement of
 16 his doings and of the business and financial matters in his charge as
 17 the department may prescribe. All moneys payable to or received by
 18 the city, town, manager or municipal light board in connection with the

Manager of
 municipal
 lighting; ap-
 pointment,
 duties, etc.
 Expenses of
 plant, how
 supervised.
 1891, 370, § 8.
 1893, 454, § 10.
 R. L. 34, § 20.
 1905, 410, § 3.
 1914, 742,
 §§ 113, 199.
 1929, 266.
 196 Mass. 41.
 272 Mass. 116.

operation of the plant, for the sale of gas or electricity or otherwise, shall 19
 be paid to the city or town treasurer. All accounts rendered to or kept 20
 in the gas or electric plant of any city shall be subject to the inspection 21
 of the city auditor or officer having similar duties, and in towns they shall 22
 be subject to the inspection of the selectmen. The auditor or officer 23
 having similar duties, or the selectmen, may require any person presenting 24
 for settlement an account or claim against such plant to make oath before 25
 him or them, in such form as he or they may prescribe, as to the accuracy 26
 of such account or claim. The wilful making of a false oath shall be 27
 punishable as perjury. The auditor or officer having similar duties in 28
 cities, and the selectmen in towns, shall approve the payment of all bills 29
 or pay rolls of such plants before they are paid by the treasurer, and may 30
 disallow and refuse to approve for payment, in whole or in part, any claim 31
 as fraudulent, unlawful or excessive; and in that case the auditor or 32
 officer having similar duties, or the selectmen, shall file with the city or 33
 town treasurer a written statement of the reasons for the refusal; and the 34
 treasurer shall not pay any claim or bill so disallowed. This section shall 35
 not abridge the powers conferred on town accountants by sections fifty- 36
 five to sixty-one, inclusive, of chapter forty-one. The manager shall at 37
 any time, when required by the mayor, selectmen, municipal light board, 38
 if any, or department, make a statement to such officers of his doings, 39
 business, receipts, disbursements, balances, and of the indebtedness of the 40
 town in his department. 41

Annual income
 and expenses.
 1891, 370,
 §§ 4, 8.
 R. L. 34, § 21.
 1905, 410, § 4.
 1906, 411.
 1908, 486.
 1914, 742,
 §§ 114, 199.
 1918, 77, § 1.
 1931, 426, § 77.

SECTION 57. At the beginning of each fiscal year, the manager of 1
 municipal lighting shall furnish to the mayor, selectmen or municipal 2
 light board, if any, an estimate of the income from sales of gas and elec- 3
 tricity to private consumers during the ensuing fiscal year, and of the 4
 expense of the plant during said year, meaning the gross expenses of 5
 operation, maintenance and repair, the interest on the bonds, notes or 6
 certificates of indebtedness issued to pay for the plant, an amount for 7
 depreciation equal to three per cent of the cost of the plant exclusive of 8
 land and any water power appurtenant thereto, or such smaller or larger 9
 amount as the department may approve, the requirements of the sinking 10
 fund or debt incurred for the plant, and the loss, if any, in the operation 11
 of the plant during the preceding year, and of the cost, as defined in sec- 12
 tion fifty-eight, of the gas and electricity to be used by the town. The 13
 town shall include in its annual appropriations and in the tax levy not less 14
 than the estimated cost of the gas and electricity to be used by the town 15
 as above defined and estimated. By cost of the plant is intended the 16
 total amount expended on the plant to the beginning of the fiscal year for 17
 the purpose of establishing, purchasing, extending or enlarging the same. 18
 By loss in operation is intended the difference between the actual income 19
 from private consumers plus the appropriations for maintenance for the 20
 preceding fiscal year and the actual expense of the plant, reckoned as 21
 above, for that year in case such expenses exceeded the amount of such 22
 income and appropriation. The income from sales and the money app- 23
 propriated as aforesaid shall be used to pay the annual expense of the 24
 plant, defined as above, for the fiscal year, except that no part of the sum 25
 therein included for depreciation shall be used for any other purpose than 26
 renewals in excess of ordinary repairs, extensions, reconstruction, enlarge- 27
 ments and additions. The surplus, if any, of said annual allowances for 28
 depreciation after making the above payments shall be kept as a sepa- 29
 rate fund and used for renewals other than ordinary repairs, extensions, 30

31 reconstruction, enlargements and additions in succeeding years; and no
 32 debt shall be incurred under section forty for any extension, reconstruction
 33 or enlargements of the plant in excess of the amount needed therefor in
 34 addition to the amount then on hand in said depreciation fund. Said
 35 depreciation fund shall be kept and managed by the town treasurer as
 36 a separate fund, subject to appropriation by the city council or select-
 37 men or municipal light board, if any, for the foregoing purpose. So
 38 much of said fund as the department may from time to time approve
 39 may also be used to pay notes, bonds or certificates of indebtedness
 40 issued to pay for the cost of reconstruction or renewals in excess of or-
 41 dinary repairs, when such notes, bonds or certificates of indebtedness
 42 become due. All appropriations for the plant shall be either for the
 43 annual expense defined as above, or for extensions, reconstruction, en-
 44 largements or additions; and no appropriation shall be used for any pur-
 45 pose other than that stated in the vote making the same. No bonds,
 46 notes or certificates of indebtedness shall be issued by a town for the
 47 annual expenses as defined in this section.

1 SECTION 57A. Any city or town having a municipal light plant may
 2 appropriate money for the maintenance and operation of such plant, speci-
 3 fying that the same shall be taken from the receipts of the department;
 4 and where such appropriations are made, the city or town treasurer may,
 5 in advance of the collection of said receipts, pay bills on account of the
 6 said appropriations, and any sum so advanced shall be repaid to the city
 7 or town from such receipts, when collected, and shall be applied as reim-
 8 bursement to the city or town, or to the payment of any temporary loan
 9 made by the city or town in anticipation of revenue of that year.

Appropriations.
 Payments in
 advance of
 receipts.
 1922, 184.

1 SECTION 58. There shall be fixed schedules of prices for gas and
 2 electricity, which shall not be changed oftener than once in three months.
 3 Any change shall take effect on the first day of a month, and shall first
 4 be advertised in a newspaper, if any, published in the municipality. No
 5 price in said schedules shall, without the written consent of the depart-
 6 ment, be fixed at less than production cost as it may be defined from
 7 time to time by order of the department. Such schedules of prices shall
 8 be fixed to yield not more than eight per cent per annum on the cost of
 9 the plant, as it may be determined from time to time by order of the
 10 department, after the payment of all operating expenses, interest on the
 11 outstanding debt, the requirements of the serial debt or sinking fund
 12 established to meet said debt, and also depreciation of the plant reckoned
 13 as provided in section fifty-seven, and losses; but any losses exceeding
 14 three per cent of the investment in the plant may be charged in succeed-
 15 ing years at not more than three per cent per annum. The gas and
 16 electricity used by the municipality for any purpose except street light-
 17 ing shall be charged for in accordance with the prices in the fixed sched-
 18 ules. The gas and electricity used by the municipality for street lighting
 19 shall be charged for at a cost to be determined as follows: the sum of all
 20 operating expenses, interest on the outstanding debt, the requirements
 21 of the serial debt or sinking fund established to meet said debt, and also
 22 depreciation of the plant reckoned as provided in section fifty-seven,
 23 and losses, shall be the dividend; the kilowatt hours sold including those
 24 supplied for street lighting shall be the divisor, and the resulting quotient
 25 multiplied by the kilowatt hours supplied for street lighting shall be the
 26 cost to be charged to the municipality for street lighting.

Price for gas
 and electricity
 regulated.
 1891, 370, § 10
 R. L. 34, § 22
 1914, 742,
 §§ 115, 199,
 1918, 77, § 2.
 1927, 269.

Advance deposit. Shut-off. Removal of appliances upon default. 1891, 370, § 10. R. L. 34, § 22. 1914, 742, §§ 115, 199. 1918, 77, § 2. G. L. (ed. of 1920) 164, § 58. 1927, 269.

SECTION 58A. A sufficient deposit to secure the payment for gas or electricity for three months may be required in advance from any consumer, and if such advance deposit is retained for a longer period than six months, interest at the rate of four per cent per annum shall be paid annually to said consumer or credited to his account. The supply may be shut off from any premises until all arrears for gas or electricity furnished thereon to such consumer shall have been paid. After three months default in the payment of such arrears, all appliances for distribution belonging to the municipality on the premises may be removed and shall not be restored except on payment of all such arrears and the expenses of removal and restoration.

Prices to be certified to department. 1892, 259, §§ 3, 4. R. L. 34, § 23. 1914, 742, §§ 116, 199.

SECTION 59. When a town fixes or changes a price, the manager of municipal lighting shall send a certified copy of the notice thereof to the department and for a failure so to do shall forfeit not more than twenty-five dollars.

Compulsory supply. 1891, 370, § 7. 1894, 533. R. L. 34, § 24. 1914, 742, §§ 117, 199.

SECTION 60. A town shall not be compelled to furnish gas or electricity to any person or corporation except upon order of the department, to whom any person aggrieved by the refusal of a town to furnish gas or electricity may appeal, stating the facts in such detail as the department directs.

Assessment of cost of services, etc. 1891, 370, § 6. R. L. 34, § 25. 1914, 742, §§ 118, 199.

SECTION 61. A town acquiring a plant may provide by ordinance or by-law for the equitable assessment upon the owner or occupant of any premises of the cost, or any part thereof, of laying and maintaining pipes, conduits, conductors or other appliances thereon. Payment of such assessments shall not be compulsory, but it shall be a condition precedent to the supplying of gas or electricity to the occupants of such premises, and may be required before providing appliances therefor.

Ordinances and by-laws relative to plant. 1891, 370, § 11. R. L. 34, § 26.

SECTION 62. A town operating a plant may pass ordinances or by-laws, imposing penalties not exceeding fifty dollars, to protect the plant, control its use and prevent accidents from gas or electricity supplied by it, and to govern consumers in their use thereof.

1914, 742, §§ 119, 199.

Records and return to department. Penalties. 1891, 370, § 9. 1896, 356; 480. R. L. 34, § 27. 1905, 410, § 5. 1914, 742, §§ 120, 199. 1918, 78, § 1. 1923, 85. 1926, 99.

SECTION 63. A town manufacturing or selling gas or electricity for lighting shall keep records of its work and doings at its manufacturing station, and in respect to its distributing plant, as may be required by the department. It shall install and maintain apparatus, satisfactory to the department, for the measurement and recording of the output of gas and electricity, and shall sell the same by meter to private consumers when required by the department, and, if required by it, shall measure all gas or electricity consumed by the town. The books, accounts and returns shall be made and kept in a form prescribed by the department, and the accounts shall be closed annually on the last day of the fiscal year of such town, and a balance sheet of that date shall be taken therefrom and included in the return to the department. The mayor, selectmen or municipal light board and manager shall, at any time, on request, submit said books and accounts to the inspection of the department and furnish any statement or information required by it relative to the condition, management and operation of said business. The department

17 shall, in its annual report, describe the operation of the several municipal
 18 plants with such detail as may be necessary to disclose the financial
 19 condition and results of each plant; and shall state what towns, if any,
 20 operating a plant have failed to comply with this chapter, and what
 21 towns, if any, are selling gas or electricity with the approval of the de-
 22 partment at less than cost. The mayor, or selectmen, or municipal light
 23 board, if any, shall annually, on or before such date as the department
 24 fixes, make a return to the department, for the preceding fiscal year,
 25 signed and sworn to by the mayor, or by a majority of the selectmen or
 26 municipal light board, if any, and by the manager, stating the financial
 27 condition of said business, the amount of authorized and existing in-
 28 debtedness, a statement of income and expenses in such detail as the
 29 department may require, and a list of its salaried officers and the salary
 30 paid to each. The mayor, the selectmen or the municipal light board
 31 may direct any additional returns to be made at such time and in such
 32 detail as he or they may order. Any officer of a town manufacturing or
 33 selling gas or electricity for lighting who, being required by this section
 34 to make an annual return to the department, neglects to make such an-
 35 nual return shall, for the first fifteen days or portion thereof during which
 36 such neglect continues, forfeit five dollars a day; for the second fifteen
 37 days or any portion thereof, ten dollars a day; and for each day there-
 38 after not more than fifteen dollars a day. Any such officer who un-
 39 reasonably refuses or neglects to make such return shall, in addition
 40 thereto, forfeit not more than five hundred dollars. If a return is de-
 41 fective or appears to be erroneous, the department shall notify the
 42 officer to amend it within fifteen days. Any such officer who neglects
 43 to amend said return within the time specified, when notified to do so,
 44 shall forfeit fifteen dollars for each day during which such neglect con-
 45 tinues. All forfeitures incurred under this section may be recovered by
 46 an information in equity brought in the supreme judicial court by the
 47 attorney general, at the relation of the department, and when so recovered
 48 shall be paid to the commonwealth.

1 SECTION 64. A town owning or operating a gas or electric plant shall
 2 be liable for any injury or damage to persons or property, or for the death
 3 of a person who is in the exercise of due care, caused by its maintenance
 4 or operation, in the same manner and to the same extent as a private
 5 corporation, but shall not be liable for damages caused by competition
 6 with an existing gas or electric plant therein.

Liability for
 injury or
 damage.
 1891, 370, § 16
 R. L. 34, § 28.
 1914, 742.
 §§ 121, 199.
 1920, 236.
 185 Mass. 214.

212 Mass. 243.

1 SECTION 65. A town authorized by special act to construct, purchase,
 2 lease, establish or maintain a gas or electric plant shall be subject to this
 3 chapter, so far as the same may be applicable.

Application
 of chapter
 to plants
 specially
 chartered.

1892, 259, § 5. R. L. 34, § 29. 1905, 410, § 6. 1914, 742, §§ 122, 199.

1 SECTION 66. This chapter, and all ordinances or by-laws of any
 2 town acting under its provisions relative to the manufacture, use or dis-
 3 tribution of gas or electricity, or to the quality thereof, or to the plant
 4 or the appliances therefor, shall apply to such town, so far as applicable.

City or town
 owning plant,
 subject to
 general laws,
 etc.
 1891, 370, § 17
 R. L. 34, § 30.

1914, 742, §§ 123, 199. 212 Mass. 243. 1 Op. A. G. 550.

1 SECTION 67. No town having within its limits the main gas works or
 2 the central electric station, or the major portion of the wires, poles, con-

Revocation
 of locations
 restricted.

1891, 370, § 18.
R. L. 31, § 31.
1914, 742,
§§ 124, 199.
161 Mass. 432.

duits or pipes used in connection with any such works or plant, shall, 3
except for a violation of the terms or conditions upon which the same 4
were granted or for a violation of law respecting the exercise thereof, 5
revoke any rights granted to any person or corporation engaged in 6
manufacturing or distributing gas or electricity for sale after the intro- 7
duction of the first vote authorizing the establishment of a gas or elec- 8
tric plant in a city council under section thirty-five or after the calling 9
of such vote, until the proceedings so begun have been finally deter- 10
mined by granting or denying authority to establish such plant. After 11
the ratification of the votes required by section thirty-five and the pas- 12
sage of both votes required by section thirty-six, no town, except as here- 13
inbefore provided, shall revoke any rights, locations or licenses granted 14
to any such person. 15
16

Sale of plant.
1917, 205, § 1.
1930, 369, § 1.

SECTION 68. A town which has acquired a municipal lighting plant 1
shall not sell it for the purpose of abandoning the distribution of gas or 2
electricity to its inhabitants until such sale has been authorized in the 3
manner and by the votes prescribed for the acquisition of such plants by 4
sections thirty-five and thirty-six. No sale of such a plant shall be made 5
for any purpose until the department, after notice and a public hearing, 6
has determined that the facilities for furnishing and distributing gas and 7
electricity in the territory served by such plant will not thereby be 8
diminished, and that such sale and the terms thereof are consistent with 9
the public interest. 10

Enforcement
of certain
provisions.
1905, 410, § 7.
1914, 742,
§§ 125, 199.

SECTION 69. The supreme judicial court for the county where the town 1
is situated shall have jurisdiction on petition of the department or of 2
twenty taxable inhabitants of the town to compel the fixing of prices by 3
the town in compliance with sections fifty-seven and fifty-eight, to pre- 4
vent any town from purchasing, operating or selling a gas or electric 5
plant in violation of any provision of this chapter, and generally to enforce 6
compliance with the terms and provisions thereof relative to the manu- 7
facture or distribution of gas or electricity by a town. 8

DISTRIBUTION OF GAS AND ELECTRICITY.

Street loca-
tions for
gas mains.
1855, 146, § 2.
G. S. 61, § 16.
1870, 224, § 56;
353, § 2.
1879, 202, § 1,
last clause.
P. S. 106, § 75.
1885, 240, § 1.
1896, 544, § 1.
R. L. 110, § 76.
1914, 742,
§§ 125, 199.
12 Allen, 75.

SECTION 70. A gas company may, with the written consent of the 1
aldermen or the selectmen, dig up and open the ground in any of the 2
streets, lanes and highways of a town, so far as necessary to accomplish 3
the objects of said corporation; but such consent shall not affect the right 4
or remedy to recover damages for an injury caused to persons or prop- 5
erty by the acts of such corporation. It shall put all such streets, 6
lanes and highways in as good repair as they were in when opened; 7
and upon failure so to do within a reasonable time, shall be guilty of a 8
misdemeanor. 9

188 Mass. 242.

220 Mass. 375.

2 Op. A. G. 416.

Approval by
department of
connecting
locations of
gas mains
regulated.
1925, 145.

SECTION 70A. Any gas company desiring to lay a main for the trans- 1
mission of gas which will of necessity pass through one or more cities or 2
towns to connect the termini of such main, whose petition for the loca- 3
tion necessary for such main has been refused, or has not been granted 4
within three months after the filing thereof by the board of aldermen of 5
a city or the selectmen of a town through which said company intends 6
to construct such main for the purpose aforesaid, may apply to said 7

8 department for such location. The department shall give a public
 9 hearing thereon after notice to the board of aldermen or selectmen refus-
 10 ing or neglecting to grant such location, and to all persons owning real
 11 estate abutting upon any way in the city or town where such location is
 12 sought, as such ownership is determined by the last assessment for tax-
 13 ation. The department shall, if requested by the board of aldermen or
 14 selectmen, hold said hearing in the city or town where the location is
 15 sought. If it appears at the hearing that the company has already been
 16 granted and has accepted a location for such main in two cities, or in
 17 two towns, or in a city and town, adjoining the city or town because of
 18 the refusal or neglect of whose board of aldermen or selectmen to grant
 19 a location therefor the application is made, and if the department deems
 20 the location necessary for public convenience, and in the public interest,
 21 it may by order grant a location for such main in the city or town with
 22 respect to which the application is made, and shall have and exercise
 23 relative thereto the same powers and authority conferred by section
 24 seventy upon the board of aldermen or selectmen, and in addition to the
 25 provisions of law governing such company may impose such other terms,
 26 limitations and restrictions as it deems public interest may require. The
 27 department shall cause an attested copy of its order, with the certificate
 28 of its clerk, endorsed thereon, that the order was adopted after due notice
 29 and a public hearing as hereinbefore prescribed, to be forwarded to the
 30 city or town clerk, who shall record the same and furnish attested copies
 31 thereof upon the terms and in the manner specified in section twenty-
 32 two of chapter one hundred and sixty-six.

1 SECTION 71. A corporation subject to this chapter may, as provided
 2 in chapter one hundred and sixty-six, construct lines for the transmission
 3 of electricity.

Construction
 of lines.
 1849, 93, § 2.
 G. S. 64, § 2.

P. S. 109, § 2.	1911, 509, § 1.	188 Mass. 250.
1883, 221.	1914, 742, §§ 127, 199.	207 Mass. 341.
1889, 434	97 Mass. 555	239 U. S. 313.
1895, 350.	153 Mass. 200	1 Op. A. G. 80, 88.
R. L. 121, § 17; 122, § 1.	184 Mass. 566.	2 Op. A. G. 416, 423.

1 SECTION 72. An electric company may petition the department for
 2 authority to construct and use or to continue to use as constructed or
 3 with altered construction a line for the transmission of electricity for
 4 distribution in some definite area or for supplying electricity to itself or
 5 to another electric company or to a municipal lighting plant for distribu-
 6 tion and sale, or to a railroad, street railway or electric railroad, for the
 7 purpose of operating it, and shall represent that such line will or does
 8 serve the public convenience and is consistent with the public interest.
 9 The company shall file with such petition a general description of such
 10 transmission line and a map or plan showing the towns through which
 11 the line will or does pass and its general location. The company shall
 12 also furnish an estimate showing in reasonable detail the cost of the line
 13 and such additional maps and information as the department requires.
 14 The department, after notice and a public hearing in one or more of the
 15 towns affected, may determine that said line is necessary for the purpose
 16 alleged, and will serve the public convenience and is consistent with the
 17 public interest. If the company shall file with the department a map or
 18 plan of the transmission line showing the towns through which it will or
 19 does pass, the public ways, railroads, railways, navigable streams and
 20 tide waters in the town named in said petition which it will cross, and
 21 the extent to which it will be located upon private land or upon, under

Taking land
 for transmis-
 sion lines.
 1914, 742,
 § 128.
 1917, 141.
 1918, 91.
 1924, 433.
 1925, 98.
 1926, 256.
 202 Mass. 402
 226 Mass. 210

or along public ways and places, the department, after such notice as it may direct, shall give a public hearing or hearings in one or more of the towns through which the line passes or is intended to pass and may by order authorize the company to take by eminent domain under chapter seventy-nine such lands, or such rights of way or widenings thereof, or other easements therein necessary for the construction and use or continued use as constructed or with altered construction of such line along the route prescribed in the order of the department. The department shall transmit a certified copy of its order to the company and the clerk of each such town. The company may at any time before such hearing change or modify the whole or a part of the route of said line, either of its own motion or at the instance of the department or otherwise, and, in such case, shall file with the department maps, plans and estimates as aforesaid showing such changes. If the department dismisses the petition at any stage in said proceedings, no further action shall be taken thereon, but the company may file a new petition after the expiration of a year from such dismissal. When a taking under this section is effected, the company may forthwith, except as hereinafter provided, proceed to erect, maintain and operate thereon said line. If the company shall not enter upon and construct such line upon the land so taken within one year thereafter, its right under such taking shall cease and determine. No lands or rights of way or other easements therein shall be taken by eminent domain under the provisions of this section in any public way, public place, park or reservation, or within the location of any railroad, electric railroad or street railway company except with the consent of such company and on such terms and conditions as it may impose; and no electricity shall be transmitted over any land, right of way or other easement taken by eminent domain as herein provided until the electric company shall have acquired from the board of aldermen or selectmen or from such other authorities as may have jurisdiction all necessary rights in the public ways or public places in the town or towns, or in any park or reservation, through which the line will or does pass.

Electric companies may enter private lands to make surveys, etc. Liability for damages. 1927, 66.

SECTION 72A. The department may upon petition authorize an electric company to enter upon lands of any person or corporation for the purpose of making a survey preliminary to eminent domain proceedings. The company so entering upon any such lands shall be subject to liability for any damages occasioned thereby, to be recovered under chapter seventy-nine.

Construction of pipes, etc., under or over railroads, etc. 1914, 712, § 129. 1919, 350, § 117. 1926, 257.

SECTION 73. A corporation subject to this chapter, to the extent that it is authorized to make, sell or distribute gas or electricity or both, may, for the purposes of such sale or distribution, lay, erect and maintain pipes, mains, wires and conduits under, over or across the location on private land of any railroad, electric railroad or street railway corporation at such places, in such manner and on such terms and conditions as it may agree upon with such corporation, or, in case of failure so to agree, then with the consent of the department and at such places, in such manner, with such safeguards, and upon such terms and conditions as it may specify; but no pole, tower or similar structure shall be located within the location of any such railroad, electric railroad or street railway corporation without its consent. The department may, from time to

13 time, specify such changes in the manner of laying, erecting and main-
 14 taining such pipes, mains, wires and conduits and in the terms and con-
 15 ditions thereof as it deems advisable.

1 SECTION 74. If a person injured in his person or property by a defect
 2 in a public way caused by the operations of a corporation subject to this
 3 chapter, in laying down or repairing its pipes, or in laying, erecting, main-
 4 taining or repairing its lines of wires, or in otherwise obstructing such way,
 5 recovers damages therefor in an action against the town where such
 6 injury is received, such town shall, if said corporation is liable for said
 7 damages and has had reasonable notice to appear and defend the original
 8 action, recover of said corporation the damages so recovered from it,
 9 with the taxable costs of both parties in such original action.

Damages for
 injuries to
 persons or
 property.
 1860, 121.
 P. S. 106, § 76
 1887, 385, § 5
 1896, 544, § 2
 R. L. 110, § 77.
 121, § 18.
 1914, 742,
 §§ 131, 199.

1 SECTION 75. The aldermen or selectmen may regulate, restrict and
 2 control all acts and doings of a corporation subject to this chapter which
 3 may in any manner affect the health, safety, convenience or property of
 4 the inhabitants of their towns.

Regulations
 by local
 authorities.
 1855, 146, § 3.
 G. S. 61, § 17.

1870, 224, § 57. 1887, 385, § 6 1914, 742, §§ 132, 199.
 P. S. 106, § 77. R. L. 110, § 78; 121, § 19.

1 SECTION 75A. No gas company or municipality distributing gas
 2 shall, after January first, nineteen hundred and thirty-two, install or
 3 replace a meter for the purpose of measuring gas supplied to premises
 4 for illuminating or other purposes unless there shall have been attached
 5 to the intake pipe leading to the meter, in accordance with regulations
 6 to be prescribed and enforced by the department, an automatic device
 7 designed to prevent or retard the escape of gas in case of fire, and ap-
 8 proved as to design and construction by the department.

Installation
 of automatic
 shut-off.
 1931, 171.

STATE SUPERVISION.

1 SECTION 76. The department shall have the general supervision of
 2 all gas and electric companies and shall make all necessary examination
 3 and inquiries and keep itself informed as to the condition of the respective
 4 properties owned by such corporations and the manner in which they
 5 are conducted with reference to the safety and convenience of the public,
 6 and as to their compliance with the provisions of law and the orders,
 7 directions and requirements of the department.

General duties
 of department.
 1885, 314, § 8.
 1887, 382,
 §§ 1, 6, 385,
 §§ 7, 10.
 R. L. 121,
 §§ 5, 20.
 1914, 742,
 §§ 138, 199.
 1 Op. A. G. 81

1 SECTION 77. The department shall make an annual report of its
 2 doings under this chapter, with such suggestions as to the condition of
 3 affairs or conduct of corporations and companies subject to this chapter
 4 as may be appropriate, with such abstracts of the returns required by
 5 section eighty-three as it deems expedient, but including the names and
 6 addresses of the principal officers and of the directors.

1914, 742, §§ 140, 199. 1918, 78, § 2. 1921, 48.

Annual report
 by department.
 1885, 314, § 14.
 1886, 346, § 2.
 1887, 382,
 §§ 2, 6
 1888, 350, § 2.
 R. L. 121, § 7
 1911, 293.

1 SECTION 78. If any corporation engaged in the manufacture and sale
 2 or distribution and sale of gas or electricity violates or fails to comply
 3 with the provisions of law, or violates or fails to comply with any lawful
 4 order of the department, it shall give written notice thereof to such
 5 corporation and to the attorney general.

Violations
 of law.
 1885, 314, § 12.
 1887, 382,
 §§ 2, 6.
 R. L. 121, § 8.
 1914, 742,
 §§ 141, 199.

Enforcement
of orders of
department.
1885, 314, § 13
1887, 382, § 2
1896, 426.
R. L. 121, § 9
1914, 742,
§§ 142, 199.

SECTION 79. The supreme judicial or superior court shall have jurisdiction in equity, upon application of the department, to enforce its lawful orders and all laws relative to cities, towns or corporations engaged in the manufacture and sale or distribution and sale of gas or electricity.

197 Mass. 556.

Office of com-
pany where
works located.
Department
to have access
to records.
1886, 346, § 1.
1887, 382,
§§ 2, 6.
R. L. 121, § 28
1914, 742,
§§ 143, 199.

SECTION 80. Gas and electric companies shall have an office in a town where their works are located and, unless otherwise authorized by the department, shall keep in said office all books and papers required by law to be kept within the commonwealth, and also such books as may be required to show their receipts, expenditures, indebtedness and financial condition; and shall at all times, upon application, submit their books to the inspection of the department and its duly authorized employees. The department may from time to time, by its members or its duly authorized employees, examine all books, records, contracts, documents, papers and memoranda of such corporations, and shall have free access thereto for such purpose at any and all reasonable times.

Form of books
and accounts
prescribed.
1886, 346, § 2.
1887, 382,
§§ 2, 6.
R. L. 121, § 29
1914, 742,
§§ 144, 199.
1920, 583, § 1

SECTION 81. Gas and electric companies or persons engaged in the manufacture and sale or distribution of gas or electricity shall keep their books and accounts in a form to be prescribed by the department, and the accounts shall be closed annually, so that a balance sheet can be taken therefrom. Manufacturing companies in which the manufacture of gas or electricity is a minor portion of their business shall be required to keep accounts of the expenses and income of their gas or electric business only.

Form of
station records
prescribed.
1896, 356, § 480.
R. L. 121, § 30.
1914, 742,
§§ 145, 199.

SECTION 82. Gas and electric companies and manufacturing companies or persons engaged in the manufacture or sale of gas or electricity shall keep such records of their work at their manufacturing station, and in respect to their distributing plant, and in such form as the department may from time to time require.

Form of
annual returns
prescribed.
1885, 314, § 7.
1886, 346, § 2.
1887, 382, § 2
R. L. 121, § 31
1903, 406.
1908, 617, § 2
1914, 742,
§§ 146, 199.
1920, 583, § 2
1931, 188, § 3.
1 Op. A. G. 186.
2 Op. A. G. 8,
311.

SECTION 83. Gas and electric companies and manufacturing companies and persons engaged in the manufacture and sale or distribution and sale of gas or electricity shall annually, on or before such date as the department fixes, make to the department, in a form prescribed by it, a return for the year ending on such date as the department may from time to time require, signed and sworn to by the president or vice president, and treasurer or assistant treasurer, and a majority of the directors, of the amount of their authorized capital, their indebtedness and financial condition, on the said date, their income and expenses during the preceding year, their dividends paid and declared, a list of the names of all their salaried officers and the amount of the salary paid to each, and the balance sheet of their accounts as of said date. Such companies and persons shall at all times, upon request, furnish any information required by the department or its duly authorized employees relative to their condition, management and operation, and shall comply with all lawful orders of the department; but manufacturing companies in which the manufacture and sale of gas or electricity is a minor portion of their business shall be required to include in their annual returns the income and expenses and other data relative to their gas and electric business only.

1 SECTION 84. Each such gas or electric company or manufacturing
 2 company or person neglecting to make the annual return required by the
 3 preceding section shall, for the first fifteen days or portion thereof during
 4 which such neglect continues, forfeit five dollars a day; for the second
 5 fifteen days or any portion thereof, ten dollars a day; and for each day
 6 thereafter not more than fifteen dollars a day. If any such company or
 7 person unreasonably refuses or neglects to make such return, it or he shall,
 8 in addition thereto, forfeit not more than five hundred dollars. If a return
 9 is defective or appears to be erroneous, the department shall notify the
 10 company or person to amend it within fifteen days. A company or person
 11 neglecting to amend said return within the time specified in the notice,
 12 when notified to do so, shall forfeit fifteen dollars for each day during
 13 which such neglect continues. All forfeitures incurred under this section
 14 may be recovered by an information in equity brought in the supreme
 15 judicial court by the attorney general, at the relation of the department,
 16 and when so recovered shall be paid to the commonwealth.

Penalty for
 failure to
 make or
 amend return
 1885, 314, § 7
 1892, 263.
 R. L. 121, § 32
 1912, 219.
 1914, 742.
 §§ 117, 199.
 1923, 96.

1 SECTION 85. The officers and employees of the department may be
 2 authorized by it to examine the books, contracts, records, documents
 3 and memoranda or the physical property of any company subject to this
 4 chapter, and of any affiliated company with respect to any relations,
 5 transactions or dealings, direct or indirect, between such affiliated com-
 6 pany and any company so subject, and, for any examination so author-
 7 ized, shall be entitled to full access to the subject matter thereof. No
 8 such officer or employee shall divulge any fact or information coming to
 9 his knowledge during the course of such an examination unless directed
 10 by the department or by the court, or authorized by law.

Department
 may examine
 books, etc., of
 companies
 or affiliated
 companies.
 1914, 631, § 2.
 1930, 395.

11 For the purposes of this section, the words "affiliated company" shall
 12 include any corporation, society, trust, association, partnership or in-
 13 dividual (*a*) controlling a company subject to this chapter, either di-
 14 rectly, by ownership of a majority of its voting stock or of such minority
 15 thereof as to give it substantial control of such company, or indirectly,
 16 by ownership of such a majority or minority of the voting stock of
 17 another corporation or association so controlling such company; or (*b*)
 18 so controlled by a corporation, society, trust, association, partnership or
 19 individual controlling as aforesaid, directly or indirectly, a company
 20 subject to this chapter; or (*c*) standing in such a relation to a company
 21 subject to this chapter that there is an absence of equal bargaining
 22 power between the corporation, society, trust, association, partnership or
 23 individual and the company so subject, in respect to their dealings and
 24 transactions.

1 SECTION 86. In a town where a gas company exists in active opera-
 2 tion, or where a person owns or operates works for the manufacture
 3 and sale of gas, no other gas company, nor any other person, shall dig
 4 up and open the streets, lanes and highways of such town in order to
 5 lay gas pipes therein, without the consent of the aldermen or selectmen,
 6 granted after notice by publication or otherwise to all parties interested
 7 and a public hearing.

Entry of gas
 company
 restricted.
 1885, 314, § 10.
 1886, 346, § 7.
 R. L. 121, § 25.
 1914, 742.
 §§ 155, 199

1 SECTION 87. In a town where a person is engaged in the manufacture
 2 or sale of electricity, no other person shall lay, erect, maintain or use,
 3 over or under the streets, lanes and highways of such town, any wires

Entry of
 electric com-
 pany, etc.,
 restricted
 1887, 382, § 3.

1892, 274.
1895, 350.
1901, 389.
R. L. 121, § 26.
1914, 742.
§§ 156, 199.
157 Mass. 86.

for the transmission of electricity except wires used by street railway companies for heat or power, without the consent of the aldermen or selectmen granted after notice to all parties interested and a public hearing.

188 Mass. 250.

1 Op. A. G. 88.

Appeal.
1885, 314, § 16
1887, 382, § 5.
R. L. 121, § 27.
1914, 742.
§§ 157, 199.
1 Op. A. G. 89.

SECTION 88. Any person aggrieved by the decision of the aldermen or selectmen, under either of the two preceding sections, may, within thirty days after notice of said decision, appeal therefrom to the department, which shall thereupon give due notice and hear all parties interested, and its decision shall be final.

Right of municipal lighting plant respecting such entry.
1914, 742,
§ 158.

SECTION 89. A town which has duly acquired a municipal lighting plant and is authorized to supply gas or electricity in any other town shall have all the rights which a private corporation supplying gas or electricity in said other town would have under the three preceding sections.

Restrictions upon entry for supplying electricity in bulk.
1908, 617, § 1.
1914, 742.
§§ 159, 199.

SECTION 90. In consenting to the laying, erecting, maintaining or using by an electric company, for the sole purpose of supplying electricity in bulk, of any wires for the transmission of electricity over or under streets, lanes and highways, as provided in section eighty-seven, the aldermen or selectmen may, in addition to the laws governing such companies, impose such other terms as they deem public interest requires, and upon an appeal under section eighty-eight, the department may, in addition to its authority under said section, affirm, amend, alter or add to the terms so imposed as it deems public interest requires.

Enforcement of such restrictions.
1908, 617, § 3.
1914, 742.
§§ 160, 199.

SECTION 91. The supreme judicial or superior court shall have jurisdiction in equity, on application of the department or of the mayor of any city or the selectmen of any town where electricity is distributed and sold under the preceding section, to compel the observance and to restrain the violation of any provision thereof and of the general laws relating to electric companies and of all lawful orders, decisions and terms made or imposed by the department or by the aldermen or selectmen under said section.

Supply of gas or electricity enforced.
1886, 346, § 5.
1887, 382,
§§ 2, 6
R. L. 121, § 33
1903, 164.
1914, 742.
§§ 161, 199.
1925, 153.
197 Mass. 556.

SECTION 92. On written petition of any person, having a residence or place of business in a town where a corporation is engaged in the manufacture, transmission or sale of gas or electricity, aggrieved by its refusal or neglect to supply him with gas or electricity, the department may, after notice to the corporation to appear at a time and place therein named to show cause why the prayer of such petition should not be granted, issue an order directing and requiring it to supply the petitioner with gas or electricity, upon such terms and conditions as are legal and reasonable; provided, however, that if such corporation is engaged in such town solely in the transmission of electricity or gas such order shall not be made where it appears that compliance therewith would result in permanent financial loss to the corporation.

Grants of locations in the streets, lanes and highways of such town for the pipes or lines necessary to the supplying of gas or electricity in pursuance of such an order by a corporation solely engaged as aforesaid shall be subject to the provisions of sections eighty-six to ninety-one, inclusive.

1 SECTION 92A. On written petition of any person, corporation or
 2 municipality aggrieved by the refusal or neglect to supply gas or elec-
 3 tricity in bulk at reasonable rates by any person, corporation or munic-
 4 ipality engaged, subject to the provisions of this chapter, in the manu-
 5 facture, transmission or sale of gas or electricity, the department may,
 6 after notice to such last-mentioned person, corporation or municipality
 7 to appear at a time and place therein named to show cause why the
 8 prayer of such petition should not be granted, issue an order directing and
 9 requiring him or it to supply the petitioner with gas or electricity, upon
 10 such terms and conditions as are legal and reasonable; provided, that
 11 such order shall not be made where it appears that compliance therewith
 12 would result in permanent financial loss to such person, corporation or
 13 municipality.

Supply of gas
or electricity
in bulk
enforced,
1930, 383.

14 Grants of locations in streets, lanes and highways for pipes or lines
 15 necessary to the supplying of gas or electricity in pursuance of such order
 16 shall be subject to the provisions of sections eighty-six to ninety-one,
 17 inclusive.

1 SECTION 93. On written complaint of the mayor of a city or the
 2 selectmen of a town where a gas or electric company is operated, or of
 3 twenty customers thereof, either as to the quality or price of the gas or
 4 electricity sold and delivered, the department shall notify said company
 5 by leaving at its office a copy of such complaint, and shall thereupon,
 6 after notice, give a public hearing to such petitioner and said company,
 7 and after said hearing may order any reduction or change in the price or
 8 prices of gas or electricity or an improvement in the quality thereof, and
 9 a report of such proceedings and the result thereof shall be included in the
 10 report required by section seventy-seven. Such an order may likewise be
 11 made by the department, after notice and hearing as aforesaid, upon its
 12 own motion. The price or prices fixed by any such order shall not there-
 13 after be changed by said company except as provided in section ninety-
 14 four.

Reduction in
price or
improvement
in quality
enforced,
1885, 314, § 9,
1887, 382,
§§ 2, 6,
1888, 350, § 1,
1894, 327,
R. L. 121, § 34
1914, 742,
§§ 162, 199,
1927, 316, § 1,
242 Mass. 305.

1 SECTION 94. Gas and electric companies shall file with the depart-
 2 ment schedules, in such form as the department shall from time to time
 3 prescribe, showing all rates, prices and charges to be thereafter charged
 4 or collected within the commonwealth for the sale and distribution of gas
 5 or electricity, together with all forms of contracts thereafter to be used in
 6 connection therewith. Rates, prices and charges in such a schedule may,
 7 from time to time, be changed by any such company by filing a schedule
 8 setting forth the changed rates, prices and charges, but until the effective
 9 date of any such change no different rate, price or charge shall be charged,
 10 received or collected by the company filing such a schedule from those
 11 specified in the schedule then in effect; provided, that a company may
 12 continue to charge, receive and collect rates, prices and charges in accord-
 13 ance with a contract heretofore lawfully entered into, or, until the depart-
 14 ment otherwise orders, after notice to the company and a hearing and
 15 determination that public interest so requires, may sell and distribute
 16 gas or electricity under a special contract hereafter made at rates or prices
 17 differing from those contained in a schedule in effect, providing a copy
 18 of the contract in each instance is filed with the department, except that
 19 a contract of a company whose sole business in the commonwealth is the
 20 supply of electricity in bulk need not be filed except as may be required
 21 by the department. Unless the department otherwise authorizes, the

Schedules of
rates, prices,
etc. Filing,
amendment,
suspension;
special
contracts,
1888, 350, § 1
1894, 327,
R. L. 121, § 35
1914, 742,
§§ 163, 199,
1927, 316, § 2,
235 Mass. 18.

rates, prices and charges set forth in such a schedule shall not become effective until the first day of the month next after the expiration of fourteen days from the filing thereof. Such rates, prices and charges shall apply to the consumption shown by meter readings made after the effective date of such rates, prices and charges, unless the department otherwise orders. So much of said schedules shall be printed in such form and distributed and published in such manner as the department may require.

The department may investigate the propriety of any proposed rate, price or charge and may, pending such investigation and decision thereon, by order served upon the company affected thereby, suspend the taking effect thereof, but not for a period longer than six months beyond the time when such rate, price or charge would otherwise become effective. An order by the department directing a change in any schedule filed shall have the same effect as if a schedule with such changes were filed by the company, and shall become effective from such time as the department shall order.

The department may, upon its own initiative, where a company has been serving the consumer for more than three years under a special contract or contracts, after notice and a hearing, make such orders relative to the rates, prices and charges covered by such a contract as it deems the public interest requires. Any order made under the provisions of this section or of section ninety-three may be enforced as provided in section seventy-nine. This section shall not apply to contracts for the sale of electricity to an electric company made in accordance with the provisions of section ninety-four A except as therein provided.

Approval of department of certain contracts for purchase of gas or electricity. 1926, 298. 1930, 342.

SECTION 94A. No gas or electric company shall hereafter enter into a contract for the purchase of gas or electricity covering a period in excess of two years without the approval of the department, unless such contract contains a provision subjecting the price to be paid thereunder for gas or electricity to review and determination by the department in any proceeding brought under section ninety-three or ninety-four; provided, that nothing herein contained shall be construed as affecting a contract for the purchase of gas or electricity from a person or corporation engaged in manufacturing, where the manufacture, sale or distribution of gas or electricity by such person or corporation is a minor portion of his or its business, and which contract is made in connection with a contract to supply such person or corporation with gas or electricity. In any such proceeding the department may review and determine the price to be thereafter paid for gas or electricity under a contract containing said provision for review. Any contract covering a period in excess of two years subject to approval as aforesaid, and which is not so approved or which does not contain said provision for review, shall be null and void.

Approval of department of certain contracts with affiliated companies. 1930, 396.

SECTION 94B. No gas or electric company shall, without the approval of the department, hereafter enter into a contract with a company related to it as an affiliated company, as defined in section eighty-five, covering a period in excess of two years, by virtue of which any compensation is to be paid by the said gas or electric company in whole or in part for services rendered by such affiliated company, unless such contract contains a provision subjecting the amount of compensation to be paid thereunder to review and determination by the department in any proceeding brought under section ninety-three or ninety-four. In any

10 such proceeding the department may review and determine the amount
 11 of compensation to be thereafter paid under a contract containing such
 12 provision for review, and, if it appears that the amount agreed on is
 13 excessive, the department may declare the said contract to be terminated
 14 forthwith, even if no bad faith be found. Any contract covering a period
 15 in excess of two years, subject to approval as aforesaid, and which is not
 16 so approved or which does not contain such provision for review, shall
 17 be null and void.

1 SECTION 95. Corporations, persons and municipalities engaged in
 2 the manufacture or sale of gas or electricity shall, within twenty-four
 3 hours after every accident caused by gas or electricity manufactured or
 4 supplied by them, whereby an employee or other person is injured, ren-
 5 dered insensible, or killed, report in writing to the department, stating
 6 the time, place and circumstances of the accident and such other facts
 7 relative thereto as the department may require. The chief of police of
 8 the town, and the medical examiner of the district, where such accident
 9 occurs shall, in writing, report the same to the department. The chief
 10 of police shall so report within twenty-four hours, and the medical
 11 examiner within seven days, after he has notice thereof. The members
 12 of the department shall personally investigate all such cases requiring
 13 investigation.

Report of
 accidents.
 1888, 350, § 2
 1896, 338.
 R. L. 121, § 39
 1914, 742.
 §§ 164, 199.

1 SECTION 96. A gas company may purchase the property of another
 2 gas company whose gas mains are in the same or contiguous municipal-
 3 ities, or may consolidate with such other gas company, and such other
 4 gas company may sell and convey its property to, or may consolidate
 5 with, such first mentioned gas company; and an electric company may
 6 purchase the property of another electric company whose lines are in
 7 the same or contiguous municipalities, or of a combined gas and electric
 8 company whose gross receipts for the preceding financial year from the
 9 sale of electricity are at least three times its gross receipts from the sale
 10 of gas and whose lines are in the same or contiguous municipalities, or
 11 may consolidate with such other electric company or such gas company,
 12 and such other electric company or such gas company may sell and con-
 13 vey its property to, or may consolidate with such first mentioned electric
 14 company; but no such purchase and sale or consolidation shall be valid
 15 or binding until the terms thereof have been approved, at meetings called
 16 therefor, by a vote of at least two thirds in interest of the stockholders
 17 of each of the contracting companies, and until the department, after
 18 notice and a public hearing, has determined that the facilities for furnish-
 19 ing and distributing gas or electricity will not thereby be diminished and
 20 that such purchase and sale or consolidation and the terms thereof are
 21 consistent with the public interest. This section shall not authorize an
 22 electric company engaged in supplying electricity in bulk to consolidate
 23 with, or to purchase the property of, or to sell its own property to,
 24 another electric company in whose territory the first named company is
 25 engaged in supplying electricity in bulk to private customers.

Consolidation
 of gas or elec-
 tric companies.
 1908, 529, § 2.
 1914, 742,
 §§ 165, 199.

1 SECTION 97. An electric company may, subject to the four following
 2 sections, from time to time purchase or acquire any or all of the property
 3 of any domestic or foreign corporation or association owning or operating
 4 a water storage reservoir or hydro-electric plant with which the lines of
 5 the said first mentioned electric company are actually connected, or

Consolidation
 of electric and
 hydro-electric
 companies.
 1914, 742, § 166.
 1919, 350,
 §§ 52, 53.
 1924, 146.

owning and operating lines for the transmission of electricity within or 6
 without the commonwealth with which the lines of said first named 7
 electric company are actually connected; and any such domestic or 8
 foreign corporation or association may, subject to the four following 9
 sections, the charter thereof and the laws of the state under which such 10
 corporation or association, if a foreign corporation or association, is 11
 organized, so far as applicable, sell any or all of its property to said first 12
 mentioned electric company, or consolidate or merge with said first 13
 mentioned electric company, or merge and consolidate its capital stock 14
 and property with said first mentioned electric company; but no such 15
 purchase and sale or merger and consolidation shall be valid or binding 16
 until the same and the terms thereof shall have been approved, at meet- 17
 ings called therefor, by vote of at least two thirds in interest of the 18
 stockholders of each of the contracting parties, and until the department, 19
 after notice and a public hearing, shall have approved the same and the 20
 terms thereof as consistent with the public interest; provided, that 21
 such electric company shall not exercise in this commonwealth any 22
 powers, rights, locations, licenses or privileges or any franchise so ac- 23
 quired which cannot be lawfully exercised by electric companies under 24
 this chapter. 25

Effect of
 consolidation.
 1908, 529, § 3.
 1914, 742.
 §§ 167, 199.

SECTION 98. The purchasing or consolidated company shall, except 1
 as provided in the preceding section, have and enjoy all the powers, 2
 rights, locations, licenses, privileges and franchises, and be subject to all 3
 the duties, liabilities and restrictions, of the company selling or merged 4
 as aforesaid, so far as they are applicable to the purchasing or consolidated 5
 company. 6

Increase of
 capital stock
 to effect
 consolidation.
 1906, 392.
 1908, 529, § 4.
 1914, 742.
 §§ 168, 199.

SECTION 99. The purchasing or consolidated company may, for the 1
 purposes authorized by sections ninety-six and ninety-seven, increase 2
 its capital stock and issue bonds in the manner and subject to the limita- 3
 tions provided in sections thirteen, fourteen, eighteen and nineteen; 4
 and may, for the same purpose and subject to the same limitations and 5
 notwithstanding any special law applicable thereto, exchange its securi- 6
 ties for those of the selling or merged company upon such terms as the 7
 department approves; but the aggregate amount of the capital stock 8
 and the aggregate amount of the debt, respectively, of the consolidated 9
 companies shall not, by reason of such consolidation, be increased. 10

Consolidations
 restricted
 1908, 529, § 5.
 1909, 316, § 1.
 1914, 742.
 §§ 169, 199.

SECTION 100. No electric company shall purchase the franchise or 1
 property of, or consolidate with, a gas company except as provided in 2
 section ninety-six; and no gas company shall purchase the franchise or 3
 property of, or consolidate with, an electric company except as authorized 4
 by sections twenty-six and ninety-six; but a gas company authorized to 5
 engage in the business of generating and furnishing electricity under 6
 section twenty-three may, with the approval of the department, and 7
 subject to the three preceding sections, so far as they may be applicable, 8
 sell its locations and the property used in its business of generating and 9
 furnishing electricity to an electric company whose lines are in the same 10
 or in a contiguous municipality. 11

Time for filing
 applications for
 consolidations.
 1909, 316, § 2.
 1914, 742.
 §§ 170, 199.

SECTION 101. All applications for the approval by the department 1
 of purchases and sales or consolidations under sections twenty-six, ninety- 2
 six, ninety-seven and one hundred shall be filed with the department 3

4 within four months after the passage by the contracting companies of
5 votes authorizing such purchase and sale or consolidation.

1 SECTION 102. The five preceding sections shall not be construed to
2 authorize the consolidation of the Boston Consolidated Gas Company
3 and The Edison Electric Illuminating Company of Boston.
1908, 529, § 6. 1914, 742, §§ 171, 199.

Certain con-
solidations
prohibited.

INSPECTION OF GAS AND METERS.

1 SECTION 103. The department, in accordance with its rules and
2 regulations, shall make the inspections of gas required by section one
3 hundred and nine and inspect, examine, ascertain and prove the ac-
4 curacy of all meters which are to be used for measuring illuminating gas
5 and which are to be furnished to, or for the use of, any consumer or
6 company, and shall seal, stamp or mark every such meter, if it be found
7 correct, with some suitable device to be determined by the department
8 and recorded in the office of the state secretary. A meter shall not be
9 stamped correct if it varies more than two per cent from the standard
10 measure. The department shall keep a correct record of all meters
11 examined by its employees with their proof at the time of inspection,
12 which shall be open at all times for examination by the officers of any
13 gas company in the commonwealth.

Powers and
duties of
department.
1861, 168,
§§ 1, 8.
1880, 230, § 1.
P. S. 61, §§ 5,
10.
1885, 314, § 15.
R. L. 58,
§§ 4, 9.
1902, 228,
§§ 1-3, 8.
1909, 483,
§§ 1, 5.
1914, 742,
§§ 175, 199.
1928, 139, § 3.

1 SECTION 104. For examining, comparing and testing gas meters,
2 with or without stamping them, the department may collect a fee of
3 twenty-five cents for each meter delivering not more than a cubic foot
4 of gas in four revolutions, vibrations or complete repetitions of its action,
5 and for each meter so delivering more than a cubic foot, a fee of thirty
6 cents, with twenty cents added for every additional cubic foot so deliv-
7 ered. For examining, comparing, testing or calibrating meter provers
8 and test or photometer meters, with or without sealing or certifying to
9 the same, the department may collect such fees as it may from time to
10 time prescribe. The department shall designate one of its employees
11 to receive all fees collected under this section and section one hundred
12 and twenty, and he shall give bond to the state treasurer in the sum of
13 five thousand dollars.

Fees for testing
gas meters,
meter provers,
etc.
1861, 168, § 4.
P. S. 61, § 6.
1899, 465, § 2.
R. L. 58, § 5.
1902, 228,
§§ 5, 8.
1909, 318;
483, § 7.
1914, 742,
§§ 177, 199.
1920, 242.

1 SECTION 105. Every gas company which annually manufactures or
2 sells more than fifteen million cubic feet of gas shall, when required by the
3 department, provide and maintain a suitable room at least a quarter of a
4 mile from the gas works with a disc photometer and its appurtenances,
5 of a construction approved by the department, and which shall be open
6 to duly authorized employees of the department on every working day
7 from eight o'clock in the forenoon until six o'clock in the afternoon.

Companies
to provide
photometer.
1880, 230, § 4.
P. S. 61, § 13.
1885, 240, § 1.
R. L. 58, § 13.
1909, 483, § 2.
1914, 742,
§§ 180, 199.
1928, 139, § 4

1 SECTION 106. The department shall, from time to time, ascertain the
2 degree of purity that can reasonably be required in gas made and sup-
3 plied by persons engaged in the manufacture or sale of gas, and shall
4 report to the general court when it deems any change in the law relative
5 thereto is desirable, and may from time to time, after notice and a public
6 hearing, establish rules and regulations consistent with law, governing
7 the quality of gas supplied by persons or municipalities subject to this
8 chapter. Such rules and regulations shall be enforced in the manner pro-
9 vided in section seventy-nine.

Regulation
of quality
of gas
1885, 314, § 11
R. L. 121, § 6.
1914, 742,
§§ 139, 199.
1918, 9, § 2.

Calorific standard for gas. Exemptions. 1916, 167, § 1. 1925, 234.

SECTION 107. To establish a calorific standard for gas, the department may from time to time, after notice and a public hearing, determine how many British thermal units shall thereafter be required of gas supplied to their consumers by gas companies or municipal lighting plants. Upon application of a gas company, or the mayor or selectmen of a municipality in which a municipal lighting plant is established, the department may exempt such gas company or municipal lighting plant from furnishing gas of the calorific standard established as aforesaid and, if in its judgment the public welfare and local conditions warrant, may determine how many British thermal units ought thereafter to be required of gas supplied to its consumers by such company or plant, and on what terms or conditions, which requirement shall thereafter be observed by such company or plant while such exemption continues or until some other standard is established in the same manner.

Companies to provide calorimeter. 1916, 167, § 3. 1928, 139, § 5.

SECTION 108. Every gas company or municipal lighting plant which distributes and sells to its consumers over fifteen million cubic feet of gas in a year shall, when required by the department, provide and maintain a suitable room not less than a quarter of a mile from the gas works with a calorimeter of a type and construction approved by the department, which shall be open at all reasonable times to duly authorized employees of the department.

Inspection of gas by photometer. 1861, 168, § 10. 1880, 230, § 5. P. S. 61, § 14. 1885, 240, § 1. 1886, 250. 1892, 67. R. L. 58, § 14. 1903, 464. 1909, 483, § 3. 1912, 233. 1914, 742. §§ 181, 199.

SECTION 109. The gas of every company which supplies more than fifty consumers shall be inspected at least twice a year and as much oftener as the department may determine. The department may, from time to time, to establish a new standard of purity for gas, after a public hearing, determine how many grains of sulphur and ammonia per hundred cubic feet of gas may be permitted, but not more than thirty grains of sulphur per hundred cubic feet and no sulphuretted hydrogen shall be allowed.

1918, 9, § 1.

1 Op. A. G. 550.

Penalty for supplying gas below standard. 1880, 230, § 5. P. S. 61, § 14. 1885, 240, § 1. 1890, 252. 1892, 67. R. L. 58, § 14. 1903, 464. 1909, 483, § 3. 1912, 233. 1914, 742. § 181. 1916, 167, § 1. 1918, 9, § 1.

SECTION 110. If the gas of any gas company or of any city or town supplying gas is found on three consecutive inspections or on three inspections made within a period of thirty consecutive days, upon such averaging of inspections as the department may prescribe, to be below the standard of purity fixed under the preceding section or the calorific standard fixed under section one hundred and seven, unless such defect is in the opinion of the department due to unavoidable cause or accident, such company, city or town shall be liable to a forfeiture of one hundred dollars, which may be recovered by an information in equity brought in the supreme judicial court by the attorney general, at the relation of the department, and when so recovered shall be paid to the commonwealth.

Unit of measure for gas. 1861, 168, § 5. P. S. 61, § 8. R. L. 58, § 8. 1914, 742. §§ 182, 199. 1918, 9, § 3.

SECTION 111. The unit of measure for the sale of gas by meter shall be the cubic foot, containing sixty-two and two thousand nine hundred and ninety-three ten thousandths pounds avoirdupois weight of air-free distilled water at sixty degrees Fahrenheit when weighed in dry air at the same temperature and at a barometric pressure of thirty inches of mercury.

1 SECTION 112. Every gas company with a capital paid in of one hun-
 2 dred thousand dollars or more, and every other gas company, if required
 3 by the department, and all makers and vendors of meters shall set up at
 4 some convenient place upon their premises one or more meter provers
 5 of a size and type approved, tested and calibrated by the department,
 6 by means of which meters may be tested.

Companies,
 etc., to provide
 meter provers
 1861, 168, § 8
 P. S. 61, § 10
 R. L. 58, § 9
 1909, 483, § 1.
 1914, 742,
 §§ 183, 199.

1 SECTION 113. A gas company providing a meter for measuring gas
 2 supplied to a customer which, if never before used, has not been duly
 3 sealed and stamped, or, if opened after being sealed and stamped, has
 4 not been again tested, sealed and stamped, shall be punished by a fine
 5 of five dollars for every such meter in use, payable to the city or town
 6 where the meter is situated.

Penalty for
 using meters
 not tested
 1861, 168, § 6
 1880, 230, § 3
 P. S. 61, § 11
 R. L. 58, § 10
 1914, 742,
 §§ 184, 199.

1 SECTION 114. Meters in use shall be tested by the department, on
 2 the request of the consumer or of the gas company, in the presence of
 3 the consumer if desired, and with sealed apparatus. If it finds that the
 4 meter is correct, the person requesting the inspection shall pay the fees
 5 for such inspection and the expense of removing the meter for the pur-
 6 pose of being tested, and the reinspection shall be stamped on the meter.
 7 If it finds that the meter is incorrect, the gas company shall pay such
 8 expenses and shall furnish a new meter without charge to the consumer.

Testing gas-
 meters in use
 1861, 168, § 9
 P. S. 61, § 12
 R. L. 58, § 11
 1914, 742,
 §§ 185, 199
 1928, 439, § 6

1 SECTION 115. Meters for measuring gas supplied to consumers shall
 2 register the quantity of gas passing through them in cubic feet so that
 3 the number of cubic feet of gas consumed may be easily ascertained by
 4 the consumer thereof. No meter shall be used which may confuse or
 5 deceive the consumer in ascertaining the price he pays per thousand cubic
 6 feet or the number of cubic feet consumed.

Gas meters to
 register plainly.
 1886, 346, § 6
 R. L. 58, § 12
 1914, 742,
 §§ 186, 199
 210 Mass. 498.

1 SECTION 116. An officer or servant of a gas or electric company who
 2 is duly authorized in writing by the president, treasurer, agent or secre-
 3 tary of said company, may at any reasonable time enter any premises
 4 supplied with gas or electricity by such company for the purpose of exam-
 5 ining or removing the meters, pipes, wires, fittings and works for supply-
 6 ing or regulating the supply of gas or electricity and of ascertaining the
 7 quantity of gas or electricity consumed or supplied; and if any person,
 8 directly or indirectly, prevents or hinders such officer or servant from
 9 so entering such premises or from making such examination or removal,
 10 such officer or servant may make complaint to any court or magistrate
 11 authorized to issue criminal process, who may thereupon issue a warrant
 12 directed to the sheriff or to any of his deputies, or to a constable of the
 13 town where such company is located, commanding him to take sufficient
 14 aid and repair to said premises accompanied by such officer or servant,
 15 who shall examine such meters, pipes, wires, fittings and works for
 16 supplying or regulating the supply of gas or electricity, and ascertain the
 17 quantity of gas or electricity consumed or supplied therein, and shall,
 18 if required, remove any meters, pipes, wires, fittings and works belonging
 19 to said company.

Entry on
 premises to
 examine
 meters, etc.
 1861, 168, § 11.
 P. S. 61, § 15.
 R. L. 58, § 15.
 1914, 742,
 §§ 187, 199.
 1923, 162.

1 SECTION 117. When a gas or electric meter in a building owned or
 2 used by a customer of a gas or electric company is read by an employee

Customer to be
 given meter
 reading.

1911, 558.
1914, 742.
§§ 188, 199.

or agent of such company, he shall, upon request, deliver to the person 3
using the gas or electricity measured by the meter a written statement of 4
the amount recorded by the meter at that time. 5

Electric meters to register plainly.
1913, 623.
1914, 742.
§§ 189, 199.

SECTION 118. Meters for measuring electricity for lighting purposes 1
supplied to consumers shall register the quantity of electricity passing 2
through them in kilowatt hours, so that the number of kilowatt hours 3
consumed may easily be ascertained by the consumer. 4

Meter rental.
1886, 346, § 6.
R. L. 58, § 12.
1913, 254; 623.
1914, 742.
§§ 186, 189,
199
1921, 404.

SECTION 119. Unless approval therefor is secured from the depart- 1
ment, no charge shall be made by a corporation furnishing electricity for 2
lighting purposes or gas for the use of a meter during any portion of 3
twelve consecutive months, if the consumer during that time uses elec- 4
tricity to the value of nine dollars, or gas to the value of seven dollars, 5
and whoever makes a charge therefor contrary to this section shall be 6
punished by a fine not exceeding one hundred dollars. 7

Testing electric meters in use.
1901, 497, § 1.
R. L. 121, § 36.
1911, 348.
1912, 437, § 1.
1914, 742.
§§ 190, 199.

SECTION 120. A customer of a corporation subject to this chapter, or 1
such corporation, may apply to the department for an examination and 2
test of any electric meter, demand indicator, so called, and any other 3
device or appliance installed by such corporation upon a customer's 4
premises and used by such corporation to determine the charge to the 5
customer for its service. The department shall forthwith cause such 6
examination and test as in its judgment is practicable and reasonable to 7
be made by a competent and disinterested person, and shall furnish 8
to the corporation and to the customer a certificate of the result and 9
expense thereof. If, upon such examination and test, it appears that 10
the appliance does not register correctly, the department may order the 11
corporation to correct or remove such meter, demand indicator or other 12
device or appliance and to substitute a correct meter, demand indicator 13
or other device or appliance therefor. All fees for examinations and 14
tests shall in the first instance be paid by the person or corporation 15
making application therefor; but if the examination or test is made at the 16
request of a customer, and the meter is found to be incorrect because too 17
fast, the corporation shall pay such fees to the department, to be repaid 18
by it to the applicant. A meter shall be deemed correct for the purposes 19
of this section if it appears from such examination or test that it does 20
not vary more than five per cent from the standard approved by the 21
department. This section shall not authorize or prohibit differential 22
prices for electricity supplied by any such company. 23

Inspection of electric meters, expense and registration thereof.
1901, 497,
§§ 2, 3
R. L. 121, § 37.
1914, 742.
§§ 191, 199.

SECTION 121. The person designated to make such examination and 1
test may at any reasonable time enter upon the premises where the 2
meter to be inspected is placed for the purpose of making the inspection. 3
He shall receive such compensation for his services as the department 4
may determine, together with his necessary traveling and other ex- 5
penses, which shall be audited by the department and paid by the com- 6
monwealth; but the total amount of compensation and expenses shall 7
not exceed three thousand dollars in any year; and if the total amount 8
of such compensation and expenses shall in any year exceed the amount 9
of the fees received for such examinations and tests, the excess shall be 10
assessed and recovered from the electric companies in the manner now 11
provided for the assessment and recovery of the other expenses of 12

13 the department. The department may establish such rules and regula-
 14 tions, fix such standards, prescribe such fees, and employ such means and
 15 methods in, and in connection with, such examinations and tests of
 16 electric meters as it deems most practicable, expedient and economical.
 17 The department may purchase such materials, apparatus and stand-
 18 ard measuring instruments for such examinations and tests as it deems
 19 necessary.

1 SECTION 122. Whoever, being engaged in the sale of electricity,
 2 maintains upon the premises of a customer for the purpose of determining
 3 the charge to be made for electricity supplied to him a meter, demand
 4 indicator or other mechanical device or appliance which is found upon
 5 examination and test, as provided in section one hundred and twenty,
 6 to register incorrectly as against such customer, shall refund to him such
 7 an amount as, if not agreed upon, shall, upon application of the customer
 8 and after opportunity given to the vendor to be heard, be determined by
 9 the department.

Penalty for use
 of incorrect
 electric meter,
 etc.
 1912, 137, § 2.
 1914, 742,
 §§ 192, 199.

1 SECTION 123. All gas and electric companies using prepayment meters
 2 shall be responsible for the loss by fire of any money deposited in said
 3 meters.

1911, 434

1914, 742, §§ 193, 199.

Use of pre-
 payment
 meters
 regulated.

1 SECTION 124. A gas or electric company may stop gas or electricity
 2 from entering the premises of any person failing to pay the amount due
 3 therefor or for the use of the meter or other article hired by him from
 4 such company; and, for such purpose, the officers, servants or workmen
 5 thereof may, after twenty-four hours' notice, enter his premises between
 6 the hours of eight in the forenoon and four in the afternoon and separate
 7 and take away such meter or other property of the company, and may
 8 disconnect any meter, pipe, wires, fittings or other works, whether they
 9 are property of the company or not, from its mains, pipes or wires.

Gas or elec-
 tricity may be
 shut off, when.
 1861, 168, § 12.
 P S 61, § 16.
 1894, 316.
 R L 58, § 16.
 1914, 742,
 §§ 194, 199
 199 Mass. 324

1 SECTION 125. A gas or electric company shall not refuse to supply
 2 gas or electricity for any building or premises to a person applying
 3 therefor who is not in arrears to it for any gas or electricity previously
 4 supplied to him, because a bill for gas or electricity remains unpaid by
 5 a previous occupant of such building or premises.

199 Mass. 324.

Refusal of
 supply re-
 stricted.
 1894, 299
 R L 58, § 17.
 1914, 742,
 §§ 195, 199.

1 SECTION 125A. A gas or electric company which has been furnishing
 2 gas or electricity to a town under a contract that has expired may,
 3 until a new contract for supplying gas or electricity to such town has
 4 lawfully been made, continue to furnish the same to such town not-
 5 withstanding any provision of a city charter or of general or special law
 6 or of any ordinance or by-law regulating the making of contracts by
 7 such town. The price, which the town shall be liable in contract to pay
 8 for gas or electricity so furnished, shall be in accordance with the terms
 9 of such expired contract or a schedule of rates filed under section ninety-
 10 four or as ordered by the department under the provisions of section
 11 ninety-three.

Supply of gas
 or electricity
 by company
 to city or town
 after expiration
 of contract
 regulated.
 1928, 265.

1 SECTION 126. Whoever wilfully or fraudulently injures, disconnects,
 2 removes or otherwise interferes with, or suffers to be injured, discon-
 3 nected, removed or otherwise interfered with, any meter, pipes or

Penalty for
 injury to gas
 meter, etc
 1861, 168,
 § § 13, 14.

P. S. 61,
 §§ 17, 18.
 R. L. 58, § 18.
 1914, 742.
 §§ 196, 199.
 4 Allen, 308.

fittings belonging to a gas company, or prevents a meter from duly 4
 registering the quantity of gas supplied through the same, or in any 5
 way hinders or interferes with its proper action or just registration, or 6
 fraudulently burns or wastes the gas of such company, or whoever 7
 attaches a pipe or any appliance to a main or pipe belonging to a gas 8
 company or, without the written consent of such company, uses or 9
 causes to be used any gas supplied by it, unless the same passes through 10
 a meter set by the company, shall be punished by a fine of not more 11
 than one hundred dollars or by imprisonment for not more than one 12
 year, or both. 13

Penalty for
 injury to elec-
 tric meter, etc.
 1895, 330.
 R. L. 121, § 40.
 1908, 243.
 1914, 742.
 §§ 197, 199.

SECTION 127. Whoever unlawfully and intentionally injures or de- 1
 stroys, or suffers to be injured and destroyed, any meter, pipe, conduit, 2
 wire, line, pole, lamp or other apparatus belonging to a corporation 3
 engaged in the manufacture or sale of electricity, or unlawfully and 4
 intentionally prevents an electric meter from duly registering the 5
 quantity of electricity supplied, or in any way interferes with its proper 6
 action or just registration, or, without the consent of such corporation, 7
 unlawfully and intentionally diverts any electric current from any wire 8
 of such corporation, or otherwise unlawfully and intentionally uses 9
 or causes to be used, without the consent of such corporation, any 10
 electricity manufactured or distributed by it shall be punished by a 11
 fine of not more than one hundred dollars or by imprisonment for not 12
 more than one year, or both. 13

CHAPTER 165.

WATER AND AQUEDUCT COMPANIES.

SECT.

WATER COMPANIES.

1. Definitions.
2. Water companies subject to certain sections of other chapters.
3. Certain powers of department of public health not affected.
4. Supervision.
5. Taking of water works, etc., by city or town.
6. Department of public health to furnish assistance.
7. Annual report.
8. Streets in certain municipalities not to be opened without consent of municipal authorities.
9. Appeal to department of public utilities.
10. Testing of water meters.
11. Injury of water meters and unlawful use of water penalized.

AQUEDUCT COMPANIES.

12. Laws applicable.

SECT.

13. Certificate of payment of capital stock.
14. Payment of capital by conveyance of property.
15. Meetings and records of certain companies.
16. Shares and names of proprietors to be entered in books.
17. Directors. President.
18. Assessments.
19. Real estate.
20. Corporation may dig up highways, etc.
21. Liability of shareholders after dissolution.
22. Individual liability of shareholders.
23. Upon dissolution, real estate to be in common.
24. Penalty for injuring aqueducts.
25. Towns to have use of water in case of fires.
26. Provisions by selectmen for taking water.
27. Recovery of damages.

WATER COMPANIES.

- 1 SECTION 1. In sections one to eleven, inclusive, the following words
 2 shall have the following meanings:
- 3 "Corporation" or "company", every person, partnership, associa-
 4 tion or corporation, other than a municipal corporation, engaged in the
 5 distribution and sale of water in the commonwealth and occupying the
 6 public streets with its mains and pipes therefor.
- 7 "Department", the department of public utilities.
- 1 SECTION 2. Chapter one hundred and fifty-eight and sections ten,
 2 eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen,
 3 twenty-one, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two,
 4 eighty-three, eighty-four, ninety-two, ninety-three, ninety-four, ninety-
 5 six, ninety-eight, ninety-nine, one hundred and one, one hundred and
 6 twenty and one hundred and twenty-one of chapter one hundred and
 7 sixty-four shall include and apply to all such corporations and companies.
- 1 SECTION 3. This chapter shall not affect or impair the powers and
 2 duties of the department of public health with respect to water supply
 3 under chapter one hundred and eleven.
- 1914, 787, § 12.
- 1 SECTION 4. The department shall have general supervision of all
 2 corporations and companies subject to this chapter, and shall make all
 3 necessary examinations and inquiries and keep itself informed as to the
 4 compliance by all such corporations and companies with the law.
- 1 SECTION 5. In all proceedings for the acquisition by a town of the
 2 water works and other property of a water company created by special
 3 law in the commonwealth providing for the appointment of commis-
 4 sioners for the determination of the price to be paid for such water
 5 works and property, the matters to be referred to, heard and determined
 6 by, such commissioners shall be referred to, heard and determined by,
 7 the department, and its determination and award shall have the same
 8 force and effect as if the determination and award had been made by
 9 the commissioners provided for in the charters of such companies.
- 1 SECTION 6. In all proceedings conducted by the department under
 2 the laws relating to the petition of any water company for authorization
 3 to issue capital stock or bonds, and in all matters connected with the
 4 determination by the department of any question relating thereto and
 5 before any such authorization is given, the department of public health
 6 shall, on request of the department, furnish without charge engineering
 7 services and advice for its assistance and guidance in such proceedings.
- 1 SECTION 7. The department shall make an annual report of all its
 2 doings under this chapter, together with such suggestions as to the
 3 condition of affairs or conduct of the corporations and companies as
 4 may be appropriate and with such abstracts of the returns required by
 5 section two as it deems expedient.
- 1 SECTION 8. In a town where a water company exists in active opera-
 2 tion, no other company or person shall dig up and open the streets, lanes

Definitions
 1914, 787, § 11
 1919, 350,
 § 117.

Water com-
 panies sub-
 ject to certain
 sections of
 other chapters
 1909, 319
 1911, 787,
 §§ 5, 12
 1917, 166, § 1
 1920, 295, 583.

Certain
 powers of
 department
 of public
 health not
 affected.

Supervision
 1914, 787, § 1
 1919, 350,
 § 117

Taking of
 water works,
 etc., by city
 or town.
 1917, 166, § 2.
 1919, 350,
 § 117.

Department
 of public
 health to
 furnish
 assistance.
 1913, 660, § 1.
 1915, 21,
 §§ 2, 3.
 1919, 350,
 § 117.

Annual report.
 1914, 787, § 4.
 1919, 350,
 § 117

Streets in
 certain munic-
 ipalities not to

be opened
without
consent of
municipal
authorities.
1914, 787, § 9.

and highways of such town for the purpose of laying water mains and pipes therein without the consent of the aldermen or selectmen after notice, by publication or otherwise, to all parties interested and a public hearing.

Appeal to
department of
public utilities.
1914, 787, § 10.
1919, 350,
§§ 117, 121.

SECTION 9. Any corporation, company or person aggrieved by the decision of the aldermen or selectmen under the preceding section may, within thirty days after notice of said decision, appeal therefrom to the department which shall thereupon give due notice to and hear all parties interested, and render decision thereon.

Testing of
water meters.
1914, 397.
269 Mass. 12.

SECTION 10. Any person using water supplied by a city, town, district or company, measured by a meter, shall be entitled to an examination and test of such meter to determine the accuracy of the same in any quarter or period, upon written application therefor, which shall be made before the expiration of the time when the rate for such quarter or period is required to be paid, to the board, commissioner or officer in charge of the water works of the city, town or district, if the water is supplied by a city, town or district, or to the company, if the water is supplied by a company. Such examination and test shall be made by a competent person employed by the city, town or district, if the water is supplied by a city, town or district, or by a competent person designated by the mayor of the city or the selectmen of the town where the water is supplied, if it is supplied by a company. A written report of the result of the examination and test shall be furnished to the person making the application, and if it appears that the meter has registered with substantial accuracy, the expense of the examination and test shall be paid by the person applying therefor, and in no case shall the expense so required to be paid exceed three dollars for each examination and test, but if it appears that the meter has not registered with substantial accuracy and that the person has been charged with, or has paid for, more water than he should have been charged with or should have paid for, the amount of such excess shall forthwith be credited to such person or remitted to him if he has paid the same, and the expense of the examination and test shall be borne by the city, town, district or company supplying the water; if, however, it appears that the person has been charged with, or has paid for less water than he should have been charged with or should have paid for, he shall forthwith be charged with the proper additional amount and shall pay the same, together with the expense of the examination and test, to the city, town, district or company supplying the water.

Injury of
water meters
and unlawful
use of water
penalized.
1914, 284.

SECTION 11. Whoever unlawfully and intentionally injures, or suffers to be injured, a water meter belonging to a city, town, district, or company engaged in supplying water, or prevents such meter from duly registering the quantity of water supplied through it, or hinders or interferes with its proper action or just registration, or attaches a pipe to a main or pipe belonging to a city, town, district or water company, or otherwise uses or causes to be used the water supplied by a city, town, district or company without the consent of the same, unless it passes through a meter set by such city, town, district or company, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year, or both.

AQUEDUCT COMPANIES.

1 SECTION 12. Aqueduct companies shall, except as otherwise herein
 2 provided, be subject to chapter one hundred and fifty-eight and also to
 3 sections four to ten, inclusive, of chapter one hundred and sixty-six except
 4 that all rights and duties imposed on the department by sections four
 5 and five of said chapter one hundred and sixty-six shall in the case of
 6 aqueduct companies be exercised by the commissioner of corporations
 7 and taxation.

Laws appli-
 cable.
 R. L. 109,
 §§ 20, 21, 24,
 27, 28, 30, 31;
 110, §§ 2, 13.
 1919, 350,
 §§ 52, 117.

1 SECTION 13. Immediately after the payment of the capital of an
 2 aqueduct company, as authorized by the commissioner of corporations
 3 and taxation, a certificate, signed and sworn to by its president, treas-
 4 urer and a majority of its directors, stating the fact of such payment,
 5 the manner in which the capital has been paid in and has been invested
 6 or voted to be invested, and approved by said commissioner, shall be
 7 filed in the office of the state secretary.

Certificate of
 payment of
 capital stock,
 1894, 380, § 1.
 R. L. 109, § 22.
 1919, 350,
 § 52.

1 SECTION 14. A conveyance to an aqueduct company of real or per-
 2 sonal property at a fair valuation shall be a sufficient payment of the
 3 capital stock to the extent of such value, if a description of such property
 4 and a statement of the value at which it has been taken in payment, in
 5 such detail as the commissioner of corporations and taxation shall require
 6 or approve, is included in the certificate mentioned in the preceding
 7 section, and a statement that he is satisfied that such valuation is fair
 8 and reasonable is endorsed by him upon such certificate.

Payment of
 capital by
 conveyance
 of property
 1894, 380, § 2.
 R. L. 109, § 23.
 1919, 350,
 § 52.

1 SECTION 15. The proprietors of an aqueduct corporation, which has
 2 been organized under chapter one hundred and ten of the Public Statutes
 3 or corresponding provisions of earlier laws, may at a legal meeting agree
 4 upon the method of calling future meetings of the corporation, and may
 5 choose a clerk, who shall be sworn and who shall record in books to be
 6 provided and kept by him for that purpose all by-laws, votes and other
 7 proceedings of the corporation. Such books shall at all times be subject
 8 to the inspection of any person appointed for that purpose by the gen-
 9 eral court.

Meetings and
 records of
 certain com-
 panies,
 1798, 59, § 3.
 R. S. 40, § 3.
 G. S. 65, § 3.
 P. S. 110, § 3.
 R. L. 123, § 41.

1 SECTION 16. The clerk, at or immediately after the first meeting,
 2 shall enter in the books the names of the several proprietors and the
 3 shares owned by each.

Shares and
 names of
 proprietors
 to be entered
 in books.

1798, 59, §§ 6, 8. G. S. 65, § 4. R. L. 123, § 12.
 R. S. 40, § 1. P. S. 110, § 4.

1 SECTION 17. The proprietors may choose any number of directors
 2 and other officers to manage the business; and the directors shall choose
 3 one of their number to be the president of the corporation.

Directors.
 President.
 1798, 59, § 3.

R. S. 40, § 6. G. S. 65, § 5. P. S. 110, § 5. R. L. 123, § 43.

1 SECTION 18. The directors may make such assessments on each
 2 share as they find necessary; and, upon the default of a proprietor for
 3 thirty days after notice thereof to pay an assessment, they may sell by
 4 public auction so many of his shares as will be sufficient to pay the
 5 assessment and the necessary charges, such sale being first advertised
 6 three weeks successively in a newspaper published in the county, or

Assessments,
 1798, 59, § 3.
 R. S. 40, § 7.
 G. S. 65, § 6.
 P. S. 110, § 6.
 R. L. 123, § 44.

notices thereof being posted thirty days at least before the sale in public 7
places in the town. The surplus proceeds arising from the sale shall be 8
paid to the owner of the shares sold. 9

Real estate,
1798, 59, § 6.
R. S. 40, § 8.
G. S. 65, § 8.
P. S. 110, § 9.

SECTION 19. Such corporation may purchase and hold real estate 1
necessary for the purpose of its association not exceeding thirty thousand 2
dollars in value. 3

R. L. 123, § 45.

Corporation
may dig up
highways, etc.
1798, 59, § 7.
R. S. 40, § 9.
G. S. 65, § 9.
P. S. 110, § 10.
R. L. 123, § 46.
11 Gray, 154.

SECTION 20. Such corporation may, with the written consent of the 1
aldermen of a city or the selectmen of a town, dig up and open any 2
street or way therein for the purpose of placing such pipes as are neces- 3
sary in constructing its aqueduct or in repairing or extending the same, 4
if the same is so done as not to prevent the convenient passing of teams 5
and vehicles. 6

Liability of
shareholders
after dissolu-
tion.
1798, 59, § 9.
R. S. 40, § 10.
G. S. 65, § 10.
P. S. 110, § 11.
R. L. 123, § 47.

SECTION 21. Contracts made by or with such a corporation shall 1
remain in force after its dissolution, and the shareholders at such dissolu- 2
tion shall continue liable and capable as a corporation in all its suits rela- 3
tive to such contracts until they are performed, if suit is commenced 4
within six years after the dissolution or after the right of action accrued. 5

Individual
liability of
shareholders.
1798, 59, § 9.
R. S. 40, § 11.
G. S. 65, § 11.
P. S. 110, § 12.
R. L. 123, § 48.

SECTION 22. If no corporate property can be found to satisfy a 1
judgment recovered against the shareholders after the dissolution, and 2
it is not satisfied within six months after it is recovered, the judgment 3
creditor may satisfy the same out of the private estate of the share- 4
holders or any of them, as if the judgment had been against them in 5
their private capacity. 6

Upon dissolu-
tion, real
estate to be
in common.
1798, 59, § 9.
R. S. 40, § 12.
G. S. 65, § 12.

SECTION 23. If the corporation at its dissolution is seized of real 1
estate, the proprietors shall become tenants in common thereof in 2
proportion to their respective shares or interests in the stock of the 3
corporation. 4

P. S. 110, § 13.

R. L. 123, § 49.

Penalty for
injuring
aqueducts.
1798, 59, § 10.
R. S. 40, § 14.
G. S. 65, § 13.
P. S. 110, § 14.

SECTION 24. Whoever maliciously injures an aqueduct or any of its 1
appurtenances shall forfeit not more than one hundred dollars to the 2
use of the town where the offence is committed, and shall be liable to 3
the corporation for treble the amount of damages sustained thereby. 4

R. L. 123, § 50.

Towns to have
use of water
in case of
fires.
1798, 59, § 11.
R. S. 40, § 15.
G. S. 65, § 14.
P. S. 110, § 15.
R. L. 123, § 51.

SECTION 25. A town in which such aqueduct is situated may put 1
conductors into the pipes for the purpose of drawing therefrom, free of 2
expense, as much water as is necessary if a building is on fire therein and 3
such conductors are so secured that water shall not be drawn therefrom 4
except for the purpose of extinguishing fires. 5

144 Mass. 177.

Provisions by
selectmen for
taking water.
1867, 158.
P. S. 110,
§§ 16, 17.
R. L. 123, § 52.
144 Mass. 177.

SECTION 26. If the selectmen consider it necessary, for the protection 1
of persons and property in their town against fire, to take water from 2
the conductors or pipes therein of an aqueduct corporation, they may 3
direct the engineers of the fire department to request the corporation to 4
put into such conductors or pipes, in such places as said engineers shall 5

6 think necessary, connections or conductors for the purpose of attaching
 7 hydrants or conducting water into reservoirs. If the corporation refuses
 8 or neglects for two weeks after such request to comply therewith, said
 9 engineers may make such connections at the cost of the town, using all
 10 necessary means for making the same and using reasonable care for the
 11 protection of the pipes and works of such corporation.

1 SECTION 27. Any person who has sustained injury in his land or by
 2 the diversion of water by the operations of an aqueduct corporation, and
 3 who is entitled to damages for such injury by the act establishing such
 4 corporation or otherwise, may recover such damages under chapter
 5 seventy-nine.

Recovery of
 damages,
 1871, 289,
 §§ 1, 2,
 G. S. 65,
 §§ 15, 16.

P. S. 110, §§ 18, 19.

R. L. 123, § 53.

16 Gray, 347.

CHAPTER 166.

TELEPHONE AND TELEGRAPH COMPANIES, AND LINES FOR THE TRANSMISSION OF ELECTRICITY.

SECT.
 FINANCES OF TELEPHONE AND TELEGRAPH COMPANIES.

1. Certain proportion of capital stock to be subscribed, etc., before constructing line. Filing of statement.
2. Limit of debt.
3. Liability of president and treasurer.
4. Issue of stock, bonds and evidences of indebtedness.
5. Enforcement of preceding section, etc.
6. Penalty for violation of § 4, etc.
7. New shares to be offered to stockholders upon increase of capital stock.
8. Stock to be sold at auction, when.
9. Stock or scrip dividends by certain corporations forbidden.
10. Such dividends void. Liability of directors.

RETURNS.

11. Annual returns.
12. Penalty for failure to make annual return.

TELEPHONE COMPANIES.

13. Service to telegraph companies without discrimination.
14. Service to other applicants without discrimination.
15. Enforcement of two preceding sections.

TELEGRAPH COMPANIES.

16. Duties.
17. Charges for despatches received by mail, etc.

SECT.

18. Penalty for violation of two preceding sections.
19. Liability for negligence in transmission of telegraphic messages.
20. Telegrams to contain time of filing, etc. Penalty.

CONSTRUCTION OF LINES FOR TRANSMITTING ELECTRICITY.

21. Construction of lines.
22. Location, etc., by aldermen or selectmen. Procedure. Fees.
23. Establishment of telegraph and telephone lines by citizens.
24. Transmission of electricity for private use. Penalty for injury, etc., to wires, etc.
25. Regulation of wires in or under public ways.
26. Proceedings if regulations are violated.
27. Approval of ordinance or regulation.
28. Approval of location by department.

DAMAGES.

29. Damages caused by erection of lines.

POLES AND WIRES.

30. Regulations concerning wires in cities and towns.
31. Names of owners to be attached. Exceptions.
32. Inspector of wires; duties.
33. Enforcement of three preceding sections.

SECT.

- 34. Insulation of poles. Penalty.
- 35. Penalty for affixing telephone wires, etc., to property without permission.
- 36. Name of corporation on pole or structure. Penalty.
- 37. No easement obtained by poles, etc.
- 38. Injury to lines, wires, etc. Penalties.
- 39. Wires may be cut, when.

SECT.

- 40. Penalty for cutting wires without notice.
- 41. Limitation of two preceding sections.
- 42. Liability of telegraph company for injury from poles, etc.

GENERAL PROVISIONS.

- 43. Application of chapter to others than corporations.

FINANCES OF TELEPHONE AND TELEGRAPH COMPANIES.

Certain proportion of capital stock to be subscribed, etc., before constructing line. Filing of statement. 1851, 247, § 3. G. S. 64, § 7.

SECTION 1. A telegraph or telephone company shall not commence the construction of its line until three fourths of its capital stock have been unconditionally subscribed for, and at least one half has been paid in in cash; and the directors shall, within ten days after commencing construction, file in the office of the state secretary a sworn statement of such subscription and payment.

P. S. 109, § 7. 1893, 274. R. L. 122, § 6.

Limit of debt. 1851, 247, § 4. G. S. 64, § 8. P. S. 109, § 8. R. L. 122, § 7.

SECTION 2. Such company shall not at any time contract or owe debts to a larger amount than one half of its capital stock actually paid in.

Liability of president and treasurer. 1851, 247, § 6. G. S. 64, § 9. P. S. 109, § 9. R. L. 122, § 8.

SECTION 3. The president and treasurer of such company shall be jointly and severally liable for all its indebtedness, in case of wilful neglect or omission on their part to comply with any provision of section one, two or eleven.

Issue of stock, bonds and evidences of indebtedness. 1875, 161. P. S. 110, § 7. 1894, 450, § 1; 452, § 1; 462, § 1. 1897, 337, § 1. R. L. 109, § 24. 1913, 784, § 3. 1918, 54. 1919, 350, § 117. 1921, 230, § 2. 214 Mass. 529. 216 Mass. 432. 233 Mass. 503. 1 Op. A. G. 659. [Penalty, § 6.]

SECTION 4. Such company shall issue only such amount of stock and bonds, and of coupon notes and other evidences of indebtedness payable at periods of more than three years, as the department of public utilities may from time to time approve as reasonably necessary for the purpose for which such issue of stock, bonds, coupon notes or other evidences of indebtedness has been authorized. Said department shall on an application for such issue, within thirty days after the final hearing thereon, render a written decision assigning the reasons therefor, and, if approving such issue, specifying the respective amounts of stock, bonds, coupon notes or other evidences of indebtedness approved for the respective purposes to which the proceeds thereof are to be applied. The decision shall, within seven days after it has been rendered, be filed in the office of the department and a certificate of said decision shall, within three days after rendition and before the stock, bonds, coupon notes or other evidences of indebtedness as aforesaid are issued, be filed in the office of the state secretary, and a duplicate thereof delivered to the corporation which shall enter the same upon its records. Such corporation shall not apply the proceeds of such stock, bonds, coupon notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate.

Enforcement of preceding section, etc.

SECTION 5. The supreme judicial or superior court shall have jurisdiction in equity, upon the application of the department, attorney

3 general, any stockholder or interested party, to enforce the preceding
 4 section and all lawful orders and decisions, conditions or requirements
 5 of said department in pursuance thereof.

1896, 473. 1913, 784, § 3. 1919, 350, § 117.
 R. L. 109, § 27. 1918, 54.

1 SECTION 6. A director, treasurer or other officer or agent of any
 2 such company who knowingly votes to authorize the issue of, or know-
 3 ingly signs, certifies or issues, stock or bonds contrary to section four,
 4 or who knowingly votes to authorize the application, or knowingly applies
 5 the proceeds, of such stock or bonds contrary to said section, or who
 6 knowingly votes to assume or incur, or knowingly assumes or incurs
 7 in the name or behalf of such corporation, any debt or liability except
 8 for the legitimate purposes of the corporation shall be punished by a
 9 fine of not more than one thousand dollars or by imprisonment for not
 10 more than one year, or both.

Penalty for
 violation of
 § 1, etc.
 1894, 450, § 3;
 452, § 3;
 462, § 3.
 1894, 450, § 2;
 452, § 2;
 462, § 2;
 R. L. 109, § 28

1 SECTION 7. If any such company increases its capital stock, such
 2 new shares necessary to produce the amount of increased capital stock
 3 authorized shall, except as provided in the following section, be offered
 4 proportionately to its stockholders at not less than the market value
 5 thereof at the time of increase, to be determined by the department of
 6 public utilities, taking into account previous sales of stock of the cor-
 7 poration and other pertinent conditions, which determination shall be
 8 in writing and with the date thereof shall be certified to and recorded
 9 in the books of the corporation. The directors, upon the approval of
 10 such increase as provided in section four and the determination of the
 11 market value as hereinbefore provided, shall cause written notice of
 12 such increase to be given to each stockholder who was such at the date
 13 of the vote to increase, stating the amount of such increase, the number
 14 of shares or fractions of shares to which he, according to the propor-
 15 tionate number of his shares at the date of such vote, is entitled, the
 16 price at which he is entitled to take them, and fixing a time, not less
 17 than fifteen days after the date of such determination, within which he
 18 may subscribe for such additional stock. Each stockholder may, within
 19 the time limited, subscribe for his portion of such stock, which shall be
 20 paid for in cash before the issue of a certificate therefor.

New shares to
 be offered to
 stockholders
 upon increase
 of capital
 stock.
 1870, 179.
 1871, 392, § 1.
 1873, 39, § 1;
 305.
 1878, 84, § 1.
 1879, 90, § 1.
 P. S. 106, § 39;
 112, § 58.
 113, § 16.
 1893, 315, § 1.
 1894, 472, § 1.
 R. L. 109, § 30.
 1918, 54.
 1919, 350,
 § 117.
 216 Mass. 432.

1 SECTION 8. If such increase does not exceed four per cent of the
 2 existing capital stock of the corporation, the directors, without first
 3 offering the same to the stockholders, may sell them by auction to the
 4 highest bidder at not less than the par value thereof to be actually paid
 5 in cash, and shall so sell any shares which remain unsubscribed for by
 6 the stockholders entitled to take them after the expiration of the time
 7 limited in the notice required by the preceding section. Such shares
 8 shall be offered for sale in Boston or such other city or town as the
 9 department of public utilities directs; and notice of the time and place
 10 of such sale shall be published at least five times during the ten days
 11 immediately preceding the sale in each of at least three daily news-
 12 papers approved by said department.

Stock to be
 sold at auction,
 when
 1870, 179.
 1871, 392, § 2.
 1873, 39, § 1;
 305; 333.
 1874, 372, § 46.
 1878, 84, § 2.
 1879, 90.
 P. S. 106, § 40;
 112, § 59;
 113, § 16.
 1893, 315, § 2.
 1894, 472,
 § 1, 2.
 R. L. 109, § 31.
 1919, 350,
 § 117.
 113 Mass. 79.

216 Mass. 432.

1 SECTION 9. No such company established under the laws of this com-
 2 monwealth shall declare any stock or scrip dividend or divide the pro-
 3 ceeds of the sale of stock or scrip among its stockholders; nor shall any

Stock or scrip
 dividends by
 certain cor-
 porations
 forbidden

1868, 310, § 1.	such company issue any share of stock to any person unless the par value	4
1871, § 89.	of the shares so issued is first paid in cash to its treasurer.	5
1874, 372, § 177.		
	P. S. 105, § 18; 112, § 61.	R. L. 109, § 20.
	1894, 350, § 1.	214 Mass. 529.

Such divi-	SECTION 10. All certificates of stock or scrip issued in violation of the	1
dends void.	preceding section shall be void; and the directors of the corporation which	2
Liability of	issues them shall be liable to a penalty of one thousand dollars each, to	3
directors.	be recovered by indictment in any county where any of them reside; but	4
1868, 310, § 2	if any such director proves that, before such issue, he filed his written	5
P. S. 105, § 19;	dissent thereto with the clerk, or was absent and at no time voted there-	6
112, § 61.	for, he shall not be so liable.	7
1894, 350, § 21.		
R. L. 109, § 21.		

RETURNS.

Annual returns	SECTION 11. Every telephone or telegraph company doing business	1
1851, 247, § 5.	in the commonwealth shall annually, on or before March thirty-first or	2
1857, 40, § 1.	such subsequent date as the department of public utilities, for good cause	3
1858, 46, § 1.	shown in any case, may fix, file with said department a report of its doings	4
G. S. 64, § 12.	for the year ending December thirty-first preceding, which report shall	5
P. S. 109, § 13.	be in such detail as the department prescribes, and shall be called the	6
R. L. 122, § 21.	“Annual Return.” Such return shall be sworn to by the treasurer and	7
1906, 433, § 8,	by the chief accounting officer of such company, and shall include a state-	8
12.	ment of its business, receipts and expenditures within the commonwealth	9
1917, 122, § 1.	during the year, its dividends paid out and declared, the amount of its	10
1918, 54.	authorized capital and its indebtedness and financial condition. The	11
1919, 350,	word “company” in this and the following section shall include every	12
§ 117.	person, partnership, association and corporation engaged in the business	13
	of the transmission of intelligence by electricity.	14

Penalty for	SECTION 12. Any such company neglecting to make the annual return	1
failure to	required by the preceding section shall, for the first fifteen days or por-	2
make annual	tion thereof during which such neglect continues, forfeit five dollars a	3
return.	day; for the second fifteen days or any portion thereof, ten dollars a day;	4
1906, 433, § 9.	and for each day thereafter a sum not exceeding fifteen dollars a day.	5
	If any company unreasonably refuses or neglects to make such return, it	6
	shall, in addition thereto, forfeit not more than five hundred dollars for	7
	each offence. All forfeitures recovered under this section shall be paid	8
	to the commonwealth.	9

TELEPHONE COMPANIES.

Service to tele-	SECTION 13. A person owning, controlling or operating a telephone	1
graph com-	exchange or service in the commonwealth shall, upon application of a	2
panies without	telegraph company, furnish such company with the use of telephones	3
discrimination.	and telephone service, and connection with his exchanges, with the sub-	4
1885, 267, § 1.	scribers thereto, and with his telephone service, without discrimination	5
R. L. 122, § 12.	between telegraph companies as to such connection, service or use of	6
262 Mass. 137.	instruments furnished or charges therefor for the same class of service.	7

Service to	SECTION 14. A person owning, controlling or operating a telephone	1
other appli-	exchange or service in the commonwealth shall, on application and the	2
cants without	tender of the charges or rental usual or customary for the class of service	3
discrimination.	required, without discrimination for the same class of service rendered,	4
1885, 267, § 2	furnish the applicant with the use of a telephone and telephone service	5
R. L. 122, § 13	and connection with his exchanges and the subscribers thereto, if the	6
262 Mass. 137.		

7 applicant secures the rights necessary to make the connections applied
8 for and pays to the telephone company in advance an amount sufficient
9 to cover the actual cost of the extension, if said extension is more than
10 one mile from any main exchange circuit of such company.

1 SECTION 15. The supreme judicial or superior court shall have juris-
2 diction in equity to enforce the two preceding sections.

1885, 267, § 3.

R. L. 122, § 14

262 Mass. 137.

Enforcement
of two pre-
ceding sections

TELEGRAPH COMPANIES.

1 SECTION 16. A telegraph company shall receive despatches from and
2 for other telegraph companies and associations, and from and for any
3 person; and, upon payment of the usual charges for transmitting
4 despatches according to the regulations of the company, shall transmit
5 them faithfully and impartially.

137 Mass. 463.

205 Mass. 598.

207 Mass. 401.

Duties,
1849, 93, § 6.
G. S. 64, § 10
P. S. 109, § 10
R. L. 122, § 9.
13 Allen, 226.
113 Mass. 229.

1 SECTION 17. A telegraph company shall receive, compute and transmit
2 despatches received at its offices from another telegraph company or by
3 mail, at the same rates of charge as for despatches received for trans-
4 mission from individuals on the same day and at the same place.

1867, 348
P. S. 109, §§ 10, 11

R. L. 122, § 10
205 Mass. 598.

207 Mass. 401.

Charges for
despatches
received by
mail, etc.
1849, 93, § 6.
G. S. 64, § 10.

1 SECTION 18. A telegraph company which wilfully neglects or refuses
2 to comply with any provision of the two preceding sections shall forfeit
3 not more than one hundred dollars to the company or person who sends
4 or desires to send the despatch.

G. S. 64, § 10.
1867, 348

P. S. 109, §§ 10, 11.
R. L. 122, § 10.

205 Mass. 598.
207 Mass. 401.

Penalty for
violation of two
preceding
sections.
1849, 93, § 6.

1 SECTION 19. A telegraph company shall be liable for damages to the
2 amount of one hundred dollars actually caused by its negligence, or that
3 of its agents, in transmitting, receiving or delivering telegraphic mes-
4 sages, and any limit of such liability by contract or regulation shall apply
5 only to the damages in each case in excess of one hundred dollars; but no
6 action therefor shall be maintained unless a written claim is presented to
7 such company or its agent within sixty days after such right of action
8 accrues. This section shall not apply to negligence occurring in a tele-
9 graph office established for the convenience and safety of a railroad cor-
10 poration in the running of its trains, and transacting a public telegraph
11 business only as incidental thereto, nor to negligence in the delivery of
12 messages received at such office.

Liability for
negligence in
transmission
of telegraphic
messages.
1885, 380
R. L. 122, § 11.
13 Allen, 226
197 Mass. 119.
205 Mass. 598.

1 SECTION 20. Every person engaged in the business of transmitting
2 communications by telegraph in the commonwealth and charging tolls
3 therefor, shall cause to appear plainly upon the addressee's copy of every
4 telegram originating at and destined for a point within the common-
5 wealth, the hour and minute of the day on which it was filed for trans-
6 mission and the hour and minute of the day of its receipt at its destination,
7 and no charge shall be made for or on account of the additional matter
8 required by this section. Violation of any provision of this section shall
9 be punished by a fine of not more than one hundred dollars for every
10 telegram in respect to which the violation occurs.

Telegrams to
contain time
of filing, etc.
Penalty.
1909, 302,
§§ 1, 2: 542.

CONSTRUCTION OF LINES FOR TRANSMITTING ELECTRICITY.

Construction
of lines.
1849, 93, § 2.
G. S. 64, § 2.
P. S. 109, § 2.
1883, 221.
1889, 434.
1895, 350.
R. L. 122, § 1.
1911, 509, § 1.
1914, 742,
§ 127.
1927, 106, § 2.
97 Mass. 555.
136 Mass. 75.
153 Mass. 200.
188 Mass. 250.
207 Mass. 341.
239 U. S. 313.
2 Op. A. G. 423

SECTION 21. A company incorporated for the transmission of intelligence by electricity or by telephone, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction and operation of a street railway or an electric railroad, may, under this chapter, construct lines for such transmission upon, along, under and across the public ways and, subject to chapter ninety-one, across and under any waters in the commonwealth, by the erection or construction of the poles, piers, abutments, conduits and other fixtures, except bridges, which may be necessary to sustain or protect the wires of its lines; but such company shall not incommode the public use of public ways or endanger or interrupt navigation.

Location, etc.,
by aldermen
or selectmen.
Procedure.
Fees.
1849, 93, § 3.
G. S. 64, § 3.
P. S. 109, § 3.
R. L. 122, § 2.
1903, 237.
1906 117.
1911, 509, § 2.
1916, 166.
1925, 166.
9 Gray, 386.
97 Mass. 555.
153 Mass. 200.
202 Mass. 402.
207 Mass. 341.
263 Mass. 81.
267 Mass. 343.
239 U. S. 313.

SECTION 22. A company desiring to construct a line for such transmission upon, along, under or across a public way shall in writing petition the board of aldermen of the city or the selectmen of the town where it is proposed to construct such line for permission to erect or construct upon, along, under or across said way the wires, poles, piers, abutments or conduits necessary therefor. A public hearing shall be held on the petition, and written notice of the time and place of the hearing shall be mailed at least seven days prior thereto by the clerk of the city or by the selectmen of the town to all owners of real estate abutting upon that part of the way upon, along, across or under which the line is to be constructed, as such ownership is determined by the last preceding assessment for taxation. After a public hearing as aforesaid, the board of aldermen or the selectmen may by order grant to the petitioner a location for such line, specifying therein where the poles, piers, abutments or conduits may be placed, and in respect to overhead lines may also specify the kind of poles, piers or abutments which may be used, the number of wires or cables which may be attached thereto, and the height to which the wires or cables may run.

After the erection or construction of such line, the board of aldermen or selectmen may, after giving the company or its agents an opportunity to be heard, or upon petition of the company without notice or hearing, by order permit an increase in the number of wires or cables, and direct an alteration in the location of the poles, piers, abutments or conduits or in the height of the wires or cables. The board of aldermen or selectmen may, on written petition by two or more companies subject to this chapter, and having locations in any of the public ways of such city or town, without notice or hearing, by order transfer any such location from one of such companies to either or any of the other petitioners, or by order authorize any such company to attach its wires and fixtures to existing poles, piers or abutments of either or any of the other petitioners, or to maintain its wires or cables in the conduits of either or any of said other petitioners, or by order grant to said companies joint or identical locations for the maintenance of said existing poles, piers, abutments or conduits, to be used in common by them. The board of aldermen or selectmen may, on written petition by two or more companies subject to this chapter, and after notice to abutting land owners and a hearing as hereinbefore provided, by order grant to said companies joint or identical locations for the erection or construction of poles, piers, abutments or

39 conduits, to be owned and used in common by them. No order of the
 40 board of aldermen or selectmen shall be required for renewing, repairing
 41 or replacing wires, cables, poles, piers, abutments, conduits or fixtures
 42 once erected or constructed under the provisions of law, or for making
 43 house connections or connections between duly located conduits and dis-
 44 tributing poles.

45 The order granting a location or an alteration or transfer thereof, or
 46 authorizing an increase in the number of wires or cables or attachments,
 47 such as are hereinbefore described, shall be recorded by the city or town
 48 clerk in books kept exclusively therefor, and where notice has been given
 49 as hereinbefore provided the clerk of the city or the chairman or a ma-
 50 jority of the selectmen shall certify on said record that the order was
 51 adopted after due notice and a public hearing as hereinbefore prescribed,
 52 and no such order shall be valid without such certificate. The company
 53 or companies in whose favor the order is made shall pay for such record
 54 the same fees allowed for the entering and recording of deeds by regis-
 55 ters of deeds, and shall be entitled to attested copies of said orders and
 56 certificates upon payment of the same fees allowed to registers of deeds
 57 for copies.

58 The board of aldermen or selectmen may under this section authorize
 59 the attachment of the wires and fixtures of a street railway or electric
 60 railroad company to the poles, piers and abutments of another owner,
 61 or the attachment of the wires and fixtures of another owner to the
 62 poles, piers and abutments of such company, and may grant joint or
 63 identical locations for the erection or construction of poles, piers, or
 64 abutments to be owned and used in common by such company and
 65 other owners, and locations for the transmission lines and telephone, sig-
 66 nal and feed wires of such company in public ways or parts thereof, other
 67 than those public ways in which the tracks of such company are laid, and
 68 locations for additional poles to support, or alterations of locations for
 69 existing poles supporting, trolley or span wires; and all locations granted
 70 to a street railway or electric railroad company hereunder shall be sub-
 71 ject only to revocation as provided in sections seventy-seven and eighty-
 72 two of chapter one hundred and sixty-one; but nothing contained in this
 73 section save as hereinbefore expressly set forth shall be held to apply to
 74 the poles, wires and other appliances and equipment which a street railway
 75 or electric railroad company, by a grant of location, or extension or
 76 alteration thereof, under any general or special law now or hereafter in
 77 force relating to street railways or electric railroads may be authorized
 78 to construct, maintain and operate in a public way; and no terms,
 79 restrictions and obligations, other than those imposed upon a grant of
 80 location for a street railway or electric railroad, or an extension or alter-
 81 ation thereof, under any general or special law now or hereafter in force
 82 relating thereto, shall be imposed upon locations granted to a street
 83 railway or electric railroad company hereunder, save locations for its
 84 transmission lines or telephone, signal or feed wires in public ways other
 85 than those public ways in which the tracks of such company are laid.

1 SECTION 23. Selectmen may authorize citizens of the commonwealth
 2 to establish and maintain, in their town, poles, wires and other apparatus
 3 for telegraphic and telephonic communication, in conformity with this
 4 chapter and other laws applicable to telegraph or telephone companies.

Establishment
 of telegraph
 and telephone
 lines by
 citizens.
 1880, c. 83, § 3.
 P. S. 27, § 49.

Transmission
of electricity
for private use
Penalty for
injury, etc.,
to wires, etc.
1869, 457.
§§ 2, 3.
P. S. 27, § 45
1883, 221.
1889, 434.
1895, 350.
R. L. 25,
§§ 52, 53.

SECTION 24. The selectmen may, upon terms and conditions pre- 1
scribed by them, and subject to the provisions of this chapter, so far 2
as applicable, authorize a person to construct for private use upon, 3
along and under the public ways of the town telegraph and telephone 4
lines and lines for the transmission of electricity for light, heat or power. 5
Upon the construction of any such line, the poles and structures thereof 6
within the location of such ways shall become the property of the town, 7
and the selectmen may regulate and control the same, may at any time 8
require the persons using the same to make alterations in the location 9
or construction thereof and may, after notice and a hearing, order the 10
removal thereof. The town may at any time attach wires for its own 11
use to such poles and structures, and the selectmen may permit other 12
persons to attach wires for their private use therto or to poles and 13
structures constructed by the town, and may prescribe reasonable terms 14
and conditions therefor. Whoever unlawfully injures or destroys any 15
wire, pole, structure or fixture of any such line shall be punished by a 16
fine of not more than five hundred dollars or by imprisonment for not 17
more than two years, or both. 18

Regulation of
wires in or
under public
ways.
1880, 83, § 1.
P. S. 27, § 47;
28, § 4.
1883, 221
1889, 398; 434
1895, 350.
R. L. 25, § 54;
26, § 6.
202 Mass. 402.
207 Mass. 341.
226 Mass. 210.

SECTION 25. The selectmen may, within their towns, permit tele- 1
graph and telephone lines to be laid under any public way or place, 2
and may establish reasonable regulations for the erection and main- 3
tenance of all lines for the transmission of intelligence by telegraph or 4
telephone, or for the transmission of electricity for light, or for heat or 5
power except for the use of street railway companies, by every person 6
having authority to place such structures in or under public ways or 7
places, including all lines owned or used by said towns. Regulations 8
established by a city hereunder shall be made by ordinance. 9

Proceedings
if regulations
are violated.
1880, 83, § 2.
P. S. 27, § 48.
1891, 293.
R. L. 25, § 55.
1918, 291, § 9.

SECTION 26. The selectmen shall forthwith give written notice in 1
detail to the owner, constructor or person using any line constructed 2
or maintained in violation of such regulations; and if thereafter such 3
unlawful construction is continued or if said lines are not within a 4
reasonable time so altered as to conform to said regulations, the supreme 5
judicial or superior court may enjoin the further progress of said work, 6
or order such line removed or altered at the expense of the owners, con- 7
structors or persons using the same. If such line belongs to or is used 8
by a town, like action may be taken upon complaint of a person injured, 9
after such notice to the town as the court may order. 10

Approval of
ordinance or
regulation.
1911, 509, § 7.
1914, 742,
§ 132
1919, 350,
§ 117.

SECTION 27. No ordinance or regulation of a city or town, or regu- 1
lation or restriction imposed in a grant of location, affecting the erection, 2
maintenance or operation of a line for the transmission of electricity for 3
light, heat or power extending or intended to extend from some point in 4
one city or town through or to some point in another city or town, shall 5
take effect until approved by the department of public utilities. 6

Approval of
location by
department.
1911, 509, § 8.
1919, 350,
§ 117.
267 Mass. 343

SECTION 28. Any company subject to this chapter, except a telegraph 1
or telephone company, desiring to construct a line for the transmission 2
of electricity which will of necessity pass through one or more cities or 3
towns to connect the proposed termini of such line, whose petition for 4
the location necessary for such line has been refused, or has not been 5

6 granted within three months after the filing thereof by the board of
 7 aldermen of a city or the selectmen of a town through which said com-
 8 pany intends to construct such line for the purpose aforesaid, may apply
 9 to said department for such location. The department shall give a pub-
 10 lic hearing thereon after notice to the board of aldermen or selectmen
 11 refusing or neglecting to grant such location, and to all persons owning
 12 real estate abutting upon any way in the city or town where such loca-
 13 tion is sought, as such ownership is determined by the last assessment
 14 for taxation. The department shall, if requested by the board of aldermen
 15 or selectmen, hold said hearing in the city or town where the location
 16 is sought. If it appears at the hearing that the company has already
 17 been granted and has accepted a location for such line in two cities, or in
 18 two towns, or in a city and town adjoining the city or town because of the
 19 refusal or neglect of whose board of aldermen or selectmen to grant a
 20 location therefor the application is made, and if the department deems
 21 the location necessary for public convenience, and in the public interest,
 22 it may by order grant a location for such line in the city or town with
 23 respect to which the application is made, and shall have and exercise
 24 relative thereto the same powers and authority conferred by section
 25 twenty-two upon the board of aldermen or selectmen, and in addition
 26 to the provisions of law governing such company may impose such other
 27 terms, limitations and restrictions as it deems public interest may re-
 28 quire. The department shall cause an attested copy of its order, with
 29 the certificate of its clerk, endorsed thereon, that the order was adopted
 30 after due notice and a public hearing as hereinbefore prescribed, to be
 31 forwarded to the city or town clerk, who shall record the same and fur-
 32 nish attested copies thereof upon the terms and in the manner specified
 33 in section twenty-two.

DAMAGES.

1 SECTION 29. An owner of land abutting upon a public way along
 2 which telegraph or telephone, electric light, heating or power lines are
 3 constructed, erected or altered in location or construction by any tele-
 4 graph or telephone, electric light, heating or power company, whose
 5 property is injuriously affected or diminished in value by occupation of
 6 the ground or of the air, or otherwise by such construction, erection or
 7 alteration, whether such owner is also the owner of the fee in such way
 8 or not, may recover damages therefor from the company under chapter
 9 seventy-nine.

Damages
 caused by
 erection of
 lines.
 1849, 93,
 §§ 4, 5.
 G. S. 64,
 §§ 4, 5.
 P. S. 109,
 §§ 4, 5.
 1884, 306, § 1.
 1895, 350
 R. L. 122, § 3.
 136 Mass. 75.

172 Mass. 197

2 Op. A. G. 423.

POLES AND WIRES.

1 SECTION 30. A person or a corporation, private or municipal, owning
 2 or operating a line of wires over or under streets or buildings shall use
 3 only strong and proper wires safely attached to strong and sufficient
 4 supports and insulated at all points of attachment; shall remove all
 5 wires the use of which is abandoned; shall properly insulate every wire
 6 where it enters a building, and, if such wire is other than a wire designed
 7 to carry an electric light, heat or power current, shall attach to it at a
 8 proper point in the circuit, near the place of entering the building, and so
 9 situated as to avoid danger from fire, an appliance adapted at all times
 10 to prevent a current of electricity of such intensity or volume as to be
 11 capable of injuring electrical instruments or of causing fire from entering
 12 the building by means of such wire beyond the point at which such

Regulations
 concerning
 wires in cities
 and towns
 1890, 404, § 1.
 1899, 337, § 1.
 R. L. 122, § 16.
 161 Mass. 583.

appliance is attached; and shall properly insulate every wire within a building designed to carry an electric light, heat or power current. 13 14

Names of owners to be attached.
Exceptions.
1890, 404, § 2.
1899, 320;
337, § 2.
R. L. 122, § 17
1911, 509, § 3.

SECTION 31. Such person or corporation shall plainly mark each pole, pier, abutment or other fixture supporting wires or cables containing wires over streets or buildings with the name or initials of the owner of such pole, pier, abutment or other fixture. Wherever cross arms or other appliances for the support of wires or cables belonging to different owners are attached to the same pole, pier, abutment or other fixture, every such cross arm or other appliance shall plainly be tagged or marked with the name or initials of the owner thereof. Wherever wires or cables belonging to different owners are attached to the same cross arm or other appliances for the support of wires or cables, every wire or cable shall be tagged or marked with the name or initials of the owner at or near its point of attachment to such cross arm or other appliance. No such tag or mark shall be required for the wires, poles, piers, abutments and other fixtures of a street railway or electric railroad company, except for its feed wires supported by poles carrying wires or cables belonging to another owner, and for its poles supporting wires or cables belonging to another owner, and for poles belonging jointly to the street railway company and another owner. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

Inspector of wires; duties.
1890, 404,
§§ 3, 4.
1899, 337,
§§ 3, 4.
R. L. 122, § 18.
1920, 591, § 18.
239 Mass. 540.

SECTION 32. A city shall, by ordinance, designate or provide for the appointment of an inspector of wires, and any town may provide by vote or by by-law for the appointment by its selectmen of such an inspector. Such inspector shall supervise every wire over or under streets or buildings in such city or town and every wire within a building designed to carry an electric light, heat or power current; shall notify the person owning or operating any such wire whenever its attachments, insulation, supports or appliances are improper or unsafe, or whenever the tags or marks thereof are insufficient or illegible; shall, at the expense of the city or town, remove every wire the use of which has been abandoned, and every wire not tagged or marked as hereinbefore required, and shall see that all laws and regulations relative to wires are strictly enforced. A city or town may recover in contract of the owner of any such wire so removed the expense which it has incurred for the removal thereof. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

Enforcement of three preceding sections.
1890, 404, § 5.
R. L. 122, § 19

SECTION 33. The supreme judicial or superior court shall have jurisdiction in equity upon petition of the inspector designated or appointed as aforesaid, to enforce the three preceding sections and to restrain the use or maintenance, or to cause the removal, of any wire, pole or other support erected, maintained or used in violation of said sections. 1 2 3 4 5

Insulation of poles.
Penalty.
1895, 228,
§§ 1-3.
R. L. 122,
§§ 20, 21
1911, 509, § 4
1926, 252.

SECTION 34. Poles and other structures used to support lines for the transmission of electricity shall be insulated in such manner as to protect employees and other persons from accidents. If such poles and other structures are of any material except wood, and support lines which are operated at a voltage in excess of two thousand volts, they shall be plainly and conspicuously marked "Dangerous. Keep Away"; provided, that if such poles or structures are used solely to support lines for the transmission of electricity for street lighting and are operated at a voltage of not over ten thousand volts the same need not be so marked if those parts thereof which are accessible to the public are 1 2 3 4 5 6 7 8 9 10

11 solidly connected to a permanent ground having a resistance of not more
 12 than two ohms and if the service wires conducting the current to such
 13 poles or structures are placed in underground conduits. The inspector
 14 of wires designated or appointed under the authority of section thirty-
 15 two, or, in Boston, the fire commissioner, shall enforce this section, and
 16 he shall be the sole judge of what constitutes a proper insulation or
 17 marking as hereinbefore required. Any owner of poles or other struc-
 18 tures, used for the transmission of electricity, shall be punished by a fine
 19 of not less than ten nor more than one hundred dollars for each pole or
 20 structure left uninsulated, ungrounded or unmarked in violation of this
 21 section for an unreasonable time after a request by said inspector or
 22 commissioner that the same be properly insulated, grounded or marked
 23 as herein required. For the purposes of this section, the words "in-
 24 spector of wires" or "inspector" shall, in any town having no such
 25 inspector, mean the selectmen.

1 SECTION 35. A corporation or person maintaining or operating
 2 telephone, telegraph or other electric wires or any other person who in
 3 any manner affixes or causes to be affixed to the property of another
 4 any pole, structure, fixture, wire or other apparatus for telephonic,
 5 telegraphic or other electrical communication, or who enters upon the
 6 property of another for the purpose of affixing the same, without first
 7 obtaining the consent of the owner or lawful agent of the owner of such
 8 property, shall, on complaint of such owner or his tenant, be punished by
 9 a fine of not more than one hundred dollars.

Penalty for affixing tele-
 phone wires,
 etc., to prop-
 erty without
 permission.
 1884, 302, § 1.
 R. L. 122, § 2.

1 SECTION 36. A corporation or person maintaining or operating tele-
 2 phone, telegraph or other electric wires shall, at all places where such
 3 wires are affixed by any pole, structure or fixture to the property of an-
 4 other, mark such pole, structure or fixture in a clear, durable and legible
 5 manner with the name or initials of the corporation or person maintaining
 6 or operating such wires, and any corporation or person failing to comply
 7 with this section shall be punished by a fine of not more than one hun-
 8 dred dollars.

Name of cor-
 poration on
 pole or struc-
 ture.
 Penalty.
 1884, 302, § 2.
 R. L. 122, § 23.
 1911, 509, § 5.

1 SECTION 37. No enjoyment, for the purposes specified in section
 2 twenty-one, for any length of time of the privilege of having or main-
 3 taining poles, wires or apparatus in, upon, over or attached to any build-
 4 ing or land of other persons shall give a legal right to the continued en-
 5 joyment of such easement or raise any presumption of a grant thereof.

No easement
 obtained by
 poles, etc.
 1851, 247, § 1.
 G. S. 64, § 14.
 P. S. 109, § 15.
 R. L. 122, § 26.
 239 U. S. 313

1 SECTION 38. Whoever unlawfully and intentionally injures, molests
 2 or destroys any line, wire, pole, pier or abutment, or any of the materials
 3 or property of any street railway company, of any electric railroad com-
 4 pany, or of any city or town engaged in the manufacture and sale of elec-
 5 tricity for light, heat or power or of any company, owner or association
 6 described in sections twenty-one and forty-three shall be punished by
 7 a fine of not more than five hundred dollars or by imprisonment for not
 8 more than two years, or both; and whoever does any act prohibited
 9 by this section between the hours of four o'clock in the afternoon and
 10 seven o'clock in the forenoon shall be punished by a fine of not more than
 11 one thousand dollars or by imprisonment for not more than four years,
 12 or both.

Injury to lines,
 wires, etc.
 Penalties.
 1849, 93, § 7.
 G. S. 64, § 15.
 P. S. 109, § 16.
 R. L. 122, § 27.
 1908, 233.

Wires may be cut, when. 1861, 141, § 1. P. S. 109, § 17. R. L. 122, § 28. 1911, 509, § 6. 188 Mass. 265.

SECTION 39. Whenever, in order to move a building or for any other necessary purpose, a person desires that the wires of any such company be cut, disconnected or removed, the company shall forthwith cut, disconnect or remove the same, if the person desiring this to be done has first left a written statement, signed by him, of the time when, and the place, described by reference to the crossings of streets or highways, where he wishes to remove said wires, at the office of the company in the city or town where such place is situated, twenty-four hours before the time so stated, or, if there is no such office, if he has deposited such statement in the post office, postage prepaid, and directed to the company at its office nearest to said place, three days before the time mentioned in said statement. If the company neglects or refuses to cut, disconnect or remove wires as hereinbefore provided, the inspector of wires, or the selectmen of a town having no such inspector, may cause the same to be cut, disconnected or removed, and the city or town may recover of the company in contract the expense of so doing.

Penalty for cutting wires without notice. 1869, 141, § 2. P. S. 109, § 18. R. L. 122, § 29.

SECTION 40. Whoever wilfully cuts, disconnects, removes or otherwise interrupts the use of the wires of any such company, without first giving notice as provided in the preceding section, shall be punished as provided in section thirty-eight.

Limitation of two preceding sections.

SECTION 41. The two preceding sections shall not apply to any wires attached to poles not erected in compliance with law.

1869, 141, § 3. P. S. 109, § 19. R. L. 122, § 30

Liability of telegraph company for injury from poles, etc. 1851, 247, § 2. 1859, 260. G. S. 64, § 11. P. S. 109, § 12. R. L. 122, § 15. 9 Gray, 386. 97 Mass. 555. 136 Mass. 75.

SECTION 42. A telegraph company shall be liable in damages to a person injured in his person or property by the poles, wires or other apparatus of such company. If they are erected upon a public way, the city or town shall not, by reason of anything contained in this chapter or done thereunder, be discharged from its liability, but all damages and costs recovered against it on account of such injury shall be reimbursed by the company owning the poles, wires or other apparatus.

161 Mass. 558. 184 Mass. 150. 260 Mass. 335.

GENERAL PROVISIONS.

Application of chapter to others than corporations. 1849, 93, §§ 1, 6.

SECTION 43. Owners and associations engaged in the business specified in section twenty-one although not incorporated shall be subject to this chapter so far as applicable.

1851, 57, § 2. P. S. 109, § 14. 1906, 433, § 12. G. S. 64, § 13. R. L. 122, § 25. 13 Allen, 226.

CHAPTER 167.

BANKS AND BANKING.

SECT.

SUPERVISION.

- 1. Definitions.
- 2. Examination of banks.
- 3. Commissioner may summon and examine officers. Penalty.
- 4. Examination of bank on request of officers, etc.
- 5. Commissioner may report and prosecute violations of law. Publication of certain facts.
- 6. Books and accounts.
- 7. Reports of banks. Penalty.
- 8. Penalty for failure to make, etc., returns, reports, etc.
- 9. Annual report and statement to general court.
- 10. Appraisal of real estate offered as security.
- 11. Returns, etc., may be destroyed

REGULATION OF BUSINESS.

- 12. Unauthorized banking prohibited
- 13. Penalty therefor.
- 14. Joint deposits regulated.
- 15. [Repealed]
- 16. Interest on sums deposited at intervals.
- 17. Dividends on savings deposits. Computation thereof when interest day falls on Sunday or holiday.
- 18. Payment of unearned dividends prohibited; penalty.
- 19. Return of vouchers. Notices.
- 20. Lost pass books.

LIQUIDATION.

- 21. [Repealed]
- 22. When commissioner may take possession of bank. Voluntary dissolution.
- 23. Possession of commissioner; effect and subsequent procedure.

SECT.

- 24. Authority of commissioner in possession. Enforcement of liability of stockholders of trust companies in possession.
- 25. Litigation and sales of property.
- 26. Commissioner may appoint agents to assist, etc.
- 27. Inventory.
- 28. Notice and proof of claims.
- 29. List of claims.
- 30. Fees and expenses.
- 31. Dividends; objections to claims.
- 32. Disposition of property deposited with bank.
- 33. Application to court to enjoin proceedings of commissioner.
- 34. Stockholders' meeting.
- 35. Disposition of funds remaining in hands of commissioner.
- 36. Enforcement.

FOREIGN BANKS.

- 37. Certain foreign banking associations not to do business without permission, etc.
- 38. Annual examination.
- 39. Commissioner to have access to vaults and may summon witnesses, etc.
- 40. Proceedings for enjoining insolvent corporation from doing business, etc.
- 41. Savings department.
- 42. Funds, etc., to be kept separate.
- 43. Income.
- 44. Number of offices in commonwealth limited.
- 45. Application of §§ 41-44.
- 45A. Certain foreign banking associations, etc., authorized to act as fiduciaries.

GENERAL PROVISIONS.

- 46. General duties of treasurer, etc.
- 47. General penalty.

SUPERVISION.

SECTION 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

“Bank”, a savings bank, co-operative bank, trust company or any person, partnership, association or corporation, incorporated or doing a banking business in the commonwealth, subject to the supervision of the commissioner of banks.

“Commissioner”, the commissioner of banks.

Definitions.
 1908, 590, § 1.
 1910, 399, § 1.
 1919, 350, § 46.
 259 Mass. 79.

Examination of banks.
 1838, 14, § 2.
 1851, 127, § 2.
 G. S. 57, § 3.
 1866, 192, § 2, 8.
 1876, 231, § 3.
 P. S. 116, § 3.
 1888, 51.
 1894, 317, § 3.
 R. L. 113, § 3.
 1906, 204, §§ 1, 3, 5.
 1908, 590, §§ 5, 69.
 1909, 491, § 3.
 1910, 622, § 1.
 1912, 173.
 1919, 350, §§ 45, 46, 49.
 1922, 363, § 1.
 1923, 406, § 1.

SECTION 2. The commissioner, either personally or by his examiners, or such others of his assistants as he may designate, shall, at least once in each year, make an examination of the affairs of each bank and ascertain its condition, its ability to fulfil its obligations and also whether it has complied with the law; and he may also, whenever he considers it expedient, make, at the expense of the bank, such further examinations as he deems advisable. The expenses of the annual examination of a trust company shall be borne by the company, and shall be limited to the actual cost of such examination and such additional sum for the overhead expenses of the division of banks and loan agencies as the commissioner shall determine to be attributable to such examination. The commissioner or the person making the examination shall, at the time of any such examination, have free access to the vaults, investments, cash, books and papers. The commissioner shall preserve a full record of each such examination of a bank, including a statement of its condition, if ascertained. Such records, and information contained in the reports of such banks, other than information required by law to be published or to be open to the inspection of the public, shall be open only to the inspection of the commissioner, his examiners and assistants, and such other officers of the commonwealth as may have occasion and authority to inspect them in the performance of their official duties. The commissioner may furnish to the national bank examiners, the federal government, any organization created by federal legislation, or the banking departments of other states, such information, reports and statements relating to the institutions under his supervision as he deems best.

Commissioner may summon and examine officers.
 Penalty.
 1838, 14, § 3.
 1839, 27.
 1851, 127, § 3.
 G. S. 57, § 3.
 1866, 192, § 3.
 1876, 231, § 3.
 P. S. 116, § 4.
 1894, 317, § 4.
 R. L. 113, § 4.
 1906, 204, §§ 1, 3, 5.

SECTION 3. The commissioner, or his examiners or such others of his assistants as he may designate, may summon the trustees, officers or agents of a bank, or any other witnesses, and examine them relative to the affairs, transactions and condition of the bank, and for that purpose may administer oaths. Whoever, without justifiable cause, refuses to appear and testify when so required, or obstructs the person making such examination in the performance of his duty, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

1908, 590, §§ 6, 69.

1919, 350, §§ 45, 46, 49.

Examination of bank on request of officers, etc.
 1851, 127, § 4.
 G. S. 57, § 6.
 1866, 192, § 4.
 1876, 231, § 3.
 P. S. 116, § 5.
 1894, 317, § 5.
 R. L. 113, § 5.

SECTION 4. Upon written application on oath to the commissioner by five or more officers, trustees, creditors or depositors of a bank setting forth their interest and the reasons for making an examination and requesting him to examine such bank, he shall forthwith make a full investigation of its affairs in the manner provided in the two preceding sections.

1906, 204, §§ 1, 3, 5.

1908, 590, §§ 7, 69.

1919, 350, §§ 45, 46, 49.

Commissioner may report and prosecute violations of law.
 Publication of certain facts.
 1838, 14, § 6.
 1851, 127, § 10.
 G. S. 57, § 9.
 1866, 192, § 7.
 1876, 231, § 3.
 1878, 253, § 6.
 P. S. 116, § 9.
 1894, 317, § 9.

SECTION 5. If, in the opinion of the commissioner, a bank or its officers or trustees have violated any law relative thereto, he may forthwith report such violation to the attorney general, who shall forthwith, in behalf of the commonwealth, institute a prosecution therefor. If, in the opinion of the commissioner, such bank is conducting any part of its business in an unsafe or unauthorized manner, he shall direct in writing that such unsafe or unauthorized practice shall be discontinued; and if any such bank refuses or neglects to comply with any such direction of the com-

9 missioner, or if, in the opinion of the commissioner, a trustee or officer of
 10 such bank has abused his trust, or has used his official position in a manner
 11 contrary to the interests of such bank or its depositors, or has been negli-
 12 gent in the performance of his duties, the commissioner may, in case
 13 of a savings bank, forthwith report the facts to the attorney general, who
 14 may, after granting a hearing to said savings bank, trustee or officer,
 15 institute proceedings in the supreme judicial court, which shall have
 16 jurisdiction in equity of such proceedings, for the removal of one or more
 17 of the trustees or officers, or of such other proceedings as the case may
 18 require; or the commissioner may, in case of any bank, after giving a
 19 hearing to the directors or trustees thereof, either report to the share-
 20 holders thereof, or, with the written consent of a board composed of the
 21 state treasurer, the attorney general and the commissioner of corporations
 22 and taxation, publish such facts relative thereto as in his opinion the
 23 public interest may require.

R. L. 113, § 9.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590,
 §§ 8, 69.
 1910, 622, § 2.
 1919, 350,
 §§ 45, 46,
 49, 53.

1 SECTION 6. The commissioner may prescribe the manner and form of
 2 keeping the books and accounts of a bank, the extent to which they shall
 3 be audited, and the manner of safeguarding the money and securities.

Books and
 accounts.
 1879, 285, § 1.
 1880, 228, § 1.
 P. S. 116, § 39.

1894, 317, § 41. 1906, 204, §§ 1, 3, 5. 1910, 622, § 3
 R. L. 113, § 46. 1908, 590, §§ 12, 69. 1919, 350, §§ 45, 46, 49.

1 SECTION 7. In addition to the reports required by law, banks shall
 2 make such other statements and reports to the commissioner as he may
 3 require. The commissioner shall furnish blank forms for all statements
 4 or reports required to be made to him. Any bank neglecting to make the
 5 returns required by law or by the commissioner, or failing to amend such
 6 report within fifteen days after notice from him, shall forfeit to the com-
 7 monwealth five dollars for each day during which such neglect continues,
 8 to be recovered by an information in equity in the name of the attorney
 9 general at the relation of the commissioner, brought in the supreme
 10 judicial court for Suffolk county.

Reports of
 banks
 Penalty.
 1834, 190, § 11.
 R. S. 36, § 83.
 1846, 49, 86, § 2.
 G. S. 57, § 149.
 1866, 192, § 6.
 1867, 203, § 2.
 1876, 203, § 24.
 1878, 253, § 2.
 P. S. 116, § 42.
 1894, 317, § 44.
 R. L. 113, § 49.
 1906, 204,
 §§ 1, 3, 5.

1908, 590, §§ 13, 69. 1912, 97. 1919, 350, §§ 45, 46, 49.

1 SECTION 8. The treasurer of any bank, or the officers or employees
 2 thereof charged with the duties and functions usually performed by the
 3 treasurer, who, for fifteen days after notice by the commissioner, fails
 4 to make any return, statement or report required by law or by the com-
 5 missioner, or to amend such a return, statement or report if lawfully
 6 required by the commissioner, shall be punished by a fine of not more than
 7 one thousand dollars or by imprisonment for not more than one year,
 8 or both.

Penalty for
 failure to make,
 etc., returns,
 reports, etc.
 1806, 327.
 R. L. 113, § 51.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590,
 §§ 14, 69.
 1918, 257,
 § 464.

1919, 5; 350, §§ 45, 46, 49. 1920, 2. 1922, 367.

1 SECTION 9. Annually, on or before the third Wednesday in January,
 2 the commissioner shall communicate to the general court an abstract
 3 of his report and such suggestions as he considers expedient relative to
 4 the general conduct and condition of banks, and on or before March
 5 fifteenth a statement of the condition of every bank, including banks in
 6 the hands of the commissioner, together with such other information
 7 relative to the affairs of the said banks, as, in his opinion, the public
 8 interest may require.

Annual report
 and statement
 to general
 court.
 1834, 190, § 11.
 R. S. 36, § 83.
 1846, 49;
 86, § 2.
 G. S. 57, § 149.
 1866, 192, § 6.
 1867, 203, § 2.
 1876, 203, § 24.

1878, 253, § 2. 1894, 317, § 44. 1906, 204, §§ 1, 3, 5.
 P. S. 116, § 42. R. L. 113, § 49. 1922, 104.

Appraisal of real estate offered as security. 1912, 128. 1919, 350. §§ 45, 46, 49.

SECTION 10. Whenever in the opinion of the commissioner an excessive loan has been made, or is about to be made upon real estate, by a trust company or co-operative bank, he may cause an appraisal of such real estate to be made at the expense of the trust company or bank making the loan. One appraiser shall be named by the commissioner, one by the trust company or bank, and a third by the two thus named. The appraisers shall determine the value of the real estate and certify the same in writing to the commissioner and to the trust company or bank. If it shall appear from the appraisal that the loan is excessive, the commissioner may make such order in relation thereto as he deems advisable.

Returns, etc., may be destroyed. 1916, 142. 1919, 350. §§ 45, 46, 49.

SECTION 11. Returns to the commissioner under section twenty-six of chapter one hundred and seventy-two, records of examinations of banks made under section two of this chapter, reports made under section twenty-six of chapter one hundred and sixty-eight, and reports made under section forty-four of chapter one hundred and seventy, may, after five years from the date of their receipt, be destroyed or disposed of by order of their lawful custodian, and any proceeds received in the course of their disposal shall be paid to the commonwealth.

REGULATION OF BUSINESS.

Unauthorized banking prohibited. 1889, 452, § 1. 1893, 230. 1894, 317, § 52. R. L. 113, § 11. 1906, 204. §§ 1, 3, 5; 377, § 1. 1908, 590. §§ 16, 69. 1909, 491, § 4. 1914, 610. 1919, 350. §§ 45, 46, 49. 1921, 78, § 1. 1922, 114. 3 Op. A. G. 250. Op. A. G. (1920) 114.

SECTION 12. No corporation, domestic or foreign, and no person, partnership or association except savings banks and trust companies incorporated under the laws of this commonwealth, or such foreign banking corporations as were doing business in this commonwealth, and were subject to examination or supervision of the commissioner on June first, nineteen hundred and six, shall hereafter make use of any sign at the place where its business is transacted having thereon any name, or other words indicating that such place or office is the place or office of a savings bank: nor shall such corporation, person, partnership or association make use of or circulate any written or printed or partly written and partly printed paper whatever, having thereon any name or other words, indicating that such business is that of a savings bank: nor shall any such corporation, person, partnership or association, or any agent of a foreign corporation not having an established place of business in this commonwealth, solicit or receive deposits or transact business in the way or manner of a savings bank, or in such a way or manner as to lead the public to believe, or as in the opinion of the commissioner might lead the public to believe, that its business is that of a savings bank: nor shall any person, partnership, corporation or association except as provided in section thirty-seven and except co-operative banks incorporated under the laws of this commonwealth and corporations described in the first sentence of this section hereafter transact business under any name or title which contains the word "bank" or "banking", or any word in a foreign language having the same or similar meaning, as descriptive of said business, or, if he or it does a banking business or makes a business of receiving money on deposit, under any name or title containing the word "trust", or any word in a foreign language having the same or similar meaning, as descriptive of said business.

Penalty therefor. 1889, 452, § 1. 1893, 230. 1894, 317, § 52.

SECTION 13. The commissioner or his examiners may examine the accounts, books and papers of any corporation, person, partnership or association making a business of receiving money on deposit, or which

4 has the word "bank", "banking", "banker", "bankers", or "trust", or
 5 any word in a foreign language having the same or similar meaning, in
 6 the name under which its business is conducted, in order to ascertain
 7 whether such corporation, person, partnership or association has violated
 8 or is violating any provision of the preceding section; and any corpora-
 9 tion, person, partnership or association refusing to allow such examination
 10 or violating any provision of said section shall forfeit to the common-
 11 wealth one hundred dollars a day for every day or part thereof during
 12 which such refusal or violation continues. Any violation of this or the
 13 preceding section shall forthwith be reported by the commissioner to the
 14 attorney general. The said forfeiture may be recovered by an information
 15 or other appropriate proceeding brought in the supreme judicial or su-
 16 perior court in the name of the attorney general. Upon such information
 17 or other proceeding the court may issue an injunction restraining such
 18 corporation, person, partnership or association from further prosecution
 19 of its business within the commonwealth during the pendency of such
 20 proceeding or for all time, and may make such other orders or decrees
 21 as equity and justice may require.

R. L. 113, § 11.
 1906, 204.
 §§ 1, 3, 5;
 377, § 2.
 1908, 590,
 §§ 17, 69.
 1911, 470.
 1918, 41.
 1919, 350,
 §§ 45, 46, 49.
 1921, 78, § 2.
 Op. A. G.
 (1920) 111.

1 SECTION 14. When a deposit is made in any bank, in the names of
 2 two persons, payable to either, or payable to either or the survivor, such
 3 deposit, or any part thereof, or interest or dividend thereon, if not then
 4 attached at law or in equity in a suit against either of said persons, may
 5 be paid to either of said persons, whether the other be living or not, and
 6 such payment shall discharge the bank making such payment from its
 7 obligation, if any, to such other person or to his legal representatives for
 8 or on account of such deposit.

Joint deposits
 regulated.
 1911, 228.
 267 Mass. 112.

1 SECTION 15. [REPEALED, 1923, 40, § 2.]

1 SECTION 16. Savings banks and trust companies in their savings de-
 2 partments may contract, on terms to be agreed upon, for the deposit at
 3 intervals within any period of twelve months, of sums of money in the
 4 aggregate not in excess of the statutory limit on deposits in savings banks,
 5 and for the payment of interest on the same at a rate not more than one
 6 per cent less than the rate of their last regular dividend on savings de-
 7 posits. A sum thus accumulated, if left in such a depository as a regular
 8 savings deposit within fifteen days after the date on which money or-
 9 dinarily begins to draw interest, may, if the depository so provides, draw
 10 interest from such prior date.

Interest on
 sums deposited
 at intervals.
 1919, 37, § 1
 240 Mass. 478.
 241 Mass. 273.

1 SECTION 17. Dividends or interest on deposits in the savings depart-
 2 ments of trust companies or in savings banks may be declared and paid
 3 for periods of not less than one month nor more than six months, as
 4 determined by their by-laws, from income which has been earned and
 5 which has been collected, except as otherwise provided in the case of
 6 savings banks by section forty-seven of chapter one hundred and sixty-
 7 eight, during the next preceding six months and which is available after
 8 deducting previous dividends paid, the reasonable expenses incurred in
 9 the management thereof, the taxes paid and the amounts required to be
 10 set apart for the guaranty fund. In the computation of such dividends
 11 or interest, when the day on which deposits in any such savings depart-
 12 ment or savings bank begin to draw interest, as provided in its by-laws

Dividends on
 savings
 deposits.
 Computation
 thereof when
 interest day
 falls on Sun-
 day or holiday.
 1919, 116, § 2;
 326, § 1.
 1920, 38, 311.
 1924, 255.
 Op. A. G.
 (1919) 115.
 Op. A. G.
 (1920) 34.

or regulations, falls on a Sunday or a legal holiday, deposits made on the next succeeding business day and remaining on deposit through the balance of the monthly period, may be construed as having been on deposit one full month, within the meaning of this section, section forty-seven of chapter one hundred and sixty-eight and section sixty-seven of chapter one hundred and seventy-two.

Payment of unearned dividends prohibited; penalty. 1919, 326, § 2.

SECTION 18. An officer, agent, clerk or servant of a trust company or savings bank who pays or authorizes the payment of any dividend or interest unless the same has been earned and collected as provided in the preceding section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months.

Return of vouchers. Notices. 1912, 277, § 2.

SECTION 19. A depositor's vouchers may be returned by mailing the same to him, at his last known address, postage prepaid, and such depositor may, when required to notify the bank, give notice in like manner.

Lost pass books. 1908, 590, § 40. 1909, 491, § 6. 1912, 471.

SECTION 20. When a pass book issued by a savings bank, a co-operative bank or the savings department of a trust company has been lost, stolen or destroyed, the person in whose name it was issued or his legal representative, may make written application to such bank, for payment of the amount of the deposit represented by said book or for the issuance of a duplicate book therefor. Thereupon with the written consent of the bank, he may give, or authorize the bank at his expense to give, public notice of such application by advertising the same at least once a week for three successive weeks in a newspaper published in or nearest to the town where such bank is situated. If such book shall not be presented to said bank within thirty days after the date of the first advertisement, as aforesaid, the bank shall, upon proof that such notice has been given, pay the amount due on said book or issue a duplicate book therefor; and upon such payment or delivery of a new book, all liability of the bank on account of the original book shall cease.

LIQUIDATION.

SECTION 21. [REPEALED, 1922, 411.]

When commissioner may take possession of bank Voluntary dissolution. 1838, 14, § 5. 1839, 27, § 2. 1851, 127, § 5. G. S. 57, § 7. 1866, 192, § 5. 1876, 231, § 3. P. S. 116, § 6. 1894, 317, § 6. R. L. 113, § 6. 1906, 204, § 1, 3, 5. 1908, 590, § 9, 69. 1910, 399, § 2, 17. 1912, 472, § 2. 1919, 350, § 45, 46, 49. 1930, 329, § 2. 211 Mass. 207. 240 Mass. 244.

SECTION 22. Whenever it shall appear to the commissioner that any bank has violated its charter or any law of the commonwealth, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it shall refuse to submit its books, papers and concerns to the inspection of the commissioner or of his duly authorized agents, or if any officer of such bank shall refuse to be examined on oath by the commissioner or his duly authorized assistants touching its concerns, or if it shall suspend payment of its obligations, or if from an examination or from a report provided for by law the commissioner shall have reason to conclude that such bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, the commissioner may take possession forthwith of the property and business of such bank and may retain possession thereof until the bank shall resume business or until its affairs shall finally be liquidated as herein provided.

16 Subject to the written approval of the commissioner, any co-operative
 17 bank or trust company may be dissolved and liquidate its affairs if
 18 authorized by a vote passed, at a meeting specially called to consider the
 19 subject, by at least two thirds of the shareholders in a co-operative bank
 20 or by stockholders of a trust company representing at least two thirds
 21 of its outstanding capital stock. A committee of three shareholders or
 22 stockholders shall thereupon be elected, and, under such regulations as
 23 may be prescribed by the commissioner, shall liquidate the assets, and
 24 after satisfying all debts of the corporation shall distribute the remaining
 25 proceeds among those entitled thereto in proportion to their respective
 26 interests therein.

242 Mass. 95,
 305
 246 Mass. 161,
 247 Mass. 530,
 251 Mass. 385.
 Op. A. G.
 (1920) 152, 309.

1 SECTION 23. Upon taking possession of the property and business of
 2 a bank, the commissioner shall forthwith give notice thereof to all banks,
 3 trust companies, associations and individuals holding or having pos-
 4 session of any assets of such bank. No bank, trust company, association
 5 or individual, knowing that the commissioner has taken such possession,
 6 or having been notified thereof as aforesaid, shall have a lien or charge for
 7 any payment, advance or clearance thereafter made, or liability there-
 8 after incurred, against any of the assets of the bank of whose property
 9 and business the commissioner shall have taken possession as aforesaid.
 10 Such bank may, with the consent of the commissioner, resume business
 11 upon such conditions as he may approve; provided, that if, in his judg-
 12 ment it is for the public interest so to do, he may retain in behalf of the
 13 bank the control, prosecution or defence of any undetermined suits or
 14 claims brought in behalf of or against the bank under section twenty-five
 15 during the time when the bank was in his charge, and the expense of pros-
 16 ecuting or defending such suits or claims shall be paid from the funds of
 17 such bank.

Possession of
 commissioner;
 effect and
 subsequent
 procedure.
 1910, 399, § 3.
 1913, 177.
 1919, 350,
 §§ 45, 46, 49.
 246 Mass. 161,
 247 Mass. 530,
 251 Mass. 385.

1 SECTION 24. Upon taking possession of the property and business of
 2 such bank, the commissioner may collect moneys due to the bank, and
 3 do all acts necessary to conserve its assets and business, and shall pro-
 4 ceed to liquidate its affairs as hereinafter provided. He shall collect all
 5 debts due and claims belonging to it, and upon the order or decree of the
 6 supreme judicial court, or any justice thereof, may sell or compound all
 7 bad or doubtful debts, and on like order or decree may sell all, or any
 8 part of, the real and personal property of the bank on such terms as the
 9 court shall direct. If, at any time after he has taken possession of the
 10 property and business of a trust company under section twenty-two,
 11 the commissioner deems it necessary to enforce the individual liability
 12 of stockholders therein, as described in the first sentence of section
 13 twenty-four of chapter one hundred and seventy-two, in order to pay
 14 the liabilities of such trust company, he may file a bill in equity, in the
 15 supreme judicial court for the county where the principal office of the
 16 trust company is located, against all persons who were stockholders
 17 therein at the time of such taking possession, to enforce such individual
 18 liability. The court may by its decree assess upon the stockholders in
 19 such suit severally sums in proportion to the amounts of stock held by
 20 them respectively at the time of such taking possession; but no such
 21 stockholder shall be liable to pay a larger sum than the amount of the
 22 par value of the stock held by him at the time of such taking possession.
 23 Such suit shall not abate by reason of the non-joinder of persons liable
 24 as respondents, unless the commissioner, after notice by plea or answer

Authority of
 commissioner
 in possession.
 Enforcement
 of liability
 of stockholders
 of trust com-
 panies in
 possession.
 1910, 399, § 4.
 1919, 350,
 §§ 45, 46, 49.
 1922, 488, § 1.
 242 Mass. 78,
 95
 244 Mass. 115,
 128,
 247 Mass. 334,
 347, 530.
 249 Mass. 144.
 Op. A. G.
 (1920) 265.

of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a respondent, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the commissioner to defend the suit.

Litigation and sales of property. 1910, 399, § 5. 1919, 350, §§ 45, 46, 49. 240 Mass. 254. 242 Mass. 95. 247 Mass. 530.

SECTION 25. To execute and perform the powers and duties conferred upon him, the commissioner may, in the name of any such bank, prosecute and defend all suits and other legal proceedings and may, in the name of the bank, execute, acknowledge and deliver all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or any compromise authorized by the court; and any deed or other instrument, executed pursuant to the authority hereby given, shall be valid and effectual for all purposes to the same extent as though executed by the officers of the bank by authority of its board of directors or of its stockholders, or by the individual banker personally. In case any of the real property so sold is located in a county other than that where the application to the court for leave to sell the same is made, the commissioner shall cause a certified copy of the order or decree of the court authorizing or ratifying such sale to be filed in the registry of deeds for the district where the said real property lies.

Commissioner may appoint agents to assist, etc. 1910, 399, § 6. 1919, 350, §§ 45, 46, 49. 247 Mass. 530.

SECTION 26. The commissioner may, under his hand and official seal, appoint agents to assist him in the duty of liquidation and distribution. The certificates of the appointment of such agents shall be filed in the office of the commissioner, and certified copies thereof shall be filed in the office of the clerk of the supreme judicial court for the county where the principal office of such bank is located. The commissioner may from time to time authorize such agents to perform such duties connected with said liquidation and distribution as he deems proper. The commissioner may procure such expert assistance and advice as he considers necessary in the liquidation and distribution of the assets of such bank, and he may retain such of the officers or employees of the bank as he deems necessary. The commissioner shall require from a special agent and from such assistants such security for the faithful discharge of their duty as he deems proper.

Inventory. 1878, 253, § 5. P. S. 116, § 7. 1894, 317, § 7. R. L. 113, § 7. 1906, 204, §§ 1, 3, 5. 1908, 590, §§ 10, 69.

SECTION 27. Upon taking possession of the property and assets of such bank, the commissioner shall make an inventory in duplicate of the assets of the bank, one to be filed in his office and one in the office of the clerk of the supreme judicial court for the county where the principal office of the bank is located.

1910, 399, §§ 7, 17.
1919, 350, §§ 45, 46, 49.

247 Mass. 530.
Op. A. G. (1920) 152.

Notice and proof of claims. 1910, 399, § 8. 1919, 350, §§ 45, 46, 49. 211 Mass. 207. 244 Mass. 64. 246 Mass. 161. 247 Mass. 530. 252 Mass. 348, 394. 254 Mass. 173. Op. A. G. (1920) 265, 275.

SECTION 28. The commissioner shall publish weekly for three consecutive months, in such newspapers as he directs, a notice calling on all persons who may have claims against such bank to present the same to the commissioner and to make legal proof thereof at a place and in a time, not earlier than the last day of publication, to be therein specified. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank, so far as their addresses are known. If the commissioner doubts the justice and validity of any

9 claim, he may reject the same and serve notice of such rejection upon
 10 the claimant either personally or by mail. An affidavit of service of such
 11 notice, which shall be prima facie evidence thereof, shall be filed with the
 12 commissioner. An action upon the claim so rejected shall not be enter-
 13 tained unless brought within six months after such service. Claims pre-
 14 sented after the expiration of the time specified in the notice to creditors
 15 shall be entitled to share in the distribution only to the extent of the
 16 assets in the hands of the commissioner equitably applicable thereto.

1 SECTION 29. Upon the expiration of the time fixed for the presenta-
 2 tion of claims, the commissioner shall make in duplicate a full and com-
 3 plete list of the claims presented, including and specifying such claims
 4 as have been rejected by him. One of said lists shall be filed in his office
 5 and the other in the office of the clerk of the supreme judicial court for
 6 the county where the principal office of the bank is located. Thereafter
 7 the commissioner shall make and file in said offices, at least fifteen days
 8 before every application to the court for leave to declare a dividend, a
 9 supplementary list of the claims presented since the last preceding list
 10 was filed, including and specifying such claims as have been rejected by
 11 him, and, in any event, he shall make and file the said list at least once
 12 in every six months after the filing of the original list, so long as he re-
 13 mains in possession of the property and business of the bank. Said in-
 14 ventory and lists shall be open to inspection at all reasonable times.

List of claims.
 1910, 399, § 9.
 1919, 350,
 §§ 45, 46, 49.
 247 Mass. 530.
 248 Mass. 302.
 252 Mass. 394.

1 SECTION 30. The compensation of the special agents, counsel, em-
 2 ployees and assistants, and all expenses of supervision and liquidation,
 3 shall be fixed by the commissioner, subject to the approval of the su-
 4 preme judicial court for the county where the principal office of such bank
 5 is located, on notice to such bank, and, upon the certificate of the com-
 6 missioner, shall be paid out of the funds of the bank in his hands.

Fees and
 expenses.
 1910, 399, § 10.
 1919, 350,
 §§ 45, 46, 49.
 244 Mass. 64.
 247 Mass. 530.

1 SECTION 31. At any time after the expiration of the date fixed for
 2 the presentation of claims, the supreme judicial court, on application
 3 of the commissioner, depositor, creditor, stockholder or any party in
 4 interest, may authorize or direct the commissioner to declare out of
 5 the funds remaining in his hands, after the payment of expenses, one or
 6 more dividends, and, after the expiration of one year from the first
 7 publication of notice to creditors, or earlier if the supreme judicial court
 8 so orders, the commissioner may declare a final dividend, such dividends
 9 to be paid to such persons, in such amounts, and upon such notice as may
 10 be directed by the supreme judicial court for the county where the prin-
 11 cipal office of such bank was located, or as may be directed by a justice
 12 of said court. Objections to any claim not rejected by the commissioner
 13 may be made by any person interested by filing a copy of the objections
 14 with the commissioner, who shall present the same to the supreme
 15 judicial court at the time of the next application for leave to declare a
 16 dividend. The court to which such application is made shall thereupon
 17 dispose of said objections, or may refer them to a master, and should the
 18 objections to any claim be sustained by the court or by the master no
 19 dividend thereon shall be paid by the commissioner until the claimant
 20 shall have established his claim by the judgment of a court of competent
 21 jurisdiction. The court may make proper provision for unproved or
 22 unclaimed deposits.

Dividends;
 objections
 to claims.
 1910, 399, § 11.
 1919, 350,
 §§ 45, 46, 49.
 1921, 471.
 1931, 12.
 247 Mass. 27,
 530.
 248 Mass. 302.
 252 Mass. 394.
 Op. A. G.
 (1920) 265, 275.

Disposition
of property
deposited
with bank
1910, 399, § 12.
1919, 350,
§§ 45, 46, 49.
247 Mass. 530.
Op. A. G.
(1920) 51, 273.

SECTION 32. Should any bank, at the time when the commissioner takes possession thereof, have in its possession for safe keeping and storage, any jewelry, plate, money, securities, valuable papers or other valuable personal property, or should it have rented any box, safes, or safe deposit boxes, or any part thereof, for the storage of property of any kind, the commissioner may at any time after taking possession as aforesaid cause to be mailed to the person claiming or appearing upon the books of the bank to be the owner of such property, or to the person in whose name the safe, vault, or box stands, a written notice in a securely closed postpaid, registered letter, directed to such person at his post office address as recorded upon the books of the bank, notifying such person to remove, within a period fixed by said notice and not less than sixty days from the date thereof, all such personal property; and upon the date fixed by said notice, the contract, if any, between such persons and the bank for the storage of said property, or for the use of said safe, vault or box, shall cease and determine, and the amount of the unearned rent or charges, if any, paid by such person shall become a debt of the bank to such person. If the property be not removed within the time fixed by the notice, the commissioner may make such disposition of said property as the supreme judicial court, upon application thereto, may direct; and thereupon the commissioner may cause any safe, vault or box to be opened in his presence, or in the presence of one of his special agents and of a notary public not an officer or in the employ of the bank, or of the commissioner, and the contents thereof, if any, to be sealed up by such notary public in a package upon which the notary public shall distinctly mark the name and address of the person in whose name such safe, vault or box stands upon the books of the bank, and shall attach thereto a list and description of the property therein. The package so sealed and addressed, together with the list and description, may be kept by the commissioner in one of the general safes for boxes of the bank until delivered to the person whose name it bears, or may otherwise be disposed of as directed by the court.

Application
to court to
enjoin pro-
ceedings of
commissioner
1910, 399, § 13.
1919, 350,
§§ 45, 46, 49.
242 Mass. 95.
247 Mass. 530.
251 Mass. 385.

SECTION 33. Whenever any bank of whose property and business the commissioner has taken possession deems itself aggrieved thereby, it may, at any time within ten days after such taking possession, apply to the supreme judicial court for the county where the principal office of the bank is located to enjoin further proceedings; and said court, after citing the commissioner to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application or may enjoin the commissioner from further proceedings and direct him to surrender the said business and property to the bank.

Stockholders'
meeting.
1910, 399, § 14.
1919, 350,
§§ 45, 46, 49.
242 Mass. 78.
247 Mass. 530.

SECTION 34. Whenever the commissioner has paid to every depositor and creditor of such corporation, not including stockholders, whose claims as such creditors or depositors have been duly approved and allowed, the full amount of such claims, and has made proper provision for unclaimed and unpaid deposits or dividends, and has paid all expenses of the liquidation, he shall call a meeting of the stockholders of the corporation by mailing notice thereof, not less than thirty days prior to the date of the meeting, to each stockholder of record whose address is known, and also by publishing notice of the meeting once a week for four successive weeks in some newspaper of general circulation published in the

11 county where the principal office of the corporation is located, the first
 12 publication to be not less than thirty days before the date appointed
 13 for the meeting. At such meeting the stockholders shall determine
 14 whether the commissioner shall be continued as liquidator and shall wind
 15 up the affairs of the corporation, or whether an agent or agents shall be
 16 elected therefor, and in so determining the stockholders shall vote by
 17 ballot, in person or by proxy, each share of stock entitling the holder to
 18 one vote; and a majority of the stock shall be necessary for the deter-
 19 mination. If it is determined to continue the liquidation under the
 20 commissioner, he shall complete the liquidation and, after paying the
 21 expenses thereof, distribute the proceeds remaining among the stock-
 22 holders in proportion to their several holdings of stock, in such manner
 23 and upon such notice as may be directed by the supreme judicial court.
 24 If it is determined to appoint an agent or agents to liquidate, the stock-
 25 holders shall thereupon select such agent or agents by ballot, a majority
 26 of the stock present and voting, in person or by proxy, being necessary
 27 to a choice. Such agent or agents shall execute and file with the com-
 28 missioner a bond to the state treasurer in such amount, with such sureties
 29 and in such form as shall be approved by the commissioner, conditioned
 30 for the faithful performance of all the duties of his or their trust, and
 31 thereupon the commissioner shall transfer and deliver to such agent or
 32 agents all undivided, uncollected or other assets of the corporation then
 33 remaining in his hands. Upon such transfer and delivery, the commis-
 34 sioner shall be discharged from all further liability to such corporation.
 35 Said agent or agents shall convert into cash the assets coming into his
 36 or their possession and shall account for and make distribution of the
 37 property of the corporation as provided in the case of distribution by
 38 the commissioner, except that the expenses thereof shall be subject to
 39 the direction and control of the supreme judicial court. In case of the
 40 death, removal or refusal to act of any such agents, the stockholders, on
 41 the like notice, to be given by the commissioner upon proof of such
 42 death, removal or refusal to act being filed with him, and by the like vote
 43 hereinbefore provided, may elect a successor, who shall have the same
 44 powers and be subject to the same liabilities and duties as the agent
 45 originally elected.

1 SECTION 35. Unclaimed dividends and all other funds received from
 2 the liquidation of any institution, so taken possession of, and remaining
 3 in the possession of the commissioner after the expiration of twelve
 4 months from the order for final distribution shall be paid by him to the
 5 state treasurer, to be held in trust, subject to the conditions hereinafter
 6 provided, for the several depositors with and creditors of such institu-
 7 tion or other persons entitled thereto, according to their several inter-
 8 ests. The commissioner shall state annually in his report to the general
 9 court the names of institutions so taken possession of and liquidated and
 10 the amounts of unclaimed dividends and other funds held by him with
 11 respect to every such institution. Upon certification by the commissioner
 12 that he has been furnished satisfactory evidence of their right to the
 13 same, the state treasurer shall pay over the money so held by him to
 14 the persons respectively entitled thereto. In cases of doubt or of con-
 15 flicting claims, the commissioner may require an order from the supreme
 16 judicial court authorizing and directing payment, and any expenses
 17 incurred in connection therewith shall be deducted before payment from
 18 the amount payable. At the expiration of six years from the date of

Disposition
 of funds
 remaining in
 hands of
 commissioner.
 1910, 399, § 15.
 1919, 350,
 §§ 45, 46, 49.
 1925, 240
 244 Mass. 64.
 247 Mass. 530.

receipt by the state treasurer from the commissioner of any such un- 19
 claimed dividends or other funds, upon certification by the commissioner 20
 that no claim thereto has been proved to his satisfaction or is pending, 21
 the same or the balance thereof then remaining, together with the 22
 interest, if any, earned thereon, shall escheat to the commonwealth. 23

Enforcement.
 1910, 399, § 16.
 240 Mass. 244,
 254
 242 Mass. 505.
 246 Mass. 161.
 247 Mass. 530.

SECTION 36. The supreme judicial court, or any justice thereof, shall 1
 have jurisdiction in equity to enforce the provisions of sections twenty- 2
 two to thirty-five, inclusive, and to act upon all applications and in all 3
 proceedings thereunder. 4

248 Mass. 302.

252 Mass. 348, 394.

FOREIGN BANKS.

Certain foreign
 banking asso-
 ciations not
 to do business
 without per-
 mission, etc.
 1906, 347, § 1.
 1908, 590, § 4.
 1909, 491, § 2.
 1910, 343.
 1919, 350,
 §§ 45-47, 49.
 248 Mass. 319.

SECTION 37. No foreign banking association or corporation shall 1
 transact business in this commonwealth until it has received a certificate 2
 from the board of bank incorporation, authorizing it so to do. The said 3
 board may grant such certificate conditioned upon the performance of 4
 such requirements as to auditing as said board may prescribe. Any 5
 foreign banking association or corporation transacting business in this 6
 commonwealth shall be subject to the supervision of the commissioner, 7
 and shall annually, within thirty days after the last business day of 8
 October, and at other times during each year on any past day to be spec- 9
 ified by the commissioner, make to him in such form as may be prescribed 10
 by him a return, signed and sworn to by the treasurer, or the corre- 11
 sponding officer, of the corporation, showing accurately the condition 12
 thereof at the close of business on said day. The president and a 13
 majority of the directors shall certify on oath that the report is correct 14
 according to their best knowledge and belief. 15

Annual
 examination.
 1906, 347, § 2.
 1919, 350,
 §§ 45, 46, 49.

SECTION 38. The commissioner shall annually at least, and as much 1
 oftener as he deems expedient, examine, either personally or by a com- 2
 petent examiner appointed by him, every such association or corporation 3
 and thoroughly inspect and examine its affairs to ascertain its financial 4
 condition and whether it has complied with the law. The proper charges 5
 incurred by reason of any such examination shall be paid by the associa- 6
 tion or corporation examined. 7

Commissioner
 to have access
 to vaults and
 may summon
 witnesses, etc.
 1902, 463.
 1906, 204,
 §§ 1, 3, 5;
 347, § 3
 1919, 350,
 §§ 45, 46, 49.

SECTION 39. For the purposes aforesaid, the commissioner or the 1
 person making the examination shall have free access to the vaults, 2
 books and papers of any such association or corporation, and may sum- 3
 mon the directors, officers or agents thereof, and such other witnesses as 4
 he deems necessary, for examination relative to the affairs, transactions 5
 and condition of such association or corporation, and for that purpose 6
 is empowered to administer oaths. 7

Proceedings
 for enjoining
 insolvent cor-
 poration from
 doing busi-
 ness, etc.
 1906, 66; 204,
 §§ 1, 3, 5;
 347, § 1
 1919, 350,
 §§ 45, 46, 49.

SECTION 40. If, upon examination, it appears that such association 1
 or corporation is insolvent, or that its capital is impaired, or that its con- 2
 dition is such as to render the continuance of its business hazardous to 3
 the public or to those having funds in its custody, the commissioner 4
 shall apply, or, if such association or corporation appears to have exceeded 5
 its powers or failed to comply with any provision of law, may apply to 6
 the supreme judicial court, which shall have jurisdiction in equity on such 7
 application, to issue an injunction restraining such association or cor- 8

9 poration, in whole or in part, from further proceeding with its business,
 10 and to make such further orders or decrees as justice and equity may
 11 require. The court may appoint one or more receivers to take possession
 12 of its property and effects, subject to such directions as may from time to
 13 time be prescribed by the court.

1 SECTION 41. Every foreign banking association or corporation which
 2 was on June tenth, nineteen hundred and six, transacting business in this
 3 commonwealth and which receives any deposits or transacts any business
 4 in the manner of a savings bank, or in such a manner as might lead the
 5 public to believe that its business is that of a savings bank, shall have a
 6 savings department in which all business transacted in such manner in
 7 this commonwealth shall be done. All money received in said manner
 8 shall be a special deposit and shall be placed in said savings department,
 9 and all loans or investments thereof shall be made in accordance with
 10 the laws governing the investment of deposits in savings banks.

Savings
department,
1907, 533, § 1.

1 SECTION 42. Such funds and the investments or loans thereof shall
 2 be appropriated solely to the security and payment of such deposits, and
 3 shall not be mingled with the investments of the capital stock or other
 4 money or property belonging to such association or corporation or be liable
 5 for the debts or obligations thereof. The accounts and transactions of
 6 said savings department shall be kept separate and distinct from the gen-
 7 eral business of the association or corporation.

Funds, etc.,
to be kept
separate,
1907, 533, § 2.

1 SECTION 43. All income received from the investment of funds in said
 2 department, over and above the sums paid to depositors in that
 3 department as interest or dividends, shall accrue as profits to the associa-
 4 tion or corporation and may be transferred to its general funds.

Income,
1907, 533, § 3.

1 SECTION 44. No such association or corporation described in section
 2 forty-one shall have more than two offices or places of business in the
 3 commonwealth.

Number of
offices
in common-
wealth
limited.

1907, 533, § 5.

1 SECTION 45. Sections forty-one to forty-four, inclusive, shall not ap-
 2 ply to any deposit received by any such association or corporation in
 3 exchange for which deposit, or in exchange for the obligation of a de-
 4 positor secured by such deposit, there shall be issued, either at the time
 5 of receiving the deposit, or thereafter, orders for merchandise for the full
 6 amount or any part thereof, and nothing contained in said sections shall
 7 be construed to apply to national banks.

Application
of §§ 41-44,
1907, 533,
§§ 4, 6.

1 SECTION 45A. The board of bank incorporation may, subject to such
 2 conditions as the commissioner may prescribe, grant to a banking asso-
 3 ciation or corporation whose principal office is in another state, a certifi-
 4 cate authorizing it to act in a fiduciary capacity under the provisions,
 5 so far as applicable, of sections fifty-two to fifty-nine, inclusive, of chap-
 6 ter one hundred and seventy-two; provided, that said association or
 7 corporation is authorized so to act by the laws of the state where its
 8 principal office is located; and provided further, that the laws of such
 9 state grant a similar privilege or privileges to like associations or cor-
 10 porations having their principal office in this commonwealth. Any such

Certain foreign
banking asso-
ciations, etc.,
authorized
to act as
fiduciaries,
1928, 128, § 1,
1929, 243.

banking association or corporation holding a certificate as aforesaid 11
 and appointed a fiduciary shall be subject to the provisions of general 12
 law with respect to the appointment of agents by foreign fiduciaries and 13
 to the same taxes, obligations and penalties, with respect to its activities 14
 as such fiduciary and the property held by it in its fiduciary capacity, 15
 as like associations or corporations having their principal office in this 16
 commonwealth, and no such certificate shall be issued to any such 17
 banking association or corporation until it has filed with the said board 18
 of bank incorporation an agreement in writing in which it binds itself 19
 to perform said obligations and pay any such taxes and penalties as 20
 aforesaid as may be levied or imposed upon it in this commonwealth. 21
 Such a corporation or association, to the extent only that it acts as fidu- 22
 ciary as hereinbefore authorized, shall not be deemed to transact business 23
 in the commonwealth for the purposes of sections thirty-seven to forty- 24
 five, inclusive. 25

GENERAL PROVISIONS.

General
 duties of
 treasurer, etc.
 1922, 312.

SECTION 46. In addition to the duties imposed by law upon the treas- 1
 urer of a bank, or the officer or employee thereof charged with the duties 2
 and functions usually performed by the treasurer, he shall also be re- 3
 sponsible for the performance of all acts and duties required of such 4
 corporation by the provisions of chapters one hundred and sixty-seven 5
 to one hundred and seventy-two, inclusive, except in so far as such per- 6
 formance has been expressly imposed on some other officer or employee 7
 of such bank by its regulations or by-laws or by provision of law. 8

General
 penalty.
 1922, 312.

SECTION 47. Any officer, director, trustee, agent or employee of any 1
 bank, who knowingly and wilfully does any act forbidden to him or to 2
 such bank by any provision of chapters one hundred and sixty-seven to 3
 one hundred and seventy-two, inclusive, or who knowingly and wilfully 4
 aids or abets the doing of any act so forbidden to such bank or to any 5
 other officer, director, trustee, agent or employee thereof, or who know- 6
 ingly and wilfully fails to do any act required of him by any such provi- 7
 sion, or who knowingly and wilfully fails to do any act which is required 8
 of such bank by any such provision the performance of which is imposed 9
 on him by the by-laws or regulations of the bank or by law or the respon- 10
 sibility for the non-performance of which is placed upon him by the 11
 preceding section, shall, if no other penalty against him in his aforesaid 12
 capacity is specifically provided, be punished by a fine of not more than 13
 one thousand dollars or by imprisonment for not more than one year, 14
 or both. 15

CHAPTER 168.

SAVINGS BANKS.

SECT.	GENERAL PROVISIONS.
1.	Definitions.
2.	Application of chapter.
3.	May borrow money.
4.	May not occupy same office with other bank.
5.	Officers may not be officers of other banks. Penalty.
6.	General court may examine.
	INCORPORATION.
7.	Agreement of association.
8.	Publication of notice, and public hearing.
9.	First meeting of subscribers.
10.	Issue of certificate of incorporation.
	MANAGEMENT.
11.	Meetings.
12.	Members.
13.	Officers.
14.	Election of officers.
14A	Election of trustees.
15.	Meetings of trustees.
16.	Meetings of the board of investment.
17.	Auditing committee.
18.	Audit by commissioner of banks.
19.	Report of audit.
20.	Additional assistance for audit.
21.	Payment over of fees.
22.	Compensation of committees.
23.	Office of trustee, when vacated.
24.	Bonding of officers and employees.
25.	Where business may be transacted. School children.
26.	Annual report to commissioner.
27.	Return of unclaimed deposits.
28.	Books of deposit to be verified.
29.	No officer, etc., to borrow funds of corporation or become surety.
30.	Savings banks, etc., not to receive brokerage, etc., on account of a loan.
	DEPOSITS.
31.	Amount of deposits limited.
31A.	Same subject. Joint accounts.

SECT.	
32.	When depositor is to be notified.
32A.	Safe deposit vaults.
33.	Deposit of securities issued by the United States.
33A.	Sale of travelers' checks, etc.
34.	If deposit is made in trust, name and residence of beneficiary to be disclosed.
55.	Depositor may set off amount of his deposit in proceedings by the corporation.
36.	Interpleader.
37.	Special trust fund for parks, shade trees, etc.
38.	Probate court may authorize executors to deposit such funds.
39.	Statement of amount of such funds to be made every third year.
40.	When funds are to be transferred.
41.	Unclaimed deposits. Deposits by order of the court.
42.	Unclaimed deposits to be paid to state treasurer.
43.	How such deposits may be reclaimed.
44.	When reduction of deposits may be ordered.
45.	Guaranty fund to be created and maintained.
46.	Transfers to guaranty fund.
47.	Manner of division of income.
48.	Payment of dividends to be authorized by trustees.
49.	When dividend is not to be paid.
50.	When extra dividends shall be paid.
51.	Withdrawal of deposits.
51A.	Loans to depositors.
52.	Payment on order after death of drawer.
53.	Payments to minors.
	INVESTMENTS.
54.	Investments authorized.
55.	Liquidation or merger of savings banks.

GENERAL PROVISIONS.

1 SECTION 1. The following words when used in this chapter, unless
 2 the context otherwise requires, shall have the following meanings:
 3 "Commissioner", the commissioner of banks.
 4 "Such corporation" or "such bank", a savings bank and an institution
 5 for savings, incorporated as such in the commonwealth.

Definitions.
 R. L. 113, § 10.
 1908, 590,
 §§ 1, 63
 1919, 350,
 §§ 45, 49.

Application of chapter.
 1834, 190, § 1.
 R. S. 36, § 71.
 G. S. 57, § 135.
 1876, 203, § 1.
 P. S. 116, § 11.
 1894, 317, § 11.
 R. L. 113, § 12.

SECTION 2. Savings banks incorporated or doing business in the commonwealth shall be subject to this chapter so far as is consistent with the provisions of their respective charters; and any such corporation may, by vote at its annual meeting or at a meeting called for the purpose, accept any provision of this chapter which is inconsistent with its charter.

1908, 590, §§ 18, 69

May borrow money.
 1908, 590, § 67.
 1919, 350, § 45, 46.

SECTION 3. If necessary to pay its depositors, such corporation may, by vote of its board of investment, borrow money, and may pledge, as security therefor, its bonds, notes or other securities. A copy of the vote of the board of investment shall be sent forthwith to the commissioner.

May not occupy same office with other bank.
 1898, 567, §§ 1, 2.
 R. L. 113, § 21.
 1902, 169, § 3.
 1908, 590, §§ 19, 69.
 1 Op. A G. 569.
 3 Op. A G. 264.

SECTION 4. No savings bank shall occupy the same office or suite of offices with a national bank, trust company or other bank of discount, nor any office directly connected by means of doors or other openings in partitions with the office or suite of offices used or occupied by any such national bank, trust company or other bank of discount. Any such corporation violating this section shall be punished by a fine of not more than five hundred dollars.

Officers may not be officers of other banks.
 Penalty.
 1902, 169, § 4.
 1908, 590, §§ 20, 69.

SECTION 5. No president, vice president or treasurer of such corporation shall hold the office or perform the duties of president, vice president, treasurer or cashier of a national bank or trust company or any other bank of discount. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.

General court may examine.
 1828, 96, § 17.
 1834, 190, § 12.
 R. S. 36, §§ 40, 41, 84.
 G. S. 57, §§ 102, 103, 155.
 1876, 203, § 27.
 P. S. 116, § 12.
 1894, 317, § 12.
 R. L. 113, § 13.
 1908, 590, §§ 21, 69.

SECTION 6. Savings banks and their officers shall be subject to examination by a committee of the general court appointed for the purpose, who may examine their affairs and shall have free access to their books and vaults. An officer of any such corporation, or other person having charge of its books and property, who refuses or neglects to exhibit the same to such committee or obstructs its examination thereof, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than three years.

9 Cush. 604.

INCORPORATION.

Agreement of association.
 1908, 590, § 22

SECTION 7. Twenty or more persons who associate themselves by an agreement in writing for the purpose of forming a savings bank, may, upon compliance with this and the three following sections, become a corporation with all the powers and privileges and subject to all the duties, restrictions and liabilities set forth in all general laws now or hereafter in force relating to such corporations. Said agreement shall set forth that the subscribers thereto associate themselves with the intention of forming a corporation to transact business within the commonwealth, and shall specify:

First. The name by which the corporation shall be known. 10

Second. The purpose for which it is to be formed. 11

Third. The city or town and district thereof where its business is to be transacted. 12 13

Each associate shall subscribe to the articles his name, occupation, residence and post office address. 14 15

1 SECTION 8. The subscribers to such agreement shall give notice to the
 2 board of bank incorporation of their intention to form such savings bank,
 3 and shall apply to said board for a certificate that public convenience and
 4 advantage will be promoted by the establishment thereof, which certificate
 5 said board may grant. Upon receipt of such application, said board shall
 6 furnish the subscribers a form of notice specifying the names, occupation
 7 and addresses of the proposed incorporators and the name and location
 8 of the proposed savings bank, and assigning a date and place for a public
 9 hearing on the application. The subscribers shall publish such notice at
 10 least once in each of three successive weeks, in one or more newspapers
 11 designated by said board, and published in or nearest to the city or town
 12 where it is desired to establish the savings bank. If said board refuses to
 13 issue such certificate, no further proceedings shall be had, but the appli-
 14 cation may be renewed after one year from the date of such refusal, in
 15 which case notice of a public hearing thereon shall be published as herein
 16 provided.

Publication of
 notice, and
 public hearing.
 1908, 590, § 23.
 1919, 350, § 47.

1 SECTION 9. The first meeting of the subscribers to the agreement of
 2 association shall be called by a notice signed either by the subscriber to
 3 the agreement who is designated therein for the purpose, or by a majority
 4 of the subscribers; and such notice shall state the time, place and purposes
 5 of the meeting. A copy of the notice shall, seven days at least before
 6 the day appointed for the meeting, be given to each subscriber or left at
 7 his residence or usual place of business, or deposited in the post office,
 8 postage prepaid, and addressed to him at his residence or usual place of
 9 business, and another copy thereof and an affidavit by one of the signers
 10 that the notice has been duly served shall be recorded with the records of
 11 the corporation. If all the incorporators shall in writing, endorsed upon
 12 the agreement of association, waive such notice and fix the time and place
 13 of the meeting, no notice shall be required. The subscribers to the agree-
 14 ment of association shall hold the franchise until the organization has been
 15 completed. At such first meeting, or at any adjournment thereof, the
 16 incorporators shall organize by the choice by ballot of a temporary clerk,
 17 by the adoption of by-laws and by the election, in such manner as the
 18 by-laws may provide, of trustees, a president, a clerk, and such other
 19 officers as the by-laws may prescribe. All the officers so elected shall be
 20 sworn to the faithful performance of their duties. The temporary clerk
 21 shall make and attest a record of the proceedings until the clerk has been
 22 chosen and sworn, including a record of the choice and qualification of
 23 the clerk.

First meeting
 of subscribers.
 1908, 590, § 24.

1 SECTION 10. The president, and a majority of the trustees elected at
 2 such first meeting, shall make, sign and make oath to, articles in duplicate,
 3 setting forth —
 4 (a) A true copy of the agreement of association, the names of the sub-
 5 scribers thereto, and the name, residence and post office address of each
 6 of the officers of the company.
 7 (b) The date of the first meeting and the successive adjournments
 8 thereof, if any.
 9 One of such certificates shall be submitted to said board of bank in-
 10 corporation, and the other, together with the records of the proposed cor-
 11 poration, to the commissioner of corporations and taxation, who shall ex-
 12 amine the same, and who may require such amendment thereof or such
 13 additional information as he may consider necessary. If he finds that the

Issue of certifi-
 cate of incorpo-
 ration.
 1908, 590, § 25.
 1909, 491, § 5.
 1919, 350,
 §§ 47, 53.
 1931, 394,
 § 175.

articles conform to the three preceding sections, relative to the organiza- 14
tion of the corporation, and that section eight has been complied with, 15
he shall so certify and endorse his approval thereon. Thereupon the 16
articles shall be filed in the office of the state secretary, who upon pay- 17
ment of a fee of five dollars, shall issue a certificate of incorporation in the 18
following form: 19

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the names of the subscribers to the agreement of
association) have associated themselves with the intention of forming a cor-
poration under the name of (the name of the corporation), for the purpose (the
purpose declared in the agreement of association) and have complied with the
provisions of the statutes of this commonwealth in such case made and pro-
vided, as appears from the articles of organization of said corporation, duly
approved by the commissioner of corporations and taxation and recorded in
this office: now, therefore, I (name of the secretary), secretary of the common-
wealth of Massachusetts, do hereby certify that said (the names of the sub-
scribers to the agreement of association), their associates and successors, are
legally organized and established as, and are hereby made, an existing cor-
poration under the name of (name of the corporation), with the powers, rights
and privileges, and subject to the limitations, duties and restrictions, which by
law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the
commonwealth of Massachusetts hereunto affixed, this day of
in the year (the date of the filing of the articles of organization).

The secretary shall sign the certificate of incorporation and cause the 20
great seal of the commonwealth to be thereto affixed, and such certificate 21
shall have the force and effect of a special charter. The existence of 22
every such corporation not created by special law shall begin upon the 23
filing of the articles of organization in the office of the state secretary. 24
The secretary shall also cause a record of the certificate of incorporation 25
to be made, and such certificate or such record, or a certified copy thereof, 26
shall be conclusive evidence of the existence of the corporation. 27

MANAGEMENT.

Meetings.
1834, 190, § 4.
R. S. 36, § 75.
G. S. 57, § 139.
1876, 203, § 5.
P. S. 116, § 16.
1884, 150.
1894, 317, § 16.
R. L. 113, § 17.
1908, 590,
§ § 26, 69.

SECTION 11. The annual meeting of such corporation shall be held at 1
such time as the by-laws direct. Special meetings may be held by order 2
of its trustees; and its clerk shall give notice of special meetings upon writ- 3
ten request of ten members of the corporation. Notice of all meetings 4
shall be given by advertisement in a newspaper published in the county 5
where the corporation is located, and by mailing to each incorporator at 6
least seven days before such meeting a written or printed notice thereof. 7
The names of those present at meetings shall be entered in the records of 8
the corporation. 9

Members.
1834, 190, § 5.
R. S. 36, § 76.
G. S. 57, § 140.
1876, 203, § 6.
P. S. 116, § 17.
1888, 120.
1890, 222.
1894, 317, § 17.
R. L. 113, § 18.
1908, 590,
§ § 27, 69.

SECTION 12. Such corporation may, at a legal meeting, elect by ballot 1
any citizen of the commonwealth to be a member thereof; and any per- 2
son may, at an annual meeting, cease to be a member, if, at least three 3
days before such meeting, he has filed with the clerk a written notice of 4
his intention so to do. If a member fails to attend two consecutive annual 5
meetings, his membership may, by vote of the corporation at its next 6
annual meeting, be declared forfeited. Such action and vote recorded 7
shall be evidence of forfeiture of membership. No person shall continue 8
to be a member after removing from the commonwealth. 9

1 SECTION 13. The officers of such corporation shall be a president,
 2 one or more vice presidents, a board of investment of not less than three,
 3 a board of not less than eleven trustees from which the officers hereinbefore
 4 mentioned shall be chosen, a treasurer, a clerk and such other officers as
 5 it may find necessary for the management of its affairs. All officers shall
 6 be sworn, and shall hold their several offices until others are elected, and
 7 qualified in their stead; and a record of every such qualification shall be
 8 filed and preserved by the clerk of the corporation. The trustees shall
 9 be elected from the incorporators, and no person shall hold an office in
 10 two such corporations at the same time. Only one of the persons holding
 11 the offices of president, treasurer or clerk shall at the same time be a
 12 member of the board of investment. The treasurer, vice treasurer or
 13 assistant treasurer shall not be clerk either of the corporation or of the
 14 trustees. Not more than three fifths of the members of any such cor-
 15 poration shall be officers thereof at any one time.

Officers.
 1834, 190.
 §§ 2, 3.
 R. S. 36, § 72.
 73
 G. S. 57.
 §§ 136, 137.
 1872, 293, § 3.
 1876, 203.
 §§ 2, 3, 10.
 P. S. 116,
 C. 13, 21.
 1889, 161.
 1891, 317.
 S. 15, 22.
 R. L. 113.
 S. 14, 27.
 1908, 590.
 S. 28, 69.
 1910, 622, § 4.
 211 Mass. 252.
 220 Mass. 300.

1 SECTION 14. The officers of such corporation, except the board of
 2 investment, treasurer, vice treasurer and assistant treasurer, shall be
 3 elected at its annual meeting, anything in its charter to the contrary
 4 notwithstanding. The board of investment, treasurer, vice treasurer
 5 and assistant treasurer shall be elected by the trustees and shall hold office
 6 during their pleasure. If any office becomes vacant during the year, the
 7 trustees may, except as otherwise provided, elect a person to fill it until
 8 the next annual meeting; and if a person elected does not, within thirty
 9 days thereafter, take the oath, his office shall thereupon become vacant.
 10 The clerk of the corporation shall, within ten days after the meeting,
 11 notify all persons elected to office; and within thirty days thereafter shall
 12 publish in a newspaper published in the county where the corporation is
 13 established a list of all persons who have taken the oath of office to which
 14 they were elected and a list of the members of the corporation. Said lists
 15 shall be included in the annual report of the corporation to the commis-
 16 sioner, and shall be kept on file in his office for inspection by the public.
 17 A clerk who neglects to give such notice or make such publication, or who
 18 makes a false publication, and a person who knowingly publishes or
 19 circulates, or knowingly causes to be published or circulated, a printed
 20 notice containing the name of a person as an officer of such corporation
 21 who has not taken the oath of office, shall be liable to a penalty of fifty
 22 dollars. The clerk shall transmit to the commissioner a copy of all by-
 23 laws adopted and all amendments thereof. Upon the election as trustee
 24 of any such bank of a person who has not been theretofore a trustee
 25 thereof, the clerk shall send forthwith to the commissioner the name and
 26 address of such person, and the commissioner shall thereupon transmit to
 27 such person a copy of the laws relating to savings banks.

Election of
 officers.
 1834, 190, § 3.
 R. S. 36, § 74.
 G. S. 57, § 138.
 1864, 126.
 1868, 49.
 1876, 203, § 4.
 P. S. 116, § 15.
 1893, 254, 2.
 1894, 317, 15.
 R. L. 113, 16.
 1902, 169, 1.
 1908, 590.
 §§ 29, 69.
 1910, 622, § 5.
 1922, 258, § 1.
 220 Mass. 300.

1 SECTION 14A. The trustees provided for by the by-laws of any such
 2 corporation shall be divided into three groups, as nearly equal in number
 3 as possible, and at the first annual meeting of such corporation after its
 4 incorporation, one of such groups shall be elected for one year, one for two
 5 years and one for three years, and thereafter at each annual meeting of
 6 such corporation, successors of the retiring group shall be elected for three
 7 years. A vacancy may be filled by election by the trustees for the un-
 8 expired term.

Election of
 trustees.
 1922, 258, § 2

Meetings of trustees.
 1876, 203, § 7
 P. S. 116, § 18
 1882, 50.
 1888, 96.
 1894, 317, § 18.
 R. L. 113, § 19.
 1908, 590,
 §§ 30, 69.
 1910, 622, § 6.
 1912, 357

SECTION 15. A regular meeting of the board of trustees of such corporation shall be held at least once in three months, for the purpose of receiving the report of its treasurer and for the transaction of other business. Special meetings may be called by the president, and the clerk shall give notice of special meetings upon written request of three trustees. A quorum shall consist of not less than seven trustees, but less than a quorum may adjourn from time to time or until the next regular meeting. At each regular meeting the trustees shall cause to be prepared a statement showing the condition of the corporation as it appears upon its books, in the form of a trial balance of its accounts. Such statement shall be entered in a book which shall form a part of the records of the bank and a copy of such statement shall be posted in a conspicuous place in its banking room, where it may easily be read by the public, and shall there remain until the next regular meeting of said board. At each regular meeting of the trustees the board of investment shall submit a detailed written statement of all loans made by the corporation, all changes in the property or security pledged or the rate of interest charged therefor, all purchases or sales of bonds, stocks and notes, all payments by the bank of taxes or insurance on mortgaged property since the last regular meeting of the trustees, and all loans on which interest is more than three months overdue. This statement, or such part thereof as the meeting may determine, shall be read to the trustees present and then shall be filed and preserved with the records of the bank. A record shall be made at each meeting of the transactions of the trustees and of the names of those present. The trustees shall cause to be published semi-annually in a newspaper published in the county where the corporation is located the names of the president, treasurer, members of the board of investment and other officers of the corporation charged with the duty of investing its funds. The first publication thereof shall be within thirty days after the election of said officers, and the second publication at the expiration of six months therefrom.

Meetings of the board of investment.
 1908, 590, § 31

SECTION 16. Meetings of the board of investment of such corporation shall be held at least once in each month. The board shall approve all loans made by the corporation, all changes in the property or security pledged or the rates of interest charged therefor, and all purchases or sales of bonds, stocks and notes, and shall perform such other duties as the by-laws may prescribe. A record shall be made at each meeting of the transactions of the board and the names of those present. The members of said board may approve changes of collateral on loans made under subdivision (e) of clause ninth of section fifty-four either by a vote of said board or by signing a statement setting forth all such changes.

Auditing committee.
 1908, 590, § 32
 1910, 622, § 7
 1919, 350,
 §§ 45, 46

SECTION 17. At the first meeting after their election, the trustees shall appoint an auditing committee of not less than three trustees, of which committee neither the treasurer nor more than one member of the board of investment shall be members, who shall at least once during the twelve months following their appointment, and oftener if required by the commissioner, cause to be made at such time as the commissioner may determine, in such form and manner and by such certified public accountant not connected with said bank as shall first be approved by the commissioner, a thorough examination and audit

10 of the books, securities, cash, assets, liabilities, income and expendi-
 11 tures of the corporation, including an accurate trial balance of the
 12 depositors' ledger, for the period elapsed since the preceding examina-
 13 tion and audit, or for such other period as the commissioner may pre-
 14 scribe. The said accountant shall personally direct and supervise the
 15 making of said examination and audit, except that, with the consent
 16 of the commissioner, he may verify a trial balance of the depositors'
 17 ledger made by the bank within six months, and, with the consent of
 18 the commissioner, such assistance as shall be necessary may be furnished
 19 by the bank. The accountant shall report to the auditing committee
 20 the result of his examination and audit, and at the next meeting of the
 21 trustees thereafter the committee shall render a report, which shall be
 22 read, stating in detail the nature, extent and result of the examina-
 23 tion and audit, and their report and the accountant's report shall be
 24 filed and preserved with the records of the corporation. The committee
 25 shall file with the commissioner a copy of the report of the accountant
 26 within ten days after its completion. The certified public accountant
 27 and the auditing committee shall certify and make oath that the re-
 28 ports made by them under this section are correct according to their
 29 best knowledge and belief. If the committee fails to cause to be made
 30 an examination and audit, including an accurate trial balance of the
 31 depositors' ledger as herein provided, the commissioner shall cause them
 32 to be made by a certified public accountant in such form and man-
 33 ner as he may prescribe, and the expense thereof shall be paid by the
 34 bank.

1 SECTION 18. The commissioner may, when so requested by the
 2 auditing committee of any such bank, make a thorough examination
 3 and audit of the books, securities, cash, assets, liabilities, income and
 4 expenditures of such bank, including an accurate trial balance of the
 5 depositors' ledgers, for the period elapsed since the preceding examina-
 6 tion and audit, or for such other period as the commissioner may pre-
 7 scribe, or he may verify a trial balance of the depositors' ledgers made
 8 by the bank within six months, and may avail himself of such assist-
 9 ance from the officers and employees as he may deem proper. The
 10 expense of the audit only shall be borne by the bank, and such examina-
 11 tion and audit shall be in place of the one required to be made by a
 12 certified public accountant as provided by the preceding section.

Audit by
 commissioner
 of banks.
 1912, 629, § 1.

1 SECTION 19. The person in charge of the examination shall render to
 2 the commissioner a report of his findings, in such form as the commissioner
 3 may prescribe, and a copy thereof shall be rendered to the auditing com-
 4 mittee within ten days after the original has been submitted to the com-
 5 missioner, together with a notice of the amount of the fee to be paid,
 6 which shall be due and payable within thirty days after the date of
 7 notice. Upon failure of any such corporation to pay the required fee
 8 within the time prescribed herein, the commissioner shall report the facts
 9 to the attorney general, who shall immediately bring an action for the
 10 recovery of the fee.

Report of
 audit.
 1912, 629, § 2

1 SECTION 20. The commissioner, in order to carry into effect the two
 2 preceding sections may employ such additional assistance, subject to the
 3 approval of the governor and council, as he deems necessary.

Additional
 assistance
 for audit.

Payment over of fees.
1912, 629, § 4.

SECTION 21. All moneys collected and received by the commissioner under section nineteen shall be paid to the commonwealth.

Compensation of committees.
1876, 203, § 11.
P. S. 116, § 22.
1894, 317, § 23.
R. L. 113, § 28.
1908, 590, § 33, 69.

SECTION 22. The board of trustees shall authorize the compensation, if any, to be paid to committees of said board. At each regular meeting of the board the treasurer shall report in detail all amounts paid by the corporation since the last regular meeting for services, fees or otherwise, to a member of the board of trustees or to any attorney of the corporation.

Office of trustee, when vacated.
1876, 203, § 7.
P. S. 116, § 18.
1882, 50.
1888, 96.
1894, 317, § 18.
R. L. 113, § 19.
1908, 590, § 34, 69.
1919, 350, § 8.
§§ 45, 46.
1931, 426, § 261.

SECTION 23. If a trustee fails both to attend the regular meetings of the board and to perform any of the duties devolving upon him as such trustee for six consecutive months, his office may be declared by the board at the next regular meeting to be vacant. A record of such vacancy shall be entered upon the books of the corporation, and a transcript of such record shall be sent by mail to the person whose office is thus made vacant. The office of any trustee who takes the benefit of any law of bankruptcy or insolvency, or who on examination on supplementary process has been found unable to pay a judgment, shall thereby be vacated. The commissioner may recommend the removal of any trustee, officer or employee who in his opinion has abused his trust, or has been negligent in the performance of his duties, and upon such recommendation the trustees may remove or discharge such trustee, officer or employee. The trustees shall act upon such recommendation within thirty days after receiving the same.

Bonding of officers and employees.
1876, 203, § 3.
1880, 162.
P. S. 116, § 14.
1886, 93.
1889, 180.
1893, 254, § 1.
1894, 317, § 14.
R. L. 113, § 15.
1908, 590, § 35, 69.
1922, 265, § 1.
1925, 16, § 1.
129 Mass. 73.
169 Mass. 500.

SECTION 24. Every treasurer, vice treasurer and assistant treasurer shall give bond to the trustees in such amount and with such surety or sureties and conditions as the commissioner may prescribe, and shall file with the commissioner an attested copy thereof, with a certificate of its custodian that the original is in his possession. Such bonded officer shall notify the commissioner of any change thereafter made therein. If he fails, within ten days after the date thereof, to file such copy, or to notify the commissioner of any such change, he shall be liable to a penalty of fifty dollars. The commissioner shall keep a record of such bonds, and the changes so notified, and, when in his judgment it is necessary for the security of the depositors, he shall require a new bond in such amount and with such surety or sureties and conditions as he may approve. The trustees may require bonds of such other officers or employees and in such amounts as they deem necessary. The treasurer, vice treasurer and assistant treasurer, and any other officers and employees required to give bond, may be included in one or more blanket or schedule bonds; provided, that such bonds are approved by the commissioner as to the amounts and conditions thereof and as to the sureties thereon.

Where business may be transacted.
School children.
1884, 253, § 1.
1889, 91, § 1.
1894, 317, § 19.
R. L. 113, § 20.
1908, 590, § 36, 69.
1911, 211.
1918, 11.
1919, 350, § 45, 46.

SECTION 25. Such corporation shall carry on its usual business at its banking house only, and a deposit shall not be received or payment on account of deposits be made by the corporation or by a person on its account in any other place than at its banking house, which shall be in the town where the corporation is established; except that the corporation may, with the written permission of and under regulations approved by the commissioner, maintain and establish one or more branch offices or depots in the town where its banking house is located, or in towns not

9 more than fifteen miles distant therefrom where there is no savings bank
 10 at the time when such permission is given; but, in order to encourage
 11 saving among school children, the corporation may, with the written
 12 consent of and under regulations approved by the commissioner and,
 13 in the case of public schools, by the commissioner and the school com-
 14 mittee in the town where the school is situated, arrange for the collection
 15 of savings from the school children by the principal or teachers of such
 16 schools or by collectors. All moneys so collected shall be entered on
 17 an individual deposit card furnished by the corporation, but the total
 18 collections received by the corporation from any one principal or teacher
 19 may be entered in the name of such principal or teacher as trustee. When
 20 the amount deposited by any one pupil and credited on the deposit card
 21 equals the minimum amount upon which interest is allowed the corpora-
 22 tion shall issue a pass book to such pupil and thereafter, when the amount
 23 deposited by the pupil and credited on the deposit card equals the sum
 24 of one dollar, it shall be transferred to the deposit book by the corpora-
 25 tion. The principal, teacher or person authorized by the corporation
 26 to make collections from school children shall be deemed to be the agent
 27 of the corporation and the corporation shall be liable to the pupil for all
 28 deposits made with such principal, teacher or other person and entered
 29 upon the deposit card, the same as if the deposit were made by the pupil
 30 directly with the corporation. The annual meeting, and meetings of
 31 the trustees or board of investment of such corporation, may be held at
 32 any place in the town where its banking house is located.

1 SECTION 26. The treasurer of such corporation shall, annually within
 2 twenty days after the last business day of October, make a report to the
 3 commissioner in such form as he may prescribe, showing accurately the
 4 condition of such corporation at close of business on that day, specifying
 5 the following particulars: name of corporation and names of incorpora-
 6 tors and officers; place where located; amount of deposits; amount of
 7 each item of other liabilities; public funds, including all United States,
 8 state, county, city, town and district bonds; railroad bonds, street railway
 9 bonds, telephone bonds, and stock in banks and trust companies, stating
 10 each particular kind, and the par value, estimated market value and
 11 amount invested in each; loans to counties, cities, towns or districts;
 12 loans on mortgages of real estate; loans on personal security, stating
 13 amount of each class separately; estimated value of real estate, and
 14 amount invested therein; cash on deposit in banks and trust companies,
 15 with the names of such banks and trust companies and the amount de-
 16 posited in each; cash on hand; the whole amount of interest or profits
 17 received, and the rate and amount of each semi-annual and extra dividend
 18 for the previous year; the times for the dividends fixed by the by-laws;
 19 the rates of interest received on loans; the total amount of loans bearing
 20 each specified rate of interest; the number of outstanding loans of an
 21 amount not exceeding three thousand dollars each, and the aggregate
 22 amount of the same; the number of open accounts; the number and
 23 amount of deposits received; the number and amount of withdrawals;
 24 the number of accounts opened and the number of accounts closed,
 25 severally, during the previous year; and the annual expenses of the cor-
 26 poration, together with such other information as the commissioner may
 27 require. The president, treasurer and auditing committee shall certify
 28 on oath that such reports are correct according to their best knowledge
 29 and belief.

Annual report
 to commis-
 sioner.
 1834, 190, § 11.
 R. S. 36, § 82.
 1846, 86, § 1
 G. S. 57, § 148.
 1862, 120, 224,
 §§ 8, 9.
 1866, 192, § 10.
 1867, 203, § 1.
 1874, 84.
 1875, Res. 68.
 1876, 203, § 23.
 1877, 159.
 P. S. 116, § 40.
 1888, 127.
 1894, 317, § 42.
 R. L. 113, § 47.
 1902, 169, § 2.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590,
 §§ 37, 69.
 1910, 350,
 §§ 45, 46.

Return of unclaimed deposits
 1887, 319.
 1894, 317, § 45.
 R. L. 113, § 50.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590,
 §§ 39, 69.
 1919, 350,
 §§ 45, 46.

SECTION 27. The treasurer of such corporation shall, within twenty days after the last business day of October in the year nineteen hundred and twenty-two and in every fifth year thereafter, return to the commissioner a sworn statement of the name, the amount standing to his credit, the last known residence or post office address, and the fact of death, if known to him, of each depositor who shall not have made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest thereon, during the twenty years last preceding such last business day of October; he shall also give notice of such deposits in one or more newspapers published in or nearest to the town where such corporation is located, and in one or more newspapers published in or nearest to the town where the depositor was last known to reside, at least once in each of three successive weeks; but this section shall not apply to a deposit made by or in the name of a person known to an officer of the corporation to be living, to a deposit the deposit book of which has during such period been brought into the bank to be verified or to have interest added, or to a deposit which, with the accumulations thereon, shall be less than twenty-five dollars. The treasurer of a savings bank who neglects or refuses to make the sworn return required by this section shall be punished by a fine of one hundred dollars. The commissioner shall incorporate in his annual report, or in a supplementary report, each return made to him as provided in this section.

Books of deposit to be verified
 1888, 40.
 1894, 317, § 47.
 1896, 193.
 R. L. 113, § 53.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590, §§ 43, 69.
 1919, 350, §§ 45, 46.

SECTION 28. During one or more of the first ten months of the year nineteen hundred and twenty-two and of each third year thereafter such corporations shall call in the books of deposit of their depositors for verification, under rules to be prescribed by their respective boards of investment, duly approved by the commissioner.

No officer, etc., to borrow funds of corporation or become surety.
 1834, 190, § 9.
 R. S. 36, § 80.
 1858, 48.
 G. S. 57, § 146.
 1876, 203, § 10.
 P. S. 116, § 21.
 1880, 161.
 1894, 317, § 22.
 R. L. 113, § 27.
 1908, 590, § 44, 69.
 4 Op. A. G. 297.

SECTION 29. No president, treasurer, member of a board of investment, or officer of such corporation charged with the duty of investing its funds, shall borrow or use any portion thereof, be surety for loans to others or, directly or indirectly, whether acting individually or as trustee holding property in trust for another person, be an obligor for money borrowed of the corporation; and if such member or officer, either individually or as trustee holding property in trust for another person, becomes the owner of real estate upon which a mortgage is held by the corporation, his office shall become vacant at the expiration of sixty days thereafter unless he has ceased to be the owner of the real estate or has caused said mortgage to be discharged or assigned. This section shall not apply to loans held by such corporation on June eighth, nineteen hundred and eight, or to renewals thereof, or to the deposit of money, as provided in section fifty-four, in banks or trust companies of which one or more trustees or officers of such corporation are directors.

Savings banks, etc., not to receive brokerage, etc., on account of a loan
 1872, 203,
 §§ 1, 5.
 1876, 203, § 11.
 P. S. 116, § 22.
 1894, 317, § 23.
 R. L. 113, § 28.

SECTION 30. Such corporation, or a person acting in its behalf, shall not directly or indirectly negotiate, take or receive a fee, brokerage, commission, gift or other consideration for or on account of a loan made by or on behalf of such corporation, other than appears on the face of the note by which such loan purports to be made; but this section shall not prohibit a reasonable charge for services in the examination of real estate or titles, and the preparation of conveyances

8 to such corporation as security for its loans. Whoever violates any
 9 provision of this section shall be punished by a fine of not more than
 10 one thousand dollars or by imprisonment for not more than one year,
 11 or both.

1908, 590,
 §§ 45, 69.

DEPOSITS.

1 SECTION 31. Such corporation may receive on deposit from any
 2 person not more than four thousand dollars; and may allow interest
 3 upon such deposits, and upon the interest accumulated thereon, until
 4 the principal, with the accrued interest, amounts to eight thousand
 5 dollars; and thereafter upon no greater amount than eight thousand
 6 dollars; but this section shall not apply to deposits by a religious or
 7 charitable corporation or labor union, or credit union, or fraternal benefit
 8 society, or in the name of a judge of probate, or by order of any court,
 9 or on account of a sinking fund of a town in the commonwealth or of
 10 any trust fund held by a town for public uses, or of the funds of any
 11 state, county or municipal retirement or pension system or association.

Amount of
 deposits
 limited
 1831, 190, § 6
 R. S. 36, § 77
 G. S. 57, § 141.
 1874, 393.
 1875, 100.
 1876, 203, § 8.
 P. S. 116, § 19.
 1889, 86;
 449, § 1.
 1894, 317, § 20
 R. L. 113, § 25.
 1908, 590,
 §§ 46, 69
 1909, 491, § 7.
 1917, 144
 1919, 11.
 1924, 67, § 1.

1927, 109, § 1. 1928, 60; 156, § 2. 231 Mass. 367. 4 Op. A. G. 437.

1 SECTION 31A. Such corporation may receive deposits on joint ac-
 2 counts provided for in section fourteen of chapter one hundred and
 3 sixty-seven to the amount of eight thousand dollars, and may allow
 4 interest upon such deposits and upon the interest accumulated thereon
 5 until the principal with the accrued interest amounts to sixteen thousand
 6 dollars, and thereafter upon no greater amount than sixteen thousand
 7 dollars. Persons having such joint accounts may also make deposits
 8 in their individual names, but the total amount of such deposits, both
 9 joint and individual, shall not exceed eight thousand dollars, and such
 10 corporation may allow interest upon such deposits and upon the interest
 11 accumulated thereon until the principal with the accrued interest on all
 12 said accounts amounts to sixteen thousand dollars, and thereafter upon
 13 no greater amount than sixteen thousand dollars.

Same subject.
 Joint accounts.
 1915, 93.
 G. L. (ed of
 1920) 167, § 15.
 1921, 153.
 1923, 40, § 1
 1924, 67, § 2.
 1927, 109, § 2.

1 SECTION 32. The treasurer of such corporation, at least once in
 2 each year, shall send notice by mail to each depositor who for the six
 3 months last preceding has not been entitled to a dividend on the whole
 4 amount standing to his credit because the same exceeds the amount
 5 on which interest is allowed, specifying the amount not entitled to
 6 dividend.

When depos-
 itor is to be
 notified.
 1871, 262, § 1.
 1876, 203, § 21.
 P. S. 116, § 33
 1894, 317, § 35.
 R. L. 113, § 40.
 1908, 590,
 §§ 47, 69.

1 SECTION 32A. Savings banks may, with the written permission of,
 2 and under regulations approved by, the commissioner, establish and
 3 maintain safe deposit vaults and rent boxes therein. The provisions of
 4 section seventeen of chapter one hundred and fifty-eight shall apply to
 5 said banks.

Safe deposit
 vaults.
 1921, 79.

1 SECTION 33. Savings banks may, with the written permission of
 2 and under regulations approved by the commissioner, receive and
 3 hold for their depositors any securities issued by the United States.

Deposit of
 securities
 issued by
 the United
 States.

1919, 60.

Op. A. G. (1920) 247.

1 SECTION 33A. Savings banks may, under regulations made by the
 2 commissioner, sell travelers' checks, and receive money for the purpose
 3 of transmitting the same, or equivalents thereof, to another state or
 4 country.

Safe of
 travelers'
 checks, etc.
 1923, 37
 1926, 162.

If deposit is made in trust, name and residence of beneficiary to be disclosed.
 1876, 203, § 20.
 P. S. 116, § 32.
 1894, 317, § 34.
 R. L. 113, § 39.
 1908, 590, §§ 48, 69.
 142 Mass. 1.
 146 Mass. 418.
 164 Mass. 583.

SECTION 34. If a deposit is made with such corporation by one person in trust for another, the name and residence of the person for whom it is made shall be disclosed, and it shall be credited to the depositor as trustee for such person; and if no other notice of the existence and terms of a trust has been given in writing to the corporation, the deposit, with the interest thereon, may in case of the death of the trustee be paid to the person for whom such deposit was made, or to his legal representative; or if such deposit does not exceed fifty dollars, it may be paid to a minor or to either of the parents of such minor, and the same shall be a valid payment.

Depositor may set off amount of his deposit in proceedings by the corporation.
 1875, 261, § 1.
 P. S. 116, § 30.
 1894, 317, § 32.
 R. L. 113, § 37.
 1908, 590, §§ 49, 69.
 128 Mass. 512.
 129 Mass. 528.
 239 Mass. 272.
 Ch. A. G. (1920) 265.

SECTION 35. A person indebted to such corporation, whether his indebtedness is secured or not, may, in a proceeding for the collection thereof or for the enforcement of any security therefor, recoup or set off the amount of a deposit held and owned by him at the time of the commencement of such proceeding, and of the interest due thereon, except a deposit purchased or acquired from another after the commencement of proceedings in equity to restrain the corporation from doing its actual business, and section three of chapter two hundred and thirty-two shall not apply to such set-off; but a judgment shall not be rendered against such corporation in favor of the defendant or defendants for any balance found due from the plaintiff if the commissioner has taken possession of such corporation, as provided in section twenty-two of chapter one hundred and sixty-seven.

Interpleader
 1876, 203, § 19.
 1877, 179.
 P. S. 116, § 31.
 1894, 317, § 33.
 R. L. 113, § 38.
 1908, 590, §§ 50, 69.
 125 Mass. 593.
 140 Mass. 260.
 141 Mass. 305.
 162 Mass. 455.
 219 Mass. 597.

SECTION 36. If, in an action against such corporation for money on deposit therewith, it appears that the same fund is claimed by another party than the plaintiff, whether by the husband or wife of the plaintiff, or otherwise, the court in which such action is pending, on the petition of the corporation and on such notice to the plaintiff and to such claimants as the court considers proper, may order the proceedings to be amended by making such claimants defendants thereto; and thereupon the rights and interests of the several parties in and to said funds shall be heard and determined. Such deposits may remain with the corporation until final judgment, and shall be paid as the court orders, or may be paid into court to await final judgment; and when so paid into court, the action shall be discontinued as to such corporation and its liability for such deposit shall cease. The taxable costs of the corporation in such actions shall be in the discretion of the court, and may be charged upon the fund.

Special trust fund for parks, shade trees, etc.
 1875, 174, § 1.
 P. S. 116, § 35.
 1894, 317, § 37.
 R. L. 113, § 42.
 1908, 590, §§ 51, 69.
 153 Mass. 462.

SECTION 37. Such corporation may receive on deposit to any amount funds in trust for the purpose of setting out shade trees in streets and parks and improving the same, purchasing land for parks or playgrounds and improving the same, maintaining cemeteries or cemetery lots or erecting and maintaining drinking fountains in public places. Such funds shall be placed on interest in such corporation, and the interest and dividends arising therefrom shall be paid semi-annually to such town or cemetery authorities as may be designated by the donors of said funds or by the will of the person bequeathing the same, and shall be expended by such authorities within their respective towns or cemeteries for any or all of said purposes, as may be specified by such donors or such will. No part of the principal of such funds shall be withdrawn or expended, and the same shall be exempt from attachment or levy on execution.

1 SECTION 38. A judge of probate, after notice and a hearing, may au-
 2 thorize an executor, administrator or trustee holding money or other per-
 3 sonal property for any of the purposes mentioned in the preceding section,
 4 to deposit such money, or the avails arising from such personal property,
 5 in any such corporation designated by the judge, to be held by it in the
 6 manner and for the uses and purposes mentioned in said section and upon
 7 the trusts upon which the executor, administrator or trustee held the
 8 same; and upon the deposit of such money and its receipt and acceptance
 9 by such corporation the executor, administrator or trustee shall be dis-
 10 charged from further care and responsibility therefor.

Probate court
 may authorize
 executors to
 deposit such
 funds.
 1877, 162.
 P. S. 116, § 36.
 1894, 317, § 38.
 R. L. 113, § 43.
 1908, 590,
 §§ 52, 69
 139 Mass. 353
 153 Mass. 462.

1 SECTION 39. The funds held in accordance with the two preceding sec-
 2 tions shall be known as the "Shade Tree and Cemetery Fund", and the
 3 treasurer of the corporation with which they are deposited shall give a
 4 receipt therefor to the depositor, and shall send by mail or deliver, in Jan-
 5 uary in each third year after the first deposit to the mayor of a city or the
 6 chairman of the selectmen of a town within the limits of which the in-
 7 terest and dividends of such fund are to be expended, a written statement,
 8 signed by such treasurer, of the amount of funds on deposit for the pur-
 9 poses aforesaid, which shall be recorded in the office of the city or town
 10 clerk.

Statement of
 amount of such
 funds to be
 made every
 third year.
 1875, 174, § 2
 P. S. 116, § 37.
 1894, 317, § 39.
 R. L. 113, § 44.
 1908, 590,
 §§ 53, 69.

1 SECTION 40. If a corporation holding such fund surrenders its charter
 2 or ceases to do business, the supreme judicial court may order said fund
 3 to be transferred and deposited in another such corporation, upon the
 4 same trusts; and if the laws authorizing such corporations are repealed,
 5 the court may order such fund to be transferred and deposited in such
 6 banking institutions as it may find proper, to be held upon the trusts
 7 aforesaid.

When funds
 are to be
 transferred.
 1875, 174, § 3.
 P. S. 116, § 38.
 1894, 317, § 40.
 R. L. 113, § 45.
 1908, 590,
 §§ 54, 69.

1 SECTION 41. Subject to section twenty-eight of chapter two hundred
 2 and six, the probate court, court of insolvency or other court, respec-
 3 tively, shall, upon the application of a person interested or of the attorney
 4 general, and after public notice, order and decree that all amounts of
 5 money deposited with such corporation, by authority of any of said courts
 6 or of any judge thereof, and which shall have remained unclaimed for
 7 more than twenty years from the date of such deposit, with the increase
 8 and proceeds thereof, shall be paid to the state treasurer, to be held and
 9 used by him according to law, subject to be repaid to the person having
 10 and establishing a lawful right thereto, with interest at the rate of three
 11 per cent per annum from the time when it is so paid to said treasurer to
 12 the time when it is paid over by him to such person, as provided in the
 13 following section.

Unclaimed
 deposits.
 Deposits by
 order of the
 court
 1889, 449, § 2
 1894, 317, § 50.
 R. L. 113, § 55.
 1908, 590,
 §§ 55, 69.
 1918, 257,
 § 369
 1919, 5.
 1920, 2.

1 SECTION 42. The probate court shall, upon the application of the at-
 2 torney general and after public notice, order and decree that all amounts
 3 of money deposited with any such bank which shall have remained un-
 4 claimed for more than thirty years and which are credited to depositors
 5 who cannot be found and who have not made a deposit on account of the
 6 same and have not withdrawn any part of the principal or interest thereof,
 7 and on whose pass book the interest has not been added for a period of
 8 thirty years, and for which no claimant is known, shall, with the increase
 9 and proceeds thereof, be paid to the state treasurer to be held subject to
 10 be paid to the person establishing a lawful right thereto, in accordance

Unclaimed
 deposits to be
 paid to state
 treasurer.
 1907, 340, § 1.
 1908, 590,
 §§ 56, 69.
 1916, 198.
 201 Mass. 23.

with the following section, with interest at the rate of three per cent per annum from the time when it was so paid to the said treasurer to the time when it is paid by him to such person. After six years from the date when such proceeds were paid to the said treasurer the same may be used as a part of the ordinary revenue of the commonwealth. Any person may, however, establish his claim at any time after the expiration of the six years above mentioned, and any claim so established shall be paid from the ordinary revenue of the commonwealth.

How such deposits may be reclaimed
1907, 340, § 2.
1908, 590,
§§ 57, 69,
1912, 70,
1913, 130,
1923, 362, § 87.
1931, 426,
§ 262
201 Mass. 23.

SECTION 43. Any person claiming a right to money deposited with the state treasurer under either of the two preceding sections pursuant to a decree of a probate court or a court of insolvency in any county may establish the same by a petition to the probate court of such county, or if so deposited pursuant to the order of any other court, by a petition to the superior court under section one of chapter two hundred and fifty-eight; provided, that in cases where claims amount to less than fifty dollars each, the claims may be presented to the comptroller, who shall examine the same and allow and certify for payment such as may be proved to his satisfaction.

When reduction of deposits may be ordered
1910, 622, § 11.
1919, 350,
§§ 45, 46.

SECTION 44. The supreme judicial court or any justice thereof sitting in equity may, on petition of a savings bank or the trustees of a savings bank, approved by the commissioner, approve or order a reduction of the deposit account of each depositor therein, whenever the value of its assets is less than the total amount of its deposits so as to divide the loss equitably among said depositors. If thereafter the bank shall realize from said assets a greater sum than was fixed by said order of reduction, such excess shall be divided among the depositors whose accounts have been reduced, but to the extent of such reduction only.

Guaranty fund to be created and maintained.
1876, 203, § 13.
P. S. 116, § 24.
1894, 317, § 25.
R. L. 113, § 30.
1908, 590,
§§ 59, 69
1 Op. A. G.
303, 538

SECTION 45. The trustees shall, immediately before making each semi-annual dividend, set apart as a guaranty fund from the net profits which have accumulated during the six months last preceding not less than one eighth nor more than one fourth of one per cent of the whole amount of deposits, until such fund amounts to five per cent thereof, and no additions shall be made to it when it amounts to five per cent, or more, thereof. Such fund shall thereafter be held to meet contingencies or losses in its business from depreciation of its securities, or otherwise. When such fund amounts to less than five per cent of the whole amount of deposits, no losses shall be met therefrom except upon written approval of the commissioner.

Transfers to guaranty fund.
1912, 122.

SECTION 46. Said trustees, subject to the written approval of the commissioner, may transfer from the profit and loss account to the guaranty fund such amounts, and at such times, as they deem for the best interests of the depositors if thereby such guaranty fund is not increased beyond the limit fixed by the preceding section.

Manner of division of income.
1834, 190, § 10.
R. S. 36, § 81.
1859, 181, § 1.
G. S. 57, § 147
1876, 203, § 14.
P. S. 116, § 25.

SECTION 47. The income of such corporation, after deducting the reasonable expenses incurred in the management thereof, the taxes paid, and the amounts set apart for the guaranty fund, shall be divided among its depositors, or their legal representatives, at times fixed by its by-laws, in the following manner: an ordinary dividend shall be declared

6 every six months from income which has been earned, and which has
 7 been collected during the six months next preceding the date of the
 8 dividend, except that there may be appropriated from the earnings re-
 9 maining undivided after declaration of the preceding semi-annual divi-
 10 dend an amount sufficient to declare an ordinary dividend at a rate not
 11 in excess thereof; but the total dividends declared during any twelve
 12 months shall not exceed the net income of the corporation actually col-
 13 lected during such period, except upon written approval of the com-
 14 missioner. Dividends may be declared oftener than every six months
 15 as provided in section seventeen of chapter one hundred and sixty-seven.
 16 Dividends shall be treated as deposits, and if not withdrawn shall be
 17 considered, in computing the dividend next following, as having been on
 18 deposit for the preceding interest period. Ordinary dividends shall not
 19 exceed the rate of five per cent a year. No ordinary dividend shall
 20 be declared or paid except as above provided, nor, except as otherwise
 21 provided by section seventeen of chapter one hundred and sixty-seven,
 22 upon a deposit of less than three months' standing; but, if the by-laws
 23 so provide, ordinary dividends may be declared and paid upon deposits
 24 of one, two, four or five months' standing, computed as provided in said
 25 section. The corporation may, by its by-laws, provide that a dividend
 26 shall not be declared or paid on less than three dollars, or on the frac-
 27 tional part of a dollar.

1894, 317, § 26.
 1897, 109.
 R. L. 113, § 31.
 1908, 590,
 §§ 60, 69.
 1919, 116,
 §§ 2, 4;
 326, § 1.

1 SECTION 48. Immediately before a meeting of the trustees called
 2 to consider the declaration of a dividend, the auditing committee shall
 3 make or cause to be made an examination of the income, profits and ex-
 4 penses for the six months' period last preceding the date of the declara-
 5 tion of the dividend, and shall report to the trustees the estimated net
 6 earnings of said period. No dividend shall be paid unless declared and
 7 authorized by the trustees after said examination, and a copy of said
 8 report shall be filed and preserved with the records of the corporation.

Payment of
 dividends to
 be authorized
 by trustees
 1859, 189,
 §§ 2, 3
 G. S. 57, § 147
 1876, 203, § 17.
 P. S. 116, § 28.
 1894, 317, § 29
 R. L. 113, § 34
 1908, 590,
 §§ 61, 69
 1919, 326, § 1.

1920, 414.

Op. A. G. (1919) 115.

1 SECTION 49. If, at the time provided by the by-laws for making
 2 ordinary dividends, the net income for the interest period last preceding,
 3 over and above the amount to be set apart for the guaranty fund, does
 4 not amount to one and one half per cent of the deposits, if said period is
 5 six months, or a proportional percentage thereof, if the period is less than
 6 six months, no dividend of the profits shall be declared or paid, except
 7 such as shall be approved in writing by the commissioner.

When dividend
 is not to be
 paid.
 1876, 203,
 § 15.
 1880, 150
 P. S. 116, § 26
 1894, 317, § 27
 R. L. 113, § 32.
 1906, 204,
 §§ 1, 3, 5.

1908, 590, §§ 62, 69

1919, 326, § 1; 350, §§ 45, 46.

1 SECTION 50. Whenever the guaranty fund and undivided net profits
 2 together amount to ten and one quarter per cent of the deposits after an
 3 ordinary dividend is declared, an extra dividend of not less than one quar-
 4 ter of one per cent shall be declared on all amounts which have been on
 5 deposit for the six months, or not less than one eighth of one per cent on
 6 all amounts which have been on deposit for the three months, preced-
 7 ing the date of such dividend, and such extra dividend shall be paid on
 8 the day on which the ordinary dividend is paid; but in no case shall
 9 the payment of an extra dividend as herein provided reduce the guaranty
 10 fund and undivided profits together to less than ten per cent of the
 11 deposits.

When extra
 dividends shall
 be paid.
 1876, 203, § 16.
 P. S. 116, § 27
 1888, 355
 1894, 317, § 28.
 1896, 231
 R. L. 113, § 33.
 1908, 590,
 §§ 63, 69
 Op. A. G.
 (1920) 254.

Withdrawal
of deposits.
1834, 190, § 10.
R. S. 36, § 81.
G. S. 57, § 147.
1876, 203, § 18.
P. S. 116, § 29.
1894, 317, § 30.
R. L. 113, § 35.
1908, 590,
§§ 64, 69.
1921, 292, § 1.
1922, 468, § 1.
127 Mass. 183.
141 Mass. 33.

SECTION 51. The principal deposits in such corporation may be 1
withdrawn at such time and in such manner as the by-laws direct, but 2
the treasurer of such corporation may at any time require a depositor 3
to give a notice not exceeding ninety days of his intention to withdraw 4
the whole or any part of his deposit or to apply for a loan under section 5
fifty-one A. Deposits so withdrawn shall be deducted in each case from 6
the amounts last deposited. Whenever such corporation requires said 7
notice from ten or more depositors on any one day, it shall be deemed to 8
have made a general requirement and it shall file within forty-eight 9
hours thereafter a written notice setting forth the terms of the require- 10
ment with the commissioner. Until such general requirement has been 11
removed and notice thereof filed with the commissioner, no payment by 12
way of withdrawal or loan shall be made to any depositor on account of 13
his deposit other than in accordance with the general requirement as 14
set forth in the notice filed with the commissioner, except that with the 15
approval of the commissioner, amounts not exceeding, in the aggregate, 16
one hundred dollars may so be paid to each depositor. 17

Such corporation shall not advertise for deposits in newspapers, by 18
posters or other written solicitation, while such general requirement is 19
in effect, unless the advertisement shall contain, in type not smaller than 20
the largest type thereof, a statement that such deposits may not be paid 21
out by way of withdrawal or loan for the period set forth in the notice 22
of said requirement. 23

Loans to
depositors.
1922, 468, § 2.

SECTION 51A. Such a corporation shall, on application by a depositor, 1
make a loan to him, secured by his deposit book, to an amount not 2
exceeding ninety per cent of the amount of deposits shown therein, for 3
a period not extending beyond the date when the next dividend of said 4
corporation shall be payable. The said corporation may charge the 5
depositor interest for the loan at a rate not exceeding one half of one 6
per cent more than the next previous regular dividend declared and 7
paid by such corporation. 8

The corporation shall keep posted conspicuously in its banking rooms a 9
notice containing the substance of this section and section fifty-one in 10
such form as the commissioner may prescribe. 11

Payment on
order after
death of
drawer.
1885, 210, § 2.
1894, 317, § 31.
R. L. 113, § 36.
1908, 590,
§§ 65, 69.

SECTION 52. Such corporation may pay an order, drawn by a person 1
who has funds on deposit to meet the same, notwithstanding the 2
death of the drawer, if presentation is made within thirty days after the 3
date of such order; and at any time if the corporation has not received 4
written notice of the death of the drawer. 5

211 Mass. 532.

Payments
to minors.
1855, 361.
G. S. 57, § 154.
1876, 203, § 18.
P. S. 116, § 29.
1894, 317, § 30.

SECTION 53. Money deposited in the name of a minor may, at the 1
discretion of the board of investment, or of the treasurer if authorized 2
by said board, be paid to such minor or to the person making such 3
deposit; and the same shall be a valid payment. 4

R. L. 113, § 35. 1908, 590, §§ 66, 69. 152 Mass. 49

INVESTMENTS.

Investments
authorized.
P. S. 116, § 20.

SECTION 54. Deposits and the income derived therefrom shall be 1
invested only as follows: 2

1894, 317, § 21. 1908, 590, §§ 68, 69.
R. L. 113, § 26. 134 Mass. 177.

3 First. In first mortgages of real estate located in the commonwealth
 4 not exceeding sixty per cent of the value of such real estate; but not
 5 more than seventy per cent of the whole amount of deposits shall be so
 6 invested. If a loan is made on unimproved and unproductive real estate,
 7 the amount loaned thereon shall not exceed forty per cent of the value
 8 of such real estate. No loan on mortgage shall be made except upon
 9 written application showing the date, name of applicant, amount asked
 10 for and security offered, nor except upon the report of not less than two
 11 members of the board of investment who shall certify on said application,
 12 according to their best judgment, the value of the premises to be mort-
 13 gaged; and such application shall be filed and preserved with the records
 14 of the corporation.

First mort-
 gages of real
 estate.
 1834, 190, § 7.
 R. S. 36, § 78.
 G. S. 57,
 §§ 142, 143
 1872, 293, § 3.
 1876, 203,
 § 9, cl. 1, § 12.
 P. S. 116,
 § 20, cl. 1, § 23.
 1894, 317,
 § 21, cl. 1, § 24.
 R. L. 113,
 § 26, cl. 1, § 29.
 1908, 590,
 § 68, cl. 1, § 69.
 1910, 622, § 10.
 1919, 350,
 §§ 45, 46
 180 Mass. 444.
 202 Mass. 214.
 211 Mass. 252.
 245 Mass. 75
 1 Op. A. G. 434.
 2 Op. A. G. 23,
 593.
 3 Op. A. G. 256.

15 At the expiration of every such loan made for a period of five or more
 16 years not less than two members of the board of investment shall certify
 17 in writing, according to their best judgment, the value of the premises
 18 mortgaged; and the premises shall be revalued in the same manner at
 19 intervals of not more than five years so long as they are mortgaged to
 20 such corporation. Such report shall be filed and preserved with the
 21 records of the corporation. If such loan is made on demand or for a
 22 shorter period than five years, a revaluation in the manner above pre-
 23 scribed shall be made of the premises mortgaged not later than five years
 24 after the date of such loan and at least every fifth year thereafter. If at
 25 the time a revaluation is made the amount loaned is in excess of sixty
 26 per cent, or in the case of unimproved and unproductive real estate in
 27 excess of forty per cent, of the value of the premises mortgaged, a suffi-
 28 cient reduction in the amount of the loan shall be required, as promptly
 29 as may be practicable, to bring the loan within sixty per cent, or in the
 30 case of unimproved and unproductive real estate, within forty per cent,
 31 of the value of said premises.

32 Whenever the commissioner deems an excessive loan has been made,
 33 or is about to be made upon real estate, he may cause an appraisal of
 34 said real estate to be made at the expense of the bank making the loan.
 35 One appraiser shall be named by the commissioner, one by the bank
 36 making the loan, and a third by the two thus named. Said appraisers
 37 shall determine the value of said real estate and certify the same in writ-
 38 ing to the commissioner and to the bank. If it shall appear from said
 39 appraisal that said loan is in excess of the amount allowed by this clause,
 40 the commissioner may make such order in relation thereto as he deems
 41 advisable.

42 Second. (a) In the public funds of the United States or of this com-
 43 monwealth, or in the legally authorized bonds of any other state of the
 44 United States, but not including a territory, which has not within the
 45 twenty years prior to the making of such investment defaulted in the
 46 payment of any part of either principal or interest of any legal debt.

Public funds
 or bonds
 1834, 190, § 7
 R. S. 36, § 78
 G. S. 57, § 142
 1863, 175, § 1
 1876, 203,
 § 9, cl. 2

1880, 177, P. S. 116, § 20, cl. 2, 1908, 590, § 68, cl. 2 (a), § 69.
 1881, 214, § 2, R. L. 113, § 26, cl. 2 (a), 1925, 209, § 1.

47 (b) In the bonds or notes of a county, city or town of this common-
 48 wealth.

1894, 317, § 21,
 cl. 2

R. L. 113, § 26, cl. 2 (b), 1908, 590, § 68, cl. 2 (b), § 69.

49 (c) In the bonds or notes of an incorporated district in this common-
 50 wealth whose net indebtedness does not exceed five per cent of the last
 51 preceding valuation of the property therein for the assessment of taxes.

1885, 111.
 R. L. 113, § 26,
 cl. 2 (c)
 1908, 590, § 68,
 cl. 2 (c), § 69

52 (d) In the bonds or notes of any city of Maine, New Hampshire,
 53 Vermont, Rhode Island or Connecticut, whose net indebtedness does

R. L. 113, § 26,
 cl. 2 (d)
 1904, 205

1908, 590, § 68, cl. 2 (d), § 69.	not exceed five per cent of the last preceding valuation of the property	54
1909, 491, § 8.	therein for the assessment of taxes; or of any county or town of said	55
2 Op. A. G. 323.	states whose net indebtedness does not exceed three per cent of such	56
	valuation; or of any incorporated water district of said states which has	57
	within its limits more than five thousand inhabitants, and whose bonds	58
	or notes are a direct obligation on all the taxable property of such dis-	59
	trict, and whose net indebtedness does not exceed three per cent of such	60
	valuation: provided, that there is not included within the limits of such	61
	water district, either wholly or in part, any city or town the bonds or	62
	notes of which are not a legal investment.	63
1882, 231.	(e) In the legally authorized bonds for municipal purposes or in re-	64
1885, 124.	funding bonds issued to take up at maturity bonds which have been	65
1887, 423.	issued for other than municipal purposes, but on which the interest has	66
1888, 90.	been fully paid, of any city of any state of the United States, other than a	67
1890, 369.	territory or dependency thereof, which was incorporated as such at least	68
1894, 317, § 21, cl. 2 (f).	twenty-five years prior to the date of such investment, which has at such	69
1895, 164.	date not less than thirty thousand nor more than one hundred thousand	70
R. L. 113, § 26, cl. 2 (f).	inhabitants, as established by the last national or state census, or city	71
1908, 590, § 68, cl. 2 (e), § 69.	census certified to by the city clerk or treasurer of said city and taken in	72
1912, 580, § 1.	the same manner as a national or state census, preceding such date, and	73
1925, 209, § 2.	whose net indebtedness does not exceed five per cent of the valuation	74
1 Op. A. G. 190.	of the taxable property therein, to be ascertained by the last preceding	75
4 Op. A. G. 225.	valuation of property therein for the assessment of taxes.	76
	(f) In the legally authorized bonds for municipal purposes or in refund-	77
1912, 580.	ing bonds issued to take up at maturity bonds which have been issued for	78
1925, 209, § 3.	other than municipal purposes, but on which the interest has been fully	79
4 Op. A. G. 225.	paid, of any city of any state of the United States, other than a territory	80
	or dependency thereof, which was incorporated as such at least twenty-	81
	five years prior to the date of such investment, which has at such date	82
	more than one hundred thousand inhabitants, established in the same	83
	manner as is provided in subdivision (e) of this clause, and whose net	84
	indebtedness does not exceed seven per cent of the valuation of the tax-	85
	able property therein, to be ascertained as provided in said subdivision	86
	(e).	87
1894, 317, § 21, cl. 2 (f).	(g) In subdivisions (d), (e) and (f) of this clause the words "net in-	88
1908, 590, § 68, cl. 2 (e).	debtedness" mean the indebtedness of a county, city, town or district,	89
1912, 580.	omitting debts created for supplying the inhabitants with water and	90
2 Op. A. G. 115.	debts created in anticipation of taxes to be paid within one year, and	91
4 Op. A. G. 225.	deducting the amount of sinking funds available for the payment of	92
	the indebtedness included.	93
Railroad bonds. Massachusetts railroads.	Third. (a) In the bonds or notes, issued in accordance with the laws	94
1887, 196.	of this commonwealth, of a railroad corporation incorporated therein	95
R. L. 113, § 26, cl. 3 (e).	the railroad of which is located wholly or in part therein, which has paid	96
1908, 590, § 68, cl. 3 (a), § 69.	in dividends in cash an amount equal to not less than four per cent per	97
Op. A. G.	annum on all its outstanding issues of capital stock in each fiscal year	98
(1918) 110.	for the five years preceding such investment, or in the first mortgage	99
	bonds of a terminal corporation incorporated in this commonwealth	100
	and whose property is located therein, which is owned and operated, or	101
	the bonds of which are guaranteed as to principal and interest, or as-	102
	sumed, by such railroad corporation. Any shares of the capital stock	103
	of a railroad corporation leased to such railroad corporation, which are	104
	owned by said lessee corporation, shall not be considered as outstanding	105
	within the meaning of this subdivision.	106

107 (b) In the bonds or assumed bonds of a railroad corporation incor-
 108 porated in any of the New England states, at least one half of the rail-
 109 road of which is located in said states, whether such corporation is in
 110 possession of and is operating its own road or is leased to another railroad
 111 corporation: provided, either that such bonds shall be secured by a first
 112 mortgage of the whole or a part of the railroad and railroad property of
 113 such corporation, or by a refunding mortgage as described in paragraph
 114 (3) or (4) of subdivision (g), or that if the railroad and railroad property
 115 of such corporation are unencumbered by mortgage such bonds shall be
 116 issued under the authority of one of said states which provides by law
 117 that no such railroad corporation which has issued bonds shall subse-
 118 quently execute a mortgage upon its road, equipment and franchise or
 119 upon any of its real or personal property, without including in and secur-
 120 ing by such mortgage all bonds previously issued and all its pre-existing
 121 debts and liabilities, which provision, so enacted in such state, shall have
 122 been accepted by the stockholders of such corporation; and provided,
 123 that such corporation has paid in dividends in cash an amount equal to
 124 not less than four per cent per annum on all its outstanding issues of
 125 capital stock in each fiscal year for the five years preceding such invest-
 126 ment.

127 (c) In the first mortgage bonds or assumed first mortgage bonds or in
 128 the bonds secured by a refunding mortgage as described in paragraph
 129 (3) or (4) of subdivision (g), of a railroad corporation incorporated in any
 130 of the New England states, the railroad of which is located wholly or
 131 in part therein, which have been guaranteed as to principal and interest
 132 by a railroad corporation described in subdivision (a) or (b) which is in
 133 possession of and is operating its own road.

134 (d) No bond shall be made a legal investment by subdivision (b) unless
 135 the corporation which issued or assumed such bond has, during its fiscal
 136 year preceding the date of such investment, paid in dividends on its
 137 capital stock an amount equal to one third of the total amount of inter-
 138 est paid on all its direct and assumed funded indebtedness.

139 No bond shall be made a legal investment by subdivision (c) unless the
 140 corporation which guaranteed such bond has, during its fiscal year pre-
 141 ceding such investment, paid in dividends on its capital stock an amount
 142 equal to one third of the total amount of interest paid on all its direct,
 143 assumed and guaranteed funded indebtedness.

144 (e) In the mortgage bonds, as described in any of the following sub-
 145 divisions of this clause, of any railroad corporation incorporated under
 146 the laws of any of the United States:

147 Provided, that during each of the five fiscal years of such railroad cor-
 148 poration preceding the date of such investment —

149 (1) Such railroad corporation owned in fee not less than five hundred
 150 miles of standard gauge railroad, exclusive of sidings, within the United
 151 States, or if such corporation owned in fee less than five hundred miles
 152 of such railroad, the gross earnings of such corporation, reckoned as
 153 hereinafter provided, shall have been not less than fifteen million dollars;

154 (2) Such railroad corporation shall have paid the matured principal
 155 and interest of all its mortgage indebtedness;

156 (3) Such railroad corporation shall have paid in dividends in cash to
 157 its stockholders an amount equal to at least four per cent upon all its
 158 outstanding capital stock;

159 (4) The gross earnings from the operation of the property of such rail-

New England
 railroads.
 1841, 44
 1863, 175, § 1
 1876, 203, § 9,
 cl. 3.
 1881, 214, § 1
 P. S. 116, § 20,
 cl. 3.
 1886, 176
 1887, 196
 1889, 305
 1893, 317, § 21,
 cl. 3.
 1898, 184, § 1,
 cl. (a), (d)
 R. L. 113, § 26,
 cl. 3 (a)
 1908, 590,
 § 68, cl. 3 (b),
 § 69
 1909, 491, § 8.
 1 Op. A. G.
 149, 619
 2 Op. A. G. 257.

Guaranteed
 railroad bonds.
 1887, 196
 1898, 184, § 1,
 cl. (b).
 R. L. 113,
 § 26, cl. 3 (b).
 1908, 590, § 68,
 cl. 3 (c), § 69
 1909, 491, § 8.
 3 Op. A. G.
 43, 462.

Dividends
 paid by
 railroads.
 1908, 590, § 68,
 cl. 3 (b)
 1909, 491, § 8.

Other railroads.
 Description of
 corporation.
 1908, 590, § 68,
 cl. 3 (c)
 1931, 346, § 1.
 2 Op. A. G. 43.
 3 Op. A. G. 183.

road corporation, including therein the gross earnings of all railroads 160
 leased and operated or controlled and operated by said corporation, and 161
 the gross earnings from the sale of coal from mines owned or controlled 162
 by it, shall not have been less in amount than five times the amount 163
 necessary to pay the interest payable upon its entire outstanding in- 164
 debtedness, the rentals of all leased lines, and the interest on all the out- 165
 standing indebtedness of railroads controlled and operated which are 166
 not owned by said corporation after deducting from said interest and 167
 rentals interest and dividends received from the stocks, bonds or notes 168
 of railroad corporations not operated by said corporation, which have 169
 been deposited with a trustee as the only security to secure the pay- 170
 ment of bonds or notes issued by said corporation, but not in excess of 171
 the interest on said last named bonds or notes; 172

And further provided that — 173

(5) No bonds shall be made a legal investment by subdivision (g) in 174
 case the mortgage securing the same shall authorize a total issue of 175
 bonds which, together with all outstanding prior debts of the issuing 176
 or assuming corporation, including all bonds not issued that may legally 177
 be issued under any of its prior mortgages or of its assumed prior mort- 178
 gages, after deducting therefrom, in case of a refunding mortgage, the 179
 bonds reserved under the provisions of said mortgage to retire prior lien 180
 debts at maturity, shall exceed three times the outstanding capital stock 181
 of said corporation at the date of such investment; 182

(6) No bonds shall be made a legal investment by subdivision (i) 183
 or (j) in case the mortgage securing the same shall authorize a total 184
 issue of bonds which, added to the total debt of the guaranteeing cor- 185
 poration as defined in paragraph (5), including therein the authorized 186
 amount of all previously guaranteed bond issues, shall exceed three 187
 times the capital stock of such guaranteeing corporation outstanding 188
 at the date of such investment; nor in case at said date the total debt 189
 of the corporation which issued said bonds shall exceed three times its 190
 outstanding capital stock; 191

In the case of a mortgage executed prior to June eighth, nineteen 192
 hundred and eight, under which the total amount of bonds which may 193
 be issued is not specifically stated, the amount of bonds outstanding 194
 thereunder at the date of such investment shall be considered, for the 195
 purposes of paragraph (5) and of this paragraph, as the total authorized 196
 issue. 197

(f) Whenever the term "first mortgage" is used in the following 198
 subdivisions, it shall mean, unless otherwise qualified, a first mortgage 199
 on not less than seventy-five per cent of the railroad owned in fee at the 200
 date of the mortgage by the railroad corporation on the railroad of 201
 which said mortgage is a lien, but in no case on less than one hundred 202
 continuous miles of standard gauge railroad, exclusive of sidings: pro- 203
 vided that — 204

Seventy-five per cent of the railroad subject to the lien of said mort- 205
 gage is connected; 206

For five years prior to the date of investment therein all the railroad 207
 subject to the lien of said mortgage at the date of execution thereof 208
 has been operated by, and its operations included in, the operations of 209
 the railroad corporation which issues, assumes or guarantees said bonds; 210

(g) Bonds issued or assumed by a railroad corporation described in 211
 subdivision (e) which are secured by a mortgage which was at the date 212
 thereof or is at the date of such investment — 213

Description
 of bonds.
 Definition of
 first mortgage.
 1908, 590, § 68,
 cl. 3 (f).
 1931, 346, § 2.

Railroad
 mortgage
 bonds.
 1908, 590, § 68,
 cl. 3 (g).

214 (1) A first mortgage on a railroad owned in fee by the corporation
 215 issuing or assuming said bonds, except that, if it is not a first mortgage
 216 on seventy-five per cent of all such railroad owned in fee by said corpo-
 217 ration, it shall be a first mortgage on at least seventy-five per cent of the
 218 railroad subject to the lien of said mortgage at the date thereof; but
 219 if any stocks or bonds are deposited with the trustee of said mortgage
 220 as part security therefor, representing or covering railroad mileage not
 221 owned in fee, the bonds secured by said mortgage shall not become legal
 222 investments unless said corporation owns in fee at least seventy-five
 223 per cent of the total mileage which is subject to the lien of said mortgage
 224 and which is represented or covered by said stocks or bonds;

225 (2) A first mortgage, or a mortgage or trust indenture which is in
 226 effect a first mortgage upon all the railroad subject to the lien of said
 227 mortgage or trust indenture by virtue of the irrevocable pledge with
 228 the trustee thereof of an entire issue or issues of bonds which are a first
 229 lien, upon the railroad of a railroad corporation which is owned and
 230 operated, controlled and operated or leased and operated by the corpo-
 231 ration issuing or assuming said bonds;

232 (3) A refunding mortgage which covers at least seventy-five per
 233 cent of the railroad owned in fee by said corporation at the date of
 234 said mortgage and provides for the retirement of all outstanding mort-
 235 gage debts which are a prior lien upon said railroad owned in fee and
 236 covered by said refunding mortgage at the date thereof; but if any
 237 of the bonds which said refunding mortgage is given to refund are se-
 238 cured on a railroad not owned in fee by the corporation executing said
 239 refunding mortgage, there shall be conveyed and assigned to the trustee
 240 of said refunding mortgage either —

1909, 491, § 8.
 1931, 346, § 3.

241 At least seventy-five per cent of the railroad on which each issue of
 242 bonds to be refunded is secured, free from any mortgage lien except
 243 that of the mortgage or mortgages securing the bonds to be refunded;
 244 or

245 At least seventy-five per cent of the outstanding bonds of each issue
 246 which is secured by a mortgage lien upon such railroad; and all of
 247 said railroad not owned in fee which is so subjected to the lien of said
 248 refunding mortgage shall be the railroad of one or more railroad cor-
 249 porations which are owned and operated, controlled and operated, or
 250 leased and operated by the corporation issuing or assuming said re-
 251 funding mortgage bonds;

252 (4) A mortgage upon not less than ten per cent of the railroad, ex-
 253 clusive of sidings, owned in fee at the date of said mortgage by the
 254 corporation issuing or assuming said bonds, but in no case on less than
 255 five hundred continuous miles of standard gauge railroad: provided
 256 that —

1931, 346, § 4.

257 Said mortgage is a first or second lien upon not less than seventy-
 258 five per cent of the total railroad covered by said mortgage at the date
 259 thereof, and which provides for the retirement of all mortgage debts
 260 which are a prior lien upon said railroad owned in fee and covered by
 261 said mortgage, at the date of the execution thereof;

262 (h) Mortgage bonds or bonds secured by mortgage bonds which are
 263 a direct obligation of, or which have been assumed, or which have been
 264 guaranteed by endorsement as to both principal and interest, by a
 265 railroad corporation whose refunding mortgage bonds are made a legal
 266 investment under paragraph (3) or (4) of subdivision (g): provided that —

Bonds under-
 lying refunding
 mortgages.
 1908, 590, § 68,
 cl. 3 (h).

Said bonds are prior to and are to be refunded by such refunding mortgage; 267 268

Said refunding mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien; 269 270

In the case of bonds so guaranteed or assumed, the corporation issuing said bonds is owned and operated, controlled and operated, or leased and operated, by said railroad corporation. 271 272 273

(i) Bonds which have been guaranteed by endorsement as to both principal and interest by a railroad corporation which has complied with all the provisions of subdivision (c): provided that — 274 275 276

Said bonds are secured by a first mortgage on the railroad of a railroad corporation which is owned and operated, controlled and operated, or leased and operated, by the corporation guaranteeing said bonds; 277 278 279

In the case of a leased railroad, the entire capital stock of which, except shares qualifying directors, is not owned by the lessee, the rental includes an amount to be paid to the stockholders of said leased railroad equal to at least four per cent per annum upon that portion of the entire capital stock thereof outstanding which is not owned by the lessee. 280 281 282 283 284 285

(j) First mortgage bonds of a railroad corporation which during each of its five fiscal years preceding the date of such investment has complied with all the requirements of paragraphs (2), (3) and (4) of subdivision (c), provided that said bonds are guaranteed by endorsement as to both principal and interest by a railroad corporation which has complied with all the requirements of subdivision (c) preceding paragraph (5), notwithstanding that the railroad of said issuing corporation is not operated by said guaranteeing corporation. 286 287 288 289 290 291 292 293

(k) Bonds which have been or shall become legal investments under any of the provisions of this section shall not be rendered illegal although the corporation issuing, assuming or guaranteeing such bonds shall fail for a period not exceeding two successive fiscal years to comply with the requirements of paragraph (4) of subdivision (c); but no further investment in the bonds issued, assumed or guaranteed by said corporation shall be made during said period. If after the expiration of said period said corporation complies for the following fiscal year with all the requirements of subdivision (c), it shall be regarded as having complied therewith during said period. 294 295 296 297 298 299 300 301 302 303

(l) Bonds which have been or shall become legal investments under any of the provisions of this section shall not be rendered illegal, although the property upon which they are secured has been or shall be conveyed to or legally acquired by another railroad corporation, and although the corporation which issued or assumed said bonds has been or shall be consolidated with another railroad corporation if the consolidated or purchasing corporation shall assume the payment of said bonds and so long as it shall continue to pay regularly interest or dividends, or both, upon the securities issued against, in exchange for, or to acquire the stock of the corporation consolidated, or the property purchased, or upon securities subsequently issued in exchange or substitution therefor, to an amount at least equal to four per cent per annum upon the capital stock outstanding at the time of such consolidation or purchase of said corporation which issued or assumed said bonds. 304 305 306 307 308 309 310 311 312 313 314 315 316 317

(m) If a railroad corporation which has complied with all the requirements of subdivision (c) preceding paragraph (5), except that the period of compliance is less than five, but not less than three successive years, 318 319 320

Guaranteed obligations. 1908, 590, § 68, cl. 3 (i). 2 Op. A. G. 257.

Guaranteed bonds of railroads not operated. 1908, 590, § 68, cl. 3 (j). 1909, 491, § 8. 1931, 346, § 5.

Corporation not to lose credit by temporary disturbance of relation of gross earnings to fixed charges. 1908, 590, § 68, cl. 3 (k).

Bonds not to become illegal on account of consolidation. 1908, 590, § 68, cl. 3 (l).

Credit of a corporation not to be lost by consolidation.

321 shall be, or shall have been, thereupon consolidated or merged with, or its
 322 railroad purchased and all of the debts of such corporation assumed by,
 323 another railroad corporation incorporated under the laws of any of the
 324 United States, such corporation so succeeding shall be considered as
 325 having complied with all the provisions of subdivision (c) preceding
 326 paragraph (5) during those successive years preceding the date of such
 327 consolidation, merger or purchase in which all said consolidated, merged
 328 or purchased corporations, if considered as one continuous corporation
 329 in ownership and possession, would have so complied: provided, that
 330 said succeeding corporation shall continue so to comply for a further
 331 period which shall make such compliance equivalent to at least five suc-
 332 cessive years, but which shall be in no case less than the two fiscal years
 333 next following said consolidation, merger or purchase.

1908, 590, § 68,
 cl. 3 (m).
 1931, 346, § 6.

334 (n) In this clause, unless the context otherwise requires, "railroad
 335 corporation" means a corporation which owns or is in possession of and
 336 operating a railroad or railway of the class usually operated by steam
 337 power. Street railway corporations are not railroad corporations within
 338 the meaning of this clause.

Street railway
 corporations
 are not railroad
 corporations.
 1908, 590, § 68,
 cl. 3 (n).

339 (o) [REPEALED, 1931, 346, § 7.]

340 (p) In notes, bonds or other obligations, issued or guaranteed as to
 341 principal and interest by a railroad corporation which complies with all
 342 the requirements of subdivisions (b) and (d), or subdivision (c) preceding
 343 paragraph (5); provided, that — (1) such securities are secured by a first
 344 lien on, or by a lease and conditional sale of, new railroad equipment of
 345 standard gange, consisting of locomotives, passenger train cars or freight
 346 train cars, free from all other encumbrances, for the purchase of which
 347 such securities were issued at not exceeding eighty per cent of the pur-
 348 chase price of such equipment; (2) the instrument under which such
 349 securities are issued or the lease and conditional sale of such equipment
 350 provides for the proper maintenance and replacement thereof and for
 351 the payment of the entire issue of such securities in not exceeding fifteen
 352 equal annual or thirty equal semi-annual instalments from date of issue,
 353 without the release of any part of the lien or interest in any part of the
 354 equipment securing such securities until the said entire issue of the series
 355 so secured shall have been paid or redeemed. Not more than ten per
 356 cent of the deposits of any such bank shall be invested in securities which
 357 are legal under this subdivision, nor more than two per cent of its deposits
 358 in such securities issued or guaranteed by, or secured by lease and con-
 359 ditional sale to, any one railroad corporation.

Railroad
 equipment
 securities.
 1926, 283.

360 Fourth. In the bonds of any street railway company incorporated in
 361 this commonwealth, the railway of which is located wholly or in part
 362 therein, and which has earned and paid in dividends in cash an amount
 363 equal to at least five per cent upon all its outstanding capital stock in
 364 each of the five years last preceding the certification hereinafter pro-
 365 vided for by the department of public utilities or its predecessors except
 366 the six months' period beginning July first and ending December thirty-
 367 first, nineteen hundred and sixteen. No such investment shall be made
 368 unless said company appears from returns made by it to the said depart-
 369 ment to have properly paid said dividends without impairment of assets
 370 or capital stock, and said department shall annually on or before June
 371 fifteenth certify and transmit to the commissioner a list of such street
 372 railway companies.

Street railway
 bonds.
 1902, 483.
 1906, 204,
 §§ 1, 3, 5; 463,
 111, §§ 147,
 148, 158.
 1908, 590,
 § 68, cl. 5, § 69.
 1909, 502, § 2.
 1915, 273, § 1.
 1917, 122,
 §§ 2, 5.
 1919, 350,
 §§ 45, 46, 117.
 3 Op. A. G. 338.

373 Dividends paid by way of rental to stockholders of a leased street
 374 railway company shall be deemed to have been earned and paid by said

company within the meaning of this clause, provided that said com- 375
pany shall have annually earned, and properly paid in dividends in cash, 376
without impairment of assets or capital stock, an amount equal to at 377
least five per cent upon all its outstanding capital stock in each of the 378
five fiscal years preceding the date of the lease thereof. 379

If two or more street railway companies have been consolidated by 380
purchase or otherwise during the five years prior to said certification, 381
the payment severally from the earnings of each year of dividends 382
equivalent in the aggregate to a dividend of five per cent on the ag- 383
gregate capital stocks of the several companies during the years pre- 384
ceding such consolidation shall be sufficient for the purpose of this 385
clause. 386

1915, 273, § 1.

Bonds which have been or shall become legal investments under 387
this clause shall not, except as hereinafter provided, be deemed to be 388
an illegal investment by reason of the fact that the corporation issuing 389
such bonds shall fail or has heretofore failed for a period not exceeding 390
two successive fiscal years to earn and pay dividends in accordance with 391
the requirements of this clause, but no further investment in the bonds 392
issued by the corporation shall be made during said period. If after the 393
expiration of said period the corporation earns and pays or has earned 394
and paid dividends during the following fiscal year in accordance with 395
the requirements of this clause, it shall be regarded as having complied 396
therewith during said period: provided, that it shall not have so failed 397
to comply during any other period within the preceding five years; and 398
provided, that during said period of non-compliance its annual earnings 399
shall have been at least sufficient to provide for the payment of the in- 400
terest upon its outstanding indebtedness and all other fixed charges in 401
addition to its operating expenses. The said department shall certify 402
and transmit to the commissioner a list of any street railway companies 403
whose bonds become legal investments by virtue of this paragraph. 404

Telephone
company
bonds.
1908, 590, § 6S,
cl 6
1925, 208.
1928, 42.

Fifth. In the bonds of any telephone company incorporated under the 405
laws of, and doing business in, any state of the United States on the 406
continent of North America: 407

Provided, that during each of the five fiscal years of such telephone 408
company preceding the date of such investment — 409

(1) The gross income of such telephone company shall have been 410
not less than ten million dollars per annum. 411

(2) Such telephone company shall have paid the matured principal 412
and interest of all its indebtedness. 413

(3) Such telephone company shall have paid in dividends in cash an 414
amount equal to not less than six per cent per annum on all its out- 415
standing issues of capital stock. 416

(4) The dividends paid on the capital stock of such telephone company 417
shall not have been less than the total amount necessary to pay the 418
interest upon its entire outstanding indebtedness. 419

And further provided, that such bonds shall be secured either (a) by 420
a first mortgage upon at least seventy-five per cent of the property of such 421
telephone company, or (b) by the deposit with a trust company incorpo- 422
rated under the laws of this commonwealth of bonds and shares of stock 423
of other telephone corporations, under an indenture of trust which limits 424
the amount of bonds so secured to seventy-five per cent of the value of 425
the securities deposited as stated and determined in said indenture, and 426
provided that during each of the five years preceding such investment the 427
annual interest and dividends paid in cash on the securities deposited 428

429 have amounted to not less than fifty per cent in excess of the annual
 430 interest on the bonds outstanding and secured by said deposit. Not
 431 more than five per cent of the deposits of any such bank shall be invested
 432 in the bonds of telephone companies nor shall more than two per cent of
 433 such deposits be invested in the bonds of any one telephone company.

434 Sixth. In the bonds of a gas, electric or water company secured by a
 435 first mortgage of the franchise and property of the company; provided,
 436 that the net earnings of the company, after payment of all operating
 437 expenses, taxes and interest, as reported to, and according to the require-
 438 ments of, the proper authorities of the commonwealth, have been in each
 439 of the three fiscal years preceding the making of such investment equal
 440 to not less than four per cent on all its capital stock outstanding in each
 441 of said years; and, provided, that the gross earnings of the company in
 442 the fiscal year preceding the making of the investment have been not less
 443 than one hundred thousand dollars. A list of the companies whose
 444 securities prima facie comply with the requirements of this clause shall
 445 be furnished to the commissioner annually, at such time after June
 446 sixteenth in any year as he shall designate, by the proper authorities of
 447 the commonwealth having supervision over such companies.

Gas, electric or
 water com-
 pany bonds.
 1919, 104, § 2
 1921, 226
 1922, 156, § 1

448 Sixth A. In the bonds, maturing not later than thirty years subse-
 449 quent to such investment, issued or assumed by any corporation incorpo-
 450 rated under the laws of the United States or of any state thereof which is
 451 operating under the supervision of a public service or other similar com-
 452 mission of the United States or of any state thereof exercising regulatory
 453 jurisdiction therein and is engaged in the sale and distribution of electric-
 454 ity, or in such sale and distribution and also in some other form of public
 455 service enterprise, or in the manufacture and distribution of artificial
 456 gas, or in the sale or distribution, of natural gas supplied in substitution
 457 for or in mixture with artificial gas, but in no case shall the bonds of any
 458 company engaged in the sale or distribution of natural gas become a legal
 459 investment unless said company maintains at all times full facilities for
 460 the manufacture of artificial gas in quantities sufficient to supply the
 461 normal demand, and is doing at least eighty per cent of its business within
 462 the territorial limits of the United States; provided, that —

Public service
 company
 securities.
 1926, 351, § 1.
 1931, 345, § 1.

463 (1) The gross operating revenue of the corporation issuing or assuming
 464 such bonds shall be not less than one million dollars for its fiscal year
 465 immediately preceding the time of making such investment, and of such
 466 revenue at least seventy-five per cent shall be derived from the sale and
 467 distribution of electricity, artificial gas and natural gas, or any one or more
 468 of them, and not exceeding twenty per cent from the operation of a
 469 transportation system.

1931, 345, § 2.

470 (2) Such corporation shall operate under a franchise or franchises under
 471 which at least seventy-five per cent of its gross operating revenue is
 472 earned and extending at least three years beyond the maturity of any
 473 such bond, or under an indeterminate franchise or permit from, or agree-
 474 ment with, a public service commission or other competent public author-
 475 ity, which franchise, permit or agreement equally protects the security
 476 of the bondholders.

477 (3) The capital stock of such corporation shall be equal to at least two
 478 thirds the total funded debt thereof; provided, that, in the case of a
 479 corporation having shares without par value, the value of its property
 480 as shown by its books shall exceed by at least two thirds its total mortgage
 481 indebtedness.

482 (4) For the period of five years immediately preceding the time of

making any investment authorized by this clause, the officially reported net earnings available for interest charges of such corporation, as shown by its annual reports or other sworn statements to the municipal, state or federal authorities shall have been equal to at least twice the interest charges for the same period on the corporation's total outstanding funded debt.

(5) Such bonds, plus the total amount of any underlying bonds, shall be outstanding in an amount not exceeding sixty per cent of the actual value of the fixed property securing such bonds, as shown by the books of the corporation.

(6) Such bonds shall be (a) a closed underlying mortgage bond secured by property owned and operated by the corporation issuing or assuming such bond; provided, that such bond is to be refunded by a junior mortgage providing for the retirement of such bond, and that such underlying mortgage may remain open solely for the purpose of issuing additional bonds to be pledged under such junior mortgage or for refunding at par prior lien bonds; or

1931, 345, § 3.

(b) a first mortgage bond constituting the only mortgage debt of such corporation. If such mortgage is not closed, it shall by its terms provide for the issuance of additional bonds for extensions, improvements and property acquisitions, only as follows: (1) for an amount not exceeding seventy-five per cent of the actual cost of such extensions, improvements and property acquisitions, when net earnings, available for interest charges, for twelve months out of the fifteen months preceding the application to the trustee under such mortgage for authentication of such additional bonds have been equal to at least one and three quarters times the interest charges for one year on the total amount of bonds outstanding under such mortgage and the proposed additional bonds, or (2) for an amount not exceeding eighty per cent of the actual cost of such extensions, improvements and property acquisitions, when net earnings, available for interest charges, for twelve months out of the fifteen months preceding the application to the trustee under such mortgage for authentication of such additional bonds have been equal to at least twice the interest charges for one year on the total amount of bonds outstanding under such mortgage and the proposed additional bonds; or

1931, 345, § 4.

(c) a refunding mortgage bond providing for the retirement of all prior lien or divisional mortgage bonds of such corporation outstanding at the time of making the investment, such bond being secured by a lien on property owned and operated by such corporation; provided, that any mortgage prior in lien to such refunding mortgage shall be closed unless such prior mortgage remains open solely for the purpose of issuing additional bonds to be pledged under such refunding mortgage; and provided, further, that if a mortgage junior in lien to such refunding mortgage bond exists, such refunding mortgage bond shall by its terms be refunded by such junior mortgage; and provided, further, that in case such refunding mortgage is not closed it shall by its terms provide for the issue of additional bonds for extensions, improvements and property acquisitions by said corporation in accordance with the provisions of subdivision (1) or (2) of paragraph (b) hereof, and shall further provide that the net earnings available for interest charges as therein stated shall respectively equal at least one and three quarters times or at least twice the interest charges for one year on the total amount of bonds outstanding under such mortgage, of bonds secured by equal or prior liens, and of the proposed additional bonds.

537 (7) In this clause, unless the context otherwise requires, "funded
538 debt" shall be construed to mean all interest-bearing debt maturing more
539 than one year from its date of issue, but excluding bonds of the company
540 held simply as collateral to secure other of its outstanding obligations,
541 and "net earnings" shall be construed to mean the amount available for
542 interest charges after deduction has been made for all operating expenses,
543 including current maintenance, all taxes except income taxes, and all
544 rentals and guaranteed interest or dividends.

545 (8) If, during any of the periods mentioned in this clause, such corpora-
546 tion has been consolidated by purchase or otherwise, the aggregate operat-
547 ing figures of the corporations so consolidated, exclusive of inter-company
548 charges, shall be sufficient for the purpose of this clause.

549 (9) Not more than fifteen per cent of the deposits of any such bank
550 shall be invested in bonds under this clause, nor shall more than two per
551 cent of such deposits be invested in the bonds of any such corporation.

552 Seventh. In the stock of a trust company incorporated under the laws
553 of and doing business within this commonwealth, or in the stock of a
554 national banking association located in the New England states and
555 incorporated under the authority of the United States, which has paid
556 dividends of not less than four per cent thereon in cash in each of the five
557 years next preceding the date of such investment and the amount of
558 whose surplus is at least equal to fifty per cent of its capital; but a
559 savings bank shall not hold, both by way of investment and as security
560 for loans, more than twenty-five per cent of the stock of any one such
561 company or association, nor shall it hold by way of investment stock of
562 such companies and associations having an aggregate initial cost in excess
563 of fifteen per cent of the deposits of such savings bank, or stock of any
564 one such company or association having an initial cost in excess of one
565 per cent of the deposits aforesaid, except that in the event of the con-
566 solidation or merger of such companies or associations or of one or more
567 such companies with one or more such associations the amount of stock
568 of the consolidated or absorbing company or association which may be
569 held under authority hereof may be in excess of one per cent but not in
570 excess of two per cent of the deposits aforesaid, provided the stock so
571 held is acquired in exchange for stock of the consolidating or merging
572 companies or associations which is owned by such savings bank at the
573 time of consolidation or merger.

574 Such corporation may deposit not more than two and one half per
575 cent of its deposits in any banking association incorporated under the
576 authority of the United States and located in this commonwealth, and
577 in any trust company incorporated in this commonwealth; but such
578 deposit shall not in any case exceed five hundred thousand dollars nor
579 twenty-five per cent of the capital stock and surplus fund of such de-
580 pository.

581 Eighth. In bankers' acceptances and bills of exchange of the kinds
582 and maturities made eligible by law for rediscount with federal reserve
583 banks, provided that the same are accepted by a bank, banking associ-
584 ation or trust company incorporated under the laws of the United States
585 or of this commonwealth, and having its principal place of business
586 within the commonwealth. Not more than ten per cent of the deposits
587 and of the income derived therefrom shall be invested by any savings
588 bank in bankers' acceptances or bills of exchange, nor shall any savings
589 bank invest in the acceptances and bills of exchange eligible by law for
590 rediscount with federal reserve banks of any one accepting bank or

Bank stocks
and deposits
in banks.
1834, 190, § 7
R. S. 36, § 78.
1855, 294
G. S. 57.
§§ 142-144.
1863, 175.
§§ 2, 3; 234.
1864, 2.
1868, 227.
1876, 203, § 9,
cl. 4.
1881, 214, § 3.
P. S. 116, § 20,
cl. 4.
1882, 224.
1883, 292.
1886, 95.
1890, 168.
1894, 317,
§ 21, cl. 5.
R. L. 113,
§ 26, cl. 5.
1908, 590,
§ 68, cl. 7.
1929, 315, § 1.
1930, 149.
151 Mass. 103

Bankers'
acceptances.
1918, 210.

trust company to an amount in excess of five per cent of its deposits and 591
of the income derived therefrom. The aggregate amount of bankers' 592
acceptances and bills of exchange of any bank, banking association or 593
trust company held by any savings bank shall not exceed twenty-five per 594
cent of the paid-up capital and surplus of such bank, banking association 595
or trust company. 596

Loans on personal security.
1834, 190, § 8.
R. S. 36, § 79.
G. S. 57, § 145.
1876, 203, § 9.
cl. 5.
P. S. 116, § 20,
cl. 6.
1884, 56; 16S.
1886, 69.
1894, 317,
§ 21, cl. 7.
R. L. 113, § 26,
cl. 7.
1908, 590, § 68,
cl. 8, § 69.
1909, 491, § 8.
Note of three citizens.
1908, 590, § 68,
cl. 8 (a).

Ninth. In loans of the classes hereinafter described, payable and to be 597
paid or renewed at a time not exceeding one year from the date thereof; 598
but not more than one third of the deposits and income shall so be in- 599
vested, nor shall the total liabilities to such corporation of a person, part- 600
nership, association or corporation for money borrowed upon personal 601
security, including in the liabilities of a partnership or company not in- 602
corporated the liabilities of the several members thereof, exceed five per 603
cent of such deposits and income; but said limitations, except as to time 604
in which said loans shall be paid or renewed, shall not apply to loans 605
made under paragraph (2) subdivision (e) of this clause. 606

(a) A note which is the joint and several obligation of three or more 607
responsible citizens of this commonwealth; provided, that the total lia- 608
bilities to such corporation of a person, partnership or association, for 609
money borrowed under this subdivision, including in the liabilities of a 610
partnership or company not incorporated the liabilities of the several 611
members thereof, shall not exceed one per cent of the deposits of such 612
corporation. 613

Corporation note.
1908, 590, § 68,
cl. 8 (b).
1909, 491, § 8.
1919, 350,
§§ 45, 46.

(b) A note, with one or more substantial sureties or endorsers: (1) of 614
a corporation incorporated in this commonwealth; or (2) of a manu- 615
facturing corporation with a commission house as surety or endorser, 616
provided that such commission house is incorporated in this common- 617
wealth, or has an established place of business and a partner resident 618
therein; or (3) of an association or corporation at least one half of the 619
real and personal property of which is located within the New England 620
states, if at least one such surety or endorser is a citizen of or corporation 621
incorporated in this commonwealth; provided, that no such loan shall 622
be made or renewed unless within eighteen months preceding the making 623
or renewing of such loan an examination of the affairs, assets and liabili- 624
ties of the borrowing corporation or association has been made, at the 625
expense of such borrowing corporation or association, by an accountant 626
approved by the commissioner. The report of such examination shall 627
be made in such form as the commissioner may prescribe. A copy of the 628
report certified to by the accountant shall be delivered by the borrowing 629
corporation or association to the savings bank before such loan or a 630
renewal thereof is made, and a copy so certified shall be delivered by the 631
accountant to the commissioner within thirty days after the completion 632
of said examination. 633

Bonds or notes of or guaranteed by certain public service companies.
1908, 590, § 68,
cl. 8 (c).
1909, 491, § 8.
1922, 159,
1926, 351, §§ 12,
13.

(c) (1) A bond or note of a gas, electric light, telephone or street rail- 634
way corporation incorporated or doing business in this commonwealth 635
and subject to the control and supervision thereof: provided, that the 636
net earnings of said corporation, after payment of all operating expenses, 637
taxes and interest as reported to, and according to the requirements of, 638
the proper authorities of the commonwealth, have been in each of the 639
three fiscal years preceding the making or renewing of such loan equal to 640
not less than four per cent on all its capital stock outstanding in each of 641
said years; and provided, that the gross earnings of said corporation in 642
the fiscal year preceding the making or renewing of such loan have been 643

644 not less than one hundred thousand dollars. A list of the companies
 645 whose securities prima facie comply with the requirements of this sub-
 646 division shall be furnished to the commissioner annually, at such time
 647 after June sixteenth in any year as he shall designate, by the proper
 648 authorities of the commonwealth having supervision over such com-
 649 panies.

650 (2) Other bonds or notes issued, assumed or guaranteed by endorse-
 651 ment as to both principal and interest by a public service corporation
 652 whose securities are authorized for investment by clause Sixth A.

653 (d) A bond or note issued, assumed, or guaranteed by endorsement as
 654 to both principal and interest, by a railroad corporation which complies
 655 with all the requirements of subdivision (b) or of subdivision (e) pre-
 656 ceding paragraph (5) of clause Third; provided, that the principal of
 657 such bond or note described in either this or the preceding subdivision is
 658 payable at a time not exceeding one year after the date of investment
 659 therein.

Bonds or
 notes issued
 or guaranteed
 by railroad
 companies
 1908, 500, § 68
 cl. 8 (d)
 1909, 491, § 8

660 (e) A note of a responsible borrower in such form as the commissioner
 661 may approve, with a pledge as collateral of —

Notes secured
 by collateral
 1879, 57, § 1
 P. S. 116, § 20,
 cl. 5
 1887, 196,
 1888, 213
 1894, 317, § 21,
 cl. 6
 1896, 178,
 1899, 269
 R. L. 113, § 26,
 cls. 2 (c), 3
 (k, l, m), 4 (c).
 1904, 210,
 1905, 250,
 1906, 463,
 111, §§ 150,
 158,
 1908, 500,
 § 68, cl. 8 (c),
 § 69
 1909, 491, § 8

662 (1) One or more first mortgages of real estate situated in this com-
 663 monwealth: provided, that the amount of such note is not in excess of
 664 sixty per cent, or in the case of unimproved or unproductive real estate
 665 in excess of forty per cent, of the value of the property or properties
 666 mortgaged; that the value of each of said properties has been certified
 667 in accordance with the provisions of clause First; and that the assign-
 668 ment of each of said mortgages has been recorded in the proper registry
 669 of deeds; or

670 (2) Bonds or notes authorized for investment by clause Second,
 671 Third, Fourth, Fifth or Seventeenth at no more than ninety per cent of
 672 the market value thereof, at any time while such note is held by such
 673 corporation; or

1919, 350, §§ 45, 46.

245 Mass. 75, 448.

674 (3) Deposit books of depositors in savings banks up to the amount of
 675 deposits shown therein and unpledged shares of co-operative banks at not
 676 more than ninety per cent of their withdrawal value; or

1922, 159, § 3
 1924, 68

677 (4) Shares of railroad corporations described in subdivision (a), (b)
 678 or (c) of clause Third at no more than eighty per cent of the market value
 679 thereof, at any time while such note is held by such corporation; or

680 (5) Such other bonds, notes or shares of corporations or associations
 681 and at such percentages of their market values as the board of investment
 682 shall approve; provided, that, if the commissioner shall disapprove any
 683 such bonds, notes or shares, he shall make such written recommendations
 684 to the board of investment of such corporation as the case may require,
 685 and shall include in his annual report a statement of the facts in each
 686 case in which such board of investment has not complied with his recom-
 687 mendations in a manner satisfactory to him; or

688 (6) Policies issued by life insurance companies approved by the com-
 689 missioner and properly assigned to the bank, but not exceeding ninety
 690 per cent of the cash surrender value of such policies; but the aggregate
 691 of such loans made by any savings bank shall not exceed one per cent of
 692 its deposits.

1910, 355.

693 (f) Whenever used in this clause, the word "association" means an
 694 association the business of which is conducted or transacted by trustees
 695 under a written instrument or declaration of trust.

"Association"
 defined
 1908, 500,
 § 68, cl. 8 (f),
 § 69.

Farm loan
bonds:
1918, 67.

Tenth. In farm loan bonds lawfully issued by federal land banks incorporated under the act of congress approved July seventeen, nineteen hundred and sixteen, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes".

Bank building.
1870, 226.
1876, 203, § 9,
cl. 6.
P. S. 116, § 20,
cl. 7.
1893, 174.
1894, 317, § 21,
cl. 8.
R. L. 113, § 26,
cl. 8.
1908, 590, § 68,
cl. 9, § 69.
1910, 281.
1919, 350,
§§ 45, 46.
149 Mass. 1.
151 Mass. 103.

Eleventh. A sum not exceeding the guaranty fund and undivided earnings of such corporation, nor in any case exceeding five per cent of its deposits or two hundred thousand dollars, may, subject to the approval of the commissioner, be invested in the purchase of a suitable site and the erection or preparation of a suitable building for the convenient transaction of its business. Extraordinary alterations in, or additions to, a bank building owned by a savings bank, involving an expense exceeding ten thousand dollars, shall not be made without the approval of the commissioner, and the cost of such alterations or additions shall not exceed the sum specified in this clause.

1 Op. A. G. 420.

Real estate ac-
quired by fore-
closure.
1870, 226.
1876, 203, § 26.
P. S. 116, § 20,
cl. 8.
1882, 200.
1883, 52; 248.
1886, 77.
1894, 317, § 21,
cl. 9.
1898, 148.
R. L. 113, § 26,
cl. 9.
1906, 204,
§§ 1, 3, 5.
1908, 590,
§ 68, cl. 10, § 69.
1919, 350,
§§ 45, 46.

Twelfth. Such corporation may hold real estate acquired by the foreclosure of a mortgage owned by it, or by purchase at sales made under the provisions of such mortgages or upon judgments for debts due to it, or in settlements effected to secure such debts. Such corporation shall sell all such real estate within five years after the title thereof is vested in it, and notwithstanding the provisions of clause First may take a mortgage thereon from a bona fide purchaser to secure the whole or a part of the purchase price; but the commissioner may, on petition of the board of investment of such corporation, and for cause, grant an additional time for the sale of the same or of the securities mentioned in the following clause.

149 Mass. 1.

Securities
acquired in
settlement
of indebted-
ness
1898, 148.
R. L. 113, § 26,
cl. 10.

Thirteenth. Such corporation may hold stocks, bonds, notes or other securities acquired in settlements effected to secure loans or indebtedness; but unless the time during which such securities may be held is extended as provided in the preceding clause, they shall be sold within five years after being acquired.

1908, 590, § 68, cl. 11.

Pledges of
securities as
collateral to
remain valid.
1876, 203, § 30.
1878, 94, § 1.
P. S. 116,
§ 20, cl. 9.

Fourteenth. The provisions of this chapter shall not invalidate or impair the title of a corporation to securities which have been or may be held by it in pledge or as security for a loan or indebtedness; and the same shall be held for the purposes for which they were pledged.

1894, 317, § 21, cl. 10. R. L. 113, § 26, cl. 11. 1908, 590, § 68, cl. 12, § 69.

List of bonds
and notes
to be prepared.
1902, 483, § 3.
1906, 204,
§§ 1, 3, 5;
463, 111, §§ 149,
158.
1908, 590, § 68,
cl. 13, § 69.
1919, 350,
§§ 45, 46.
1926, 351, § 3.
1928, 27.

Fifteenth. Annually, not later than July first, the commissioner shall prepare a list of all the bonds and notes which are then legal investments under the provisions of clause Third, Fourth, Fifth, Sixth A or Seventeenth. Said list shall at all times be open to public inspection and a copy thereof shall be sent to every savings bank. In the preparation of any list which the commissioner is required to furnish, he may employ such expert assistance as he deems proper or may rely upon information contained in publications which he deems authoritative in reference to such matters; and he shall be in no way held responsible for the omission from such list of the name of any state, municipality or corporation the bonds or notes of which conform to the provisions of this section, or of

744 any bonds or notes which so conform, nor shall he be held responsible for
 745 the inclusion in such list of any such names or bonds or notes which do
 746 not so conform.

747 Sixteenth. Bonds which at any time have been for ten successive
 748 years legal investments under the provisions of subdivision (a), (b),
 749 (c), or (d) of clause Third or clause Fifth of this section shall not be
 750 rendered illegal although the corporation issuing, assuming or guaran-
 751 teeing such bonds shall fail for a period not exceeding two successive
 752 years to comply as to dividends on its capital stock, with the require-
 753 ments of the clauses specified above; but no further investment in the
 754 bonds issued, assumed or guaranteed by such corporation shall be made
 755 during said period. If after the expiration of said period, such corpo-
 756 ration complies for the following fiscal year with the requirements of
 757 the clauses specified above, it shall be regarded as having complied
 758 therewith during said period; provided, that it shall not have so failed
 759 to comply during any other period within the next preceding ten years.

Bonds not to become illegal by reason of temporary failure to meet legal requirements. 1913, 291, 1915, 273, § 2.

760 Seventeenth. This section shall not render illegal the investment in
 761 any mortgages of real estate held by such corporation on June eighth,
 762 nineteen hundred and eight, nor the investment before or after said date
 763 in any issue of bonds or notes dated before said date in which such cor-
 764 poration might then invest, so long as such bonds or notes continue to
 765 comply with the laws then in force.

Certain investments previously authorized. 1908, 590, § 68, cl. 4.

1 SECTION 55. Any savings bank may, if authorized by vote of at least
 2 two thirds of its corporators at a meeting specially called to consider the
 3 subject, be dissolved and liquidate its affairs in the manner hereinafter
 4 set forth; provided, that the commissioner is satisfied that such savings
 5 bank has given at least thirty days' notice to each other savings bank,
 6 located within twenty-five miles, of its willingness to enter into negotia-
 7 tions with a view to consolidation or merger and that no consolidation
 8 or merger with any such other savings bank can be arranged upon terms
 9 satisfactory to the commissioner; and provided, further, that, prior to
 10 such vote, the commissioner shall have approved in writing the proposed
 11 liquidation of such savings bank as being in the interest of its depositors.
 12 In such case a committee of three shall thereupon be elected by and from
 13 the trustees and, under such regulations as may be prescribed by the com-
 14 missioner, shall liquidate the assets, and after satisfying all debts of the
 15 liquidating savings bank shall distribute the remaining proceeds among
 16 its depositors, as of the date of the vote of liquidation, and other persons
 17 entitled thereto, according to their several interests. The charter of a
 18 savings bank shall upon such a vote to liquidate become void except for
 19 the purpose of discharging its existing obligations and liabilities.

Liquidation or merger of savings banks. 1930, 329, § 1.

20 Funds representing unclaimed dividends in liquidation and remaining
 21 in the hands of the liquidating committee for six months after the date
 22 of the final payment in liquidation shall be deposited by them, together
 23 with all books and papers of the savings bank, with the commissioner.
 24 Such funds shall be deposited in one or more trust companies or national
 25 banks to the credit of the commissioner in his official capacity, in trust for
 26 the depositors of the savings bank and other persons entitled thereto,
 27 according to their several interests. Upon receipt of evidence satis-
 28 factory to him, the commissioner may pay over the moneys so held by
 29 him to the persons respectively entitled thereto. In case of doubt or of
 30 conflicting claims, he may require an order of the supreme judicial court
 31 authorizing and directing the payment thereof. He may apply the

interest earned by the money so held to the defraying of expenses incurred 32
 in the payment of such unclaimed dividends. At the expiration of 33
 twelve months from the date of receipt of such funds by the commis- 34
 sioner, such portion thereof as still remains in his possession shall be 35
 disposed of as provided in section thirty-five of chapter one hundred and 36
 sixty-seven. 37

If, however, the commissioner is satisfied that a consolidation or merger 38
 of the savings bank proposing liquidation with another savings bank 39
 located within twenty-five miles can be effected on terms approved by 40
 him and if he finds that such consolidation or merger is in the interest of 41
 the depositors of the savings banks concerned, such consolidation or 42
 merger may be effected upon such terms and subject to the direction of 43
 the commissioner, provided that a vote authorizing the same is passed 44
 by at least two thirds of the corporators of each of the savings banks 45
 aforesaid at meetings specially called to consider the subject. 46

CHAPTER 169.

DEPOSITS WITH OTHERS THAN BANKS.

<p>SECT.</p> <p style="text-align: center;">APPLICATION OF CHAPTER.</p> <p>1. Application of chapter.</p> <p style="text-align: center;">BONDS AND LICENSES.</p> <p>2. Bond required.</p> <p>3. Requirements of bond. Issue of license, and revocation. Trust fund for depositors.</p> <p>4. Record of bonds.</p> <p>5. Actions on bonds.</p> <p style="text-align: center;">SUPERVISION BY PUBLIC AUTHORITY.</p> <p>6. Supervision of commissioner. Returns.</p> <p>7. Books and accounts. Bond by custodian of deposits.</p> <p>8. Examination by commissioner.</p> <p>9. Powers of commissioner relative to examination.</p>	<p>SECT.</p> <p>10. Persons subject to examination.</p> <p>11. When commissioner is to apply for injunction or receiver.</p> <p style="text-align: center;">DISPOSITION OF FUNDS DEPOSITED.</p> <p>12. [Repealed.]</p> <p>13. [Repealed.]</p> <p>14. Money to be forwarded.</p> <p>15. Form of receipt regulated.</p> <p>15A. [Repealed.]</p> <p style="text-align: center;">GENERAL PROVISIONS.</p> <p>16. Penalties.</p> <p>17. Police to notify commissioner of persons to whom this chapter applies and prosecute offenders.</p> <p>18. Revocation of license, etc.</p>
---	---

APPLICATION OF CHAPTER.

Application of chapter.
 1905, 428, § 1.
 1906, 408, § 1.
 1907, 377, § 1.
 1910, 338, § 1.
 1913, 478; 179.
 1923, 473, § 1.
 1929, 182, § 1.

SECTION 1. This chapter shall apply to all persons who engage or 1
 are financially interested in the business of receiving deposits of money, 2
 for the purpose of transmitting the same or equivalents thereof to for- 3
 eign countries, in such sums that the average of the separate deposits so 4
 received during any twelve successive months, or during such period, 5
 if less than twelve months, that such person has been engaged in such 6
 business, is less than five hundred dollars, except duly incorporated 7
 banks and trust companies, express companies having contracts with 8
 railroad or steamship companies for the operation of an express service 9
 upon the lines of such companies, or express companies doing an inter- 10
 national express business, or transatlantic steamship companies or tele- 11
 graph companies. 12

BONDS AND LICENSES.

SECTION 2. Every person subject to section one shall, before engaging or becoming financially interested or continuing to engage or be financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries, make, execute and deliver to the state treasurer a bond in a sum equal to twice the amount of money or equivalents thereof transmitted to foreign countries by such person in any one week, as determined by the commissioner of banks, in this chapter called the commissioner, but in no event shall the sum of the bond be less than fifteen thousand dollars; provided, that the sum of such bond shall be increased on order of the commissioner at any time to such amount as shall be shown by examination to be necessary. Said bond shall be conditioned upon the faithful holding and transmission of any money or equivalents thereof which shall have been delivered to such person for transmission to a foreign country, and, in the event of the insolvency or bankruptcy of the principal, upon the payment of the full amount of such bond to the assignee, receiver or trustee of the principal, as the case may require, for the benefit of such persons as shall have delivered money or equivalents thereof to said principal for the purpose of transmitting the same to a foreign country.

Bond required
 1905, 428, § 1
 1906, 408, § 1
 1907, 377, § 1.
 1911, 358, § 1.
 1912, 335,
 1913, 179,
 1919, 350,
 §§ 45, 49,
 1923, 473, § 2
 1929, 182, § 2
 1931, 426,
 § 945,
 197 Mass. 64,
 247 Mass. 27
 259 Mass. 310

SECTION 3. Except as otherwise expressly provided herein, the provisions of this section shall apply to the bonds required by the preceding section. Each such bond shall be executed by the person of whom it is required, as principal, with at least two good and sufficient sureties who shall be residents and owners of real estate within the commonwealth or by said person as principal and a surety company, approved by the commissioner. In lieu of the aforesaid sureties, the person may deposit, and the state treasurer shall accept as security for the fulfilment of the provisions of the bond, money, bonds of the United States, of this commonwealth or of any municipality thereof, or, if approved by the commissioner, other bonds, certificates of deposit issued by a national bank or trust company, or deposit books of depositors in savings banks or in savings departments of trust companies or national banks. The money or securities so deposited shall be held upon the conditions specified in the bond. If securities be deposited in lieu of sureties and be accepted, the state treasurer shall require the depositor to maintain such deposit at a value equal to the amount fixed as the penalty of the bond, and he may in his discretion permit the substitution of securities for money, or of money for securities, in whole or in part, or of money or securities for any sureties, or of a bond for money or securities deposited, or the withdrawal of securities deposited and the substitution of others of equal value in their place, and, if the total value of the securities becomes substantially impaired, he shall require the deposit of money or additional securities sufficient to cover the impairment in value. No bond required by the preceding section shall be accepted until it has been first examined and approved by the commissioner and unless also approved by the state treasurer, and upon such approval by the state treasurer it shall be filed in his office. Upon notice of such approval by the state treasurer, the commissioner shall issue a license authorizing said person to carry on the business of receiving deposits of money for

Requirements
 of bond. Issue
 of license, and
 revocation.
 Trust fund for
 depositors.
 1905, 428, § 2.
 1906, 408, § 2.
 1908, 493, § 2.
 1911, 358, § 1.
 1912, 335,
 1919, 350,
 §§ 45, 49,
 1923, 473, § 3.
 1929, 182, § 3.
 247 Mass. 27.

the purpose of transmitting the same or equivalents thereof to foreign countries for a period of one year from the date of the issuance of the license, at a place to be specified therein, and no person shall engage or become financially interested or continue to engage or be financially interested in the aforesaid business without such authority. The fee for such license shall be fifty dollars. The license shall not be transferred or assigned. It shall not authorize the transaction of business at any place other than that described in the license, except with the written approval of the commissioner. Immediately upon the receipt of the license issued by the commissioner, the licensee named therein shall cause the license to be posted and at all times conspicuously displayed in the place of business for which it is issued, so that all persons visiting such place may readily see the same. It shall be unlawful for any licensee to post the license or to permit the license to be posted upon premises other than those described therein or those to which it has been transferred with the written approval of the commissioner, or knowingly to deface or destroy any such license. The money and securities deposited with the state treasurer as herein provided and the money which in case of breach of the bond shall be paid by any licensee or surety thereon, shall constitute a trust fund for the benefit of such persons as shall deposit money with the licensee for transmission as aforesaid, and such beneficiaries shall be entitled to an absolute preference as to such money or securities over all general creditors of the licensee. The license shall be revocable at all times by the commissioner for cause shown and in the event of such revocation or of a surrender of the license no refund shall be made in respect of any license fee paid. Every license shall be surrendered to the commissioner within twenty-four hours after written notice to the holder that the license has been revoked. In case of the revocation of the license the money and securities and the bond, if there be one, shall continue to be held by the state treasurer for a period of one year from the date of such revocation and until the expiration of sixty days after final judgment in any action or suit commenced prior to the end of said period, unless otherwise directed by the order or judgment of a court of competent jurisdiction.

Record of
bonds.
1905, 428, § 3.
1931, 426,
§ 266.

SECTION 4. The state treasurer shall keep a record open to public inspection, of such bonds filed with him, with the names, places of residence and of business of the principals and sureties, and the name of the officer before whom the bond was executed or acknowledged; and also of any money or securities deposited in lieu of sureties as provided in section three.

Actions on
bonds.
1906, 408, § 3.

SECTION 5. Suit to recover on such bond may be brought by or upon the relation of any party aggrieved, in a court of competent jurisdiction.

1909, 287, § 2; 450.

1913, 245.

SUPERVISION BY PUBLIC AUTHORITY.

Supervision of
commissioner.
Returns.
1907, 377, § 2.
1919, 350,
§§ 45, 49.

SECTION 6. Any person transacting any business described in section one shall be subject to the supervision of the commissioner, and shall annually, within thirty days after the last business day in October, and at such other times as he may specify, make to him in such form as he may prescribe a return signed and sworn to by such officers or persons as he

6 may designate, showing accurately the condition thereof at the close of
 7 business on said last business day of October or such other day as he
 8 may specify.

1 SECTION 7. The books and accounts of every such person shall be
 2 kept and audited in such manner and form, and the persons charged with
 3 the custody of the funds and investments thereof shall give a bond in
 4 such manner and amount and to such person as the commissioner may
 5 prescribe.

Books and
 accounts. Bond
 by custodian
 of deposits
 1907, 377, § 3.
 1919, 350,
 §§ 45, 49.

1 SECTION 8. The commissioner shall, at such times as he deems ex-
 2 pedient, examine, either personally or by a competent examiner whom he
 3 shall appoint, every such person, and thoroughly inspect and examine his
 4 affairs to ascertain his financial condition and whether he has complied
 5 with all laws applicable thereto.

Examination
 by commis-
 sioner.
 1907, 377, § 4.
 1911, 358, § 2.
 1919, 350,
 §§ 45, 49.

1 SECTION 9. For the purposes aforesaid the commissioner or the person
 2 making the examination shall have free access to the vaults, books and
 3 papers of every such person, and may summon the directors, officers or
 4 agents thereof, and such other witnesses as may be deemed necessary,
 5 for examination relative to the affairs, transactions and condition of such
 6 person, and for that purpose the commissioner or the person making the
 7 examination may administer oaths. Whoever, without justifiable cause,
 8 refuses to appear and testify when so required, or obstructs the com-
 9 missioner or the person making the examination in the performance of
 10 his duty, shall be punished by a fine of not more than one thousand
 11 dollars or by imprisonment for not more than one year.

Powers of
 commissioner
 relative to
 examination.
 1907, 377, § 5.
 1919, 350,
 §§ 45, 49.

1 SECTION 10. The commissioner shall have the power conferred by
 2 the three preceding sections, for the purpose of determining whether a
 3 person is engaged in a business subject to section one or prohibited by
 4 section sixteen.

Persons subject
 to examination.
 1908, 493, § 1.
 1919, 350,
 §§ 45, 49.

1929, 182, § 4.

1 SECTION 11. If, upon examination, it appears that such person is
 2 insolvent, or that his capital is impaired, or that his condition is such as
 3 to render the continuance of his business hazardous to the public or to
 4 those having funds in his custody, the commissioner shall apply, or, if
 5 such person appears to have exceeded his powers or failed to comply with
 6 any provision of law, he may apply, to the supreme judicial court, which
 7 shall have jurisdiction in equity on such application to issue an injunction
 8 restraining such person, in whole or in part, from further proceeding with
 9 his business, and to make such further order or decree as justice and
 10 equity may require. The court may appoint one or more receivers to
 11 take possession of the property and effects of such person, subject to
 12 such directions as may from time to time be prescribed by the court.

When com-
 missioner is
 to apply for
 injunction
 or receiver.
 1907, 377, § 6.
 1919, 350,
 §§ 45, 49.

DISPOSITION OF FUNDS DEPOSITED.

1 SECTION 12. [REPEALED, 1929, 182, § 5.]

1 SECTION 13. [REPEALED, 1929, 182, § 5.]

Money to be forwarded. 1916, 175, § 3. SECTION 14. All money received for transmission to a foreign country by any person subject to this chapter shall be forwarded to the persons to whom the same is directed to be transmitted within seven days after the receipt thereof. 1 2 3 4

Form of receipt regulated. 1916, 175, § 4. 1919, 350, §§ 45, 49. SECTION 15. The receipts given by any person subject to this chapter for deposits of money received for transmission to a foreign country shall be on forms approved by the commissioner, and the use of any form for this purpose which has not so been approved shall be sufficient cause for revocation of the license granted under this chapter. 1 2 3 4 5

SECTION 15A. [INSERTED, 1923, 473, § 5; REPEALED, 1929, 182, § 5.] 1

GENERAL PROVISIONS.

Penalties. 1905, 428, § 4. 1923, 473, § 6. 1929, 182, § 6. SECTION 16. Any person engaged or financially interested in the selling of steamship or railroad tickets for transportation to or from foreign countries, or in supplying laborers, who shall, in conjunction with said business, engage or become financially interested or continue to engage or be financially interested in the business of receiving deposits of money for safe keeping or other purpose than for transmitting the same to foreign countries, after July first, nineteen hundred and thirty-two, or prior thereto except as authorized by law, and any person who shall engage or become financially interested or continue to engage or be financially interested in the business of receiving deposits of money for the purpose of transmitting the same, or equivalents thereof, to foreign countries contrary to any provision of this chapter, and any person who otherwise violates any provision of this chapter, shall, except as otherwise provided in section nine, be punished by a fine of not less than fifty nor more than one thousand dollars, or by imprisonment for not less than one month nor more than one year or both. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

Police to notify commissioner of persons to whom this chapter applies and prosecute offenders. SECTION 17. Police departments of towns shall notify the commissioner of any persons in their respective towns to whom this chapter applies, and the police of the town where any violation of this chapter occurs shall prosecute the offender. 1 2 3 4
1906, 408, § 4. 1910, 338, § 2. 1919, 350, §§ 45, 49.

Revocation of license, etc. 1916, 175, § 5. 1923, 473, § 7. 1929, 182, § 7. SECTION 18. The violation of any provision of section fourteen or fifteen shall be sufficient cause for the revocation of any license granted hereunder, and shall be a violation of the condition of the bond which was prerequisite to the issue of said license or of any bond substituted therefor. 1 2 3 4 5

CHAPTER 170.

CO-OPERATIVE BANKS.

<p>SECT.</p> <p style="text-align: center;">INCORPORATION.</p> <p>1. Definitions.</p> <p>2. Agreement of association.</p> <p>3. Notice and hearing.</p> <p>4. First meeting.</p> <p>5. Articles and certificate of incorporation.</p> <p style="text-align: center;">MANAGEMENT.</p> <p>6. By-laws.</p> <p>7. Officers, election, etc.</p> <p>8. Security committee.</p> <p>9. Duties of treasurer. Bond.</p> <p>10. Assistant treasurer.</p> <p>11. Meetings, place of business.</p> <p style="text-align: center;">CAPITAL.</p> <p>12. Issue of shares.</p> <p>13. Payment of dues.</p> <p>14. Shares issued to minors or trustees.</p> <p>15. Joint accounts.</p> <p>15A. Number of shares in joint accounts limited.</p> <p>16. Withdrawal of shares. Temporary loans by bank.</p> <p>17. Forfeiture of shares.</p> <p>18. Retirement of shares.</p> <p>19. Maturity of shares.</p> <p>20. Payment of deferred withdrawals and matured shares.</p> <p style="text-align: center;">LOANS AND INVESTMENTS.</p> <p>21. Methods of loaning funds.</p> <p>22. Limitation of loans.</p> <p>23. Loans and investments of unsold funds.</p> <p>24. Interest payments.</p> <p>25. Applications for loans on real estate.</p> <p>26. Loans on real estate. Conversion into demand or time loan.</p>	<p>SECT.</p> <p>27. Loans on shares.</p> <p>28. Agreement for reduction of interest or premium.</p> <p>29. Repayment of loans.</p> <p>30. Real estate acquired. Common form mortgages.</p> <p>31. May hold or improve real estate used as place of business.</p> <p>32. Recovery of loan.</p> <p>33. Suspension of payments authorized for borrowers engaged in war service or temporarily unable to make payments.</p> <p>34. Resumption of such payments.</p> <p>35. [Repealed.]</p> <p>36. Assignment of loans to insurance companies.</p> <p style="text-align: center;">GENERAL PROVISIONS.</p> <p>37. Fines.</p> <p>38. Bank or officers not to take certain fees, etc. Penalty.</p> <p>39. Transfer of shares. Fee.</p> <p>40. Distribution of earnings.</p> <p>40A. Reserve.</p> <p>41. Guaranty fund.</p> <p>42. Surplus account.</p> <p>43. General accounts.</p> <p>44. Annual reports.</p> <p>45. Consolidation of banks.</p> <p>46. Powers and duties of bank commissioner.</p> <p>47. Fees for examination and audit. Assessment of portion of overhead expense of division.</p> <p>48. Co-operative banking to be done only under this chapter. Penalty.</p> <p>49. Loans by foreign co-operative banks on real estate mortgages permitted.</p>
---	--

INCORPORATION.

1 SECTION 1. The following words as used in this chapter, unless the Definitions.
 2 context otherwise requires, shall have the following meanings:
 3 "Commissioner", the commissioner of banks.
 4 "Corporation", a co-operative bank incorporated as such in this
 5 commonwealth.

1 SECTION 2. Twenty or more persons who associate themselves by a Agreement of
 2 written agreement to form a co-operative bank for the purpose of ac- association
 3 cumulating the savings of its members in fixed periodical instalments 1854, 454
 4 and loaning such accumulations to them may, upon compliance with G. S. 58,
 5 sections two, three, four and five, become a corporation with all the 1877, 221,
§§ 1-4,
P. S. 117.
§§ 1-4

1883, 98, § 1.
1890, 243.
R. L. 110, § 16;
114, §§ 2, 3.
1912, 623,
§§ 1, 45.
3 Op. A. G.
250.

powers and privileges and subject to all the duties, restrictions and liabilities set forth in all general laws relating to such corporations. Said agreement shall set forth that the subscribers thereto associate themselves with the intention of forming a corporation to transact business within the commonwealth, and shall specify —

First. The name by which the corporation shall be known, the words “co-operative bank” to form a part thereof.

Second. The purpose for which it is to be formed.

Third. The town where its business is to be transacted.

Each associate shall subscribe to the articles his name, residence and post office address.

Notice and hearing.
1912, 623, § 2.

SECTION 3. The subscribers to said agreement shall give notice to the board of bank incorporation of their intention to form a co-operative bank and shall apply to said board for a certificate that public convenience and advantage will be promoted by the establishment thereof. Said board may grant such certificate, which shall be deemed revoked if the applicants therefor do not become incorporated and begin business within six months after its date of issue. Upon receipt of such application, said board shall furnish the subscribers a form of notice, specifying the names of the proposed incorporators and the name and location of the proposed co-operative bank and assigning a date and place for a public hearing on the application. The subscribers shall publish the notice at least once a week for three successive weeks, in one or more newspapers designated by said board, and published in the town where it is desired to establish the bank, or, if there is no newspaper in such town, in the town where a newspaper is published, which is nearest to the location of the bank. If said board refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of the refusal, in which case notice of a public hearing thereon shall be published as herein provided.

First meeting.
1877, 224,
§§ 2, 4
P. S. 117,
§§ 2, 4
R. L. 114, § 3.
1912, 623,
§§ 3, 45
101 Mass. 385.

SECTION 4. The first meeting of the subscribers to the agreement of association shall be called by a notice signed either by that subscriber to the agreement who is designated therein for the purpose, or by a majority of the subscribers; and the notice shall state the time, place and purpose of the meeting. A copy of the notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit by one of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall in writing, endorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. The subscribers to the agreement of association shall hold the franchise until the organization has been completed. At the first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of by-laws and by the election, in such manner as the by-laws may determine, of a president, a clerk of the corporation, a treasurer, a board of not less than five directors, and such other officers as the by-laws may prescribe. All the officers so elected shall be sworn to the

21 faithful performance of their duties. The temporary clerk shall make
 22 and attest a record of the proceedings until the clerk has been chosen and
 23 sworn, including a record of the choice and qualification of the clerk.

1 SECTION 5. The president and a majority of the directors who are
 2 elected at the first meeting shall make, sign and make oath to, articles
 3 in duplicate setting forth —

4 (a) A true copy of the agreement of association, the names of the sub-
 5 scribers thereto, and the name, residence and post office address of each
 6 of the officers of the corporation.

7 (b) The date of the first meeting and the successive adjournments
 8 thereof, if any.

9 One duplicate original of the articles so signed and sworn to shall be
 10 submitted to said board, and the other, together with the records of the
 11 proposed corporation, to the commissioner of corporations and taxation,
 12 who shall examine the same and may require such amendment thereof
 13 or such additional information as he considers necessary. If he finds
 14 that the articles conform to the three preceding sections, and that section
 15 three has been complied with, he shall so certify and endorse his approval
 16 thereon. Thereupon the articles shall be filed in the office of the state
 17 secretary, who upon receipt of five dollars, shall issue a certificate of
 18 incorporation in the following form:

Articles and
 certificate of
 incorporation.
 1877, 224,
 §§ 2, 1.
 P. S. 117,
 §§ 2, 4.
 R. L. 111, § 3
 1912, 623,
 §§ 4, 45.
 1919, 350, § 53
 1931, 394,
 § 176
 149 Mass. 436
 151 Mass. 558

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the names of the subscribers to the agreement of
 association) have associated themselves with the intention of forming a corpora-
 tion under the name of (the name of the corporation), for the purpose (the pur-
 pose declared in the agreement of association), and have complied with the pro-
 visions of the statutes of this commonwealth in such case made and provided,
 as appears from the articles of organization of said corporation, duly approved
 by the commissioner of corporations and taxation and recorded in this office:
 Now, therefore, I (the name of the state secretary), secretary of the common-
 wealth of Massachusetts, do hereby certify that said (the names of the subscribers
 to the agreement of association), their associates and successors, are legally or-
 ganized and established as, and are hereby made, an existing corporation under
 the name of (name of the corporation), with the powers, rights and privileges,
 and subject to the limitations, duties and restrictions, which by law appertain
 thereto.

Witness my official signature hereunto subscribed, and the great seal of the
 commonwealth of Massachusetts hereunto affixed, this
 day of _____ in the year (the date of the filing of the articles of
 organization).

19 The state secretary shall sign the certificate of incorporation and
 20 cause the great seal of the commonwealth to be thereto affixed, and
 21 such certificate shall have the force and effect of a special charter. The
 22 existence of every such corporation which is not created by special law
 23 shall begin upon the filing of the articles of organization in the office of
 24 the state secretary, who shall also cause a record of the certificate of
 25 incorporation to be made, and such certificate or such record, or a certi-
 26 fied copy thereof, shall be conclusive evidence of the existence of the
 27 corporation.

MANAGEMENT.

1 SECTION 6. The shareholders of every such corporation shall make
 2 and adopt the necessary by-laws consistent with law for the government

By-laws,
 1577, 224,
 §§ 6, 16

P § 117, § 6.	of its affairs, and a copy thereof shall be filed in the office of the com-	3
1901, 123.	missioner of banks.	4
R L. 114, § 6.	The by-laws shall provide for and determine —	5
1912, 623.	(a) The time for holding the annual meeting of the shareholders and	6
§§ 5, 15	the monthly meetings of the board of directors, and for the receipt of	7
1919, 350, § 45.	moneys.	8
	(b) The manner of calling either regular or special meetings.	9
	(c) The number necessary to constitute a quorum at all meetings.	10
	(d) The qualifications of electors.	11
	(e) The number, title and duties of officers and standing committees, their	12
	terms of office and the manner of their election or appointment.	13
	(f) The care and custody of money, securities and property of the	14
	bank.	15
	(g) The method of loaning the funds of the bank.	16
	(h) The proportion of profits, if any, to be reserved upon voluntary	17
	withdrawals.	18
	(i) The time within which satisfactory security for real estate loans	19
	shall be offered.	20
	(j) Whether partial payments of less than fifty dollars may be received	21
	upon loans.	22
	(k) The rate of fines to be charged upon delinquent payments.	23
	(l) The manner of transferring shares and the fee therefor.	24
	(m) The manner and conditions under which the by-laws may be	25
	amended.	26

Officers,
election, etc.
1877, 224,
§§ 6, 16
P § 117, § 6.
1885, 121, § 1.
1901, 123
R L. 114, § 6.
1912, 623,
§§ 6, 15
1914, 643, § 1.
1923, 100
1926, 150, § 1.

SECTION 7. The business and affairs of every such corporation shall 1
be managed by a board of not less than five directors to be elected by the 2
shareholders. Directors may be elected for terms of not less than one 3
nor more than three years, and, in case the term is more than one year, 4
they shall be divided into classes and an equal number, as nearly as 5
may be, elected each year. All vacancies in the board or in any office 6
may be filled by the board of directors for the unexpired term. Every 7
officer and director when appointed or elected shall take an oath that 8
he will faithfully and impartially discharge the duties devolving upon 9
him, and the fact that the oath has been taken shall be entered in the 10
records of the corporation; and if a person appointed or elected does not, 11
within thirty days thereafter, take the oath, his office shall thereupon 12
become vacant. The president, vice president, treasurer, clerk, and other 13
officers whose election is not otherwise herein or in section ten expressly 14
provided for, may be chosen either by the shareholders or by the board 15
of directors as the by-laws may determine. No shareholder shall be 16
entitled to more than one vote at any meeting, and no shareholder shall 17
vote by proxy. All officers shall be elected by ballot, shall be shareholders 18
when nominated and shall continue to hold their offices until their suc- 19
cessors have been chosen and shall have assumed their duties, and no such 20
corporation shall expire from neglect to elect officers at the time pre- 21
scribed in its by-laws. If an officer ceases to be a shareholder his office 22
shall thereupon become vacant. If a director fails both to attend the 23
regular meetings of the board and to perform any of the duties devolving 24
upon him as such director for six consecutive months, his office may be 25
declared by the board at the next regular meeting to be vacant. A record 26
of any vacancy shall be entered upon the books of the corporation, and a 27
transcript of such record shall be sent by mail to the person whose office 28
has been made vacant. 29

1 SECTION 8. At the first meeting of the board of directors after the
 2 annual meeting for the election of officers, the board shall elect from its
 3 own number a security committee of at least three members, whose duty
 4 shall be to examine real estate offered as security for loans and to report
 5 thereon as required by section twenty-five.
 6 The personal examination of any parcel of real estate by the security
 7 committee may be omitted by special vote of the board of directors.
 8 No member of the security committee shall make an official report
 9 upon property offered as security for a loan in which he has a personal
 10 interest.

Security
 committee.
 1912, 623, § 7.

1 SECTION 9. The treasurer shall keep the accounts and have charge of
 2 all books and papers necessary therefor, and dispose of and secure the
 3 safe keeping of all money, securities and property of the corporation, in
 4 the manner designated by the by-laws, and the treasurer and all other
 5 permanent employees having access at all times to the cash or negotiable
 6 securities, shall each give, subject to section twenty-four of chapter one
 7 hundred and sixty-eight, a bond for the faithful performance of their
 8 respective duties in such amount as the board of directors may require,
 9 provided that such treasurer and other permanent employees may in the
 10 discretion of the commissioner be included in one or more schedule or
 11 blanket bonds, approved by him as to the conditions thereof and as to
 12 the sureties thereon.

Duties of
 treasurer.
 Bond.
 1877, 224, § 14
 P. S. 117, § 17
 1898, 247, § 1
 R. L. 114, § 7.
 1912, 623,
 §§ 8, 45.
 1925, 16, § 2.
 1930, 49.

1 SECTION 10. Such corporation may provide in its by-laws for an
 2 assistant treasurer if the commissioner approves and, if it has assets in
 3 excess of five million dollars, for such additional number of assistant
 4 treasurers as the commissioner approves, and may so provide for the
 5 election of such assistant treasurer or assistant treasurers by either the
 6 shareholders or the board of directors. An assistant treasurer may per-
 7 form all the duties of the treasurer.

Assistant
 treasurer.
 1916, 22
 1919, 350, § 45.
 1926, 150, § 2.

1 SECTION 11. The board of directors shall hold stated monthly meet-
 2 ings at any place in the town where the bank is located, and its usual
 3 business shall be transacted at its office only, which shall be in the town
 4 named in its agreement of association; but moneys due the bank may
 5 be collected by the treasurer, or other person duly empowered by the
 6 directors, upon such days and in such other places as may be designated
 7 by vote of the directors and approved by the commissioner, and the bank
 8 may advertise its branch in such manner as the commissioner may
 9 prescribe.

Meetings, place
 of business.
 1877, 224,
 §§ 5, 7, 9.
 1881, 271,
 § 1, cl. 3.
 P. S. 117, § 7.
 1900, 249
 R. L. 114,
 §§ 8, 27.
 1906, 204,
 §§ 1, 3, 5.
 1912, 623,
 §§ 9, 45.
 1915, 38.

1919, 350, § 45.

CAPITAL.

1 SECTION 12. The capital to be accumulated shall be unlimited and
 2 shall be divided into shares of the ultimate value of two hundred dollars
 3 each; provided that the total value of paid-up shares outstanding at
 4 any one time shall not exceed ten per cent of the assets of the corporation.
 5 The shares may be issued in quarterly, half yearly or yearly series, in
 6 such amounts and at such times as the board of directors may determine.
 7 Shares of a prior series may be issued after a new series, subject to the
 8 approval of the board of directors. Paid-up shares may be issued, sub-
 9 ject to such approval, each share to have a value of two hundred dollars,

Issue of shares.
 1877, 224, § 5
 P. S. 117, § 5
 1887, 216, § 1
 R. L. 114, § 4
 1903, 147, § 1
 1912, 623,
 §§ 10, 45.
 1914, 643, § 2.
 1915, 77
 1918, 83, § 1.
 1920, 429
 1921, 242
 1924, 223, § 1
 2 Op. A. G. 484

which shall be paid by the purchaser when the shares are issued, together with interest from the last distribution of profits at a rate fixed by the directors, but not in excess of the rate distributed to unmatured shares. Paid-up shares shall participate in each distribution of profits in the same manner and to the same extent as matured shares, as provided in section forty, but at a rate not to exceed five per cent. No person shall hold more than forty unmatured shares, ten matured and ten paid-up shares in any one bank at the same time. Paid-up shares may be withdrawn or retired in the manner provided in sections sixteen and eighteen for matured shares.

Payment
of dues.
1877, 224,
§§ 5, 7, 9.
1881, 271,
§ 1, cl. 3.
P. S. 117, § 7.
R. L. 114, § 8.
1912, 623,
§§ 11, 45.
1914, 643, § 3.

SECTION 13. On or before the regular monthly meeting for the receipt of moneys, as fixed by the by-laws, every shareholder shall pay to the corporation, as a contribution to its capital, one dollar as dues upon each unmatured share held by him until it is withdrawn, forfeited, retired or matured. Payment of dues on each series shall begin with its issue.

Shares issued
to minors or
trustees.
1887, 216, § 3.
R. L. 114, § 5.
1912, 623,
§§ 12, 45.

SECTION 14. Shares may be issued in the name of a minor, and may, in the discretion of the directors, be withdrawn, as provided in section sixteen, by the minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. A minor under the age of eighteen shall not have the right to vote. If shares are held in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for such person. If no other notice of the existence and terms of the trust has been given in writing to the corporation, such shares may, upon the death of the trustee, be withdrawn by the person for whom such deposit was made or by his legal representatives.

Joint accounts.
1912, 623, § 13.

SECTION 15. Shares may be issued to, or in the name of, two persons or the survivor; and in the event of the death of either, the corporation shall be liable thereon only to the survivor, and while both are living payment to either shall discharge the liability to both. The joint ownership of shares shall not confer the right to vote to a greater extent than if they were held by an individual.

Number of
shares in joint
accounts
limited.
1924, 223, § 2.

SECTION 15A. The number of shares which may be issued by the corporation and held at the same time in any joint account provided for in section fifteen shall not exceed eighty unmatured shares, twenty matured shares and twenty paid-up shares. Either party to such a joint account may also hold shares in his individual name, but the total amount of such shares held by him, both jointly and individually, in such corporation at the same time shall not exceed eighty unmatured shares, twenty matured shares and twenty paid-up shares.

Withdrawal
of shares.
Temporary
loans by
bank.
1877, 224, § 10.
1881, 271,
§ 1, cl. 3.
P. S. 117, § 8.
1882, 251, § 1.
1887, 216,
§ 2.
R. L. 114, § 9.

SECTION 16. Upon giving thirty days' written notice to the treasurer of his intention so to do, a shareholder may withdraw unpledged shares, but the board of directors of such corporation may at any time require a member holding unpledged matured shares to give ninety days' written notice of his intention so to do. He shall be paid the balance remaining after deducting from the amount then standing to the credit of the shares all fines, any other charges legally incurred, and such part of the profits

8 credited thereto, as the by-laws may prescribe; but at no time shall
 9 more than one half of the funds in the treasury be applicable to the de-
 10 mands of withdrawing shareholders without the consent of the directors.
 11 All withdrawals shall be paid in the order in which notices thereof are
 12 given, and the treasurer may waive such notices, in his discretion, under
 13 such restrictions as may be imposed by the board of directors. On any
 14 occasion when there is an unusual demand by shareholders for real
 15 estate loans or for withdrawal from the funds of any such corporation, it
 16 may, by a vote of at least three fifths of its directors and with the con-
 17 sent of the commissioner, borrow from any national bank, savings bank,
 18 co-operative bank or trust company for a period of not more than six
 19 months. As security for such loans, it may pledge any portion of its
 20 securities or resources.

1903, 95, § 1.
 1912, 623,
 §§ 14, 45.
 1914, 643, § 4.
 1919, 350, § 15.
 1920, 110
 149 Mass. 167.
 Op. A. G.
 (1919) 87.

1 SECTION 17. The shares of a non-borrower who continues in arrears
 2 more than six months shall, at the option of the directors, if he fails to
 3 pay the arrears within thirty days after notice, be declared forfeited, and
 4 the withdrawal value of the shares at the time of forfeiture shall be as-
 5 sessed, and, after deducting all fines and other legal charges, the bal-
 6 ance remaining shall be transferred to an account to be designated the
 7 "Forfeited Share Account", to the credit of the defaulting shareholder,
 8 who shall be entitled, upon giving thirty days' notice, to receive out of
 9 the funds appropriated for the payment of withdrawals the balance so
 10 transferred without interest from the time of the transfer, all defaulting
 11 shareholders being entitled to receive their balance so transferred in the
 12 order in which their respective notices are given. All shares forfeited
 13 shall cease to participate in any profits accruing after the adjustment and
 14 valuation of shares last preceding said forfeiture.

Forfeiture
 of shares.
 1877, 224, § 13
 P. S. 117, § 15.
 1896, 285
 R. L. 114, § 18.
 1912, 623,
 §§ 15, 45.

1 SECTION 18. The directors may retire the unpledged shares of any
 2 series after four years from the date of their issue, by enforcing the with-
 3 drawal of the same in the following manner: the treasurer shall season-
 4 ably send to every shareholder in the series in which shares are to be
 5 retired a notice in the following form, and the shares shall be retired in
 6 accordance with its provisions:

Retirement
 of shares.
 1877, 224, § 10.
 1881, 271,
 § 1, cl. 3.
 P. S. 117, § 8.
 1882, 251, § 1.
 1887, 216, § 2.
 R. L. 114, § 9.
 1903, 95, § 1.
 1906, 204,
 §§ 1, 3, 5.
 1912, 623,
 §§ 16, 45.
 1914, 643, § 5
 1919, 350, § 43
 1931, 426,
 § 267.

The board of directors have voted to retire on the _____ day
 of _____ 19____ shares in series No. _____
 in which you are a shareholder.

Should you desire to have your shares, or any number of them, retired and to
 receive the full value thereof, you will please notify the treasurer in writing on
 or before _____ 19____.

If the shares voluntarily offered exceed the number desired, the shares to be
 retired will be determined by lot from those offered.

If the number so offered is less than the number desired, the number offered
 shall be retired and the balance determined by lot from the remaining shares
 in the series.

7 The directors may, under rules made by them, retire matured shares
 8 at any time and in such order and manner as they may provide.

9 The shareholders whose shares are retired shall be paid the full value
 10 thereof, less all fines and any other charges legally incurred. Shares
 11 pledged for share loans shall be treated as unpledged shares. Whenever
 12 shares are retired between the dates of adjustment of profits, interest
 13 shall be paid upon the full value of the shares from the date of the pre-

ceding adjustment to the date of retirement, at the rate at which profits were distributed at said preceding adjustment.

The commissioner, whenever he deems it necessary for the welfare of the shareholders in any such corporation, may order the retirement of matured shares, or of unmatured shares in any series after four years from the date of issue, and the board of directors shall, in the manner herebefore provided, comply with the order of the commissioner.

Maturity of shares.
1881, 271, § 1, cl. 3.
P. S. 117, § 9, 1882, 251, § 1.
1887, 216, § 5.
1898, 247, § 3.
R. L. 114, § 10.
1903, 95, § 2.
1912, 623, § 17, 45.
1914, 643, § 6.
1922, 208.
4 Op. A. G. 388.
Op. A. G. (1919) 39.

SECTION 19. Whenever shares of a given series reach the value of two hundred dollars, either by the payment of dues, the addition of a regular dividend or the addition of interest as hereinafter provided, they shall be deemed matured and all payments of dues thereon shall cease, and the owner of each unpledged share shall be paid out of the funds of the corporation the matured value thereof; or if he shall so elect, and at the option of the directors, there may be entered on his pass book any number of shares that have matured, not exceeding ten, and such shares shall continue as matured shares in said corporation, subject to be withdrawn or retired as provided in sections sixteen and eighteen, but at no time, except as provided in section twenty, shall more than one half of the funds in the treasury be applicable to payment of shares, either matured or unmatured or both, without the consent of the directors. For the purpose of determining the maturity of shares between the dates of adjustment of profits, there shall be added to the value of the shares interest for all full months from the date of the preceding adjustment to the date when the addition thereof will mature the shares. The interest to be added shall be at the same rate at which profits were distributed at the last preceding adjustment; but before the payment of matured shares all arrears and fines shall be deducted. In the event of a dissolution and winding up of such corporation, by process of law or otherwise, any member holding matured or paid-up shares of such corporation shall not thereby be entitled to any preference over any holder of unmatured shares, and all shares, whether matured, paid-up or unmatured, shall be held and treated as belonging to one general class of liability.

Payment of deferred withdrawals and matured shares.
1912, 623, § 18.
1914, 643, § 7.
1919, 350, § 45.

SECTION 20. Whenever a notice of withdrawal of either matured or unmatured shares has been filed, or shares have reached maturity, and either shall have remained unpaid for a period of six months from the date when payment thereof is due, all the receipts of the bank from any source whatever shall, after the payment of the legitimate expenses of conducting business, be applied to the payment of such withdrawals and matured shares; and the board of directors or the commissioner, at his discretion, may direct that such payments shall be made upon a ratable and proportionate basis. This section shall not apply to a bank which may become subject to sections twenty-two to thirty-six, inclusive, of chapter one hundred and sixty-seven.

LOANS AND INVESTMENTS.

Methods of loaning funds.
1877, 224, § 7, 12.
1881, 271, § 1, cl. 4.
P. S. 117, § 10, 11.
1882, 251, § 2.
1890, 78.
1896, 277.

SECTION 21. The funds accumulated, after due allowance for all necessary expenses and the payment of shares, shall, at each stated monthly meeting, be offered to applicants according to the premium bid by them for priority of right to a real estate or share loan, which shall consist of a percentage charged on the amount loaned in addition to interest, at a rate not less than five per cent per annum, payable in

7 monthly instalments. If the corporation so provides in its by-laws, the
 8 bid for loans shall, instead of a premium, be a rate of annual interest not
 9 less than five per cent per annum payable in monthly instalments upon
 10 the amount desired. Any such corporation may, when so authorized by
 11 its by-laws, dispense with the offering of its money for bids, and in lieu
 12 thereof may loan its money at such rate of interest not less than five per
 13 cent per annum or interest and premium as may be fixed, from time to
 14 time, by the board of directors, in which case the priority of right to a
 15 loan shall be decided by the priority of the approved applications there-
 16 for. Such bids or rates shall include the whole interest to be paid and
 17 may be at any rate not less than five per cent per annum.

R. L. 114,
 §§ 11, 12,
 1910, 288,
 1912, 623,
 §§ 19, 15,
 4 Op. A. G. 335.

1 SECTION 22. Any person whose application is accepted shall be en-
 2 titled, upon giving proper security, to receive a real estate loan of a sum
 3 not exceeding two hundred dollars for each unpledged share held by him,
 4 or a share loan within the limitations hereinafter provided.

Limitation
 of loans.
 1877, 224, § 7.
 P. S. 117, § 10.
 1890, 78.

1896, 277. 1910, 288.
 R. L. 114, § 11. 1912, 623, §§ 20, 45.

1 SECTION 23. The directors may invest any unsold or surplus funds
 2 in any of the securities named in the second clause of section fifty-four of
 3 chapter one hundred and sixty-eight, or may loan such funds upon first
 4 mortgages of real estate situated in this commonwealth, or upon the
 5 shares of the bank, upon the conditions imposed by section twenty-five,
 6 twenty-six or twenty-seven of this chapter; but in either case the loans
 7 shall be at the highest rate obtained on a real estate loan at the last
 8 preceding monthly sale of money or at the prevailing rate when fixed by
 9 the board of directors.

Loans and
 investments of
 unsold funds.
 1881, 271,
 § 1, cl. 4.
 P. S. 117, § 10.
 1890, 78,
 1896, 277.
 R. L. 114, § 11
 1910, 288,
 1912, 623,
 §§ 21, 45,
 259 Mass. 79.

1 SECTION 24. A borrowing shareholder shall, in addition to the dues
 2 on his shares, pay interest, and the premium, if any, monthly on his loan,
 3 at the determined rate, until his shares reach their matured value, or
 4 until the loan has been repaid. Interest may be computed from the
 5 date on which the money is advanced; and when the said matured value
 6 is reached, the shares shall be cancelled, the loan discharged, and the
 7 balance, if any, due upon the shares shall be paid to the member.

Interest
 payments.
 1881, 271,
 § 1, cl. 3.
 P. S. 117, § 12.
 R. L. 114, § 13.
 1912, 623,
 §§ 22, 45,
 1917, 52,
 4 Op. A. G. 388.

1 SECTION 25. No loan shall be made upon real estate unless a written
 2 application is made therefor, showing the date, name of applicant, amount
 3 of loan desired, description of property offered and other information
 4 deemed necessary. A written report thereon shall be made by at least
 5 two members of the security committee, signed by them, approving the
 6 security offered and certifying to the value of the property according to
 7 their best judgment. The application and report shall be filed and pre-
 8 served with all other papers relating to the loan.

Applications
 for loans on
 real estate.
 1912, 623, § 23.
 1931, 332, § 1.
 254 Mass. 82.

1 SECTION 26. For every loan made upon real estate a note shall be
 2 given, accompanied by a transfer and pledge of the requisite number of
 3 shares standing in the name of the borrower, and secured by a mortgage
 4 of real estate situated in the commonwealth, the title to which is in the
 5 name of the borrower and which is unencumbered by any mortgage or
 6 lien other than municipal liens or such as may be held by the corporation
 7 making the loan. No loan upon one parcel of real estate shall exceed
 8 eight thousand dollars and no loan shall exceed eighty per cent of the

Loans on
 real estate.
 Conversion into
 demand or
 time loan.
 1877, 244, § 8,
 1881, 271, § 1,
 cl. 1.
 P. S. 117, § 13.
 1889, 159, § 1.
 1891, 342, § 1.
 R. L. 114, § 14.
 1904, 292,
 1912, 623,
 §§ 24, 45.

1918, S3, § 2.
1931, 332, § 2.
259 Mass. 79.
2 Op. A. G. 462.

value of the mortgaged property, if improved real estate, nor more than 9
fifty per cent of such value, if vacant land, as certified by the security 10
committee. The shares so pledged shall be held by the corporation as 11
collateral security for the performance of the conditions of the note and 12
mortgage. The note and mortgage shall recite the number of shares 13
and the series to which the shares belong and the amount of money ad- 14
vanced thereon, and shall be conditioned upon the payment at or before 15
the stated meetings of the corporation of the monthly dues on said shares, 16
and the interest and premium, if any, upon the loan, with all fines on pay- 17
ments in arrears, until said shares reach their matured value or until said 18
loan is otherwise cancelled and discharged. If the borrower fails to offer 19
security satisfactory to the directors within the time prescribed by the 20
by-laws, his right to the loan shall be forfeited and he may be charged 21
with one month's interest and one month's premium, if any, at the 22
determined rate, and with such part of the expenses incurred as may be 23
determined by the board of directors; and the money appropriated for 24
such loan may subsequently be reloaned. 25

Whenever the full value of shares pledged to secure any loan on im- 26
proved real estate made and secured as aforesaid, after deducting all fines 27
and other charges legally incurred respecting said shares, shall equal or 28
exceed twenty-five per cent of the original amount of the note evidencing 29
such loan, but not earlier than four years after the date of said note, such 30
loan may, at the option of the owner of such shares and with the approval 31
of the directors, be converted into a demand or time loan bearing interest 32
at a determined rate payable monthly or quarterly, and evidenced by a 33
new note secured by a first mortgage in common form upon said real 34
estate; provided, that upon application of the shareholder for such con- 35
version, a report approving the security for such converted loan and a 36
certification of the value of the real estate securing the same shall be 37
made in the manner provided by section twenty-five for original co- 38
operative bank loans and that said loan when so converted will not 39
exceed sixty per cent of the value of the real estate securing the same, as 40
certified as aforesaid, and said shareholder shall subscribe for such 41
number of shares in the current series and, until the discharge of such 42
converted loan, shall hold such number of shares, as the treasurer may 43
determine. 44

In the event of the conversion as aforesaid of a co-operative bank mort- 45
gage into a common form mortgage, the full value of the shares pledged 46
to secure the co-operative bank mortgage, after deducting all fines and 47
any other charges legally incurred and such sum as will leave the unpaid 48
balance a multiple of fifty dollars, shall be credited to the owner thereof, 49
the co-operative bank mortgage discharged and the shares pledged to 50
secure the same surrendered and cancelled. 51

No loan or mortgage shall so be converted as to render the total 52
amount of such converted loans held by such corporation in excess of 53
fifteen per cent of the aggregate amount of loans secured by mortgage 54
of real estate held by such corporation. Every parcel of real estate 55
mortgaged to secure a converted loan shall be revalued at intervals of 56
not more than three years so long as it is so mortgaged, by at least two 57
members of the security committee of the corporation, who shall certify 58
in writing according to their best judgment the value of the real estate 59
so mortgaged. Such reports shall be filed and preserved with the records 60
of the corporation. If, at the time of any such revaluation, the amount 61
outstanding on such a converted loan is in excess of sixty per cent of the 62

63 value of the real estate mortgaged to secure the same, a reduction in the
 64 amount of such loan shall be required, as promptly as may be practicable,
 65 sufficient to bring its amount within sixty per cent of the said value;
 66 provided, that no such reduction shall be required prior to the maturity
 67 of the loan.

1 SECTION 27. Loans may be made upon unpledged shares to an
 2 amount not exceeding ninety per cent of their withdrawal value at the
 3 time of the loan, and for every such loan a note shall be given, accom-
 4 panied by a transfer and pledge of the shares borrowed upon. Loans
 5 may be made upon matured or paid-up shares to an amount not exceed-
 6 ing ninety per cent of their face value, as represented by the certificate.
 7 For every such loan a note shall be given accompanied by a transfer of the
 8 certificate as collateral for the loan.

Loans on
 Shares,
 1912, 623, § 25.
 1918, 101.
 1921, 211.
 4 Op. A. G. 338.

1 SECTION 28. If a borrower purchases money at a lower rate than
 2 that paid by him on an existing loan, secured by a mortgage, for the
 3 purpose by him declared of reducing the premium or rate of interest
 4 upon said loan, a new mortgage shall not be required, but a written
 5 agreement for the reduction of said premium or rate of interest, signed
 6 by the borrower and the treasurer of the bank, with the written approval
 7 of the president, shall be valid, and shall not impair or otherwise affect
 8 the existing mortgage; and thereafter the borrower shall make the
 9 monthly payments on the loan in accordance with the terms of said agree-
 10 ment, and the amount of money previously so purchased by him may be
 11 re-sold by the bank at the same meeting.

Agreement for
 reduction of
 interest or
 premium.
 1894, 342, § 2.
 R. L. 114, § 15.
 1912, 623,
 §§ 26, 45.
 4 Op. A. G. 335.

1 SECTION 29. A borrower or one of several joint borrowers or his heirs
 2 or assigns may repay a loan at any time, whereupon his account shall be
 3 charged with the full amount of the loan, all monthly instalments of
 4 interest, premium and fines in arrears and any other legal charges, and
 5 shall be given credit for the withdrawal value of his shares pledged and
 6 transferred as security; the pass book shall be surrendered to the cor-
 7 poration and the balance shall be received by the corporation in full sat-
 8 isfaction of said loan. All settlements made between stated meetings of
 9 the directors shall be made as of the date of the stated meeting next suc-
 10 ceeding such settlement. A borrower desiring to retain his shares and
 11 membership may repay his loan without claiming credit for his shares,
 12 whereupon the shares shall be transferred to him free from any claim on
 13 account of the repaid loan.

Repayment
 of loans.
 1877, 224, § 11.
 P. S. 117, § 14.
 1887, 216, § 4.
 R. L. 114,
 §§ 16, 17.
 1906, 280.
 1912, 623,
 §§ 27, 45.

14 Partial payments of loans shall be received in amounts of fifty dollars
 15 or a multiple thereof, or in such less amount as may be fixed by the by-
 16 laws. For each two hundred dollars so repaid upon a real estate loan
 17 one share of stock shall be released from pledge.

18 With the approval of the board of directors, any borrower upon real
 19 estate security, unless the property is encumbered by a mortgage other
 20 than that held by the bank and dated prior to November first, nineteen
 21 hundred and twelve, may have the full value of the shares upon which
 22 the loan is predicated, less such sum as will leave the amount of the loan
 23 a multiple of fifty dollars, applied as a credit to the amount of the loan
 24 as hereinafter provided, whereupon such shares shall become cancelled,
 25 and new shares in the current series shall be issued to the borrower in the
 26 proportion of one share to each two hundred dollars of the loan remaining
 27 unpaid after the application of the value as aforesaid. The new shares

issued shall be transferred and pledged to the bank as security for the 28
 balance of the loan, and the fact thereof shall be endorsed upon or at- 29
 tached to the note in the following form: 30

, 19 .

The value of the shares herein pledged, less such sum as will leave the amount
 of the loan a multiple of fifty dollars, amounting to \$ has this day been
 applied as a credit upon this note, leaving a balance due and unpaid of \$
 to secure which shares of series have been issued, and
 are hereby transferred and pledged. For value received, I promise to pay to said
 corporation or to its order dollars at or before its monthly meeting
 on the of each month hereafter, being the amount of the monthly
 dues on the shares hereby substituted, and of the monthly interest upon said bal-
 ance of \$, together with all fines chargeable by the by-laws of said cor-
 poration upon arrears of such payments until said substituted shares shall reach
 maturity, or otherwise sooner to pay to said corporation or its order the said bal-
 ance of \$, with interest and fines as aforesaid.

Witness,

Treasurer.

Neither the note evidencing the loan nor the mortgage securing the 31
 same shall be prejudiced by the application of the value and the change 32
 of shares, notwithstanding the fact that a provision for such application 33
 and change was not originally made in the note or mortgage, and both 34
 note and mortgage shall continue to be held by the bank as good and 35
 sufficient security for the balance remaining unpaid. After the applica- 36
 tion of the value as a credit, the amount of the loan shall forthwith be 37
 reduced to an equal extent, and the borrower shall thereafter be liable 38
 for only the reduced amount and any arrearages or penalties occasioned 39
 by his own default. 40

Real estate
 acquired.
 Common form
 mortgages.
 1877, 224, § 17.
 P. S. 117, § 19.
 1898, 247, § 2.
 1900, 214.
 R. L. 114, § 26.
 1912, 623.
 §§ 28, 45.
 1919, 350, § 45.
 1 Op. A. G. 401.

SECTION 30. Any such corporation may purchase at public or private 1
 sale real estate upon which it may have a mortgage, judgment, lien or 2
 other encumbrance, or in which it may have an interest, and may sell, 3
 convey or lease the real estate acquired by it and, on the sale thereof, 4
 may take a mortgage thereon in common form to secure the payment of 5
 the purchase price or of a part thereof. All real estate shall be sold within 6
 five years after the acquisition of the title thereto; but the commissioner 7
 may, on petition of the security committee of the corporation and for 8
 cause, grant additional time for the sale of the same. 9

May hold or
 improve real
 estate used as
 place of
 business.
 1906, 204,
 §§ 1, 3, 5.
 1913, 264.
 1919, 350, § 45.
 1921, 158.
 1922, 212.
 1923, 21.

SECTION 31. Any such corporation may, with the approval of the 1
 commissioner, invest a sum not exceeding its surplus and guaranty fund 2
 accounts in the purchase of a suitable site and the erection or preparation 3
 of a suitable building for the convenient transaction of its business, but 4
 in no case exceeding five per cent of its dues capital or one hundred thou- 5
 sand dollars. Any such corporation may, with the approval of the com- 6
 missioner, expend a sum not exceeding one per cent of its dues capital for 7
 alterations in any building leased by it for the transaction of its business, 8
 but in no case exceeding its surplus and guaranty fund accounts. 9

Recovery
 of loan
 1877, 224,
 §§ 8, 13.
 P. S. 117, § 16.
 1882, 251, § 1.
 1885, 121, § 4.

SECTION 32. If a borrower is in arrears for dues, interest, premium or 1
 fines for more than four months, or commits any other breach of the 2
 conditions of a mortgage, the directors may, after twenty-one days' 3
 notice, mailed to the last known address of the borrower, declare the 4

5 shares forfeited if the arrears then remain unpaid or such breach con-
 6 tinues. The account of such borrower shall then be debited with the
 7 arrears of interest, premium and fines to the date of forfeiture, and the
 8 shares shall be credited upon the loan at their withdrawal value. The
 9 balance of the account shall immediately become due and payable, and
 10 may, and after six months shall, be enforced against the security, and be
 11 recovered, together with interest thereon, as all debts are recovered at
 12 law. If the shares of a borrower are in arrears at the maturity of the
 13 series, his account shall be charged with the amount of the loan and all
 14 arrears at the date of maturity, and shall be credited with the value of
 15 the shares; the balance of the account shall immediately become due
 16 and payable and may, and after six months shall, be enforced against the
 17 security, and be recovered, together with interest thereon, as all debts
 18 are recovered at law.

R. L. 114, § 19.
 1912, 623.
 §§ 29, 45.
 2 Op. A. G. 286.

1 SECTION 33. For the accommodation of any owner of shares pledged
 2 for a real estate loan who is actually engaged in the military or naval
 3 service of the United States, or who is the wife or a dependent member
 4 of the family of a person so engaged, or for the accommodation of any
 5 owner of shares so pledged who is otherwise temporarily unable to make
 6 payments to such a corporation on account of his loan because of unem-
 7 ployment or other emergency, the directors may cause to be endorsed
 8 on the mortgage note held by the corporation the full value of the shares
 9 pledged to secure the same, less such sum as will leave the amount of the
 10 balance due thereon a multiple of fifty dollars, and thereupon such shares
 11 shall be cancelled and further payments and fines thereon waived, and the
 12 balance due as aforesaid shall be payable as provided in section thirty-
 13 four, with interest payable monthly at the original rate and subject to
 14 such fine as may be prescribed by the by-laws of the corporation for
 15 default by shareholders in payment of interest and to foreclosure or other
 16 remedy provided by law, in case of default; provided, that the person
 17 seeking such accommodation, or any person in his behalf, shall sign a
 18 written request therefor, stating his reasons and agreeing in consideration
 19 thereof to abide fully by the terms of this and the following section and
 20 also all requirements of the directors, who shall be the sole judges of the
 21 necessity of the accommodation and the time when such accommodation
 22 shall be terminated, and provided, further, that no suspension of payments
 23 as aforesaid for any cause other than that the accommodated party is
 24 engaged in the military or naval service of the United States or is the wife
 25 or a dependent member of the family of a person so engaged shall extend
 26 for a period longer than two years.

Suspension of
 payments
 authorized for
 borrowers en-
 gaged in war
 service or tem-
 porarily unable
 to make
 payments.
 1918, 47, § 1.
 1931, 365, § 1.

27 Neither the note evidencing the loan nor the mortgage securing the
 28 same shall be prejudiced by the application of the value of the shares
 29 provided for in this section or the pledging of new shares provided for in
 30 section thirty-four, notwithstanding the fact that a provision for such
 31 application and pledging was not originally made in the note or mortgage,
 32 and both note and mortgage shall continue to be held by the corporation
 33 as good and sufficient security for the balance remaining unpaid.

1 SECTION 34. The person thus accommodated, or his successors in
 2 title, may at any time, and shall upon the request of the directors at any
 3 time after the expiration of said military or naval service or after the
 4 period of accommodation granted under the preceding section for tem-
 5 porary inability to make the required payments has been terminated as

Resumption
 of such
 payments.
 1918, 47, § 2.
 1931, 365, § 2.

therein provided, or after the vesting in either case of the mortgaged estate in a person other than the person accommodated, subscribe to and pledge as security for the balance due on the loan one new share in the current series issued by the corporation for each two hundred dollars or fraction thereof of said balance. Failure to subscribe to and pledge such shares, when so requested, or to make payments thereon in accordance with law or the by-laws of the corporation, shall render said balance immediately due and payable, and payment thereof may be enforced against the security by foreclosure proceedings or by any other remedy provided by law for the collection of debts. The fact of the pledging of new shares shall be endorsed upon or attached to the note in the following form:

19

The value of the shares formerly pledged herein, less such sum as left the amount of the loan a multiple of fifty dollars, amounting to \$ _____ having been applied on the _____ day of _____ as a credit upon this note, leaving a balance due and unpaid of \$ _____ to secure which shares of series _____ have been issued, and are hereby transferred and pledged. For value received, I promise to pay to said corporation or to its order _____ dollars at or before its monthly meeting on the _____ day of each month hereafter, being the amount of the monthly dues on the shares hereby substituted, and of the monthly interest upon said balance of \$ _____, together with all fines chargeable by the by-laws of said corporation upon arrears of such payments until said substituted shares shall reach maturity, or otherwise sooner to pay to said corporation or its order the said balance of \$ _____, with interest and fines as aforesaid.

Witness,

(Signature)

Approved

Treasurer.

SECTION 35. [REPEALED, 1931, 365, § 3.]

1

Assignment
of loans to
insurance
companies.
1907, 351.
1912, 623, § 30.

SECTION 36. Any such corporation may insert in its form of real estate mortgage a clause providing that in case of any loss by fire on the mortgaged property in respect to which the fire insurance companies shall deny liability as to the insured the bank may at its option assign the debt and note for which the mortgage was given, and also the mortgage, to the insurance companies, upon payment to the bank by such companies of the amount due upon the mortgage loan at the time of the fire, together with the unpaid interest, premium and fines, if any, accrued thereon at the date of the assignment less the value of the forfeited shares as hereinafter provided, whereupon the note and mortgage shall forthwith become a note and mortgage for such total balance due, payable upon demand with interest semi-annually at the same rate, including premium, if any, as therein stated, the first payment of interest to be due six months after the date of the assignment, and any shares of the bank pledged as security for the note and mortgage loan shall be forfeited by the bank immediately before the execution and delivery to the insurance companies of such assignment, and the withdrawal value of shares so forfeited shall, at the time of the assignment, be credited as a part payment on said mortgage loan, the balance thereof being the balance of the loan due at the time of the assignment to the insurance companies as aforesaid. Any mortgage note taken under this section shall contain proper reference thereto.

22

GENERAL PROVISIONS.

1 SECTION 37. A shareholder making default in the payment of his
 2 monthly dues, interest and premiums, shall be charged such a fine, not
 3 exceeding two per cent a month on each dollar in arrears, as may be
 4 fixed by the by-laws. No fines shall be charged after the expiration of
 5 six months from the first lapse in any such payment, nor upon a fine in
 6 arrears.

Fines.
 1877, 224, § 13.
 P. S. 117, § 15
 1893, 172
 1896, 285
 R. L. 114,
 §§ 18, 20
 1912, 623,
 §§ 31, 45.

7 No shareholder whose shares are withdrawn, forfeited or retired, shall
 8 be charged with fines upon such shares in excess of the profits distributed
 9 thereto, and if no profits shall have been distributed to such shares no
 10 fines shall be charged thereon. This section shall not prevent a borrower
 11 from being charged with fines according to law upon interest and pre-
 12 miums in arrears.

1 SECTION 38. No such corporation, and no person acting in its behalf,
 2 shall ask for, take or receive a fee, brokerage, commission, gift or other
 3 consideration for or on account of a loan made by or on behalf of such
 4 corporation, other than appears on the face of the note or contract by
 5 which the loan purports to be made; but this section shall not apply to
 6 a reasonable charge for services in the examination of property and
 7 titles, and for the preparation and recording of conveyances to the cor-
 8 poration as security for its loans. Whoever violates any provision of
 9 this section shall be punished by a fine of not less than one hundred nor
 10 more than one thousand dollars.

Bank or
 officers not to
 take certain
 fees, etc
 Penalty.
 1897, 161
 R. L. 114, § 21
 1912, 623,
 §§ 32, 45.

1 SECTION 39. Any such corporation may charge a fee for the transfer
 2 of shares not exceeding twenty-five cents. The amount of such fee shall
 3 be fixed by the by-laws. Shares, both unmaturred and maturred, may be
 4 transferred only on the books of the corporation, in such manner as its
 5 by-laws may provide.

Transfer of
 shares. Fee
 1912, 623, § 33
 1914, 643, § 8.

1 SECTION 40. The board of directors shall distribute the profits and
 2 losses annually, semi-annually or quarterly to the shares then existing,
 3 and whenever a new series of shares is to be issued. Profits and losses
 4 shall be distributed to the various shares existing at the time of such dis-
 5 tribution, in proportion to their value at that time, and shall be computed
 6 upon the basis of a single share fully paid to the date of distribution.
 7 Losses shall be apportioned immediately after their occurrence. At each
 8 distribution of profits on unmaturred shares there shall also be distributed
 9 profits on outstanding maturred shares at a rate per cent fixed by the
 10 directors but not in excess of the rate distributed to unmaturred shares.
 11 Profits distributed on outstanding maturred shares shall be credited to
 12 the owner thereof and shall be payable on demand at any time thereafter,
 13 out of the funds of such corporation, and upon such profits not with-
 14 drawn no interest or profits shall accrue or be distributed. The board
 15 of directors shall cause to be recorded in the minutes of its meetings the
 16 distribution of all profits and losses.

Distribution
 of earnings
 1877, 224, § 15.
 1881, 271, § 1,
 cl 2
 P. S. 117, § 18
 R. L. 114, § 23
 1912, 623,
 §§ 34, 45.
 1914, 643, § 9.

1 SECTION 40A. Every such corporation shall establish and at all times
 2 maintain, as a reserve to meet withdrawals of shares and applications
 3 for share loans, an amount equal to not less than three per cent of its
 4 total resources. Such reserve shall consist of any or all of the follow-

Reserve.
 1931, 146,
 §§ 1, 2.

ing:— (a) cash on hand; (b) balance payable on demand due from any trust company incorporated in this commonwealth or national banking association having its principal place of business within this commonwealth; (c) bonds of the United States; (d) bonds and notes of this commonwealth. If at any time subsequent to October first, nineteen hundred and thirty-two, the reserve of any such corporation falls below the amount herein required, such corporation shall not make any real estate loans, except additional loans and re-loans upon property already mortgaged to such corporation, until such reserve shall have been fully restored.

Guaranty fund.
1885, 121, § 2.
R. L. 114, § 24
1903, 203.
1912, 623.
§§ 35, 45.
1921, 157, § 1.

SECTION 41. At each distribution of profits the board of directors shall reserve as a guaranty fund not less than one nor more than five per cent of the net profits accrued since the last preceding adjustment, until such fund amounts to five per cent of its total liabilities, and the fund shall thereafter be maintained and held, and shall at all times be available to meet losses in the business of the corporation from depreciation of its securities or otherwise. The board of directors may at any time, by vote duly recorded, transfer to the guaranty fund such part of the surplus account as they deem wise.

Surplus account.
1900, 273.
R. L. 114, § 25.
1912, 623.
§§ 36, 45.
1921, 157, § 2.

SECTION 42. At each distribution of profits not more than one per cent of the net profits accrued since the last preceding adjustment shall be credited to the surplus account unless there shall have been reserved and credited to the guaranty fund the maximum per cent of the net profits under the preceding section. Any such corporation may hold in its surplus account such sum as the board of directors may, from time to time, deem wise; but whenever the guaranty fund and surplus account together exceed five and one fourth per cent of its total liabilities, the board of directors shall declare an extra dividend at such rate as may be necessary to apportion to the shareholders the accumulation in excess of five per cent of its total liabilities.

General accounts.
1877, 224, § 14.
P. S. 117, § 17.
R. L. 114, § 22.
1912, 623.
§§ 37, 45.
173 Mass. 54.

SECTION 43. The general accounts of every such corporation shall be kept by double entry and the treasurer shall, at least monthly, make a trial balance of such accounts, to be recorded in a book provided for that purpose. All money received from each shareholder shall be received by persons designated by the directors, and entered in a pass book provided for the use of, and to be held by, the shareholder. The pass book shall be plainly marked with the name and address of the shareholder, the number of shares held by him and the number or designation and date of issue of each series or issue to which said shares, respectively, belong. All payments from the funds of every such corporation shall be made by the treasurer, and the record of such payments shall show the date, name of payee, amount, purpose for which made, and the signature of the payee acknowledging receipt of the funds.

Annual reports.
1889, 159, § 2.
1893, 171.
R. L. 114, § 30.
1906, 204.
§§ 1, 3, 5.
1910, 364.
1912, 623.
§§ 38, 45.
1919, 350, § 45.
1923, 44.

SECTION 44. Every such corporation shall annually, within thirty days after its regular meeting day for the receipt of moneys in October, make to the commissioner, in such form as he prescribes, a report, signed and sworn to by the treasurer of the corporation, showing accurately the condition thereof at close of business on that day. The president and three or more directors shall certify and make oath that the report is correct, according to their best knowledge and belief. If a report is

8 defective or appears to be erroneous, the commissioner shall notify the
 9 bank to amend the same within fifteen days. A bank neglecting to make
 10 the report required by this section on or before the time named therein,
 11 or to amend the same within fifteen days, if notified by the commissioner
 12 so to do, shall forfeit five dollars for each day during which such neglect
 13 continues.

1 SECTION 45. If two or more such banks doing business in the same
 2 town desire to consolidate, a special meeting of the shareholders of each
 3 of said banks shall be called, and notice of such special meeting and of
 4 the business to come before it shall be sent by the clerk of each bank to
 5 each member thereof by mail, postage prepaid, at least seven days before
 6 the date of the meeting. Notice of the meeting shall also be advertised
 7 three times in one or more newspapers published in that town, and if there
 8 be none such, then in a newspaper published in the county where the town
 9 is located, the last publication to be at least one day before the meeting;
 10 and if two thirds or more of the shareholders of each of the banks intend-
 11 ing to consolidate signify in writing their approval of the consolidation,
 12 and if two thirds or more of the shareholders of each of said banks, pres-
 13 ent and voting at such special meeting, vote in favor of the consolidation,
 14 then the board of directors of each bank shall forthwith petition the
 15 commissioner for authority to consolidate in accordance with the fol-
 16 lowing provisions:

Consolidation
 of banks.
 1901, 392.
 1906, 204.
 1911, 4, 5.
 1912, 623, § 39.
 1919, 359, § 45.

17 (a) The said petition shall be in writing, signed for and in behalf of the
 18 board of directors of each bank by the president and treasurer thereof,
 19 and shall have annexed thereto an affidavit signed and sworn to by the
 20 clerk stating that the notices of the special meeting were duly given and
 21 that the preceding requirements of this section were complied with, and
 22 the affidavit shall be prima facie evidence that such requirements were
 23 complied with. There shall also be annexed to the petition a duly at-
 24 tested copy of the records of the meeting of the shareholders of each
 25 bank authorizing such action, signed by the clerk, and a duly attested
 26 copy of the balance sheet of each bank at the close of business on the
 27 last day of the month previous to the date of the petition, signed by the
 28 treasurer.

29 (b) The commissioner shall at once select a competent auditor, who
 30 shall make a thorough audit of the books and assets of each bank, which
 31 shall include a verification of the pass books of the shareholders with
 32 the ledgers of each bank. The auditor shall submit a written report of
 33 his findings to the commissioner; and the expenses of such audit, pro-
 34 vided that the consolidation is not finally approved by the commissioner,
 35 shall be borne by the petitioning banks in proportion to their dues cap-
 36 ital, but if the consolidation is approved and carried out the continuing
 37 bank shall bear the expense of the audit, legal services and other charges,
 38 authorized and incident to the proposed consolidation.

39 (c) If the said reports disclose to the commissioner a condition favor-
 40 able to consolidation, the order for consolidation may be issued with in-
 41 structions in detail as follows:

42 (1) The assets of each bank shall be turned over to the continuing
 43 bank as soon as the order for consolidation is issued by the commissioner,
 44 and the continuing bank shall thereupon assume all liabilities accrued
 45 on account of the outstanding shares issued by the banks the assets of
 46 which are so taken over, and shall be subject to all the liabilities of such
 47 banks except as otherwise specifically provided herein, and thereafter

all business shall be done under the title of the continuing bank except 48
as otherwise provided in subdivision (f). 49

(2) No more shares shall be sold by the banks taken over, but during 50
the life of the series of shares already issued by such banks, and out- 51
standing, separate account shall be kept, and the monthly payments 52
shall be due and payable as if said banks had not been taken over. 53

(d) All liabilities of the consolidated banks for current expenses shall 54
be adjusted and paid by each bank before the consolidation is finally ap- 55
proved by the commissioner, and a certificate to that effect from each 56
bank, signed and sworn to by its president, treasurer and a majority of 57
its directors, shall be filed with the commissioner and shall be prima facie 58
evidence that the said liabilities have been discharged in full. 59

(e) At the time of, and upon final approval of, the consolidation, all 60
the offices of the banks whose assets and business are taken over by the 61
continuing bank shall forthwith become vacant and be abolished, and 62
the continuing bank, its officers, by-laws and rules for doing business, 63
shall govern and control in all matters relating to the banks consolidated. 64

(f) A new name or the name of any one of the petitioning banks may be 65
adopted as the name of the continuing bank at the special meeting called 66
as herein provided; and if such proposed name is set forth in the petition 67
to the commissioner and is approved by him, it shall become the name of 68
the continuing bank, upon the final approval of the consolidation, without 69
further action under the laws of the commonwealth as to change or adop- 70
tion of a new name on the part of the continuing bank. 71

Powers and
duties of bank
commissioner
1879, 129.
P. S. 117, § 20
R. L. 114, § 28
1906, 204.
§§ 1, 3, 5,
1912, 623.
§§ 40, 45,
1919, 350, § 45
1 Op A G 401.

SECTION 46. The commissioner shall have the same duties and powers 1
in respect to every such corporation which he has in respect to savings 2
banks. In the examination of every co-operative bank inquiry shall be 3
made as to the nature and resources of the corporation in general, the 4
methods of conducting and managing its affairs, the actions of its officers, 5
the investment of its funds, and whether the administration of its affairs 6
is in compliance with its by-laws and with statutory requirements. At 7
each visitation, a thorough examination and audit shall be made of the 8
books, securities, cash, assets, liabilities, income and expenditures, includ- 9
ing a trial balance of the shareholders' ledgers, for the period elapsed since 10
the preceding examination. The person in charge of the examination 11
shall render to the commissioner a report of his findings, in such form as 12
the commissioner prescribes, and a copy thereof shall be rendered to the 13
board of directors within ten days after the original has been submitted 14
to the commissioner, together with a notice of the amount of the fee to 15
be paid as provided in the following section, which shall be due and pay- 16
able within thirty days after the date of the notice. Upon the failure of 17
any such corporation to pay the required fee within the time prescribed 18
herein, the commissioner shall report the facts to the attorney general, 19
who shall immediately bring an action to recover the fee. The com- 20
missioner shall annually make a report to the general court of such facts 21
and statement relative to such corporations, and in such form, as he 22
considers that the public interest requires. The officers of every such 23
corporation shall answer truly all inquiries made, and shall make all 24
returns required by the commissioner. 25

Fees for
examination
and audit
Assessment of
portion of

SECTION 47. To defray the expense of the examination and audit 1
provided for by the preceding section, every such corporation so exam- 2
ined and audited shall, upon notice from the commissioner, pay to him 3

4 as a fee therefor the actual cost of such examination and audit, not in-
 5 cluding any portion of the overhead expense of the division of banks and
 6 loan agencies. Immediately after the close of the fiscal year of the com-
 7 monwealth, that part of the overhead expense of the division which shall
 8 be determined by the commissioner to be attributable to the supervision
 9 of such corporations shall be assessed upon and paid by each such cor-
 10 poration in the proportion that its total assets bear to the aggregate
 11 total assets of all co-operative banks as shown by their annual reports at
 12 the close of business on their respective regular meeting days for the
 13 receipt of moneys in October; provided, that an assessment upon any
 14 such corporation, together with the fee payable as aforesaid for the
 15 actual cost of its examination and audit shall not exceed twenty cents
 16 per one thousand dollars of assets as shown by its statement of condition
 17 on the date of such examination and audit. For the purpose of this
 18 section traveling and hotel expense shall be included in the overhead
 19 expense of the aforesaid division.

overhead
 expense of
 division
 1912, 623, § 41.
 1919, 350, § 45
 1922, 256
 1928, 292

1 SECTION 48. No person, and no association or corporation shall
 2 transact the business of accumulating the savings of its members and
 3 loaning to them such accumulations in the manner of a co-operative
 4 bank, unless incorporated in this commonwealth for such purpose.
 5 Whoever violates any provision of this section shall be punished by a
 6 fine of not more than one thousand dollars, and the supreme judicial or
 7 superior court shall have jurisdiction in equity to enforce this section.

Co-operative
 banking to be
 done only under
 this chapter.
 Penalty.
 1889, 452,
 §§ 1, 3.
 1890, 310,
 §§ 1, 4.
 1896, 286,
 R. L. 114, § 1.
 1906, 204,
 §§ 1, 3, 5.

1912, 623, §§ 42, 45.
 1919, 350, § 45

1931, 426, § 268.
 183 Mass. 513.

3 Op. A. G. 372.

1 SECTION 49. This chapter shall not prevent a foreign co-operative
 2 bank from loaning money upon mortgages of real estate located within
 3 this commonwealth.

Loans by
 foreign co-
 operative
 banks on real
 estate mort-
 gages per-
 mitted.

1889, 452, § 1.
 1890, 310, § 2.
 1891, 403.

R. L. 114, § 29.
 1906, 204, §§ 1, 3, 5.
 1912, 623, §§ 43, 45.

1919, 350, § 45.
 1931, 426, § 269.

CHAPTER 171

CREDIT UNIONS.

<p>SECT.</p> <p>1. Name. Definitions.</p> <p>2. Incorporation. Resumption of business regulated.</p> <p>3. Law applicable. Fees for examination.</p> <p>4. Use of words "credit union" restricted. Penalty.</p> <p>5. Fraternal organizations, etc., as limited members. Restrictions as to loans, etc.</p> <p>6. Deposits, loans, etc.</p> <p>7. By-laws.</p> <p>8. Amendments to by-laws.</p> <p>9. Approval by commissioner.</p> <p>10. Capital. Limitations as to shares and deposits.</p> <p>11. Shares and deposits of minors.</p> <p>12. Fiscal year.</p> <p>13. Annual and special meetings. Voting powers and restrictions. Maximum loans. Dividends.</p>	<p>SECT.</p> <p>14. Directors.</p> <p>15. Officers and committees.</p> <p>16. Powers and duties of directors.</p> <p>17. Powers and duties of auditing committee.</p> <p>18. Directors not to receive compensation. Loans to directors limited. Compensation of officers.</p> <p>19. Guaranty fund.</p> <p>20. Reserve fund.</p> <p>21. Investment of funds.</p> <p>22. Powers and duties of credit committee.</p> <p>23. Applications for loans. Form, contents.</p> <p>24. Loans regulated.</p> <p>25. Dividends.</p> <p>26. Lost pass books.</p> <p>27. Annual report to commissioner. Penalty.</p> <p>28. Expulsion of members.</p> <p>29. Liquidation. Disposition of unclaimed funds and of books and papers.</p>
--	---

Name. Definitions. 1909, 419, § 1. 1915, 268, §§ 1, 26. 1919, 350, §§ 45, 46. 1926, 273, § 1.

SECTION 1. A corporation organized under this chapter shall include in its corporate name the words "credit union". Other distinguishing words may be used. The words "credit union" shall mean a corporation organized under this chapter or corresponding provisions of earlier laws, and, unless the context otherwise requires, the word "commissioner" shall mean the commissioner of banks.

Incorporation. Resumption of business regulated. 1909, 419, § 3. 1915, 268, §§ 2, 26. 1922, 147, § 1. 1923, 38. 1926, 273, § 1. Op. A. G. (1918) 99. Op. A. G. (1920) 250.

SECTION 2. Twenty or more persons, resident in this commonwealth, who have associated themselves by a written agreement with the intention of forming a corporation for the purpose of accumulating and investing the savings of its members and making loans to them for provident purposes, may, with the consent of the board of bank incorporation, become such a corporation upon complying with the following section. Said board may grant such consent when satisfied that the proposed field of operation is favorable to the success of such corporation, and that the standing of the proposed incorporators is such as to give assurance that its affairs will be administered in accordance with the spirit of this chapter. A credit union shall organize and commence business within six months from the date of its incorporation, otherwise its charter shall become void; and no credit union shall resume business under a charter which was outstanding and inactive on July first, nineteen hundred and twenty-three, except with the written approval of said board.

Law applicable. Fees for examination. 1909, 419, § 5. 1915, 268, §§ 3, 26. 1926, 273, § 1. 1930, 180. 1931, 394, § 177. 3 Op. A. G. 411.

SECTION 3. Credit unions shall be organized under the provisions, so far as applicable, of sections seven to eleven, inclusive, of chapter one hundred and seventy-two, except that the fee for filing the articles of organization, including the issuing by the state secretary of the certificate of incorporation, shall be five dollars. So much of chapter one hundred

6 and sixty-seven as relates to supervision by the commissioner shall apply
 7 to credit unions so far as applicable.
 8 To defray in part the expenses of each regular examination provided for
 9 by section two of chapter one hundred and sixty-seven, every credit union
 10 so examined, shall, upon notice from the commissioner, pay a fee which
 11 shall be due and payable within thirty days after the date of the notice,
 12 of fifteen cents for each one thousand dollars of assets as shown by the
 13 statement of condition of the credit union at the date of the examination,
 14 which fee shall in no event be less than five dollars; provided, that no fee
 15 shall be collected from a credit union hereunder until it has been in opera-
 16 tion for a period of three years unless prior to the expiration of said period
 17 its assets shall amount to twenty-five thousand dollars or more.

1 SECTION 4. No person, partnership or association, and no corporation,
 2 except one incorporated under this chapter or corresponding provisions of
 3 earlier laws, shall hereafter receive payments on shares or deposits from
 4 its members and loan such payments on shares and deposits in the man-
 5 ner of a credit union or transact business under any name or title contain-
 6 ing the words "credit union". Whoever violates any provision of this
 7 section shall be punished by a fine of not more than one thousand dollars,
 8 and the supreme judicial and superior courts shall have jurisdiction in
 9 equity, by any appropriate process to enforce the provisions of this
 10 section.

Use of words
 "credit union"
 restricted.
 Penalty
 1909, 419, § 4.
 1915, 268,
 §§ 4, 26
 1926, 273, § 1.

1 SECTION 5. Any fraternal organization, voluntary association, part-
 2 nership or corporation, having a usual place of business within the com-
 3 monwealth and composed principally of individual members or stock-
 4 holders who are themselves eligible to membership in a credit union, may
 5 become a member of a credit union, but, except with the consent of the
 6 commissioner, a credit union shall make no loan to such a member in
 7 excess of the total of its shares and deposits therein; nor shall a credit
 8 union receive from any such member money in payment for shares or on
 9 deposit to such an amount that the total of such payments by all members
 10 of the class described in this section shall exceed at any time twenty-five
 11 per cent of the assets of the credit union.

Fraternal
 organizations,
 etc., as limited
 members.
 Restrictions
 as to loans, etc.
 1923, 294, § 1
 [G. L. 171,
 § 4A].
 1926, 273, § 1.

1 SECTION 6. Subject to section five, a credit union may receive savings
 2 of its members in payment for shares or on deposit or may lend to its
 3 members at reasonable rates or invest, as hereinafter provided, the funds
 4 so accumulated. It may undertake such other activities relating to the
 5 purpose of the association as its by-laws may authorize.

1923, 294, § 2.

1926, 273, § 1.

Deposits,
 loans, etc.
 1909, 419, § 2
 1915, 268,
 § 5, 26.
 G. L. (ed. of
 1920) 171, § 5.

1 SECTION 7. The shareholders of every such corporation shall make
 2 and adopt by-laws, consistent with law, for the government of its affairs.
 3 The by-laws shall provide for and determine —
 4 (a) The name of the corporation.
 5 (b) The purposes for which it is formed.
 6 (c) The condition of residence, occupation or association which qualify
 7 persons for membership.
 8 (d) The conditions on which shares may be paid in, transferred and
 9 withdrawn.
 10 (e) The conditions on which deposits may be received and withdrawn.

By-laws.
 1909, 419, § 6.
 1915, 268,
 § 6, 26.
 G. L. (ed. of
 1920) 171, § 6.
 1923, 294,
 § 5, 1.
 1926, 273,
 § 1.
 Op. A. G.
 (1918) 99.

(f) The method of receipting for money paid on account of shares or deposits or repaid on loans.	11
(g) The number of directors and the number of members of the credit committee.	12
(h) The time of holding regular meetings of the board of directors, the credit committee and the auditing committee.	13
(i) The duties of the several officers.	14
(j) The entrance fees, if any, to be charged.	15
(k) The fines, if any, to be charged for failure to meet obligations to the corporation punctually.	16
(l) The date of the annual meeting and the manner in which members shall be notified of all meetings.	17
(m) The number of members who shall constitute a quorum at all meetings.	18
(n) Such other regulations as may be deemed to be necessary.	19

Amendments
to by-laws.
1926, 273, § 1.

SECTION 8. Subject to section nine, the by-laws may be amended at any annual meeting or at a special meeting, called for the purpose, by a three fourths vote of all the members present and entitled to vote; provided, that a copy of the proposed amendment, together with a written notice of the meeting, shall have been sent to each member or handed to him in person at least seven days prior to said meeting.	1
	2
	3
	4
	5
	6

Approval by
commissioner.
1909, 419, § 7.
1915, 268,
§§ 7, 26.
G. L. (ed. of
1920) 171, § 7.

SECTION 9. No credit union shall receive any deposits or payments on account of shares, or make any loans, until its by-laws have been approved in writing by the commissioner, nor shall any amendments to its by-laws become operative until they have been so approved.	1
	2
	3
	4

1926, 273, § 1.

Capital.
Limitations
as to shares
and deposits.
1909, 419, § 13.
1915, 268,
§§ 9, 26.
G. L. (ed. of
1920) 171, § 8.
1926, 273, § 1.

SECTION 10. The capital of a credit union shall be unlimited in amount and shall consist of shares and deposits. Shares of capital stock may be subscribed for and paid for in such manner as the by-laws shall prescribe; provided, that the par value of the shares shall be five dollars. Section sixteen of chapter one hundred and sixty-seven shall also apply to credit unions, subject to the limitations as regards shares and deposits herein provided. A shareholder may purchase and hold not exceeding four hundred shares in a credit union and may also make deposits in such credit union to an amount not exceeding two thousand dollars, which deposits, together with the addition of interest thereon and dividends on shares, may accumulate to an amount not exceeding three thousand dollars; provided, that the total amount of shares and deposits held by any one member in any one credit union, including the aforesaid accumulations, shall not exceed four thousand dollars in the aggregate; and provided further, that in the event that the by-laws of a credit union do not provide for the receipt of deposits, a shareholder may purchase not exceeding eight hundred shares in such credit union. A credit union may require from a member ninety days' notice of his intention to withdraw any or all of his shares and sixty days' notice of his intention to withdraw any or all of his deposits. Section fourteen of chapter one hundred and sixty-seven shall apply to credit unions.	1
	2
	3
	4
	5
	6
	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
	17
	18
	19
	20
	21

Shares and
deposits of
minors.
1909, 419, § 14.
1915, 268,
§§ 10, 26.

SECTION 11. Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or by his parent or guardian, and	1
	2
	3

4 in either case payments made on such withdrawals shall be valid and
 5 shall release the corporation from liability to the minor, parent or
 6 guardian in respect of such shares and deposits. A minor under eighteen
 7 shall not have the right to vote.

G. L. (ed. of
 1920) 171, § 9,
 1926, 273, § 1.

1 SECTION 12. The fiscal year of every credit union shall end at the
 2 close of business on the last business day of October.

Fiscal year.

1909, 419, § 8,
 1915, 268, §§ 12, 26.

G. L. (ed. of 1920) 171, § 10,
 1926, 273, § 1.

1 SECTION 13. The annual meeting of the corporation shall be held at
 2 such time and place as the by-laws prescribe, but not later than thirty
 3 days after the close of the fiscal year. Special meetings may be called at
 4 any time by a majority of the directors and shall be called by the clerk
 5 upon written application of ten or more members entitled to vote. Notice
 6 of all meetings of the corporation and of all meetings of the board of
 7 directors and of committees shall be given in the manner prescribed in
 8 the by-laws. No member shall be entitled to vote by proxy or have more
 9 than one vote, and, after a credit union has been incorporated for one
 10 year, no member thereof shall be entitled to vote until he has been a
 11 member for more than three months.

Annual and
 special meet-
 ings. Voting
 powers and
 restrictions.
 Maximum
 loans.
 Dividends
 1909, 419, § 8,
 1915, 268,
 §§ 13, 26.
 G. L. (ed. of
 1920) 171, § 11,
 1926, 273, § 1.

12 A fraternal organization, voluntary association, partnership, or corpora-
 13 tion, having membership in a credit union may cast one vote at any of its
 14 meetings by a duly delegated agent.

15 The members at each annual meeting shall fix the maximum amount
 16 to be loaned to any one member and, upon recommendation of the board
 17 of directors, may declare dividends in accordance with section twenty-five.

1 SECTION 14. The business and affairs of a credit union shall be
 2 managed by a board of not less than eleven directors unless the number
 3 of members of such union is less than eleven. The directors shall be
 4 elected at the annual meetings. All members of the said board, as well
 5 as the officers whom they may elect, shall be sworn to the faithful per-
 6 formance of their duties and shall hold their several offices unless sooner
 7 removed as hereinafter provided, until their successors are qualified. A
 8 record of every such qualification shall be filed and preserved with the
 9 records of the corporation. Directors shall be elected for not less than
 10 one nor more than three years, as the by-laws shall provide. If the term
 11 is more than one year, they shall be divided into classes, and an equal
 12 number, as nearly as may be, elected each year. If a director ceases to be
 13 a member of the credit union, his office shall thereupon become vacant.

Directors.
 1909, 419, § 9,
 1915, 268,
 §§ 14, 26,
 G. L. (ed. of
 1920) 171, § 12,
 1926, 273, § 1.

1 SECTION 15. The directors at their first meeting after the annual
 2 meeting shall elect from their own number a president, one or more vice-
 3 presidents, a clerk, a treasurer, a credit committee of not less than three
 4 members, an auditing committee of three members, and such other
 5 officers as may be necessary for the transaction of the business of the
 6 credit union, who shall be the officers of the corporation and who shall
 7 hold office until their successors are qualified, unless sooner removed as
 8 hereinafter provided. The offices of clerk and treasurer may be held by
 9 the same person. No member of the said board of directors shall be a
 10 member of both the credit and the auditing committee unless the number
 11 of members of the credit union is less than eleven. Each officer handling
 12 funds of a credit union shall give bond to the directors in such amount and

Officers and
 committees.
 1909, 419,
 §§ 9, 10,
 1915, 268,
 §§ 14, 15, 26,
 G. L. (ed. of
 1920) 171,
 §§ 12, 13,
 1922, 147, § 2
 1926, 273, § 1.

with such surety or sureties and conditions as the commissioner may pre- 13
 scribe, and shall file with him an attested copy thereof, with a certificate 14
 of its custodian that the original is in his possession. 15

Powers and
 duties of
 directors.
 1909, 419, § 10.
 1915, 268,
 §§ 15, 26.
 G. L. (ed. of
 1920) 171, § 13.
 1922, 147, § 2.
 1926, 273, § 1.
 252 Mass. 574.

SECTION 16. The board of directors shall have the general direction 1
 of the affairs of the corporation and shall meet as often as may be neces- 2
 sary, but not less than once each month. It shall act upon all applica- 3
 tions for membership and upon the expulsion of members; determine the 4
 rate of interest on loans subject to the limitations contained in this 5
 chapter; shall decide on all applications for real estate mortgage loans 6
 after receipt of the certification by the credit committee of the application 7
 in the manner hereinafter provided; shall determine the rate of interest 8
 to be paid on deposits which shall not, however, exceed six per cent per 9
 annum and shall fill vacancies in the board of directors and committees 10
 until the next annual election. It shall make recommendations to the 11
 members of the credit union relative to the maximum amount to be 12
 loaned to any one member; the advisability of declaring a dividend and 13
 the amount to be declared; the need of amendments to the by-laws, and 14
 other matters upon which, in its opinion, the members should act at any 15
 regular or special meeting. The board of directors, with the approval of 16
 the commissioner, may borrow money for and in behalf of the credit union. 17
 It may by a two thirds vote remove from office for cause any officer or 18
 any member of any committee. 19

Powers and
 duties of
 auditing
 committee.
 1909, 419,
 § 12.
 1915, 268,
 §§ 16, 26.
 G. L. (ed. of
 1920) 171, § 14.
 1922, 147, § 3.
 1926, 273, § 1.

SECTION 17. The auditing committee shall keep fully informed at 1
 all times as to the financial condition of the credit union; shall examine 2
 carefully the cash and accounts of the credit union monthly; shall certify 3
 the monthly statements submitted by the treasurer; shall make a 4
 thorough audit of the books, including income and expense, semi-an- 5
 nually; and shall report to the board of directors its findings, together 6
 with its recommendations. It shall, under regulations prescribed by 7
 the commissioner, cause to be verified the pass books of the credit union 8
 at least once in every three years. It shall hold meetings at least once 9
 each month, shall keep records thereof and shall make an annual report 10
 at the annual meeting. 11

Directors not
 to receive
 compensation.
 Loans to
 directors
 limited.
 Compensation
 of officers.
 1909, 419, § 17.
 1915, 268,
 §§ 19, 26.
 G. L. (ed. of
 1920) 171, § 15.
 1922, 147, § 4.
 1926, 273, § 1.
 1930, 100.

SECTION 18. No member of the board of directors shall receive any 1
 compensation for his services as a member of the said board or as a 2
 member of any committee, nor shall any member of the said board 3
 borrow from the corporation to an amount in excess of the total of his 4
 shares and deposits in said credit union and the accumulated earnings 5
 standing to his credit thereon on the books of the corporation, unless 6
 approved by vote of two thirds of the other members of the said board. 7
 No member of said board shall become surety or co-maker for any loan. 8
 The officers elected by the board may receive such compensation as it 9
 may authorize, subject to the approval of the members at the next annual 10
 meeting or at a special meeting called for the purpose. 11

Guaranty
 fund.
 1909, 419, § 22.
 1915, 268,
 §§ 20, 26,
 1918, 257,
 § 370,
 1919, 5,
 1920, 2.
 G. L. (ed. of
 1920) 171, § 16.
 1926, 273, § 1.

SECTION 19. Before the payment of an annual or semi-annual divi- 1
 dend there shall be set apart as a guaranty fund not less than ten per 2
 cent of the gross income which has accumulated during the next pre- 3
 ceding dividend period, except as hereinafter provided, until such time 4
 as said guaranty fund shall equal fifteen per cent of the assets of the 5
 said credit union; and thereafter there shall be added to the guaranty 6

7 fund at the end of each such period such percentage of the gross income
 8 which has accumulated during that period as will result in maintaining
 9 such guaranty fund at such amount. All entrance fees shall be added
 10 to the guaranty fund at the close of the dividend period. Said guaranty
 11 fund and the investments thereof shall be held to meet contingencies or
 12 losses in the business of the credit union, and shall not be distributed to
 13 its members, except in case of dissolution.

1 SECTION 20. If the losses and bad debts of a credit union at the end
 2 of any dividend period exceed twenty per cent of the guaranty fund,
 3 including in said term the amount required by law to be contributed at
 4 the end of that period to said fund, there shall thereafter be maintained
 5 a reserve fund which shall before the payment of a dividend be made
 6 equal, by payments from the earnings of that period, to the amount by
 7 which the losses and bad debts at the end of that period exceed twenty
 8 per cent of the guaranty fund, including the aforesaid contribution for
 9 that period; provided, that the excess in any subsequent period over
 10 the amount required to be maintained for that period as a reserve fund
 11 may be transferred from such fund and made available for the payment
 12 of dividends. All debts due to any credit union on which interest or
 13 partial payments on the principal are due and unpaid for a period of six
 14 months, unless the same are well secured and in process of collection,
 15 shall be considered bad debts within the meaning of this section.

Reserve fund
 1923, 143, § 1
 [G. L. 171,
 § 15 A]
 1926, 273, § 1.

1 SECTION 21. The capital, deposits and surplus of a credit union
 2 shall be invested in loans to members, with approval of the credit com-
 3 mittee, as provided in the following section, and also when so required
 4 herein, of the board of directors; and any capital, deposits or surplus
 5 funds in excess of the amount for which loans shall be approved by the
 6 credit committee and the board of directors, may be deposited in savings
 7 banks or trust companies incorporated under the laws of this common-
 8 wealth, or in national banks located therein, or invested in any bonds or
 9 bankers' acceptances which are at the time of their purchase legal
 10 investments for savings banks in this commonwealth or in the shares of
 11 co-operative banks incorporated in this commonwealth. At least five
 12 per cent of the total assets of a credit union shall be carried as cash on
 13 hand or as balances due from banks and trust companies, or invested in
 14 the bonds or notes of the United States, or of any state, or subdivision
 15 thereof, which are legal investments for savings banks as above pro-
 16 vided. Whenever the aforesaid ratio falls below five per cent, no further
 17 loans shall be made until the ratio as herein provided has been re-estab-
 18 lished. Investments, other than personal loans, shall be made only with
 19 the approval of the board of directors.

Investment
 of funds
 1909, 119, § 15
 1914, 437,
 §§ 1, 2,
 1915, 268,
 §§ 11, 26,
 1918, 257,
 § 370,
 1919, 5,
 1920, 2,
 G. L. *ed.* of
 1920) 171, § 17.
 1922, 147, § 5.
 1923, 294, § 4
 1926, 273, § 1.

1 SECTION 22. The credit committee shall:
 2 (a) Hold meetings at least once in each month;
 3 (b) Act on all applications for loans;
 4 (c) Approve in writing all personal loans granted and the security, if
 5 any, pledged therefor; and
 6 (d) Submit to the board of directors all applications for loans to be
 7 secured by mortgages of real estate, with their recommendations thereon,
 8 which shall include a certificate as to their best judgment of the value
 9 of the real estate involved.

Powers and
 duties of
 credit
 committee.
 1909, 119, § 11
 1915, 268,
 §§ 17, 26
 G. L. *ed.* of
 1920) 171, § 18
 1926, 273, § 1
 Op. A. G.
 (1917) 33.

No personal loan shall be made unless all of the members of the credit committee who are present when the application is considered, which number shall constitute at least two thirds of the members of said committee, approve said loan. No loan shall be granted unless the members of said committee are satisfied that the loan promises to be of benefit to the borrower.

Applications for loans. Form, contents. 1909, 419, § 11. 1915, 268, §§ 17, 26. G. L. (ed. of 1920) 171, § 18. 1926, 273, § 1. Op. A. G. (1917) 33.

SECTION 23. All applications for loans shall be made in writing and shall state the purpose for which the loan is desired and the security, if any, offered. The form of application for a loan to be secured by a mortgage of real estate shall contain —

- (a) The date.
- (b) The name of the applicant.
- (c) The name of the husband or wife of the applicant, if any.
- (d) Amount of loan desired.
- (e) Assessed value of the real estate in question.
- (f) A statement of all balances due of any mortgages outstanding against said real estate.
- (g) The income from said real estate.
- (h) A description of said real estate.
- (i) Such other information as the board of directors may require.

Loans regulated. 1914, 437, §§ 1-4. 1915, 231, § 19; 268, §§ 18, 26. 1918, 257, § 370. 1919, 5. 1920, 2. G. L. (ed. of 1920) 171, §§ 19, 20. 1926, 273, § 1. Op. A. G. (1917) 33.

SECTION 24. A credit union may make loans of the following classes to its members:

- (a) Personal loans secured by the note of the borrower; and
- (b) Loans secured by mortgages of real estate situated within the commonwealth.

Personal loans shall always be given the preference and, in the event there are not sufficient funds available to satisfy all loan applications approved by the credit committee, preference shall be given to the smaller loan.

(A) PERSONAL LOANS.

Each personal loan shall be payable within one year from the date thereof and shall be paid or renewed on or before such date.

Each endorser of a note given as security for a personal loan shall be a resident of the commonwealth at the time the loan is made, unless such endorser is a member of the credit union.

Each personal loan shall be limited as follows:

1. To an amount not exceeding one hundred dollars, if secured by the unendorsed and unsecured note of the borrower.
2. To an amount not exceeding three hundred dollars, if secured by the note of the borrower with one or more responsible endorsers thereon, or with satisfactory collateral pledged to secure the same, or if secured by the joint and several note of two or more members.
3. To an amount not exceeding one thousand dollars, if secured by the note of the borrower with two or more responsible endorsers thereon, or with satisfactory collateral pledged to secure the same, or if secured by the joint and several note of three or more members.
4. To an amount not exceeding fifteen hundred dollars, if secured by the note of the borrower with two or more responsible endorsers thereon, or by a joint and several note of three or more members, and, in either

29 ease, with collateral valued at not more than eighty per cent of its market
30 value, pledged fully to secure the same.

31 5. To an amount not exceeding three thousand dollars, if secured by
32 the note of the borrower and with sufficient collateral pledged to secure
33 the same made up of bonds or notes of the United States, or of any state
34 or subdivision thereof, which are legal investments for savings banks in
35 this commonwealth valued at not more than eighty per cent of their
36 market value, or by the assignment of the pass book of a depositor in a
37 savings bank doing business in any of the New England states or in the
38 savings department of a trust company or national bank doing business
39 in this commonwealth, or the pass book of a depositor in a co-operative
40 bank incorporated under chapter one hundred and seventy.

41 6. To an amount not exceeding the value of the shares and deposits of
42 the borrower in the credit union, if secured by the note of the borrower
43 and by an assignment of said shares and deposits.

44 For the purposes of this section, an assignment of wages may be re-
45 ceived as satisfactory collateral for any loan not in excess of two hundred
46 and fifty dollars.

(B) LOANS SECURED BY MORTGAGES OF REAL ESTATE.

47 The total amount which a credit union may invest in loans secured by
48 mortgages of real estate, both first and subsequent, shall not exceed
49 seventy per cent of the aggregate amount of the shares, deposits and
50 guaranty fund, provided, that in credit unions having assets of less than
51 seventy-five thousand dollars, the total amount so invested shall not
52 exceed fifty per cent of such aggregate amount. All loans secured by
53 mortgages of real estate shall be subject to the following restrictions: —

54 1. The total liability of any member upon loans of this class shall not
55 exceed five per cent of the assets of the credit union, nor shall it exceed
56 eight thousand dollars.

57 2. A loan secured by a first mortgage of real estate shall not exceed
58 sixty per cent of the value of the property mortgaged, as determined by
59 the credit committee, except as hereinafter provided.

60 3. The aggregate of all loans secured by mortgages of real estate out-
61 standing, whether held by the credit union or not, shall not exceed eighty
62 per cent of the value of the property mortgaged, as determined by the
63 credit committee; provided, that any loan held which exceeds sixty per
64 cent of the value of the property mortgaged, as herein determined, whether
65 written on demand or on time, shall be amortized by weekly, monthly
66 or quarterly payments, such payments being at the rate of at least six
67 per cent per annum until such loan is reduced to said sixty per cent.

1 SECTION 25. At the annual meeting, and if it is provided in the by-
2 laws that a dividend shall be paid semi-annually, at a meeting during the
3 month of May in each year, a dividend may be declared from the earn-
4 ings which have actually been collected during the dividend period next
5 preceding and which remain after the deduction of all expenses, interest
6 on deposits and the amounts required to be set apart to the guaranty
7 fund and to the reserve fund, or such dividend may be declared in whole
8 or in part from the undivided earnings of preceding years remaining after
9 the aforesaid deductions for said years.

10 Such dividends shall be paid on all fully paid shares outstanding at the
11 close of the dividend period, but shares which become fully paid during

Dividends
1909, 319, § 21.
1915, 268,
§§ 22, 26
G. L. (ed. of
1920) 171, § 23.
1923, 54,
143, § 2
1926, 273, § 1.

such dividend period shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall, at his election, be paid to him in cash or be credited to his account in either shares or deposits.

No dividend exceeding eight per cent per annum shall be paid until such time as the guaranty fund shall equal fifteen per cent of the assets as hereinbefore provided, after which time special dividends may be declared from surplus earnings on recommendation of the board of directors.

Lost pass books, 1917, § 33.

SECTION 26. Section twenty of said chapter one hundred and sixty-seven shall apply to the pass books of credit unions.

G. L. (ed. of 1920) 171, § 24. 1926, 273, § 1.

Annual report to commissioner. Penalty. 1909, 419, § 24. 1915, 268, §§ 23, 26. G. L. (ed. of 1920) 171, § 25. 1926, 273, § 1.

SECTION 27. Within twenty days after the last business day of December in each year, every credit union shall make to the commissioner a report in such form as he may prescribe, signed by the president, treasurer and a majority of the auditing committee, who shall make oath that the report is correct according to their best knowledge and belief. Any credit union neglecting to make said report within the time herein prescribed shall forfeit to the commonwealth five dollars for each day during which such neglect continues.

Expulsion of members. 1909, 419, §§ 18, 19. 1915, 268, §§ 24, 26. G. L. (ed. of 1920) 171, § 26. 1926, 273, § 1.

SECTION 28. The board of directors may expel from a credit union any member who has not carried out his engagements with it, or who has been convicted of a criminal offence, or who neglects or refuses to comply with the provisions of this chapter or of the by-laws of the credit union, or whose private life is a source of scandal, or who habitually neglects to pay his debts, or who becomes insolvent or bankrupt, or who has deceived the corporation or any committee thereof with regard to the use of borrowed money; but no member shall so be expelled until he has been informed in writing of the charges against him, and an opportunity has been given him, after reasonable notice, to be heard thereon.

The amounts paid in on shares or deposited by members who have withdrawn or have been expelled shall be paid to them, in the order of withdrawal or expulsion, but only as funds therefor become available and after deducting any amounts due from such members to the credit union. Such expulsion shall not operate to relieve a member from any outstanding liability to the credit union.

Liquidation. Disposition of unclaimed funds and of books and papers. 1909, 419, § 23. 1915, 268, §§ 25, 26. G. L. (ed. of 1920) 171, § 27. 1923, 55. 1926, 273, § 1.

SECTION 29. At any meeting specially called for the purpose, the members, upon recommendation of not less than two thirds of the board of directors, may, by a two thirds vote of those present and entitled to vote, vote to liquidate the corporation. A committee of three shall thereupon be elected to liquidate the assets of the corporation under the direction of the commissioner, and each share of the capital stock, according to the amount paid thereon, shall be entitled to its proportional part of the assets in liquidation after all deposits and debts have been paid; and the charter of such corporation voting to liquidate in accordance with this section shall become void except for the purpose of discharging existing obligations and liabilities.

Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the

14 date of the final dividend, shall be deposited by them, together with
 15 all books and papers of the credit union, with the commissioner. Such
 16 funds shall be deposited in one or more trust companies, savings banks
 17 or national banks to the credit of the commissioner in his official capac-
 18 ity in trust for the members of the liquidating credit union entitled
 19 thereto, according to their several interests. Upon receipt of evidence
 20 satisfactory to him, the commissioner may pay over the money so held
 21 by him to the persons respectively entitled thereto.

22 In cases of doubt or of conflicting claims, he may require an order
 23 of the supreme judicial court authorizing and directing the payment
 24 thereof. He may apply the interest earned by the moneys so held toward
 25 defraying the expenses incurred in the payment of such unclaimed
 26 dividends. At the expiration of twelve months from the date of receipt
 27 thereof such funds as still remain in the hands of the commissioner shall
 28 be disposed of as provided in section thirty-five of chapter one hundred
 29 and sixty-seven.

CHAPTER 172.

TRUST COMPANIES.

SECT.

GENERAL PROVISIONS.

- 1. Definitions.
- 2. Corporations subject to this chapter.
- 3. Adoption of chapter.
- 4. Use of words "Trust Company" in name.
- 5. Limit of time for organization and commencement of business.

INCORPORATION UNDER GENERAL LAW.

- 6. Who may incorporate.
- 7. Agreement of association.
- 8. Notice of intention to form trust company.
- 9. First meeting.
- 10. Certificates of organization and incorporation.
- 11. Certificate permitting business.

OFFICERS AND BY-LAWS.

- 12. Officers.
- 13. Choice of officers.
- 14. Directors.
- 15. By-laws. Quorum.
- 16. Certain fees, etc., to officers, employees and attorneys prohibited.
- 17. Penalty.

STOCK AND STOCKHOLDERS.

- 18. Capital stock; amount, issue, increase.
- 19. Books open for inspection.
- 20. [Repealed.]
- 21. [Repealed.]
- 22. [Repealed.]

SECT.

- 23. [Repealed.]
- 24. Liability of stockholders.
- 25. Enforcement of liability.

PUBLIC SUPERVISION.

- 26. Returns to commissioner.
- 27. Examination by commissioner.
- 28. [Repealed.]
- 29. [Repealed.]
- 30. [Repealed.]
- 30A. Interdepartment transfers of assets.

POWERS.

- 31. Deposits.
- 32. Time deposits. Penalty.
- 33. Investment of funds.
- 34. Loans on farm property, etc.
- 35. Agent to buy, etc.
- 36. May accept drafts and issue letters of credit.
- 37. May accept or rediscount certain drafts, etc.
- 38. May act as agent, trustee, etc.
- 39. Loans on shares of capital stock, etc.
- 40. Liabilities of any one person to corporation limited.
- 41. May hold real estate suitable for its business.
- 42. Real estate held by corporation which is successor to national bank.
- 43. Holding of stock in other trust company limited.
- 44. Consolidation of trust companies regulated.
- 45. Branch offices.

<p>SECT.</p> <p>46. Office of merged company maintained as branch office.</p> <p>47. Establishment of foreign branches.</p> <p>48. Additional powers, if member of federal reserve bank.</p> <p style="text-align: center;">TRUST DEPARTMENT.</p> <p>49. Trust department.</p> <p>50. Deposit by authority of court, etc.</p> <p>51. Investment of such funds.</p> <p>52. Appointment as trustee, executor, etc.</p> <p>53. Investment of funds held as executor, etc.</p> <p>54. Trust funds to be kept as special deposit.</p> <p>55. Capital stock as security.</p> <p>56. Not to exercise powers, etc., unless authorized.</p> <p>57. Signing of returns, etc. Examination of officers.</p> <p>58. Surety on bonds.</p> <p>59. Disposition of trust funds, etc.</p> <p style="text-align: center;">SAVINGS DEPARTMENT.</p> <p>60. Savings department. Investment committee.</p> <p>61. Investments of deposits in savings department</p> <p>62. Such deposits to be kept separate.</p> <p>63. Capital stock as security for such deposits.</p>	<p>SECT.</p> <p>64. Guaranty fund in savings department.</p> <p>65. Income.</p> <p>66. Notice of intention to withdraw savings deposits.</p> <p>66A. Loans to depositors.</p> <p>67. Deposits may go on interest monthly.</p> <p>68. Payment of dividends to be authorized by directors after examination by investment committee.</p> <p>69. Interest.</p> <p>70. Pass books to be verified.</p> <p>71. No officer, etc., to borrow funds of savings department or become surety.</p> <p>72. Trust companies, etc., not to receive brokerage, etc., on account of loan by savings department.</p> <p style="text-align: center;">RESERVES AND GUARANTY FUNDS.</p> <p>73. Reserve; weekly report to commissioner relative to. Penalty.</p> <p>74. Composition of reserve.</p> <p>75. Corporation may act as reserve agent.</p> <p>76. Proceedings if reserve less than required.</p> <p>77. Trust guaranty fund.</p> <p>78. Trust guaranty fund pledged, etc.</p> <p>79. Trust guaranty fund not to be transferred, etc.</p> <p>80. Dividends. Surplus fund.</p> <p>81. Reserve requirements, if member of federal reserve bank.</p>
--	--

GENERAL PROVISIONS.

Definitions.
1919, 350, § 46.
40p A G 190

SECTION 1. Whenever used in this chapter, unless the context otherwise requires, the words "trust company" or "such corporation" mean a trust company incorporated as such in the commonwealth, and the "commissioner" means the commissioner of banks. 1
2
3
4

Corporations subject to this chapter
1888, 413, § 1.
1890, 315, § 2
1899, 348, § 1.
R. L. 116, § 1
165 Mass. 384.

SECTION 2. All trust companies shall be subject to this chapter; except that any such corporation chartered prior to May twenty-eighth, eighteen hundred and eighty-eight, shall not be subject, in the performance of its duties as trustee, to any provision of section fifty-four which is inconsistent with its charter and shall be subject to the following provisions, or any of them, only if, and according as, it adopts them under section three, or has adopted corresponding provisions of earlier laws: sections twelve to fifteen, inclusive, eighteen, nineteen, twenty-four to twenty-six, inclusive, so much of section twenty-seven as does not apply to corporations exercising the powers conferred by section fifty-two, sections thirty-one, thirty-three, thirty-eight to forty-one, inclusive, fifty, fifty-one, fifty-nine and seventy-seven to eighty, inclusive. 1
2
3
4
5
6
7
8
9
10
11
12

Adoption of chapter.
1890, 315, § 2.
R. L. 116, § 2.

SECTION 3. A trust company chartered before May twenty-eighth, eighteen hundred and eighty-eight, transacting business in the commonwealth may adopt as a part of its charter this chapter, or any provision thereof which under the preceding section it may adopt, by a majority vote of the stock represented at a special meeting called for the purpose 1
2
3
4
5

6 and by filing, within ten days from the date of such meeting, with the
7 state secretary and with the commissioner a certificate sworn to by the
8 clerk of such corporation and stating such adoption.

1 SECTION 4. No person or association and no bank or corporation,
2 except trust companies, shall use in the name or title under which his
3 or its business is transacted the words "Trust Company" even though
4 said words may be separated in such name or title by one or more other
5 words, or advertise or put forth a sign as a trust company or in any way
6 solicit or receive deposits as such. Whoever violates this section shall
7 forfeit one hundred dollars for each day during which such violation
8 continues. But this section shall not prohibit a foreign corporation
9 which was authorized to transact a foreign mortgage business in the
10 commonwealth during the twelve months next preceding January first,
11 nineteen hundred and twenty-three, and which had an established place
12 of business in, and was complying with the laws of, the commonwealth
13 during the whole of said period, from continuing to use the words
14 "Trust Company" as a part of its corporate name.

Use of words
"Trust
Company"
in name
1890, 167
R. L. 116, § 3.
1909, 191, § 1
1923, 31

1 SECTION 5. A trust company shall organize and commence busi-
2 ness within six months from the date of its incorporation, otherwise its
3 charter shall become void, and no trust company shall resume business
4 under a charter which is outstanding and inactive on July first, nineteen
5 hundred and twenty-two, except upon the written approval of the board
6 of bank incorporation.

Limit of time
for organi-
zation and
commence-
ment of
business.
1893, 114, § 1.
R. L. 116, § 4.
1922, 263, § 1.

INCORPORATION UNDER GENERAL LAW.

1 SECTION 6. Fifteen or more persons who associate themselves by a
2 written agreement for the purpose of forming a trust company may,
3 upon compliance with sections six to eleven, inclusive, become a corpo-
4 ration, with all the powers and privileges and subject to all the duties,
5 restrictions and liabilities set forth in all general laws relating to such
6 corporations.

Who may
incorporate.
1904, 374, § 1.

1 SECTION 7. Said agreement shall set forth that the subscribers
2 thereto associate themselves with the intention of forming a corpora-
3 tion, and shall specifically state —

Agreement of
association.
1904, 374, § 2.

- 4 First, The name by which the corporation shall be known.
- 5 Second, The purpose for which it is formed.
- 6 Third, The city or town, which shall be within the commonwealth,
7 where its business is to be transacted.
- 8 Fourth, The amount of its capital stock, and the number of shares
9 into which it is to be divided.

10 Each associate shall subscribe to the articles his name, residence, post
11 office address and the number of shares of stock which he agrees to take.

1 SECTION 8. A notice of the intention of the subscribers to form such
2 a trust company shall be given to the board of bank incorporation.

3 A notice in such form as said board shall approve shall be published at
4 least once a week, for three successive weeks, in one or more newspapers
5 designated by said board, and published in the city or town in which
6 it is proposed to establish the company. Such notice shall specify the
7 names of the proposed incorporators, the name of the corporation and

Notice of
intention to
form trust
company.
1904, 374, § 3.
1906, 201, § 4
1908, 590, § 4.
1909, 491, § 2
1919, 350, § 47.

the location of the same, as set forth in the above mentioned agreement of association. Within thirty days after the first publication of said notice the subscribers to said agreement shall apply to said board for a certificate that public convenience and advantage will be promoted by the establishment of such trust company. If the board refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of such refusal, without further notice or publication unless the board shall order it.

First meeting.
1904, 374, § 4.

SECTION 9. The first meeting of the subscribers to the agreement of association shall be called by a notice signed either by that subscriber to the agreement who is designated therein for the purpose, or by a majority of the subscribers; and such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit of one of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall in writing, endorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. The subscribers to the agreement of association shall hold the franchise until the organization has been completed. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of by-laws and by the election in such manner as the by-laws may determine, of directors, a president, a clerk, and such other officers as the by-laws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

Certificates of
organization
and incorpo-
ration.
1904, 374, § 5.
1906, 204,
§§ 1, 3, 5.
1909, 491, § 3.
1919, 350, § 46.
1920, 598, § 7.
1922, 263, § 2.
1931, 394,
§ 178.

SECTION 10. The president, and a majority of the directors elected at such first meeting, shall make, sign and make oath to, articles in duplicate, setting forth —

(a) A true copy of the agreement of association, the names of the subscribers thereto, and the name, residence and post office address of each of the officers of the company;

(b) The date of the first meeting and the successive adjournments thereof, if any.

One of such certificates shall be submitted to the commissioner, and the other, together with the records of the proposed corporation, to the commissioner of corporations and taxation, who shall examine the same, and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the four preceding sections relative to the organization of the corporation and that section eight has been complied with, he shall so certify and endorse his approval thereon. The articles shall be filed within thirty days thereafter in the office of the state secretary, who, upon payment of a fee equal to one twentieth of one per cent of the capital stock of said corporation as set forth in said articles, shall issue a certificate of incorporation in the following form:

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock of (the amount fixed in the agreement of association), and have complied with the statutes of the commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the commissioner of corporations and taxation and recorded in this office: Now, therefore, I (the name of the state secretary), secretary of the commonwealth of Massachusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the commonwealth of Massachusetts hereunto affixed, this _____ day of _____ in the year _____ (the date of the filing of the articles of organization).

21 The state secretary shall sign the certificate of incorporation and cause
 22 the great seal of the commonwealth to be thereto affixed, and such cer-
 23 tificate shall have the force and effect of a special charter. The existence
 24 of every corporation not created by special law shall begin upon the
 25 filing of the articles of organization in the office of the state secretary.
 26 He shall also cause a record of the certificate of incorporation to be
 27 made, and such certificate, or such record, or a certified copy thereof,
 28 shall be conclusive evidence of the existence of such corporation.

1 SECTION 11. When the whole capital stock has been issued, a new
 2 list of the stockholders, with the name, residence and postoffice address
 3 of each, and the number of shares held by each, shall be filed with the
 4 board of bank incorporation, which list shall be verified by the two
 5 principal officers of the corporation. Upon receipt of such list said
 6 board shall cause an examination to be made of the method of payment
 7 of the capital stock, of the personnel of the corporation, including the
 8 officers and directors thereof, and if, after such examination, it appears
 9 that the whole capital stock has been paid in in cash, and that all re-
 10 quirements of law have been complied with, said board shall, if satisfied
 11 that the public convenience and advantage will be promoted thereby,
 12 issue a certificate authorizing such corporation to begin the transaction
 13 of business. It shall be unlawful for any such corporation to begin the
 14 transaction of business until such a certificate has been granted.

Certificate
 permitting
 business.
 1897, 304, § 1.
 R. L. 116, § 6.
 1904, 374, § 6.
 1906, 204, § 4.
 1908, 590, § 4.
 1909, 491, § 2.
 1919, 350, § 2.
 1922, 293, § 47.

OFFICERS AND BY-LAWS.

1 SECTION 12. The officers of such corporation shall be a president,
 2 clerk or secretary, a board of not less than seven directors, a treasurer or
 3 actuary or both, and such other officers as may be prescribed by its by-
 4 laws and they shall be sworn to the faithful performance of their duties.

Officers
 1888, 413, § 3.
 1897, 304, § 2.
 R. L. 116, § 7.
 249 Mass. 585.

1 SECTION 13. The officers of such corporation, except the treasurer,
 2 actuary, and the members of the investment committee, if one is required
 3 by section sixty, shall be chosen at its annual meeting. The treasurer
 4 and actuary shall be appointed by the directors, shall hold their respec-
 5 tive offices during the pleasure of the board of directors and shall give
 6 bond to said board in such amounts and with such surety or sureties and

Choice of
 officers.
 1888, 413, § 1.
 R. L. 116, § 8.
 1911, 87.
 1920, 563, § 1.
 1922, 265, § 2.
 249 Mass. 585.

conditions as the commissioner may prescribe. The treasurer and 7
 actuary, and any other officers and employees required to give bond, 8
 may be included in one or more blanket or schedule bonds; provided, 9
 that such bonds are approved by the commissioner as to the amounts 10
 and conditions thereof and as to the sureties thereon. The board of 11
 directors may fill, until the next annual meeting, any vacancies in 12
 offices that may occur. 13

Directors,
 1888, 413, § 19.
 R. L. 116, § 9.
 1921, 352.
 1929, 291, § 2.
 256 Mass. 323.

SECTION 14. No person shall be a director in any such corporation 1
 unless he is a stockholder of record holding unpledged stock therein of 2
 an aggregate par value of not less than one thousand dollars. A ma- 3
 jority of the directors shall be citizens of and resident in the common- 4
 wealth and not more than one third of the directors shall be directors 5
 in any other such corporation. 6

By-laws,
 Quorum,
 1888, 413, § 5.
 R. L. 116, § 10.

SECTION 15. The corporation may adopt by-laws for the proper man- 1
 agement of its affairs, may establish regulations controlling the assign- 2
 ment and transfer of its shares and may determine what number of shares 3
 shall be represented at any meeting to constitute a quorum. If the 4
 quorum is not so determined, a majority in interest of the stockholders 5
 shall be a quorum. 6

Certain fees,
 etc., to officers,
 employees and
 attorneys
 prohibited.
 1915, 219, § 1.
 1928, 262.

SECTION 16. No officer, director, employee or attorney of a trust 1
 company shall be a beneficiary of or receive, directly or indirectly, any 2
 fee, commission, gift or other consideration for or in connection with 3
 any business of such corporation. This section shall not prohibit any 4
 such officer, director, employee or attorney from receiving interest on a 5
 deposit made by him or his usual salary or director's fee or a reasonable 6
 fee for services rendered to such corporation or from borrowing from such 7
 corporation in accordance with law, or from sharing in commissions, 8
 profits or other benefits derived by any firm, association or corporation, 9
 in which he is interested, arising out of any transaction with said trust 10
 company in or in relation to securities if such transaction is made in the 11
 regular course of business upon terms as favorable to the trust company 12
 as those offered to other persons, or if any such transaction is authorized 13
 either by the affirmative vote or the written assent of a majority of those 14
 members of the trust company's board of directors who are not inter- 15
 ested in such transaction otherwise than as directors as aforesaid; pro- 16
 vided, however, that the commissioner may require a full disclosure to 17
 be made on such forms as he may prescribe, by regulation or otherwise, 18
 of all commissions, profits and other benefits realized in any such trans- 19
 action in or in relation to securities. 20

Penalty.
 1915, 219, § 2.

SECTION 17. Whoever violates any provision of the preceding sec- 1
 tion shall be punished by a fine not exceeding five thousand dollars or 2
 by imprisonment for not more than one year, or both. 3

STOCK AND STOCKHOLDERS.

Capital stock;
 amount, issue,
 increase.
 1888, 413, § 2.
 1897, 394, § 1.
 R. L. 116, § 5.
 1904, 374, § 6.
 1905, 189.
 1906, 204,
 §§ 1, 3, 5.

SECTION 18. The capital stock of such corporation shall be not less 1
 than two hundred thousand dollars, except that in a city or town whose 2
 population numbers not exceeding one hundred thousand but exceeding 3
 ten thousand the capital stock may be not less than one hundred thou- 4
 sand dollars and in a town whose population numbers not exceeding ten 5

6 thousand, not less than fifty thousand dollars. The capital stock shall
 7 be divided into shares of the par value of not more than one hundred
 8 dollars each. No business shall be transacted by such corporation until
 9 the whole amount of its capital stock is subscribed for and actually paid
 10 in. No stock shall be issued by any such corporation under this section
 11 until the par value thereof shall be fully paid in in cash or is in its pos-
 12 session as surplus; provided, that no stock shall be issued against surplus
 13 unless the surplus remaining after such issue shall amount to at least
 14 fifty per cent of the total capital stock of such corporation after such
 15 increase. Any such corporation may, subject to the approval of the
 16 commissioner, increase or reduce its capital stock in the manner pro-
 17 vided by section forty-one, section forty-four, and the first sentence of
 18 section forty-five, all of chapter one hundred and fifty-six; provided,
 19 that in the case of a reduction as aforesaid the capital stock as so reduced
 20 shall not be less than the amount required by this section. Any such
 21 corporation may decrease the par value of its shares in the manner pro-
 22 vided by sections forty-one and forty-three of said chapter one hundred
 23 and fifty-six.

1907, 487
 1909, 491, § 3.
 1913, 206.
 1916, 37.
 1919, 350, § 46
 1926, 239.
 1929, 201, § 1
 231 Mass. 42
 249 Mass. 401
 251 Mass. 514
 253 Mass. 205

1 SECTION 19. The books of such corporation shall at all reasonable
 2 times be open for inspection to the stockholders and to beneficiaries
 3 under any trust held by such corporation.

Books open
 for inspection
 1888, 413, § 25
 R. L. 116, § 11.

1 SECTION 20. [REPEALED, 1923, 406, § 2.]

1 SECTION 21. [REPEALED, 1923, 406, § 2.]

1 SECTION 22. [REPEALED, 1923, 406, § 2.]

1 SECTION 23. [REPEALED, 1922, 363, § 2.]

1 SECTION 24. The stockholders of such corporation shall be per-
 2 sonally liable, equally and ratably and not one for another, for all con-
 3 tracts, debts and engagements of the corporation, to the amount of
 4 their stock therein at the par value thereof, in addition to the amount
 5 invested in such shares, and no stockholder shall be allowed to set off
 6 any claim as a depositor in or creditor of either the commercial or sav-
 7 ings departments against such liability. Sections forty-six to fifty-four,
 8 inclusive, of chapter one hundred and fifty-eight shall apply to and
 9 regulate the enforcement of such liability by creditors of the corporation.

Liability of
 stockholders.
 1888, 413, § 14.
 R. L. 116, § 30
 1905, 228, § 1.
 1922, 488, § 2
 203 Mass. 551
 207 Mass. 441
 216 Mass. 156
 240 Mass. 254
 242 Mass. 78
 244 Mass. 64,
 128
 247 Mass. 334,
 347
 249 Mass. 401.

253 Mass. 205.

256 Mass. 323.

1 SECTION 25. Any such corporation whose capital stock has, in the
 2 opinion of the commissioner, become impaired by losses or otherwise,
 3 shall, within three months after receiving notice from the commis-
 4 sioner, pay the deficiency in the capital stock by assessment upon the
 5 stockholders pro rata to the shares held by each. If such corporation
 6 shall fail to pay such deficiency in its capital stock for three months
 7 after receiving such notice, the commissioner may apply to the supreme
 8 judicial court for an injunction; and if a stockholder of such corporation
 9 neglects or refuses, after three months' notice, to pay the assessment as
 10 provided in this section, the board of directors shall cause an amount
 11 of his stock sufficient to make good his assessment to be sold by public

Enforcement
 of liability.
 1892, 327.
 R. L. 116, § 31
 1906, 204,
 §§ 1, 3, 5.
 1909, 491, § 3.
 1919, 350,
 §§ 15, 16.
 1922, 488, § 3.

auction, after thirty days' notice given by posting such notice in the office of the corporation and by publishing it in a newspaper of the city or town where the corporation is located or in a newspaper published nearest thereto; and the balance, if any, shall be returned to such delinquent stockholder. This section shall not take away the right of creditors to enforce the liability of stockholders in such corporations, as provided in the preceding section, or the right of the commissioner to enforce such liability as provided in section twenty-four of chapter one hundred and sixty-seven, nor increase the general liability of such stockholders.

PUBLIC SUPERVISION.

Returns to
commissioner.
1888, 413, § 26.
R. L. 116, § 36.
1906, 204, § 36.
§§ 1, 3, 5.
1907, 320, § 1.
1908, 520, § 13.
1909, 491, § 3.
1919, 350, § 46.
1924, 162.

SECTION 26. Such corporation shall at such times as the commissioner orders, but not exceeding five times within any calendar year, and within ten days after a day designated in the order, make a return to the commissioner, signed and sworn to by its president and secretary, treasurer or actuary and not less than four of its board of directors, showing accurately the condition of such corporation at the close of business on the day designated, and said return shall specify: capital stock; amount of all money and property in detail in the possession or charge of said corporation as deposits; amount of deposits payable on demand or within ten days; amount of trust guaranty fund; trust funds and funds for purposes of investment; number of depositors; investments in authorized loans of the United States or any of the New England states, counties, cities or towns; investments in bank stock, railroad stock and railroad bonds, stating amount in each; loans on notes of corporations; loans on notes of individuals; loans on mortgages of real estate; cash on hand; rate, amount and date of dividends since last return; and such other information as the commissioner orders. Such return shall be in the form of a trial balance of its books and shall specify the different kinds of its liabilities and assets, with the amount of each kind, in accordance with a blank form furnished by the commissioner and shall be published by and at the expense of such corporation in a newspaper of the city or town where such corporation is located, at such times and in such manner as may be directed by the commissioner.

Examination
by com-
missioner.
1888, 413, § 26.
1899, 348, § 6.
R. L. 116, § 37.
1906, 204, § 37.
§§ 1, 3, 5.
1908, 500, § 1.
1909, 491, § 3.
1919, 350, § 46.
§§ 45, 46.

SECTION 27. The commissioner shall have access to the vaults, books and papers of such corporation, and shall inspect, examine and inquire into its affairs and take proceedings in regard to it in the same manner and to the same extent as if it were a savings bank; and may make, or cause to be made by an expert at the expense of the corporation, such further examination of a corporation exercising the powers conferred by section fifty-two as he may consider necessary, and shall, when ordered by any court of competent jurisdiction, make an examination or cause it to be made.

SECTION 28. [REPEALED, 1923, 406, § 2.]

SECTION 29. [REPEALED, 1923, 406, § 2.]

SECTION 30. [REPEALED, 1923, 406, § 2.]

1 SECTION 30A. No such corporation shall make any transfer of assets
 2 from one department thereof to another without forthwith making report
 3 of such transfer to the commissioner. The report shall be made on forms
 4 provided by the commissioner, and shall set forth such information in
 5 relation to the said assets, the purposes of the transfer and such other
 6 data in relation thereto as the commissioner may require. In case the
 7 commissioner, not later than thirty days after the receipt of said report,
 8 notifies such corporation of his disapproval of such transfer, it shall
 9 forthwith retransfer the said assets to the department from which they
 10 were transferred. In no case shall such corporation make any such
 11 transfer of securities or other property held by it for more than the
 12 market or fair value at the time of such transfer; provided, that in case
 13 the commissioner orders a retransfer of securities or other property
 14 under authority of this section, such retransfer shall be made as of the
 15 value at which they were transferred. Failure of the commissioner to
 16 disapprove a transfer of assets as provided in this section shall for no
 17 purpose be deemed an approval thereof. Whoever violates or permits
 18 to be violated any provision of this section shall be punished by a fine
 19 of not more than one thousand dollars or by imprisonment for not more
 20 than one year, or both.

Interdepart-
 ment transfers
 of assets.
 1922, 310.

POWERS.

1 SECTION 31. Such corporation may receive on deposit, storage or
 2 otherwise, money, government securities, stocks, bonds, coin, jewelry,
 3 plate, valuable papers and documents, evidences of debt, and other
 4 property of any kind, upon terms or conditions to be agreed upon, and
 5 at the request of the depositor may collect and disburse the interest or
 6 income, if any, upon said property received on deposit and collect and
 7 disburse the principal of such of said property as produces interest or
 8 income when it becomes due, upon terms to be prescribed by the cor-
 9 poration. Such deposits shall be general deposits, and may be made by
 10 corporations and persons acting individually or in any fiduciary capacity.
 11 Such corporation shall not give collateral or other security for a deposit
 12 of money received under this section, except that the corporation may
 13 make such a deposit of securities as may be required by the laws of the
 14 United States or the rules and regulations of the trustees of the postal
 15 savings system as security for deposits of postal savings funds made
 16 with such corporation and may give such collateral or other security for
 17 deposits of public or other funds as may be required by any public au-
 18 thority making such deposits or controlling the terms upon which they
 19 may be made. The provisions of sections forty-two and forty-three of
 20 chapter one hundred and sixty-eight applicable to unclaimed deposits in
 21 savings banks shall apply in all respects to similar unclaimed deposits in
 22 all departments of trust companies.

Deposits.
 1888, 413, § 6.
 1896, 423, § 1.
 R. L. 116, § 12.
 1912, 54.
 1914, 537, § 3.
 1931, 426,
 § 263.
 240 Mass. 244
 241 Mass. 262.
 245 Mass. 143.
 249 Mass. 333.

1 SECTION 32. No such corporation shall allow a time deposit repre-
 2 sented by a certificate or written agreement to be withdrawn before the
 3 time specified therein, and where such certificate or agreement does not
 4 specify any definite date for withdrawal no such corporation shall allow
 5 such deposit to be withdrawn without receiving written notice of at least
 6 thirty days. Originals or duplicates of all agreements in reference to time
 7 deposits shall be kept on file by such corporations and submitted to the
 8 commissioner at his request. Any such corporation violating this section
 9 shall be punished by a fine of not more than one thousand dollars.

Time deposits.
 Penalty
 1910, 377.
 1919, 350, § 46.
 245 Mass. 143.
 249 Mass. 401.

Investment of funds-
 1888, 413, § 6.
 1890, 315, § 1.
 R. L. 116, § 13.
 1917, 172, § 1.
 1929, 120.
 245 Mass. 259.
 249 Mass. 333.

SECTION 33. Such corporation may, subject to the limitations of the following section, advance money or credits, whether capital or general deposits, on real estate situated in the commonwealth and on personal security, on terms to be agreed upon, and also invest its money or credits, whether capital or general deposits, in the stocks, bonds or other evidences of indebtedness of corporations or of associations or trusts, both as defined in chapter one hundred and eighty-two, or of governments, both foreign and domestic.

Loans on farm property, etc.
 1888, 413, § 1.
 1889, 342.
 R. L. 116, § 14.
 249 Mass. 333.

SECTION 34. No such corporation shall advance money or credits upon notes secured by deed of trust or by mortgage upon farms or agricultural or unimproved land outside of the commonwealth, except upon land situated in the New England states or the state of New York, or invest in or make loans on the bonds or other securities of a company negotiating or dealing in such notes so secured or in such mortgages.

Agent to buy, etc.
 1890, 315, § 1.
 R. L. 116, § 15.

SECTION 35. No such corporation shall as agent, buy, sell or negotiate securities or evidences of debt on which such corporation may not lawfully advance money or credits, nor as such agent buy, sell or negotiate evidences of debts secured exclusively by real estate under mortgage or deed of trust.

May accept drafts and issue letters of credit.
 1916, 129, § 1.
 1919, 350, § 46.
 249 Mass. 585.
 256 Mass. 58.

SECTION 36. Any such corporation may, subject to such restrictions as may be imposed by the commissioner, accept for payment at a future date drafts and bills of exchange drawn upon it, and issue letters of credit authorizing holders thereof to draw drafts upon it, or its correspondents, at sight or on time; provided, that such acceptances or drafts be based upon actual values, but no such corporation shall accept such bills or drafts to an aggregate amount exceeding at any one time one half of its paid-up capital and surplus, except with the approval of the commissioner, and in no case to an aggregate amount in excess of its capital and surplus.

May accept or rediscount certain drafts, etc.
 1914, 537, § 3.
 249 Mass. 585.
 256 Mass. 58.

SECTION 37. Such corporation may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the import or export of goods, having not more than six months' sight to run, but no such corporation shall accept such bills to an amount equal at any time in the aggregate to more than one half of its paid-up capital stock and surplus. Such corporation may rediscount notes, drafts and bills of exchange arising out of actual commercial transactions.

May act as agent, trustee, etc.
 1888, 413, § 15.
 R. L. 116, § 32.

SECTION 38. Such corporation may act as agent for the purpose of issuing, registering or countersigning the certificates of stock, bonds or other evidences of indebtedness of a corporation, association, municipal corporation, state or national government, on such terms as may be agreed upon, and may also act as trustee or financial or other agent for a person, association, municipal corporation or government, and in their behalf may negotiate loans and sell and negotiate the sale of securities, and may also act as trustee for the bondholders of a corporation, and for such purpose may receive transfers of real and personal property upon such terms as may be agreed upon.

Loans on shares of capital stock, etc.
 1888, 413, § 16.

SECTION 39. No such corporation shall directly or indirectly make a loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of such shares, unless such security or

4 purchase shall be necessary to prevent loss upon a debt previously con- R. L. 116, § 33.
 5 tracted in good faith; and stock so purchased or acquired shall, within 1922, 264.
 6 six months after its purchase or acquisition, be sold or disposed of at 253 Mass. 205.
 7 public or private sale. The treasurer of any such corporation, or any
 8 other officer or employee thereof, who knowingly violates any provision
 9 of this section shall be punished by a fine of not more than one thousand
 10 dollars or by imprisonment for not more than one year, or both.

1 SECTION 40. The total liabilities of a person, other than cities or
 2 towns, including in the liabilities of a firm the liabilities of its several
 3 members, for money borrowed from and drafts drawn on any such cor-
 4 poration having a capital stock of five hundred thousand dollars or more
 5 shall at no time exceed one fifth part of the surplus account and of such
 6 amount of the capital stock of such corporation as is actually paid up.
 7 Such total liabilities to any such corporation having a capital stock of
 8 less than five hundred thousand dollars shall at no time exceed one fifth
 9 of such amount of the capital stock of the corporation as is actually paid
 10 up, or one tenth part of the surplus account and of such amount of the
 11 capital stock of such corporation as is actually paid up; but the discount
 12 of bills of exchange drawn in good faith against actually existing values,
 13 and the discount of commercial or business paper actually owned by the
 14 person negotiating it, shall not be considered as money borrowed. The
 15 total liabilities to any one such corporation of any government, either
 16 foreign or domestic, other than the government of the United States of
 17 America or of this commonwealth, shall not exceed one tenth part of the
 18 surplus account and of such amount of the capital stock of such corpora-
 19 tion as is actually paid up, and no trust company shall invest or advance
 20 an aggregate amount exceeding at any one time twenty per cent of its
 21 surplus account and paid up capital stock in such securities and evidences
 22 of indebtedness.

Liabilities of
 any one person
 to corporation
 limited
 1888, 413, § 17
 1901, 255
 R. L. 116, § 34
 1916, 129, § 2
 1917, 172, § 2.
 1921, 194
 2 Op. A. G. 190
 3 Op. A. G. 69
 4 Op. A. G. 8
 Op. A. G.
 (1918) 52

1 SECTION 41. Such corporation may hold real estate suitable for the
 2 transaction of its business, provided that if the aggregate amount invested
 3 and proposed to be invested therein, including the cost of alterations and
 4 additions in the nature of permanent fixtures, exceeds, directly or indi-
 5 rectly, twenty-five per cent of its capital actually paid in and its surplus
 6 account, any such excess investment shall be made only with the approval
 7 of the commissioner. The amount of any mortgage on real estate owned
 8 by a trust company directly or indirectly and in whole or in part used
 9 by it for the transaction of its business, and the amount of money invested
 10 by a trust company in the securities of any corporation, trust or other
 11 organization which holds real estate in whole or in part used for the
 12 transaction of the business of such trust company or intended for such
 13 use, shall be included in determining the amount of real estate that may
 14 be held by such trust company under this section.

May hold real
 estate suitable
 for its business.
 1888, 413, § 18.
 1894, 274
 R. L. 116, § 35.
 1912, 53
 1922, 321.
 1929, 116
 2 Op. A. G. 317.

1 SECTION 42. Such corporations which succeed or have succeeded to
 2 the business of national banks may continue to hold the real estate owned
 3 by such national banks and used in the transaction of their business.
 1912, 90.

Real estate
 held by corpo-
 ration which is
 successor to
 national bank.

1 SECTION 43. No trust company shall hold more than ten per cent of
 2 the capital stock of any other trust company.
 1914, 504, § 1. 231 Mass. 42.

Holding of
 stock in other
 trust company
 limited

Consolidation of trust companies regulated. 1914, 504, § 2. 1922, 292. 1931, 11. 263 Mass. 444.

SECTION 44. No trust company shall be merged in or consolidated with another trust company except with the written approval of the commissioner and under the provisions of sections forty-two and forty-six of chapter one hundred and fifty-six, which are hereby made applicable to the sale or exchange of all the property and assets, including the good will and corporate franchise, of a trust company. The charter of a trust company the business of which shall, on or after July first, nineteen hundred and twenty-two, be consolidated or merged with, or absorbed by, another bank or trust company, or the affairs of which shall, on or after said date, have been liquidated, shall be void except for the purpose of discharging existing obligations and liabilities.

Branch offices. 1902, 355, §§ 1, 2. 1906, 204, §§ 1, 3, 5. 1908, 520, § 15. 500, § 4. 1909, 491, § 2. 1914, 504, § 3. 1919, 350, § 47. 1928, 285. 2 Op. A. G. 317. 3 Op. A. G. 131.

SECTION 45. The board of bank incorporation may authorize in writing any such corporation to maintain one or more branch offices in the town where its main office is located; provided, that in any town the population of which according to the last preceding state or national census does not exceed fifty thousand not more than one such branch, and in any town the population of which according to said census exceeds fifty thousand but does not exceed one hundred thousand not more than two such branches, shall so be authorized.

No such corporation shall maintain a branch office except as provided in this and the two following sections, but the restrictions of this section shall not extend to branch offices authorized prior to January first, nineteen hundred and twenty-eight.

Office of merged company maintained as branch office. 1914, 504, § 3. 1919, 350, § 46. 1922, 396.

SECTION 46. Any office of a trust company the business of which has been taken over under section forty-four by, or any office of a national bank purchased by or merged in, a trust company located in the same town, may be maintained as a branch office of such corporation, if in the opinion of the commissioner public convenience will be served thereby.

Establishment of foreign branches. 1914, 537, § 2. 1919, 350, § 46.

SECTION 47. Any such corporation having a capital and surplus of one million dollars or more may file application with the commissioner, upon such conditions and under such regulations as may be prescribed by him, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States. Such application shall specify, in addition to the name and capital of the trust company filing it, the places where the banking operations proposed are to be carried on and the amount of capital set aside for the conduct of its foreign business. The commissioner may approve any such application, or reject it if, in his judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of the application is deemed inexpedient. Every such corporation which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the commissioner upon demand, and he may order special examinations of such foreign branches at such times as he deems best. Every such corporation shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger profit or loss accruing at each branch, as a separate item.

1 SECTION 48. A trust company which becomes a stockholder in a
 2 federal reserve bank within the federal reserve district where such trust
 3 company is situated, and while such trust company continues as a mem-
 4 ber bank under the United States "Federal Reserve Act" approved
 5 December twenty-third, nineteen hundred and thirteen, or any acts in
 6 amendment thereof, may have and exercise any and all of the corporate
 7 powers and privileges which may be exercised by member banks under
 8 said "Federal Reserve Act" or any acts in amendment thereof or in
 9 addition thereto.

Additional
 powers, if mem-
 ber of federal
 reserve bank.
 1914, 537, § 1.

TRUST DEPARTMENT.

1 SECTION 49. Every such corporation acting under any provision of
 2 the following section or section fifty-two shall have a trust department
 3 in which all business authorized by said sections shall be kept separate
 4 and distinct from its general business.

Trust depart-
 ment
 1888, 413, § 7.
 R. L. 116, § 24

1 SECTION 50. A court of law or equity or a probate court of the com-
 2 monwealth, may direct that money or property under its control, or
 3 which may be paid into court by parties to any legal proceedings, or
 4 which may be brought into court by reason of an order or judgment,
 5 be deposited with such corporation, upon such terms and subject to
 6 such instructions as the court may prescribe. When money so depos-
 7 ited has remained unclaimed for more than ten years, the court may
 8 upon motion of the attorney-general order and decree that it shall be
 9 paid over to the state treasurer to be held by him under the terms of
 10 said order or decree, and upon the entry of such order or decree the
 11 corporation shall pay over money so deposited and specified in the
 12 order to the state treasurer, to be held by him as aforesaid; and if any
 13 person shall establish a lawful right thereto the said treasurer shall
 14 repay the same to such person, with interest at the rate of three per
 15 cent per annum from the time when paid to said treasurer to the time
 16 when it is paid over by him to such person. Any person claiming the
 17 right to money deposited with the state treasurer under this section
 18 pursuant to a decree of a probate court or a court of insolvency in any
 19 county may establish the same by a petition to the probate court of
 20 such county, or, if so deposited pursuant to the order of any other
 21 court, by a petition to the superior court under section one of chapter two
 22 hundred and fifty-eight; provided, that in cases where claims amount
 23 to less than fifty dollars each, the claims may be presented to the comp-
 24 troller, who shall examine the same and allow and certify for payment
 25 such as may be proved to his satisfaction. Such corporation may also
 26 hold money or property in trust or on deposit from executors, admin-
 27 istrators, assignees, guardians, conservators and trustees, upon such
 28 terms and conditions as may be agreed upon.

Deposit by
 authority of
 court, etc.
 1888, 413, § 7.
 R. L. 116, § 16
 1907, 417, § 1.
 1915, 23, § 1.
 1931, 426,
 § 264.

1 SECTION 51. Money or property received under the preceding section
 2 shall be loaned on or invested only in the authorized loans of the United
 3 States, or any of the New England states, counties, cities or towns
 4 thereof, or of the states of Illinois, Iowa, Michigan, Minnesota, Wis-
 5 consin, or the counties or cities thereof, or stocks of national banks
 6 situated within this commonwealth, or in the first mortgage bonds of a
 7 railroad corporation incorporated in any of the New England states
 8 whose road is located wholly or in part in the same and which has
 9 earned and paid regular dividends on all its issues of capital stock for

Investment of
 such funds-
 1888, 413, § 7.
 R. L. 116, § 17.
 1931, 426,
 § 270.
 1 Op. A. G. 334.

two years last preceding such loan or investment, or in the bonds of any such railroad company unencumbered by mortgage, or in first mortgages on real estate in this commonwealth, or in any securities in which savings banks may invest, or upon notes with two sureties of domestic manufacturing corporations or of individuals with a sufficient pledge as collateral of any of the aforesaid securities; but all real estate acquired by foreclosure of mortgage or by levy of execution shall be sold at public auction within two years after such foreclosure or levy.

Appointment as trustee, executor, etc. 1888, 413, §§ 7, 8. 1899, 348, §§ 1, 2. R. L. 116, § 18. 1908, 116, § 505. 1928, 128, § 2. 212 Mass. 335. 249 Mass. 440. 263 Mass. 394.

SECTION 52. Such corporation may be appointed executor of a will, codicil or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian, conservator or trustee under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the same, as a legally qualified individual. Any such appointment as guardian shall apply to the estate and not to the person of the ward. Such corporation shall not be required to receive or hold property or money or assume or execute a trust under this section or section fifty without its assent. The words "such corporation" as used in this section and in sections fifty-three to fifty-nine, inclusive, shall, so far as applicable, include any banking association or corporation holding a certificate under section forty-five A of chapter one hundred and sixty-seven.

Investment of funds held as executor, etc. 1911, 389.

SECTION 53. Every such corporation may invest the funds or assets which it may receive and hold under the preceding section in the same way, to the same extent, and under the same restrictions as an individual holding a similar position may invest such funds or assets.

Trust funds to be kept as special deposit. 1888, 413, §§ 7, 9. 1899, 348, § 3. R. L. 116, § 24.

SECTION 54. Money, property or securities received, invested or loaned under the provisions of sections fifty to fifty-two, inclusive, shall be a special deposit in such corporation, and the accounts thereof shall be kept separate. Such funds and the investment or loans thereof shall be specially appropriated to the security and payment of such deposits, shall not be mingled with the investments of the capital stock or other money or property belonging to such corporation, or be liable for the debts or obligations thereof.

Capital stock as security. 1888, 413, § 8. 1889, 348, § 2. R. L. 116, § 19. 244 Mass. 64.

SECTION 55. The capital stock of such corporations, with the liabilities of the stockholders thereunder, shall be held as security for the faithful performance of the duties undertaken by virtue of sections fifty to fifty-two, inclusive, or of any similar provision of law.

Not to exercise powers, etc., unless authorized. 1896, 423, § 3. 1899, 348, § 5. R. L. 116, § 20. 1906, 204, § 4. 1908, 590, § 4.

SECTION 56. No such corporation shall commence to exercise the powers and duties described in sections fifty to fifty-two, inclusive, until it has received written authority therefor from the board of bank incorporation, and said board may grant or refuse such authority after such investigation of the affairs of the corporation as it deems expedient.

1909, 491, § 2.

1919, 350, § 47.

Signing of returns, etc. Examination of officers. 1888, 413, § 8.

SECTION 57. In all proceedings in the probate court or elsewhere, connected with any authority exercised under section fifty or fifty-two, or under any similar provisions of law, all accounts, returns and other

4 papers may be signed and sworn to, in behalf of the corporation, by
 5 any officer thereof duly authorized by it, and the answers and exami-
 6 nations under oath of said officer shall be received as the answers and
 7 examinations of the corporation. The court may order and compel an
 8 officer of such corporation to answer and attend said examination in
 9 the same manner as if he, instead of the corporation, were a party to
 10 the proceeding.

1 SECTION 58. No surety shall be required upon the bonds filed by
 2 such corporation as fiduciary under section fifty-two except that the
 3 court making an appointment under said section, other than of a trust-
 4 tee, may, upon application by an interested person, require the corpo-
 5 ration so appointed to give such security, in addition to that provided
 6 by section fifty-five, as the court may consider proper, and upon fail-
 7 ure of such corporation to give the security required, may revoke such
 8 appointment and remove such corporation.

Surety on
 bonds.
 1888, 413, § 8.
 1899, 348,
 §§ 2, 4
 R. L. 116,
 §§ 19, 22.

1 SECTION 59. A person creating a trust may direct whether money
 2 or property deposited under it shall be held and invested separately or
 3 invested in the general trust fund of the corporation; and such cor-
 4 poration acting as trustee shall be governed by directions contained in
 5 the will or instrument under which it acts.

Disposition of
 trust funds,
 etc.
 1888, 413, § 8.
 R. L. 116, § 23.

SAVINGS DEPARTMENT.

1 SECTION 60. Every such corporation soliciting or receiving deposits
 2 (a) which may be withdrawn only on presentation of the pass book or
 3 other similar form of receipt which permits successive deposits or with-
 4 draws to be entered thereon, or (b) which at the option of such cor-
 5 poration may be withdrawn only at the expiration of a stated period
 6 after notice of intention to withdraw has been given, or (c) in any
 7 other way which might lead the public to believe that such deposits are
 8 received or invested under the same conditions or in the same manner
 9 as deposits in savings banks, shall have a savings department in which
 10 all business relating to such deposits shall be transacted. Every such
 11 corporation subject to this section shall have an investment committee
 12 of not less than three members, elected by and from the board of directors,
 13 and such committee shall hold meetings at least once in each month.

Savings
 department.
 Investment
 committee.
 1908, 520, § 1.
 1920, 563, § 1.
 231 Mass. 367.
 241 Mass. 273.
 346
 244 Mass. 64.
 245 Mass. 143.
 254 Mass. 444.

1 SECTION 61. All such deposits shall be special deposits and shall
 2 be placed in said savings department, and all loans or investments
 3 thereof shall be made in accordance with the law governing the invest-
 4 ment of deposits in savings banks. The investment committee shall
 5 approve all loans and all purchases or sales of bonds, stocks and notes
 6 made by or for the savings department, and shall perform such other
 7 duties as the by-laws or board of directors may prescribe. A record
 8 shall be made at each meeting of the transactions of the committee
 9 and of the names of those present. The committee may, by vote or by
 10 a statement signed by a majority of its members, approve changes
 11 of collateral security made by or for said department, and the vote or
 12 statement, and the record thereof, shall set forth all such changes.

Investments
 of deposits
 in savings
 department.
 1908, 520, § 2.
 1918, 67.
 1920, 563, § 1.
 239 Mass. 272.
 298, 305.
 241 Mass. 273.
 346.
 242 Mass. 343.
 244 Mass. 64.
 245 Mass. 143.
 254 Mass. 444
 3 Op. A. G. 454.
 4 Op. A. G. 8.
 Op. A. G.
 (1920) 265.

1 SECTION 62. Such deposits and the investments or loans thereof
 2 shall be appropriated solely to the security and payment of such de-

Such deposits
 to be kept
 separate.

1908, 520, § 3.
220 Mass. 499.
239 Mass. 272.
298, 305.
240 Mass. 254.
241 Mass. 346.
243 Mass. 530.
244 Mass. 64.
247 Mass. 73.
3 Op. A. G. 574.

posits, shall not be mingled with the investments of the capital stock or other money or property belonging to or controlled by such corporation, or be liable for the debts or obligations thereof until after the deposits in said savings department have been paid in full. The accounts and transactions of said savings department shall be kept separate and distinct from the general business of the corporation.

Capital stock
as security for
such deposits.
1908, 520, § 4.
239 Mass. 298.
241 Mass. 346.
244 Mass. 64.
253 Mass. 205.
Op. A. G.
(1920) 265.

SECTION 63. The capital stock of such corporation with the liabilities of the stockholders thereunder shall be held as security for the payment of such deposits, and the persons making such deposits or entitled thereto shall have an equal claim with other creditors upon the capital and other property of the corporation in addition to the security provided for by sections seventy-three and seventy-four or section eighty-one.

Guaranty fund
in savings
department.
1920, 563, § 5.
241 Mass. 346.
Op. A. G.
(1920) 254.

SECTION 64. Every such trust company shall, immediately before making a semi-annual dividend on deposits in its savings department, set apart as a guaranty fund from the net profits of such department which have accumulated during the six months last preceding, a sum equal to one eighth of one per cent of the deposits in the savings department on the date of said dividend. If the said payments by way of dividends are made to cover periods of less than six months, then the amount so set apart for the particular period covered shall bear the same proportion to the said one eighth of one per cent which the length of the period covered bears to the period of six months. The said sums shall continue to be set apart until the guaranty fund amounts to five per cent of the savings deposits. The guaranty fund shall be kept in the savings department and shall be invested in securities legal for the investment of deposits in savings departments. Further additions to the guaranty fund shall be at the discretion of the investment committee or board of directors of the trust company. When the fund amounts to less than five per cent of the whole amount of the said deposits no losses shall be met therefrom except upon the written approval of the commissioner.

Income.
1908, 520, § 5.
1922, 365
244 Mass. 64.

SECTION 65. All income received from the investment of funds in said savings department, after deducting the expenses and losses incurred in the management thereof and such sums as may be paid to depositors therein as interest or dividends, shall accrue as profits to such corporation and may be transferred to its general funds; but no such profits shall be transferred to such general funds unless the net undivided profits remaining on hand in the savings department after such transfer would exceed the depreciation of securities owned by said department and the other losses therein.

Notice of
intention to
withdraw
savings
deposits.
1908, 520, § 7.
1921, 292, § 2.
1922, 468, § 3.
254 Mass. 444.

SECTION 66. Such corporation may at any time require a depositor in said savings department to give a notice not exceeding ninety days of his intention to withdraw the whole or any part of his deposit or to apply for a loan under section sixty-six A.

Whenever such corporation requires said notice from ten or more depositors on any one day, it shall be deemed to have made a general requirement and it shall file within forty-eight hours thereafter a written notice setting forth the terms of the requirement with the commissioner. Until such general requirement has been removed and notice thereof

10 filed with the commissioner, no payment by way of withdrawal or loan
 11 shall be made to any depositor in said savings department on account
 12 of his deposit other than in accordance with the general requirement as
 13 set forth in the notice filed with the commissioner, except that with the
 14 approval of the commissioner, amounts not exceeding, in the aggregate,
 15 one hundred dollars may so be paid to each depositor.

16 Such corporation shall not advertise for deposits in newspapers, by
 17 posters or other written solicitation, while such general requirement is in
 18 effect, unless the advertisement shall contain, in type not smaller than
 19 the largest type thereof, a statement that such deposits may not be paid
 20 out by way of withdrawal or loan for the period set forth in the notice
 21 of said requirement.

1 SECTION 66A. Such a corporation shall, on application of a depositor
 2 in said savings department, make a loan to him, secured by his deposit
 3 book, to an amount not exceeding ninety per cent of the amount of de-
 4 posits shown therein, for a period not extending beyond the date when
 5 the next dividend of the savings department of said corporation shall
 6 be payable. The said corporation may charge the depositor interest for
 7 the loan at a rate not exceeding one half of one per cent more than the
 8 next previous regular dividend declared and paid by the savings depart-
 9 ment of such corporation.

Loans to
 depositors
 1922, 468, § 4

10 The corporation shall keep posted conspicuously in the banking rooms
 11 of its savings department a notice containing the substance of this sec-
 12 tion and of section sixty-six in such form as the commissioner may
 13 prescribe.

1 SECTION 67. Such corporations having savings departments may
 2 place deposits on interest once a month and not oftener, on such day
 3 in each month as may be determined by their by-laws.

Deposits may
 go on interest
 monthly.

1919, 116, § 1; 350, § 46.

1 SECTION 68. Immediately before a meeting of the directors called to
 2 consider the declaration of a dividend by the savings department of
 3 every such trust company, the investment committee shall make or cause
 4 to be made an examination of the income, profits and expenses for the
 5 six months' period next preceding the date of the proposed dividend,
 6 and shall report to the directors the estimated net earnings of the said
 7 department for the said period. No dividend shall be paid unless it is
 8 declared and authorized by the directors after the said examination,
 9 and a copy of the said report shall be filed and preserved with the records
 10 of the corporation. Ordinary dividends in such a department shall not
 11 exceed the rate of five per cent a year, and extra dividends may be paid
 12 as by savings banks, under and in accordance with section fifty of chap-
 13 ter one hundred and sixty-eight.

Payment of
 dividends to be
 authorized by
 directors after
 examination
 by investment
 committee.
 1920, 563, § 6
 Op. A. G.
 (1920) 254

1 SECTION 69. Except as otherwise provided by section seventeen of
 2 chapter one hundred and sixty-seven, no such corporation shall allow
 3 interest on any savings deposit from a date prior to that on which the
 4 deposit is made, nor shall a deposit which is withdrawn between its divi-
 5 dend days be entitled to interest after the prior dividend day except
 6 with the written permission of, and under regulations prescribed by, the
 7 commissioner.

Interest.
 1919, 116, § 3;
 350, § 46
 1920, 38.

Pass books to
be verified
1920, 563, § 2.

SECTION 70. During one or more of the first ten months of the year
nineteen hundred and twenty-two, and of each third year thereafter,
every such trust company shall cause a verification of the pass books of
the savings department to be made under such rules and in such man-
ner as may be approved by the commissioner.

No officer, etc.,
to borrow funds
of savings
department or
become surety.
1920, 563, § 3.

SECTION 71. No president, treasurer, member of the investment
committee, or officer of such a trust company charged with the duty of
investing the funds of its savings department shall borrow or use any
part thereof, be surety on loans of said department to others, or, di-
rectly or indirectly, whether acting individually or as trustee be an
obligor for money borrowed from such savings department, and if such
member or any such officer, either individually or as trustee, becomes
the owner of real estate upon which a mortgage is held by such trust
company in its savings department, his office and membership on such
investment committee shall become vacant at the expiration of sixty
days thereafter, unless he has then ceased to be the owner of the real
estate or has in good faith caused the mortgage thereon to be discharged
or assigned. This section shall not apply to any loans or mortgages
held by such company in its savings department on May twenty-eighth,
nineteen hundred and twenty, or to renewals thereof, or to the deposit
of money in any bank or trust company of which one or more members
of the investment committee or officers of such trust company are di-
rectors. For the purposes of this section, no director who is neither
on such investment committee nor charged with the investment of the
funds of such a department shall be considered an officer.

Trust com-
panies, etc.,
not to receive
brokerage, etc.,
on account of
loan by savings
department.
1920, 563, § 4.

SECTION 72. No such trust company, and no person acting in its
behalf, shall, directly or indirectly, negotiate, take or receive a fee,
brokerage commission, gift or other consideration for or on account of
a loan made by or on behalf of such trust company in the savings depart-
ment, other than appears on the face of the note or instrument evidenc-
ing the same, or upon the records of the savings department, but this
section shall not prohibit a reasonable charge for services in the exam-
ination of the property that may be offered or accepted as security for
the loan, or of the title to the property, or in the preparation of con-
veyances to such company of the security so offered or accepted. Viola-
tion of this section shall be punished by a fine of not more than one
thousand dollars, or by imprisonment for not more than one year, or
both.

RESERVES AND GUARANTY FUNDS.

Reserve;
weekly report
to commis-
sioner relative
to. Penalty.
1888, 413, § 13.
1900, 257.
R. L. 116, § 28.
1904, 374, § 7.
1905, 331.
1908, 520, § 8.
1910, 377.
1914, 422.
1922, 294.
3 Op. A. G. 239.

SECTION 73. Every such corporation shall at all times have on hand
as a reserve an amount equal to at least fifteen per cent of the aggregate
amount of its deposits, exclusive of savings deposits and all time deposits
represented by certificates or written agreements; but whenever such
time deposits may be withdrawn within thirty days, they shall be sub-
ject to the reserve requirements of this chapter; and every trust com-
pany doing business in Boston shall at all times have on hand as a reserve
an amount equal to at least twenty per cent of the aggregate amount of
its deposits, computed in the same manner, but this provision shall not
affect such corporations doing business in Boston and located at a dis-
tance of not less than three miles from the state house. The treasurer

12 of every trust company, or other officer or employee thereof charged with
 13 the duties and functions usually performed by the treasurer, shall report
 14 in writing to the commissioner once in each week a statement of its
 15 reserve for each business day of the preceding week. Any such officer or
 16 employee who neglects or fails to make such report as above provided
 17 shall be punished by a fine of not more than one thousand dollars or by
 18 imprisonment for not more than one year, or both.

1 SECTION 74. Not less than one fifth of the required reserve shall con-
 2 sist of lawful money of the United States, gold certificates, silver cer-
 3 tificates, or notes and bills issued by any lawfully organized national
 4 banking association or federal reserve bank. The remainder, if any,
 5 shall consist of balances payable on demand due from any trust company
 6 authorized to act as reserve agent as provided in the following section,
 7 or from any member of the federal reserve system located in this com-
 8 monwealth, in a reserve city in the second, third or fourth federal reserve
 9 district or in a central reserve city, as designated by or under authority of
 10 act of congress, and of bonds, notes, bills and certificates of indebted-
 11 ness of the United States, or of this commonwealth, computed at their
 12 fair market value, which are the absolute property and under the con-
 13 trol of such corporation; provided, that not more than two fifths of the
 14 minimum reserve required shall consist of such bonds, notes, bills and
 15 certificates of indebtedness.

Composition
 of reserve.
 1888, 413, § 13.
 1901, 257.
 R. L. 116, § 28.
 1904, 374, § 7.
 1905, 331, § 1.
 1908, 520, § 9.
 1917, 283.
 1919, 82.
 1930, 27.
 Op. A. G.
 (1917) 49.

1 SECTION 75. The commissioner may authorize any trust company
 2 in Boston to act as reserve agent for trust companies doing business in
 3 the commonwealth; provided, that a trust company shall not keep any
 4 part of its reserve in a trust company so authorized to act as reserve
 5 agent without first obtaining the written consent of the commissioner.
 6 Not less than one half of the reserve of such trust company acting as
 7 reserve agent shall consist of lawful money of the United States, gold
 8 certificates, silver certificates or notes and bills issued by any lawfully
 9 organized national banking association, and the remainder of such reserve
 10 may consist of balances, payable on demand, due from any trust company
 11 in Boston authorized to act as reserve agent as herein provided, or from
 12 any national banking association doing business either in this common-
 13 wealth, or in the cities of New York, Philadelphia, Chicago or Albany.

Corporation
 may act as
 reserve agent
 1888, 413, § 13.
 1900, 257.
 R. L. 116, § 28.
 1904, 374, § 7.
 1905, 331, § 1.
 1908, 520, § 10.

1 SECTION 76. If the reserve of any trust company is at any time less
 2 than the amount which it is required to keep on hand, such corporation
 3 shall not make any new loans or investments until the required propor-
 4 tion between the aggregate amount of its deposits and reserve shall be
 5 restored. The commissioner may notify such corporation to make good
 6 such reserve, and if it fails so to do for thirty days thereafter, he may
 7 proceed to take possession of its property and business and liquidate
 8 its affairs in the manner provided in sections twenty-two to thirty-five, in-
 9 clusive, of chapter one hundred and sixty-seven. If the reserve of any
 10 such corporation which has been authorized to act as reserve agent is at
 11 any time less than the amount which it is required to keep on hand, the
 12 commissioner may notify such corporation to make good such reserve,
 13 and if such corporation fails for ten days thereafter so to make good such
 14 reserve, the commissioner may revoke the authority of such corporation
 15 to act as a reserve agent.

Proceedings if
 reserve less
 than required.
 1888, 413, § 13.
 R. L. 116, § 28.
 1904, 374, § 7.
 1905, 331, § 1.
 1906, 204.
 §§ 1, 3, 5.
 1908, 520, § 11.
 1909, 491, § 3.
 1922, 291.

Trust guar-
anty fund.
1888, 413, § 10.
R. L. 116, § 25.

SECTION 77. The directors may from time to time set apart as a trust guaranty fund such portion of the profits as they may consider expedient. Such fund shall be invested in such securities only as the trust deposits may be invested in. The accounts of its investment and management, and the securities in which it is invested, shall be kept in the trust department.

Trust guaranty
fund pledged,
etc.
1888, 413, § 11.
R. L. 116, § 26.

SECTION 78. The trust guaranty fund shall be absolutely pledged for the faithful performance by the corporation of all its duties and undertakings under sections fifty to fifty-two, inclusive, and shall be applied to make good any default in such performance, and such pledge and liability shall not in any way relieve the capital stock and general funds of the corporation, but creditors under said sections shall have an equal claim with other creditors upon the capital and other property of the corporation, in addition to the security hereby given.

Trust guaranty
fund not to be
transferred,
etc.
1888, 413, § 12.
R. L. 116, § 27.

SECTION 79. No portion of such trust guaranty fund shall be transferred to the general capital while the corporation has undertakings of the kind mentioned in sections fifty and fifty-two for whose performance bonds are required from individuals, outstanding uncompleted; but its income, if not required at any dividend time to make good such deposits or undertakings, may be added to and disposed of with the general income of the corporation.

Dividends.
Surplus fund.
1896, 423, § 2.
R. L. 116, § 29.
1922, 394.

SECTION 80. The directors of any such corporation may declare dividends of so much of the net profits of the corporation as they shall judge expedient; but such corporation shall, before the declaration of a dividend from the net profits, carry one tenth part of its net profits of the preceding period for which said dividend is paid, to its surplus fund until the same shall amount to fifty per centum of its capital stock. No such corporation or stockholder thereof shall, during the time it continues its banking operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. No dividend shall be paid by any such corporation, while it continues its banking operations, to an amount greater than its net profits then on hand, exclusive of the surplus fund provided for in this section, after deducting from such net profits its losses and bad debts. All debts due to any such corporation on which interest is due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock as provided for in section eighteen.

Reserve
requirements,
if member of
federal reserve
bank.
1914, 537, § 1.

SECTION 81. A trust company which becomes a stockholder in a federal reserve bank within the federal reserve district where such trust company is situated, and while such trust company continues as a member bank under the United States "Federal Reserve Act" approved December twenty-third, nineteen hundred and thirteen, or any acts in amendment thereof, shall be subject to the provisions of said "Federal Reserve Act" and any amendments thereof relative to bank reserves, in substitution for the requirements of sections seventy-three to seventy-five, inclusive.

CHAPTER 173.

MORTGAGE LOAN INVESTMENT COMPANIES.

SECT.

1. Powers and duties.
2. Loans.
3. May purchase, sell and assign notes, etc.
4. Receipt of money for investment, etc.
5. Foreclosure of mortgages, etc.
6. Issue of debentures or bonds.
7. Amount guaranteed limited.
8. Bonds, notes, etc., where payable.

SECT.

9. May hold real estate.
10. Holding its own capital stock.
11. Liability of shareholders.
12. Guaranty fund.
13. Books to be open for inspection.
14. Commissioner of banks to have supervision.
15. Returns.
16. Annual report as to such corporations.

1 SECTION 1. Every corporation chartered in the commonwealth for
 2 the special purpose of negotiating or making loans of money secured by
 3 deed of trust or mortgage of real estate situated outside of the common-
 4 wealth shall be subject to this chapter. Any such corporation chartered
 5 prior to May twenty-second, eighteen hundred and eighty-eight, shall,
 6 except where inconsistent with this chapter, continue to exercise the
 7 powers and be subject to the duties set forth in its charter.

Powers and
 duties.
 1888, 387, § 1.
 R. L. 117, § 1.

1 SECTION 2. Such corporation may loan money secured by deed of
 2 trust or mortgage of real estate not subject to a prior mortgage or en-
 3 cumbrance and situated in any state, other than this commonwealth, or
 4 territory of the United States, to an amount not exceeding fifty per cent
 5 of the appraised value of said property. It may also hold, sell and assign
 6 the bonds, notes, mortgages and securities taken for such loans, may
 7 guarantee the payment of the interest and principal of bonds, notes or
 8 other evidences of debt secured as aforesaid, and may guarantee title
 9 to the property securing such evidences of debt for the time such debt
 10 remains unpaid; but this chapter shall not authorize such corporations
 11 to engage in the business of title insurance.

Loans.
 1888, 387, § 2.
 R. L. 117, § 2.

1 SECTION 3. It may purchase, hold, guarantee, sell and assign notes
 2 or bonds, and the mortgages or deeds of trust securing the same, or other
 3 papers securing a loan made in accordance with the preceding section.

May purchase,
 sell and assign
 notes, etc.
 1888, 387, § 3.
 R. L. 117, § 3.

1 SECTION 4. It may receive money for investment in securities which
 2 it is by this chapter authorized to sell or issue, and may allow interest
 3 on such money from the time of its receipt to the time of its investment,
 4 at such rate as may be agreed upon; may receive, care for, manage and
 5 sell stocks, bonds and evidences of debt, the avails of which are intended
 6 for investment as aforesaid. No such corporation shall receive money
 7 on deposit, except as herein provided, or engage in any form of banking
 8 or trust business except that permitted by this chapter.

Receipt of
 money for
 investment, etc.
 1888, 387, § 4.
 R. L. 117, § 4.

1 SECTION 5. It may act as agent for foreclosing mortgages and col-
 2 lecting claims arising by reason of any evidence of debt deposited with it
 3 under the preceding section. It may purchase real estate at public auc-
 4 tion sale thereof made by virtue of the power contained in any deed of
 5 trust or mortgage owned, held or guaranteed by it, or at private sale

Foreclosure of
 mortgages, etc.
 1888, 387, § 5.
 R. L. 117, § 5.

thereof made to cancel the debt secured by such deed of trust or mortgage, and may hold, sell, transfer and convey said property; but real estate so purchased or acquired shall be sold within five years thereafter.

Issue of debentures or bonds.
1888, 387, § 6.
R. L. 117, § 6.

SECTION 6. It may issue debentures or bonds, to secure the payment of which it shall from time to time assign and transfer to trustees, none of whom shall be officers of the corporation, or to a domestic trust company, deeds of trust or mortgages of real estate on which loans have been made in accordance with this chapter, to be held by such trustees or company in trust for the benefit of the holders of said debentures or bonds, whereupon such trustees or company shall endorse their or its certificate of such fact upon debentures or bonds not exceeding in amount the face value of securities so transferred to them or it.

Amount guaranteed limited.
1888, 387, § 7.
R. L. 117, § 7.

SECTION 7. The total amount of mortgages guaranteed and of debentures or bonds issued by such corporation shall at no time exceed ten times the amount of its capital stock actually paid in and its surplus.

Bonds, notes, etc., where payable.
1888, 387, § 8.
R. L. 117, § 8.

SECTION 8. Bonds, notes and other evidences of debt taken by such corporation for money loaned shall be payable to it at its principal place of business in the commonwealth, and shall pass by delivery, by transfer on the books of such corporation at said place of business, or by certificate of its transfer agent at such other place as it may appoint. No transfer, except on the books of the corporation or by certificate of its transfer agent, shall be valid unless the last transfer shall have been to bearer. A complete record of such transfer by said transfer agents shall be forwarded to and kept at said place of business of such corporation.

May hold real estate.
1888, 387, § 9.
R. L. 117, § 9.

SECTION 9. Such corporation may hold real estate in the commonwealth suitable for the transaction of its business to an amount not exceeding twenty-five per cent of its capital actually paid in.

Holding its own capital stock.
1888, 387, § 10.
R. L. 117, § 10.

SECTION 10. No such corporation shall purchase or hold shares of its own capital stock unless necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased shall within six months thereafter be sold or disposed of at public or private sale.

Liability of shareholders.
1888, 387, § 11.
R. L. 117, § 11.

SECTION 11. The shareholders of such corporation shall be personally liable in the same manner and to the same extent as stockholders of business corporations are liable under the laws of this commonwealth. Sections thirty-eight to forty, inclusive, of chapter one hundred and fifty-six shall apply to and regulate the enforcement of such liability.

Guaranty fund.
1888, 387, § 12.
R. L. 117, § 12.

SECTION 12. Such corporation shall set apart as a guaranty fund not less than five per cent of its paid-in capital, and shall thereafter annually add thereto not less than ten per cent of its net earnings, until such fund, with the accumulated interest thereon, shall be equal to not less than twenty-five per cent of its paid-in capital. Said fund shall be invested in United States bonds, English consols, first mortgage bonds of any railroad corporation which has paid a dividend on its stock for at least three years last preceding the date of said investment, the legally authorized bonds for municipal purposes of any city of the United States

10 of not less than thirty thousand inhabitants whose whole indebtedness
 11 does not exceed five per cent of its last assessed valuation, or in any
 12 securities in which savings banks may invest their deposits.

1 SECTION 13. The books of such corporation shall at all reasonable
 2 times be open for inspection to the stockholders and to holders of bonds
 3 and debentures issued by such corporation, or of notes and other evidences
 4 of debt guaranteed by it.

Books to be open for inspection
 1888, 387, § 13.
 R. L. 117, § 13.

1 SECTION 14. The commissioner of banks and his assistants shall
 2 have access to the vaults, books and papers of such corporation, shall
 3 inspect, examine and inquire into its affairs, and take proceedings in
 4 regard to it at such times as the commissioner shall consider necessary,
 5 in the same manner and to the same extent as if such corporation were
 6 a savings bank, and he may cause an examination to be made by an expert
 7 under his direction but at the expense of the corporation.

Commissioner of banks to have supervision
 1888, 387, § 14.
 R. L. 117, § 14.
 1906, 204, §§ 1, 3, 5.
 1909, 491, § 3.
 1919, 350, §§ 45, 46, 49.

1 SECTION 15. Such corporation shall annually, within ten days after
 2 the last business day of October, make a return to said commissioner
 3 which shall be in the form of a trial balance of its books, and shall specify
 4 the different kinds of its liabilities and assets, stating the amount of each
 5 kind in accordance with a blank form to be furnished by him; and such
 6 returns shall be published in a newspaper of the town where such cor-
 7 poration is located, at the expense of such corporation, at such times
 8 and in such manner as may be directed by him.

Returns
 1888, 387, § 14.
 R. L. 117, § 15.
 1906, 204, §§ 1, 3, 5.
 1909, 491, § 3.
 1919, 350, §§ 45, 46, 49.

1 SECTION 16. The department of banking and insurance shall include
 2 in its annual report such facts and statements relative to such corpora-
 3 tions as the public interest requires.

Annual report as to such corporations.

1888, 387, § 14. 1906, 204, §§ 1, 1909, 491, § 3.
 R. L. 117, § 15. 3, 5. 1919, 350, §§ 8, 45, 46.

CHAPTER 174.

BOND AND INVESTMENT COMPANIES.

SECT.

1. Corporations to sell bonds, etc., on instalment plan, organization, deposit with state treasurer, etc.
2. Suit in equity relative to deposit.
3. Certificate of authority from commissioner of banks required. Issue regulated.
4. Examination of corporation.
5. Annual statement. Filing; fee.
6. Penalties for failure to file and for false statement.

SECT.

7. Suspension of business of foreign corporation. Jurisdiction of supreme judicial court.
8. Same subject. Domestic corporation.
9. Penalty on agent of unauthorized corporation.
10. No forfeiture after one fourth of instalments paid. Unearned dividends forbidden.
11. Chapter not to apply to insurance and fraternal corporations.
12. General penalty.

1 SECTION 1. The business of issuing, negotiating or selling any bonds,
 2 certificates or obligations of any kind on the partial payment or instal-
 3 ment plan, unless such bond, certificate or obligation shall at the time

Corporations to sell bonds, etc., on instalment plan, organization,

deposit with
state treas-
urer, etc.
1904, 427, § 1.
1906, 204,
§§ 1, 3, 5.
1908, 590, § 2.
1909, 491, § 3.
1919, 350, § 46.

of issuance, negotiation or sale be secured by adequate property, real 4
or personal, shall be transacted in the commonwealth only by corpora- 5
tions subject to the requirements of this chapter. Every such corpora- 6
tion before doing business in the commonwealth shall have at least one 7
hundred thousand dollars of capital stock fully paid in, which, for the 8
benefit and protection of all its investors equally, shall be deposited 9
in trust with the state treasurer or with the duly authorized officer of 10
some other state, which deposits shall consist of cash or of securities in 11
which savings banks in this commonwealth are permitted to invest their 12
deposits or of securities approved by the commissioner of banks, and 13
worth at least one hundred thousand dollars. Such corporation, if the 14
deposit is made with the officer of any other state, shall furnish to the 15
commissioner a certificate from said officer under his official seal, show- 16
ing that he, as such officer, holds said deposit in trust for the benefit and 17
protection of all the investors in said corporation. The certificate shall 18
embrace the items of securities so held, and show that such officer is 19
satisfied that said securities are worth one hundred thousand dollars, 20
but such certificate shall in no manner impair the right of said commis- 21
sioner to examine the securities so held. A corporation making such 22
deposit with the treasurer of this commonwealth shall be entitled to the 23
income thereof, and may from time to time, with the consent of the 24
treasurer, change, in whole or in part, the deposited securities for other 25
securities of equal value, approved as aforesaid. The treasurer may re- 26
turn to the corporation any such deposit if it shall appear that the cor- 27
poration has ceased to do business in this commonwealth, and is under 28
no obligation to its contract holders or other persons in this common- 29
wealth or elsewhere for whose benefit such deposit was made. 30

Suit in equity
relative to
deposit.
1904, 427, § 1.
1906, 204,
§§ 1, 3, 5.
1908, 590, § 2.

SECTION 2. A corporation that has made such deposit, the commis- 1
sioner of banks or any creditor may bring in the supreme judicial court 2
for Suffolk county a suit in equity against the commonwealth to en- 3
force, administer or terminate the trust created by such deposit. 4

1909, 491, § 3.

1919, 350, § 46.

Certificate of
authority from
commissioner
of banks
required.
Issue regu-
lated.
1904, 427, § 2.
1906, 204,
§§ 1, 3, 5.
1908, 590, § 2.
1909, 491, § 3.
1919, 350, § 46.

SECTION 3. No corporation shall transact the business described in 1
section one without receiving a certificate of authority from the com- 2
missioner of banks. Upon the making of the deposit with the state treas- 3
urer or the filing with the commissioner of the certificate required by 4
section one, and upon an examination or exhibition of the assets and 5
liabilities of the corporation showing that it is in a sound financial con- 6
dition, and if it is otherwise duly qualified under the laws of the com- 7
monwealth to transact business therein, the commissioner shall issue 8
to it a certificate of authority to do business in the commonwealth. 9

Examination
of corporation.
1904, 427, § 2.
1906, 204,
§§ 1, 3, 5.
1908, 590, § 2.
1909, 491, § 3.
1919, 350, § 46.

SECTION 4. Upon the filing of such certificate, or whenever he deems 1
it to be prudent for the protection of investors in the commonwealth, 2
the commissioner may visit personally, or by a competent examiner, 3
any corporation engaged in said business, and thoroughly inspect and 4
examine its affairs, and ascertain its financial condition and whether 5
it has complied with law. The proper charges incurred in the examina- 6
tion of a foreign corporation, including the expenses of the commissioner 7
and the expenses and compensation of his assistants employed therein, 8
shall be paid by such corporation. For the purposes aforesaid, the com- 9
missioner or the person making the examination shall have free access 10

11 to all the books and papers of a corporation which relate to its business,
 12 and to the books and papers kept by any of its agents; and may examine
 13 and administer oath to, and examine as witnesses, the directors, officers
 14 and agents of said corporation, and any other person, relative to its
 15 affairs, transactions and condition.

1 SECTION 5. Every corporation transacting said business shall annu-
 2 ally, on or before January fifteenth, file with the commissioner a state-
 3 ment of its financial condition on December thirty-first of the previous
 4 year, and its business of that year. For cause, the commissioner may
 5 extend the time for filing said statement to a date not later than February
 6 fifteenth. The statement shall be in the form required by the commis-
 7 sioner, and shall be sworn to by the president and secretary, or, in their
 8 absence, by two of the principal officers of the corporation. The fee for
 9 filing such annual statement shall be twenty dollars.

Annual
 statement
 Filing fee
 1904, 427, § 3.
 1906, 204,
 §§ 1, 3, 5
 1908, 590, § 2
 1909, 491, § 3
 1919, 350, § 46.

1 SECTION 6. A corporation neglecting to file its annual statement
 2 within the time required shall forfeit one hundred dollars for each day
 3 during which such neglect continues; and, upon notice by the commis-
 4 sioner to that effect, its authority to do any business shall cease while
 5 such default continues. For wilfully making a false annual statement
 6 the corporation and the person making oath to or subscribing to the
 7 same shall be punished by a fine of not less than five hundred nor more
 8 than five thousand dollars.

Penalties for
 failure to file
 and for false
 statement.
 1904, 427, § 3.
 1906, 204,
 §§ 1, 3, 5.
 1908, 590, § 2.
 1909, 491, § 3.
 1919, 350, § 46.

1 SECTION 7. If the commissioner is of opinion, upon examination
 2 or other evidence, that a foreign corporation subject to this chapter is
 3 in an unsound financial condition, that it has failed to comply with
 4 law, or if its officers or agents refuse to submit to examination or to
 5 perform any legal obligation relative thereto, he shall suspend all certifi-
 6 cates of authority granted to said foreign corporation, its officers or
 7 agents, and shall cause notices thereof to be published in such news-
 8 papers as the commissioner may deem advisable; and no new busi-
 9 ness shall thereafter be done by it in this commonwealth while such
 10 default or disability continues, nor until its authority to do business is
 11 restored by the commissioner or by the supreme judicial court as herein-
 12 after provided. He shall forthwith notify the corporation of such
 13 suspension and shall specify in the notice the cause thereof and the
 14 particulars of any alleged violation of law. The supreme judicial court,
 15 upon petition of said corporation brought within thirty days after
 16 receipt of said notice, shall summarily hear and determine the question
 17 whether such cause for suspension exists, and shall make any appro-
 18 priate order or decree therein. Questions of law may be taken to the
 19 full court, as in other cases.

Suspension of
 business of
 foreign cor-
 poration
 Jurisdiction
 of supreme
 judicial
 court.
 1904, 427, § 4
 1906, 204,
 §§ 1, 3, 5
 1908, 590, § 2.
 1909, 491, § 3
 1919, 350, § 46.

1 SECTION 8. If upon examination the commissioner is of opinion that
 2 any domestic corporation subject to the requirements of this chapter
 3 is in an unsound financial condition or has exceeded its powers, or has
 4 failed to comply with any provision of law, he shall apply to the supreme
 5 judicial court in equity for an injunction restraining the corporation
 6 from further proceeding with its business in whole or in part. The
 7 court may issue an injunction forthwith, and may, after a full hearing,
 8 make the injunction permanent, and may appoint a receiver or receivers

Same subject.
 Domestic
 corporation.
 1904, 427, § 4
 1906, 204,
 §§ 1, 3, 5
 1908, 590, § 2.
 1909, 491, § 3
 1919, 350, § 46.

to take possession of the property and effects of the corporation and 9
to settle its affairs, subject to the order of the court. 10

Penalty on
agent of un-
authorized
corporation.
1904, 427, § 5.
1906, 204,
§§ 1, 3, 5.
1908, 590, § 2.
1909, 491, § 3.
1919, 350, § 46.

SECTION 9. Whoever sells or attempts to sell any bond, certificate 1
or obligation issued by a corporation subject to this chapter, or transacts 2
any business in behalf of said corporation, unless said corporation is 3
thereto authorized under this chapter by the commissioner of banks, 4
shall be punished by a fine of not less than one hundred nor more than 5
one thousand dollars or by imprisonment for not more than six months, 6
or both. 7

No forfeiture
after one
fourth of in-
stalments paid.
Unearned
dividends
forbidden.
1904, 427, § 6.

SECTION 10. Every corporation subject to this chapter shall provide 1
in every bond, certificate or contract issued by it that, after one fourth 2
of the total amount of instalments therein required has been paid and in 3
any event after instalments for two full years have been paid thereon, in 4
case of default in the payment of any subsequent instalment a paid-up 5
bond shall be given to the holder of said bond, certificate or contract 6
of not less than the full amount paid thereon less any amount paid by 7
said corporation on account thereof, said paid-up bond to mature at the 8
same date as the original bond, certificate or contract; and no such cor- 9
poration shall provide for the payment of profits in the form of dividends 10
or otherwise, except from earnings, nor pay any part of the payments 11
made by the holder of any bond, certificate or contract in force to the 12
holder of any other bond, certificate or contract; provided, that nothing 13
herein contained shall be construed to prohibit the payment of accumu- 14
lations by such corporation on its contracts at their final maturity. 15

Chapter not
to apply to
insurance and
fraternal
corporations.

SECTION 11. This chapter shall not apply to corporations subject 1
to chapter one hundred and seventy-five or one hundred and seventy-six. 2
1904, 427, § 7. 1931, 426, § 78.

General
penalty.
1904, 427, § 8.

SECTION 12. Any person or corporation violating any provision of 1
this chapter for which no penalty is specifically provided shall be pun- 2
ished by a fine of not more than five hundred dollars. 3

CHAPTER 175.

INSURANCE.

SECT.

GENERAL PROVISIONS.

- 1. Definitions.
- 2. Definition of contract of insurance.
- 2A. Status of reinsurance contracts.
- 3. Insurance contracts contrary to this chapter or chapter 176 or 178 forbidden.

POWERS AND DUTIES OF COMMISSIONER OF INSURANCE.

- 3A. Administration, etc., of insurance laws. Prosecutions.
- 4. Examination of companies and financing corporations. Reports admissible as evidence in certain proceedings. Investigation of complaints on claims and of sales of companies' stock. Penalty.
- 5. Revocation of authority of foreign companies. Petitions for review.
- 6. Certain domestic companies to make good impaired capital. Injunction and receivership proceedings. Return of certain premiums and construction of section regulated.
- 7. [Repealed.]
- 8. [Repealed.]
- 8A. Commissioner may summons witnesses.
- 9. Computation of reserves of life companies. Acceptance of certificates of valuation of foreign companies.
- 10. Computation of reserves of companies other than life.
- 11. Computation of assets and liabilities.
- 12. Computation of reserves of liability companies.
- 13. [Repealed.]
- 14. Collection of charges and fees.
- 15. Blanks for annual statements.
- 16. Record of proceedings. Certificates for use in court.
- 17. Annual report.

PROVISIONS COMMON TO FOREIGN AND DOMESTIC COMPANIES.

- 18. Companies to act in corporate name. Liabilities to be published with assets.
- 19. [Repealed.]
- 19A. Merger of companies.
- 20. Reinsurance.
- 21. Limit of single risk. Penalty.
- 22. Certain provisions in policies void.

SECT.

- 22A. Policies providing coverage for more than one class of insurance, approval and contents.
- 22B. Waivers of provisions of chapter prohibited unless authorized thereby. Penalty.
- 23. Life company to cease business while funds are insufficient. Penalty.
- 23A. Certain companies to notify commissioner of certain occurrences affecting them.
- 24. Policies of life companies may provide for total, etc., disability and accidental death benefits. Separate policies, approval of form. Section 108 not applicable to certain policies.

Annual Statements.

- 25. Annual statements.
- 26. Penalty for neglect to make annual statement.
- 27. Companies to report suits on claims.
- 28. Report to general court of company delaying, etc., claim.

PROVISIONS RESPECTING DOMESTIC COMPANIES.

General.

- 29. Companies subject to this chapter.
- 30. Companies subject to general corporation laws.
- 31. Continuation of certain companies.
- 31A. Extension of business territorial limits of domestic companies incorporated by special acts.
- 32. Domestic company to employ underwriter, accountant, etc., and obtain certificate before issuing policies.
- 33. Signatures on policies. Facsimile signatures.
- 34. Location of office and designation.
- 35. Salaries to be authorized by directors. Limitations.
- 36. Pensions to employees.
- 37. Vouchers for disbursements.
- 38. [Repealed.]
- 39. [Repealed.]
- 40. [Repealed.]
- 41. [Repealed.]
- 42. [Repealed.]
- 43. [Repealed.]
- 44. Failure to transact business, effect. Notice of incorporation of certain companies to be filed.

SECT.	SECT.
45. Unauthorized foreign agencies forbidden. Penalty.	
46. Certain claims against insolvent companies deemed preferred.	
46A. Preference of certain claims against insolvent domestic liability companies.	
46B. Domestic companies to file by-laws, etc., with commissioner.	
<i>Organization.</i>	
47. Purposes of incorporation. Kinds of business.	
48. Organization and capital of stock companies.	
48A. Organization of mutual companies.	
49. Formation of corporation.	
50. Change of business, location, etc. Procedure.	
51. Kinds of business which may be combined by stock companies.	
52. [Repealed.]	
53. [Repealed.]	
54. Kinds of business which may be combined by certain mutual companies.	
55. Powers of certain mutual companies.	
56. Reincorporation of fraternal society subject to chapter 176.	
<i>Stock Companies.</i>	
57. Directors; election, number, quorum, term, classes. Vacancies.	
58. Directors; duties.	
59. Duties of president and secretary. Records. Penalty for false record.	
60. Qualification and bonds of officers. Penalty.	
61. Rights of stockholders. Proxies.	
62. Liability of officers for certain unauthorized acts.	
<i>Investments of All Companies.</i>	
63. Payment and investment of capital and reserve.	
64. Investments, deposits, sales and loans.	
65. Certain loans on mortgages prohibited.	
66. Investments of life companies.	
67. Charter limitations on investments, when ineffective.	
68. Prohibited investments to be sold.	
<i>Provisions as to Capital Stock.</i>	
69. Assessment if capital impaired. Authority to transact new business to cease, when.	
70. Increase of capital.	
71. Reduction of capital.	
72. Dividends.	
	<i>Mutual Companies.</i>
	73. Mutual fire companies. Solicitation of subscriptions for insurance and issue of policies regulated. Penalties.
	74. Same subject. Certain companies not to make further insurance without a certificate.
	75. Same subject. Compensation and status of person determining risks.
	76. Same subject. Stockholders as members.
	77. Same subject. Directors; election, duties, filling of vacancies.
	78. Same subject. Companies subject to certain sections.
	79. Same subject. Guaranty capital.
	80. Same subject. Dividends, accumulated profits, etc.
	81. Same subject. Premiums. Contingent liability.
	82. Same subject. Certain companies may take deposit notes.
	83. Same subject. Assessments.
	84. Same subject. Application to supreme judicial court to review or order assessment.
	85. Same subject. Penalty for guaranty against assessments. Personal liability of officers.
	86. Mutual marine companies.
	87. Certain mutual companies subject to certain provisions of Public Statutes, etc.
	88. Mutual marine companies subject to certain sections.
	89. Liability of president and directors for certain acts.
	90. Certain mutual companies subject to laws relative to mutual fire companies. Liability of certain policyholders to assessment regulated.
	90A. Mutual fire and marine, mutual automobile, companies. Issue of policies.
	90B. Mutual fidelity and corporate surety companies. Issue of policies. Principals on certain bonds, etc., deemed members.
	90C. Certain domestic mutual companies may create guaranty fund in lieu of establishing guaranty capital.
	91. [Repealed.]
	92. Mutual boiler companies. Issue of policies.
	93. Mutual liability companies. Issue of policies.
	93A. Mutual plate glass, sprinkler, etc., leakage, elevator, credit, burglary or livestock companies. Issue of policies.

SECT.

- 93B. Mutual surety, liability and casualty companies. Issue of policies.
- 93C. Guaranty capital, establishment by mutual surety, liability and casualty companies.
- 93D. Mutual surety, liability and casualty companies to cease business if number, etc., of risks, etc., or guaranty capital impaired.
- 93E. Mutual life, liability and casualty companies. Issue of policies.
- 94. Mutual life companies. Members. Proxies. Directors.

FIRE INSURANCE.

- 95. Over-insurance prohibited. Term of fire policy.
- 96. Liability for fire loss limited.
- 97. Payment of mortgagees.
- 98. Statements in application and by-laws not part of contract unless, etc.
- 99. Standard form of fire policy.
- 100. Referees. Appointment.
- 100A. Same subject. Filling of vacancies.
- 100B. Same subject. Qualifications for nomination, etc.
- 101. Same subject. Meetings.
- 101A. Same subject. Awards.
- 101B. Same subject. Compensation, etc., of third referee.
- 101C. Same subject. Payment of such compensation, etc. Effect on right to contest validity of award.
- 101D. Same subject. Referees to determine sound value, when.
- 101E. Legal defenses not waived by company joining in reference proceedings, etc.
- 101F. Penalty for refusal to comply with provisions relative to reference proceedings.
- 101G. Receivership as affecting reference proceedings. Preference of referees' claims.
- 102. Lack of sworn statement of loss not to be taken advantage of by company, when.
- 102A. Combination fire policies, approval and contents.
- 102B. Same subject. Policies issued by mutual companies.
- 103. [Repealed.]
- 104. Complaint by person aggrieved by fire rates. Proceedings.

FIDELITY INSURANCE AND CORPORATE SURETYSHIP.

- 105. Powers of fidelity and corporate surety companies.
- 106. Deposit required of foreign company.
- 107. Status of surety bonds.

SECT.

ACCIDENT AND HEALTH INSURANCE.

- 108. Accident or health policies, approval and contents.
- 109. Certain conditions prohibited.
- 110. Sections 108 and 109 not applicable to certain policies. General or blanket policy.
- 111. Beneficiary under health or accident policy may sue.

LIABILITY INSURANCE.

- 111A. Combination liability policies, approval and contents.
- 111B. Same subject. Policies issued by mutual companies.
- 112. Liability of insurer under liability policy regulated.
- 113. Judgment creditor may sue insured under liability policy.

COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE.

- 113A. Compulsory motor vehicle liability policies, approval and contents.
- 113B. Same subject. Annual classifications of risks and establishment of premium charges. Review, etc., by supreme judicial court.
- 113C. Same subject. Notification to registrar of names of companies authorized to issue policies, etc.
- 113D. Same subject. Proceedings on complaints relative to cancellations or refusals of companies to issue policies.

TITLE INSURANCE.

- 114. Domestic title insurance companies not subject to certain provisions of this chapter.
- 115. [Repealed.]
- 116. Guaranty fund.
- 116A. Foreign title insurance companies not subject to certain provisions of this chapter.

STEAM BOILER INSURANCE.

- 117. Term of boiler policies.

SPRINKLER LEAKAGE INSURANCE.

- 117A. Combination sprinkler leakage policies, approval and contents.

LIFE INSURANCE.

- 118. Definition of life company.
- 119. Domestic life companies may grant annuities, etc.
- 119A. Protection of persons entitled to proceeds of life insurance policy or annuity contract retained by life company.

SECT.	SECT.
120. Discrimination prohibited.	FOREIGN COMPANIES.
121. Certain agreements prohibited.	150. Admission to transact business.
122. Discrimination on account of color prohibited. Penalty.	151. Conditions of admission, in general.
123. Medical examination, when required. Penalty.	152. Kinds of business which may be combined.
124. Statements as to age, etc., when binding on company.	153. Conditions of admission of foreign life companies.
125. Rights of creditor or beneficiary.	154. Service of process on commissioner as attorney.
126. Policy payable to married woman enures to her benefit.	155. Conditions of admission of companies of a foreign country.
127. Penalties for false statements, etc.	156. Such company may appoint trustees.
128. Avoidance of certain contracts by infant prohibited.	156A. Certain foreign companies to cease transacting business, when. Penalty.
129. Life, etc., policies. Description.	157. Foreign companies to act through resident agents.
130. Same subject. Incorrect dating forbidden.	158. Policy not invalidated by war.
131. Copy of application referred to in life policy to be attached thereto.	159. Reciprocal obligations and prohibitions, when imposed.
132. Life, annuity, etc., policies, approval and contents.	160. Penalty for negotiating, etc., policy in an unlicensed company.
133. Group life insurance defined.	LLOYDS ASSOCIATIONS.
134. Group life policies, approval and contents. "Employer" and "employee" defined.	161. [Repealed.]
135. Same subject. Not subject to attachment.	AGENTS, BROKERS AND ADJUSTERS.
136. Same subject. Exempt from loan provision, etc. Equity, how applied.	162. Definitions.
137. Employer only to be member of mutual company issuing policy.	163. Licenses of agents. Penalty.
138. Sections 133-137 to govern, when.	164. License not necessary for certain collectors.
139. Exchange, alteration or conversion of certain life policies.	165. Authority of officer of domestic company to act without license.
140. Annual dividends, etc.	166. Licenses of brokers. Penalty.
141. Safety fund.	167. Limited licenses of brokers.
142. Loans on policies.	167A. Veterans exempt from payment of certain license fees.
143. Certain policies subject to earlier laws limiting forfeiture.	168. Special brokers' licenses. Penalty.
144. Cash surrender value, extended term insurance or paid-up policy after three annual premiums on certain policies have been paid.	169. Effect of payment to agent or broker.
145. Cash surrender value of certain industrial policies.	170. Penalty for false pretence by agent or broker.
146. Extended term insurance after three years' premiums on certain industrial policies have been paid.	171. Liability of agent on policy of unauthorized company.
147. Paid-up policy or cash surrender value after five years' premiums on such policies have been paid.	172. Licenses of adjusters of fire losses. Penalty.
147A. Industrial life and endowment policies issued by domestic life companies to contain certain information.	172A. Voluntary association as agent, broker, etc. Penalty.
148. [Repealed.]	173. Partnership as agent, broker, etc. Penalty.
149. Domestic life company not to issue both participating and non-participating policies. Exceptions. Excess interest on deferred payments of proceeds of non-participating policies.	174. Certain corporations as agents, brokers, etc. Penalties.
	174A. Service of notices of hearings, revocations or suspensions of licenses.
	174B. Surrender of revoked licenses. Amended licenses. Penalty.
	175. Penalty for pretending to be agent, broker, etc.
	176. Larceny of premium by agent or broker.
	177. Compensation to unlicensed persons forbidden. Penalty.

<p>SECT.</p> <p style="text-align: center;">RECEIVERS.</p> <p>178. Compensation and accounts.</p> <p>179. Commissioner, etc., may be appointed.</p> <p>180. Examinations of accounts, etc.</p> <p>180A. Receivers of domestic companies to give notice of appointment to policyholders.</p> <p style="text-align: center;">MISREPRESENTATIONS AND REBATES.</p> <p>181. Misrepresentations to insured prohibited. Penalty.</p> <p>182. Rebates, etc., prohibited.</p> <p>183. Acceptance of such rebates, etc., prohibited.</p> <p>184. Application of two preceding sections.</p> <p style="text-align: center;">MISCELLANEOUS PROVISIONS.</p> <p>185. Deposits of companies.</p> <p>186. Misrepresentation by insured. Effect.</p>	<p>SECT.</p> <p>187. Foreign companies may insert conditions required by foreign laws, when.</p> <p>187A. Limitation of actions on policies.</p> <p>187B. Refusal to pay return premium on cancelled policies. Penalty.</p> <p>187C. Cancellation, how effected.</p> <p>187D. Cancellation for non-payment of premium.</p> <p>188. Penalty for unlawful use of proxy.</p> <p>189. Penalty for making, etc., policies in violation of this chapter.</p> <p>190. [Repealed.]</p> <p>191. Companies to file policies, circulars, etc., on request. Penalty.</p> <p>192. Riders, etc., subject to approval of commissioner.</p> <p>193. Certain policies binding on company though issued contrary to this chapter.</p> <p>193A. Information in equity in superior court to enforce this chapter.</p> <p style="text-align: center;">GENERAL PENALTY.</p> <p>194. General penalty.</p>
---	--

GENERAL PROVISIONS.

1 SECTION 1. The following words, as used in this chapter, unless the
 2 context otherwise requires or a different meaning is specifically prescribed,
 3 shall have the following meanings:

<p>G. S. 58, § 78.</p> <p>1873, 141, § 14.</p> <p>1878, 130, § 7.</p> <p>P. S. 119, § 1.</p>	<p>1887, 214, § 1.</p> <p>1894, 522, § 1.</p> <p>R. L. 118, § 1.</p> <p>1907, 576, §§ 1, 122.</p>	<p>1917, 10, § 2.</p> <p>1919, 350, §§ 45, 46.</p> <p>1921, 165, § 1.</p> <p>1931, 242, § 2.</p>
--	---	--

Definitions.
 1854, 453, § 30.
 1856, 252, § 55.

[Additional definitions, §§ 118, 133, 134, 162.]

- 4 "Commissioner", the commissioner of insurance.
- 5 "Company", all corporations, associations, partnerships or individ- 3 Op. A. G. 222.
 6 uals engaged as principals in the business of insurance.
- 7 "Compensation", as used in section twelve, relates to all insurance
 8 effected under statutes providing compensation to employees for per-
 9 sonal injuries regardless of the fault of the employer.
- 10 "Domestic company", a company incorporated or formed in the
 11 commonwealth.
- 12 "Earned premiums", as used in section twelve, includes gross pre-
 13 miums charged in all policies written, including all determined excess
 14 and additional premiums less return premiums, other than premiums
 15 returned to policyholders as dividends, and less reinsurance premiums
 16 and premiums on policies cancelled, and less unearned premiums on
 17 policies in force. But any participating company which has charged
 18 in its premiums a loading solely for dividends shall not be required to
 19 include such loading in its earned premiums; provided, that a state-
 20 ment of the amount of such loading has been filed with and approved
 21 by the commissioner.
- 22 "Foreign company", a company formed by authority of any state or
 23 government other than this commonwealth.
- 24 "Insurance company" or "insurer", the same meaning as "company".
- 25 "Liability", as used in section twelve, relates to all insurance, except
 26 compensation insurance, against loss or damage from accident to or

injuries suffered by an employee or other person, for which the insured 27
is liable. 28

“Loss payments” and “loss expense payments”, as used in said 29
section, include all payments to claimants, including payments for 30
medical and surgical attendance, legal expenses, salaries and expenses 31
of investigators, adjusters and field men, rents, stationery, telegraph and 32
telephone charges, postage, salaries and expenses of office employees, 33
home office expenses, and all other payments made on account of claims, 34
whether such payments shall be allocated to specific claims or unallocated. 35

197 Mass. 131.
205 Mass. 303.

“Net assets”, the funds of a company available for the payment of its 36
obligations in the commonwealth, including, in the case of a mutual fire 37
company, its deposit notes or other contingent funds, and, in the case of a 38
mutual marine company its subscription fund and premium notes abso- 39
lutely due, and also including uncollected and deferred premiums not 40
more than three months due, or in the case of business originating outside 41
the North American continent, Hawaii, Porto Rico, Cuba and the West 42
Indies not more than six months due, on policies actually in force, after 43
deducting from such funds all unpaid losses and claims, and claims for 44
losses, and all other debts and liabilities inclusive of net value of policies 45
and exclusive of capital, guaranty capital or guaranty fund, if any. 46

“Net value of policies”, the liability of a company upon its insurance 47
contracts, other than accrued claims, computed by rules of valuation 48
established by sections nine to twelve, inclusive. 49

“Profits” of a mutual company, that portion of its cash funds not 50
required for payment of losses and expenses nor set apart for any purpose 51
allowed by law. 52

“Unearned premiums”, the same meaning as “net value of policies”. 53

Definition
of contract
of insurance.
1887, 214, § 3.
1894, 522, § 3.
1897, 66.
R. L. 118, § 3.

SECTION 2. A contract of insurance is an agreement by which one 1
party for a consideration promises to pay money or its equivalent, or to 2
do an act valuable to the insured, upon the destruction, loss or injury of 3
something in which the other party has an interest. 4

1907, 576, §§ 3, 122. 227 Mass. 63. 2 Op. A. G. 123,
105 Mass. 149. 249 Mass. 476. 226, 251, 419.
165 Mass. 501. 1 Op. A. G. 33, 77, 153, 3 Op. A. G. 222.
217 Mass. 47. 164, 345, 544. Op. A. G. (1918) 40.
226 Mass. 281.

[See § 107 as to surety bonds.]

Status of
reinsurance
contracts.
1921, 277, § 1.

SECTION 2A. Contracts of reinsurance shall be deemed contracts of 1
insurance as defined in section two, and authority to make contracts of 2
insurance shall include authority to make contracts of reinsurance cover- 3
ing the same classes of risks, but the hazards under such contracts shall be 4
deemed distinct in nature from the hazard originally insured. No provi- 5
sion of law relative to the form of insurance policies shall apply to con- 6
tracts of reinsurance unless made specifically applicable thereto. 7

Insurance con-
tracts contrary
to this chapter
or chapter 176
or 178 for-
bidden.
1887, 214, § 3.
1894, 522, § 3.
1897, 66.
R. L. 118, § 3.
1907, 576,
§§ 3, 122.
1911, 628, § 4.

SECTION 3. No company shall make a contract of insurance upon or 1
relative to any property or interests or lives in the commonwealth, or 2
with any resident thereof, and no person shall negotiate, solicit, or in any 3
manner aid in the transaction of such insurance or of its continuance or 4
renewal, except as authorized by this chapter or chapter one hundred and 5
seventy-six or one hundred and seventy-eight, or except as otherwise 6
expressly authorized by law. 7

1918, 112, § 7. 1931, 426, § 272. 226 Mass. 281.
1924, 406, § 1. 182 Mass. 389. 249 Mass. 476.
1929, 24, § 2. 212 Mass. 459. 2 Op. A. G. 471.

POWERS AND DUTIES OF COMMISSIONER OF INSURANCE.

1 SECTION 3A. The commissioner shall administer and enforce the
 2 provisions of this chapter and chapter one hundred and seventy-six, and,
 3 so far as is provided therein, chapter one hundred and seventy-eight. If
 4 upon complaint, examination or other evidence exhibited to him he is of
 5 the opinion that any provision of said chapters has been violated, he shall
 6 forthwith report the facts to the attorney general, to the proper district
 7 attorney or to the commissioner of public safety, who shall cause the
 8 offender to be prosecuted therefor.

1907, 576, §§ 10, 122.
 1924, 406, § 2.

1929, 24, § 3.
 G. L. (ed. of 1920) 175, § 8.

Administration,
 etc., of insur-
 ance laws
 Prosecutions.
 1855, 124,
 § 9, 10.
 G. S. 58, § 8.
 1871, 297, § 9
 P. S. 119, § 16.
 1887, 214, § 10.
 1894, 522, § 10.
 R. L. 118, § 10.

1 SECTION 4. Before granting licenses or certificates of authority to a
 2 company to issue policies of insurance or annuity or pure endowment
 3 contracts, the commissioner shall be satisfied, by such examination as
 4 he may make and such evidence as he may require, that such company
 5 is otherwise duly qualified under the law of the commonwealth to trans-
 6 act business therein. He shall require every domestic company to keep
 7 its books, records, accounts and vouchers in such manner that he or his
 8 authorized representatives may readily verify its annual statements and
 9 ascertain whether the company has complied with the law.

Examination
 of companies
 and financing
 corporations.
 Reports ad-
 missible as
 evidence in
 certain pro-
 ceedings
 Investigation
 of complaints
 on
 claims and of
 sales of com-
 panies' stock.
 Penalty.
 1855, 124,
 §§ 5-7,
 231, § 5.
 1856, 232, § 53.
 1858, 177, § 2.
 G. S. 58,
 §§ 2, 3, 5.
 1871, 297,
 §§ 1-3, 5.
 P. S. 119,
 §§ 5-8, 10.
 1887, 214,
 §§ 6, 108,
 1894, 522,
 §§ 6, 108,
 1907, 67, § 1.
 R. L. 118,
 §§ 6, 108,
 1907, 576,
 §§ 6, 117, 122.
 1911, 329.
 1916, 40
 1926, 156
 1928, 133, § 1.
 1930, 79, § 1.
 181 Mass. 261.

10 At least once in three years, and whenever he determines it to be pru-
 11 dent, he shall personally, or by his deputy or examiner, visit each domestic
 12 company, and thoroughly inspect and examine its affairs to ascertain its
 13 financial condition, its ability to fulfil its obligations, whether it has
 14 complied with the law, and any other facts relating to its business methods
 15 and management, and the equity of its dealings with its policyholders.
 16 He shall also make such examination upon the request of five or more of
 17 the stockholders, creditors, policyholders or persons pecuniarily inter-
 18 ested therein who shall make affidavit of their belief, with specifications
 19 of their reasons therefor, that such company is in an unsound condition.
 20 If, in the course of an examination of a domestic company which main-
 21 tains a branch office outside the commonwealth, it becomes necessary or
 22 expedient for the commissioner or any of his deputies or examiners to
 23 travel outside the commonwealth, such company shall pay the proper
 24 expenses of the commissioner, his deputies or examiners incurred by
 25 reason thereof. Whenever he deems it advisable he shall cause a com-
 26 plete audit of the books of the company to be made by a disinterested
 27 expert accountant.

28 Whenever he determines it to be prudent, for the protection of policy-
 29 holders in the commonwealth, he shall in like manner visit and examine,
 30 or cause to be visited and examined by some competent persons whom
 31 he may appoint therefor, any foreign company applying for admission
 32 or already admitted to do business in the commonwealth; and such
 33 company shall pay the proper charges incurred in such examination,
 34 including the expenses of the commissioner or his deputy or examiners
 35 and the expenses and compensation of his appointees employed therein.

36 A report of an examination of any company made under this section
 37 may, as far as material and relevant, be admitted, in the discretion of the
 38 court, in any judicial proceeding under section five or six, as prima facie
 39 evidence of the facts stated in such report; but nothing in this paragraph
 40 shall be construed to require the commissioner to make an examination
 41 under this section before proceeding to act under section five or six.

The assets and liabilities of the company shall be allowed and computed, in any report of an examination made under this section, in accordance with sections nine to twelve, inclusive, and may be set forth therein in accordance with the items specified in the forms of annual statements prescribed by section twenty-five, so far as the commissioner may deem appropriate.

If it shall appear upon examination that any company has entered into an agreement with a corporation, domestic or foreign, or other organization whereby such corporation or organization has undertaken, except by reinsurance, to be responsible for the whole or any part of the expenses, liabilities or other obligations appertaining to the transaction of business by such company for the consideration that such company shall become liable to such corporation or organization for a part of said company's income, assets or profits, the commissioner may examine or cause to be examined such corporation or organization, and may thoroughly investigate its affairs to ascertain its financial condition, its ability to fulfil its obligation to the company, and any other facts relating to its business methods and management, and shall set forth his findings, so far as they affect the financial condition of the company, in a report which shall be a public record.

If it shall appear to the commissioner, from charges filed with him setting forth the facts on oath, that unwarranted and misleading statements, estimates and promises are being made and excessive compensation allowed for promoting the sale in the commonwealth of stock for establishing a new company, domestic or foreign, the commissioner shall investigate said charges, or may act on his own initiative in making such investigations, and shall make a record in his department of his findings in relation thereto.

The commissioner may investigate, in such manner and to such extent as he may deem expedient, any complaint of a policyholder in respect to any claim under any policy of insurance or annuity or pure endowment contract.

The commissioner or the person authorized by him to make examinations or investigations provided for by this section shall have free access to all the assets of the company, corporation or other organization for the purpose of verification and to all the books and papers relating to its business and to the books and papers of its representatives. He or the person authorized by him may summon and examine under oath any person who, he believes, has knowledge of the affairs, transactions or circumstances being examined or investigated; and whoever without justifiable cause neglects upon due summons to appear and testify before the commissioner or his authorized representative, and whoever obstructs said commissioner or said representative in making examinations or investigations hereunder, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Revocation of authority of foreign companies. Petitions for review. 1871, 297, § 4. P. S. 119, § 13. 1887, 214, §§ 7, 82. 1890, 304. 1894, 522, §§ 7, 82.

SECTION 5. If the commissioner is satisfied, upon examination or other evidence submitted to him, that any foreign company is insolvent or is in an unsound financial condition, or that its business policies or methods are unsound or improper, or that its condition or management is such as to render its further transaction of business hazardous to the public or its policyholders, or that it is transacting business fraudulently, or that its officers or agents have refused to submit to an examination

8 under section four or to perform any legal obligation relative thereto or
 9 that the amount of its funds, net cash or contingent assets is deficient
 10 or that its capital stock or deposit or guaranty capital is impaired, as
 11 set forth in section twenty-three A, or that such capital stock, deposit
 12 or guaranty capital has been reduced below the amount required by
 13 section one hundred and fifty-one, he shall revoke the license issued to
 14 said company under section one hundred and fifty-one and the licenses
 15 issued to all of its agents under section one hundred and sixty-three; or,
 16 if he is satisfied, as aforesaid, that any foreign company has violated any
 17 provision of law or has failed to comply with its charter, he may revoke
 18 such licenses or suspend them for a period not exceeding the unexpired
 19 terms thereof. He shall give written notice to the company specifying
 20 the date on which such revocation or suspension shall be effective, the
 21 term of any such suspension and the ground for such revocation or sus-
 22 pension; provided, that if the ground for revocation or suspension is
 23 that the company has violated any provision of law or has failed to com-
 24 ply with its charter, the effective date of such revocation or suspension
 25 shall be not less than ten days from the date of issue of said notice, and
 26 the particulars of such violation or failure to comply with its charter
 27 shall be specified in said notice. Such notice may be served by registered
 28 mail, sent postage prepaid, addressed to the company at its last home
 29 office address or, in the case of a company described in section one hun-
 30 dred and fifty-five, to its resident manager in the United States at his
 31 last address, appearing on the records of the commissioner. An affidavit
 32 of the commissioner, in such form as he may prescribe, or of anyone
 33 authorized by him to give such notice, appended to a copy thereof, that
 34 such notice has been mailed as aforesaid shall be prima facie evidence
 35 that such notice has been duly given. He shall also cause notice of such
 36 revocation or suspension to be published in such manner as he may deem
 37 necessary for the protection of the public. Such company or its agents
 38 shall not make any contracts, or issue any policies, of insurance in the
 39 commonwealth after such revocation or suspension is effective nor until
 40 its license is restored by the commissioner. A company aggrieved by a
 41 revocation or suspension of its license hereunder, may within ten days
 42 from the effective date of such revocation or suspension file a petition in
 43 the supreme judicial court for the county of Suffolk for a review of such
 44 action of the commissioner. The court shall summarily hear and deter-
 45 mine the question whether the ground for revocation or suspension
 46 specified in the notice of the commissioner exists and may make any
 47 appropriate order or decree. If the order or decree is adverse to the
 48 petitioning company it may within ten days therefrom appeal to the
 49 full court; and in case of such an appeal the revocation or suspension of
 50 the license of the said company shall continue in full force until the final
 51 determination of the question by the full court, unless vacated by the
 52 commissioner during the pendency of such appeal.

1898, 537, § 1.
 R. L., 118.
 §§ 7, 20, § 2.
 1903, 421.
 1907, 576.
 §§ 7, 20, 61,
 87, 122.
 1910, 493, § 7.
 1912, 330.
 1913, 474, § 3.
 1914, 448, § 1.
 1919, 114, § 1.
 1920, 147, § 4.
 1927, 284, § 2.
 155 Mass. 404.
 184 Mass. 261.
 Op. A. G.
 (1917) 37.

1 SECTION 6. If it appears to the commissioner that the capital of a
 2 domestic stock company other than a life company is impaired to the
 3 extent of one quarter or more on the basis fixed by sections ten to twelve,
 4 inclusive, but that the company can with safety to the public and its
 5 policyholders be permitted to continue to transact business, he shall
 6 notify the company in writing that its capital is legally subject to be made
 7 good as provided in section sixty-nine. If such a company other than a
 8 life company shall not within three months after receiving such notice

Certain do-
 mestic com-
 panies to
 make good
 impaired
 capital. In-
 junction and
 receivership
 proceedings.
 Return of cer-
 tain premiums
 and construc-
 tion of section
 regulated.

1855, 124, § 8.
 G. S. 58, § 6.
 1862, 131, 145.
 1866, 255, § 2.
 1873, 141, § 14.
 P. S. 119,
 §§ 14, 15.
 1887, 214,
 §§ 7, 8.
 1894, 522,
 §§ 7, 8.
 R. L. 118,
 §§ 7, 8.
 1907, 576,
 §§ 8, 122.
 1925, 154,
 § 3; 267, § 1.
 1926, 114, § 2.
 1927, 284, § 3.
 1928, 171, § 2.
 1931, 426, § 79.
 112 Mass. 131
 115 Mass. 278.
 171 Mass. 81.
 197 Mass. 131.

satisfy the commissioner that it has fully made good its capital or reduced 9
 it as provided in section seventy-one, or, if he is satisfied that any domes- 10
 tic company is insolvent or in an unsound financial condition, or that its 11
 business policies or methods are unsound or improper, or that its con- 12
 dition or management is such as to render its further transaction of busi- 13
 ness hazardous to the public or to its policyholders or creditors, or that it 14
 is transacting business fraudulently or that it or its officers or agents have 15
 refused to submit to an examination under section four or seventy-three, 16
 or that it has attempted or is attempting to compromise with its creditors 17
 on the ground that it is financially unable to pay its claims in full, or that, 18
 when its assets are less than its liabilities, inclusive of unearned premiums 19
 but exclusive of capital, if any, it has attempted or is attempting to 20
 disadvantage of policyholders who have sustained losses to prefer or, 21
 has preferred, by reinsurance, policyholders who have sustained no 22
 losses, he shall, or, if he is satisfied that any domestic company has ex- 23
 ceeded its powers or has violated any provision of law, or that the amount 24
 of its funds, insurance in force or premiums or number of risks is deficient 25
 or that its guaranty capital under section ninety B is impaired, as set 26
 forth in sections twenty-three, seventy-four, ninety-three D and one 27
 hundred and sixteen, he may, apply to the supreme judicial court for 28
 an injunction restraining it in whole or in part from further proceeding 29
 with its business. The court may issue a temporary injunction forthwith 30
 and may after a full hearing make the injunction permanent and may 31
 appoint one or more receivers to take possession of the property and 32
 effects of the company and to settle its affairs, subject to such rules and 33
 orders as the court may prescribe. 34

The appointment of a permanent receiver or receivers under this section 35
 shall terminate the liability of the company under all of its policies or 36
 contracts in force on the date of said appointment in respect to claims 37
 arising after thirty days from said date; provided, that its liability under 38
 any motor vehicle liability policy or motor vehicle liability bond, both as 39
 defined in section thirty-four A of chapter ninety, which is in force on said 40
 date, shall terminate on the effective date of the new certificate, if any, 41
 filed under section thirty-four H of said chapter ninety, or, if no certificate 42
 is filed as aforesaid, on the effective date of the revocation under said 43
 section thirty-four H of the registration of the motor vehicle or trailer 44
 covered by such policy or bond. The insured under any policy, other 45
 than a motor vehicle liability policy or motor vehicle liability bond, both 46
 as defined as aforesaid, which is in force on the thirtieth day following the 47
 date of the appointment of such receiver or receivers and which by its 48
 terms provides for a cancellation thereof either by the insured or the 49
 company shall be entitled, subject to the provisions of section forty-six, 50
 to a return premium calculated on a pro rata basis as of the thirtieth day 51
 following the date of said appointment, if he has paid the premium thereon 52
 to the company, or its agent who issued the policy or to the duly licensed 53
 insurance broker, if any, through whom the policy was negotiated; and 54
 the insured under a motor vehicle liability policy or the principal on a 55
 motor vehicle liability bond, both as defined as aforesaid, shall be en- 56
 titled, subject to said section forty-six, if he has paid the premium thereon 57
 as aforesaid, to a return premium calculated on a pro rata basis as of the 58
 effective date of the new certificate, if any, filed by him under said section 59
 thirty-four H, or, if no certificate is filed as aforesaid, as of the effective 60
 date of the revocation under said section thirty-four H of the registration 61
 of the motor vehicle or trailer covered by such policy or bond. Nothing 62

63 in this section shall be construed in any case to continue any policy or
 64 contract in force beyond its date of expiration, or to prohibit a cancella-
 65 tion thereof by the insured or by the receiver or receivers in accordance
 66 with law and its terms during the said period of thirty days or prior to
 67 the filing of a new certificate or the revocation of the registration as afore-
 68 said, or to affect the liability of the holder of a policy or contract to pay
 69 to the receiver or receivers the full amount of the premium due on any
 70 policy or contract or the liability of a member of a mutual company, other
 71 than a life company, to pay the full amount of any valid assessment
 72 levied on its members.

1 SECTION 7. [REPEALED, 1925, 154, § 6.]

1 SECTION 8. [REPEALED, 1924, 406, § 17.]

1 SECTION 8A. At any hearing which the commissioner is authorized
 2 by law to hold, he may by summons require the attendance and testi-
 3 mony of witnesses and the production of books, records and papers touch-
 4 ing upon the matters in question at such hearing, and may administer
 5 oaths to such witnesses. The fees of such witnesses for attendance and
 6 travel shall be the same as for witnesses before the superior court in civil
 7 cases and shall be paid by the commonwealth upon the certificate of the
 8 commissioner filed with the comptroller. Fees of such witnesses need not
 9 be paid or tendered to them prior to their attendance and testimony.
 10 This section shall not affect any powers conferred upon the commissioner
 11 by section four.

Commissioner
may summons
witnesses.
1923, 197.

1 SECTION 9. He shall each year compute the reserve liability on
 2 December thirty-first of the preceding year of every company authorized
 3 to make insurance on lives in the commonwealth, in accordance with
 4 the following rules:

Computation
of reserves
of life com-
panies
Acceptance of
certificates of
valuation of
foreign
companies.
1858, 177, § 2.
G. S. 58, § 4
P. S. 119, § 17.
1887, 214, 11.
1894, 522, 11.
1899, 229, 11.
§§ 4, 5
1900, 363, 1.
R. L. 118, § 11.
1903, 224
1907, 576, 11.
§§ 11, 122.
1911, 54
1912, 74
1915, 110
1920, 333.
1921, 213.
181 Mass. 261.
220 Mass. 52
1 Op. A. G. 269.
3 Op. A. G. 82

5 First. The net value on the last day of December of the preceding
 6 year of all outstanding policies of life insurance in the company issued
 7 before January first, nineteen hundred and one, shall be computed
 8 upon the basis of the "Combined Experience" or "Actuaries' Table" of
 9 mortality, with interest at four per cent per annum.

10 Second. The net value on the last day of December of the preceding
 11 year of all outstanding policies of life insurance issued after the last day
 12 of December, nineteen hundred, shall be computed upon the basis of
 13 the "American Experience Table" of mortality, with interest at three
 14 and one half per cent per annum; but any life company may at any
 15 time elect to reserve upon a three per cent basis, and thereupon its
 16 policies issued upon such reserve shall be computed upon the basis of
 17 the "American Experience Table" of mortality, with interest at three
 18 per cent per annum, and any life company receiving premiums by weekly
 19 payments may elect for such weekly payment business or any portion
 20 thereof to reserve upon any table showing a higher rate of mortality
 21 approved by the commissioner.

22 Third. In every case in which the actual premium charged for an in-
 23 surance is less than the net premium for such insurance, computed ac-
 24 cording to its respective tables of mortality and rate of interest specified
 25 in this section, the company shall also be charged with the value of an
 26 annuity, the amount of which shall equal the difference between the
 27 premium charged and that required by the rules set forth in this section.

and the term of which in years shall equal the number of future annual payments due on the insurance at the date of the valuation.

Fourth, When, from reports filed with him or from other evidence the commissioner is satisfied that a company is assuming risks that cannot be properly measured by the mortality tables specified in this section, he may compute such extra reserve as in his judgment is warranted by the extra hazard assumed, and he may further in his discretion prescribe such table or tables of mortality, other than those specified by this section, as he may deem necessary properly to measure such additional risks, with interest at not less than three per cent per annum, for the computation of the net value upon any special class or classes of risks.

Fifth, The reserve liability for the total and permanent disability provision incorporated in policies under section twenty-four shall be computed on the basis of "Hunter's Disability Table", or any similar table approved by the commissioner, with interest not exceeding three and one half per cent per annum; provided, that in no case shall said liability be less than one half of the net annual premium computed by such table for the disability benefit. The commissioner may accept a certificate of valuation from the company for the reserve liability for the total and permanent disability provision if he is satisfied by the use of general averages and percentages that such reserve has been computed in accordance with the foregoing rule.

Sixth, The value on the last day of December of the preceding year of all outstanding annuities shall be computed on the basis of "McClintock's Tables of Mortality among Annuitants" or on such higher table as the commissioner may prescribe, with interest at not more than four per cent per annum; provided, that annuities issued prior to January first, nineteen hundred and seven, and annuities deferred ten or more years and written in connection with life, endowment or term insurance shall be valued on the same mortality table from which the consideration or premiums were computed. This basis of valuation shall be used in connection with the valuation as of December thirty-first, nineteen hundred and twenty, and all valuations thereafter.

Seventh, The reserve liability for group insurance written as yearly renewable term insurance shall be computed on a basis not lower than the "American Men Mortality Table", with interest at not more than three and one half per cent per annum.

The aggregate net value so ascertained of all the policies of any such company shall be deemed its reserve liability, to provide for which it shall hold funds of an amount equal to such net value above all its other liabilities.

All policies of life insurance issued before July first, eighteen hundred and ninety-nine, by corporations formerly transacting a life insurance business on the assessment plan under chapter four hundred and twenty-one of the acts of eighteen hundred and ninety and acts in amendment thereof, and now having authority to do business in the commonwealth under this chapter, which policies are in force on December thirty-first of any year, and which contain a provision for a payment other than the premium stipulated therein, and under which the duration of the premium payment is the same as the duration of the contract, except in endowment policies, shall be valued and shall have a reserve maintained thereon on the basis of renewable term insurance as fixed by attained age in accordance with this chapter. To the reserve liability

82 determined as above the commissioner shall add the determinate con-
 83 tract reserve under any other policies issued by said corporations before
 84 said July first and remaining in force on December thirty-first of any
 85 year, and in the absence of such contract reserve shall value them as
 86 contracts providing similar benefits are to be valued under this chapter.
 87 But under no policy shall a greater aggregate reserve liability be charged
 88 than is otherwise required by this section. All policies of life insurance
 89 issued by any such corporation subsequent to July first, eighteen hundred
 90 and ninety-nine, including those which contain a provision for a pay-
 91 ment other than the premiums specified therein, shall be valued and
 92 a reserve maintained thereon according to this section; but all such
 93 policies issued by said corporations prior to January first, nineteen
 94 hundred and six, shall be valued taking the first year as one year term
 95 insurance.

96 The commissioner may, in place of the computation of the reserve
 97 liability of a foreign life company required by the preceding provisions of
 98 this section, accept the certificate of valuation of the official having super-
 99 vision over insurance companies in the state where such company is incor-
 100 porated; provided that such valuation is made in accordance with the
 101 rules set forth in said provisions or produces values at least as great as if
 102 made in accordance therewith.

1 SECTION 10. The commissioner shall determine the liability of a
 2 company other than a life company, upon its contracts of insurance,
 3 excepting marine insurance, and the amount the company shall hold as
 4 a reserve for reinsurance by charging as a liability fifty per cent of the
 5 premiums written in its policies, or the actual unearned portions of such
 6 premiums. He shall charge as a liability fifty per cent of the amount of
 7 the premiums written in its policies of marine insurance upon yearly
 8 risks, and upon risks covering more than one passage not terminated,
 9 and the full amount of premiums written in policies upon all other
 10 marine risks not terminated, except that in the case of a foreign fire and
 11 marine company with less than three hundred thousand dollars capital,
 12 admitted to transact fire insurance only, he shall charge as a liability
 13 the full amount of premiums written in its marine and inland navigation
 14 and transportation insurance policies.

Computation
 of reserves of
 companies
 other than
 life.
 1874, 108.
 1880, 35.
 P. S. 119, § 11.
 1883, 126.
 1884, 178.
 1887, 214, § 11.
 1894, 522, § 11.
 1900, 363, § 1.
 R. L. 118, § 11.
 1903, 223.
 1907, 576,
 § 11, 122.
 1924, 406, § 3.

1 SECTION 11. Beside the reserve provided for in the two preceding
 2 sections he shall, except as provided in the following section, charge to
 3 each company as a liability all unpaid losses and claims for losses, and
 4 all other debts and liabilities, including in the case of a stock company
 5 its capital stock and including, in the case of a mutual company with a
 6 guaranty capital or guaranty fund, such guaranty capital or guaranty
 7 fund. He shall allow to the credit of a company in the account of its
 8 financial condition only such assets as are available for the payment of
 9 losses in this commonwealth, including all assets deposited with officers
 10 of other states or countries for the security of the policyholders of such
 11 company; but no holding or parcel of real estate shall be given a higher
 12 value than would be adequate to yield at three per cent annual interest
 13 the average amount of its net rental for three years next preceding, except
 14 that if a company shows to his satisfaction that the actual value of any
 15 of its real estate is greater than the value so ascertained, then the actual
 16 value of the said real estate as determined by the commissioner shall be
 17 allowed.

Computation
 of assets and
 liabilities.
 1872, 325, § 3.
 P. S. 119, § 64.
 1887, 214, § 11.
 1894, 522, § 11.
 1900, 363, § 1.
 R. L. 118, § 11.
 1903, 223.
 1907, 576,
 § 11, 122.
 1914, 505.
 1920, 168.
 1927, 284, § 4.
 1931, 242, § 3.

He shall not allow stockholders' obligations of any description as part 18
of the assets or capital of any stock company, unless secured by sufficient 19
approved collateral. 20

He may value all bonds or other evidences of debt having a fixed term 21
and rate held by a life company, if amply secured and not in default as 22
to principal or interest, as follows: if purchased at par, at the par value; 23
if purchased above or below par, on the basis of the purchase price 24
adjusted so as to bring the value to par at maturity and so as to yield 25
meantime the effective rate of interest at which the purchase was made; 26
provided, that the purchase price shall in no case be taken at a higher 27
figure than the actual market value when purchased; and provided, 28
further, that the commissioner shall have full discretion in determining 29
the method of calculating values according to the foregoing rule, and the 30
values found by him in accordance with such method shall be final and 31
binding; provided, also, that any such company may return such bonds 32
or other evidences of debt at their market value or their book value, but 33
in no event at an aggregate value exceeding the aggregate of the values 34
calculated according to the foregoing rule. 35

Computation
of reserves of
liability
companies.
1905, 287.
1907, 576.
§§ 11, 122.
1911, 315.
1917, 10.
§§ 1, 3-5.
270 Mass. 29.
4 Op. A. G. 29.

SECTION 12. The commissioner shall each year compute the reserve 1
required of liability companies for outstanding losses under insurance 2
against loss or damage from accident to or injuries suffered by an em- 3
ployee or other person, for which the insured is liable, as follows: 4

1. For all liability suits being defended under policies written more 5
than — 6

(a) Ten years prior to the date as of which the financial statement 7
required by section twenty-five is made, fifteen hundred dollars for each 8
suit. 9

(b) Five and less than ten years prior to said date, one thousand 10
dollars for each suit. 11

(c) Three and less than five years prior to said date, eight hundred 12
and fifty dollars for each suit. 13

2. For all liability policies written during the three years immedi- 14
ately preceding said date, such reserve shall be sixty per cent of the 15
earned liability premiums of each of the said three years, less all loss 16
and loss expense payments made under liability policies written in the 17
corresponding years; but in any event the reserve shall, for the first of 18
the said three years, be not less than seven hundred and fifty dollars 19
for each outstanding liability suit on said year's policies. 20

3. For all compensation claims under policies written more than three 21
years prior to said date, the present values at four per cent interest of the 22
determined and the estimated future payments. 23

4. For all compensation claims under policies written in the three 24
years immediately preceding said date, the said reserve shall be sixty- 25
five per cent of the earned compensation premiums of each of the said 26
three years, less all loss and loss expense payments made in connection 27
with such claims under policies written in the corresponding years; but 28
in any event in the case of the first year of any such three year period 29
the reserve shall be not less than the present value at four per cent 30
interest of the determined and the estimated unpaid compensation 31
claims under policies written during that year. 32

All unallocated liability loss expense payments made in a given cal- 33
endar year subsequent to the first four years in which an insurer has 34
been issuing liability policies shall be distributed as follows: thirty- 35

36 five per cent shall be charged to the policies written in that year, forty
 37 per cent to the policies written in the preceding year, ten per cent to
 38 the policies written in the second year preceding, ten per cent to the
 39 policies written in the third year preceding, and five per cent to the
 40 policies written in the fourth year preceding; and such payments made
 41 in each of the first four calendar years in which an insurer issues liability
 42 policies shall be distributed as follows: in the first calendar year one
 43 hundred per cent shall be charged to the policies written in that year,
 44 in the second calendar year fifty per cent shall be charged to the policies
 45 written in that year, and fifty per cent to the policies written in the
 46 preceding year; in the third calendar year forty per cent shall be charged
 47 to the policies written in that year, forty per cent to the policies written
 48 in the preceding year, and twenty per cent to the policies written in the
 49 second year preceding; and in the fourth calendar year thirty-five per
 50 cent shall be charged to the policies written in that year, forty per cent
 51 to the policies written in the preceding year, fifteen per cent to the poli-
 52 cies written in the second year preceding, and ten per cent to the policies
 53 written in the third year preceding, and a schedule showing such dis-
 54 tribution shall be included in the annual statement.

55 All unallocated compensation loss expense payments made in a given
 56 calendar year subsequent to the first three years in which an insurer
 57 has been issuing compensation policies shall be distributed as follows:
 58 forty per cent shall be charged to the policies written in that year, forty-
 59 five per cent to the policies written in the preceding year, ten per cent to
 60 the policies written in the second year preceding, and five per cent to
 61 the policies written in the third year preceding; and such payments
 62 made in each of the first three calendar years in which an insurer issues
 63 compensation policies shall be distributed as follows: in the first cal-
 64 endar year one hundred per cent shall be charged to the policies written
 65 in that year; in the second calendar year fifty per cent shall be charged
 66 to the policies written in that year and fifty per cent to the policies
 67 written in the preceding year; in the third calendar year forty-five per
 68 cent shall be charged to the policies written in that year, forty-five per
 69 cent to the policies written in the preceding year, and ten per cent to
 70 the policies written in the second year preceding; and a schedule show-
 71 ing such distribution shall be included in the annual statement.

72 Whenever, in the judgment of the commissioner, the liability or com-
 73 pensation loss reserves of any insurer calculated in accordance with the
 74 foregoing provisions are inadequate, he may require such insurer to
 75 maintain additional reserves based upon estimated individual claims or
 76 otherwise.

77 Every company writing liability or compensation policies shall include
 78 in the annual statement required by section twenty-five a schedule of
 79 its experience thereunder in such form as the commissioner may prescribe.

1 SECTION 13. [REPEALED, 1923, 39, § 3.]

1 SECTION 14. He shall collect and pay to the commonwealth charges
 2 and fees as follows: for each examination prior to granting a license or
 3 a certificate of authority to issue policies of insurance or annuity or pure
 4 endowment contracts as provided in sections four and thirty-two, fifty
 5 dollars; for the valuation of life policies of a domestic company as pro-
 6 vided in section nine, two and one half mills for each thousand dollars
 7 of insurance; for each certificate issued under section sixteen, two dol-

Collection of
 charges and
 fees.
 G. S. 58, § 64.
 1867, 267,
 §§ 4-6
 1870, 349, § 8.
 1871, 297, § 5.
 1878, 35, § 4,
 36, § 2
 P. S. 119, §§ 5,
 18, 71, 157, 203,
 209.

1884, 55.
 1887, 214.
 §§ 15, 24, 71,
 91, 96.
 1891, 19; 522,
 §§ 15, 24, 71,
 91, 96.
 1897, 67, § 2.
 R. L. 118,
 §§ 15, 88, 96.
 1902, 106.
 1906, 271, § 7.
 1907, 576,
 §§ 15, 93, 101,
 122.
 1908, 170.
 1911, 429,
 §§ 1, 4.
 1917, 164, § 1.
 1918, 71.
 1919, 38,
 § 1; 46.
 1920, 326.
 1921, 166.
 1924, 450, § 1.
 1925, 124, § 1.
 1926, 174, § 1.

lars, provided that such certificates shall be issued without charge for 8
 the use of the commonwealth; for each certificate under section thirty- 9
 two, two dollars; for each special license under clause (g) of section 10
 fifty-one or of section fifty-four, ten dollars; for each certificate issued 11
 by the commissioner under section seventy or seventy-one, two dollars; 12
 for filing copy of charter or deed of settlement of each foreign company 13
 under section one hundred and fifty-one, thirty dollars; for filing finan- 14
 cial statement with the application for admission of a foreign company 15
 under said section one hundred and fifty-one, and for the filing of each 16
 annual statement by a foreign company under section twenty-five, 17
 twenty dollars; for each service of lawful process upon him as attorney 18
 for a foreign company under section one hundred and fifty-one and 19
 section one hundred and fifty-four, two dollars; provided, that such fee 20
 shall not be required for the service of process in any criminal proceed- 21
 ing; for each license or renewal thereof to an insurance agent of any 22
 company under section one hundred and sixty-three, two dollars; for 23
 each license or renewal thereof to an insurance broker under section one 24
 hundred and sixty-six, twenty-five dollars; for each license or renewal 25
 thereof to a special insurance broker under section one hundred and 26
 sixty-eight, twenty-five dollars; for each license or renewal thereof to 27
 an adjuster of fire losses under section one hundred and seventy-two, 28
 ten dollars; for each license or renewal thereof to a voluntary associa- 29
 tion under section one hundred and seventy-two A, to a partnership 30
 under section one hundred and seventy-three or to a corporation under 31
 section one hundred and seventy-four, the fees hereinbefore prescribed 32
 for like licenses issued to individuals under said section one hundred and 33
 sixty-three, one hundred and sixty-six, one hundred and sixty-eight or 34
 one hundred and seventy-two, for each trustee, partner or officer to be 35
 covered by the license; provided, that the fee to be collected for an 36
 insurance broker's license issued under said section one hundred and 37
 seventy-three to a partnership composed entirely of residents of other 38
 states of the United States eligible therefor under said section one hun- 39
 dred and sixty-six, and covering all the partners, shall be twenty-five 40
 dollars and that the aggregate fees to be collected for such a license 41
 issued as aforesaid to any other partnership shall not exceed one hun- 42
 dred dollars; for each certificate of the valuation of the policies of any 43
 life company and for each certificate of the examination, condition or 44
 qualification of a company, two dollars; for each copy of any paper on 45
 file in the office of the commissioner, twenty cents a page and for copies 46
 of tabulations, forty cents a page and two dollars for certifying the same; 47
 and all other fees and charges due the commonwealth for any official 48
 act or service of the commissioner. 49

Blanks for
 annual state-
 ments.

SECTION 15. He shall annually, in December, furnish each company 1
 two or more blanks in form adapted for its annual statement. 2

1837, 192, § 4.	G. S. 58, § 7.	1889, 451, § 8.
1838, 178, § 3.	P. S. 119, § 19.	1894, 522, § 16.
1849, 104, § 6.	1883, 33, § 3.	1897, 65.
1856, 252, § 8.	1887, 214, § 16.	R. L. 118, § 16.
1858, 170, § 2.	1888, 199, § 3.	1907, 576, §§ 16, 122.

Record of
 proceedings.
 Certificates
 for use in
 court.
 1855, 124, § 3.
 G. S. 58, § 9.
 P. S. 119, § 20.
 1887, 214, § 17.

SECTION 16. He shall preserve in a permanent form a record of his 1
 proceedings, including a concise statement of the result of official exam- 2
 inations of companies. 3

He shall furnish, upon payment of the fee prescribed by section four- 4
 teen, when required for evidence in court, certificates, under seal of the 5

6 division of insurance, relative to the authority of an insurance agent,
 7 broker or company, or an adjuster of fire losses, or a fraternal benefit
 8 society, to transact business in the commonwealth on any particular
 9 date or for any specified period, and such certificates shall be received
 10 by the courts in lieu of the testimony of the commissioner or his repre-
 11 sentative.

1 SECTION 17. He shall annually, and as early as is consistent with
 2 full and accurate preparation, make a report to the general court of his
 3 official transactions, and shall include therein a report of the condition
 4 of the receiverships of insolvent companies; an exhibit of the financial
 5 condition and business transactions of the several companies as disclosed
 6 by official examinations of the same or by their annual statements,
 7 abstracts of which statements, with his valuation of life policies, shall
 8 appear therein; and such other information and comments relative to
 9 insurance and the public interest therein as he thinks proper.
 10 The annual report of the commissioner on fire and marine insurance
 11 matters shall contain the laws enacted on those subjects in the year of
 12 the report, and his annual report on life and miscellaneous insurance
 13 matters shall contain the laws enacted on those subjects in the year of
 14 the report.

PROVISIONS COMMON TO FOREIGN AND DOMESTIC COMPANIES.

1 SECTION 18. Every company shall conduct its business in the com-
 2 monwealth in its corporate name, and all policies and contracts, other
 3 than contracts of corporate suretyship, issued by it shall, except as pro-
 4 vided in sections one hundred and two A, one hundred and eleven A and
 5 one hundred and seventeen A of this chapter and in section fifty-six of
 6 chapter one hundred and fifty-two, be headed or entitled only by such
 7 name.
 8 When any such company publishes its assets it shall in the same con-
 9 nection and with equal conspicuousness publish its liabilities, both com-
 10 puted on the basis allowed for its annual statements, and any publication
 11 purporting to show its capital shall exhibit only the amount of such
 12 capital as has been actually paid in cash. Such publications shall be held
 13 to include all policies, renewals, signs, circulars, cards or other means by
 14 which public announcements are made.
 15 A company or an officer or agent thereof who issues or circulates ad-
 16 vertisements in violation of this section shall be punished by a fine of
 17 not less than fifty nor more than five hundred dollars.

1 SECTION 19. [REPEALED, 1931, 426, § 273.]

1 SECTION 19A. Two or more domestic companies may merge or con-
 2 solidate into one corporation, or a domestic company may merge or
 3 consolidate with any company or companies organized under the laws of
 4 any state of the United States into one corporation, which shall be a
 5 domestic corporation. In either case the title of such new corporation
 6 shall be subject to the provisions of section forty-nine. Companies
 7 merging or consolidating under this section shall enter into a written
 8 agreement for such merger or consolidation prescribing its terms and
 9 conditions, the classes of business it proposes to transact subject to sec-
 10 tions forty-eight, fifty-one and fifty-four, the amount of the capital stock,

Annual report.
 1847, 192, § 5.
 1852, 227, § 17.
 1907, 576,
 §§ 17, 122
 1919, 29, 350,
 §§ 45, 46
 1924, 450, § 2.
 219 Mass. 511.
 1854, 453, § 12.
 1855, 124, § 9.
 1856, 252, § 5.
 1857, 40, § 8.
 1858, 177, § 2.
 G. S. 58, § 10.
 P. S. 119, § 21.
 1887, 214, § 17.
 1894, 522, § 17.
 R. L. 118, § 17.
 1907, 576,
 §§ 17, 122.
 1911, 51.

Companies to
 act in cor-
 porate name.
 Liabilities
 to be pub-
 lished with
 assets.
 1853, 333, § 1.
 1854, 453, § 2.
 1856, 252, § 5.
 G. S. 58, § 24.
 1878, 87,
 § 1, 2
 P. S. 119,
 § 178-180.
 1887, 214,
 § 18, 100.
 1894, 522,
 § 18, 100.
 R. L. 118,
 § 18, 100.
 1907, 576,
 § 18, 100, 122.
 1912, 330,
 1924, 285, § 2
 1925, 164, § 2
 1928, 80, § 2.

Merger of
 companies.
 1921, 172.
 1923, 192.

if any, of the new corporation, which shall not be a larger amount than 11
the aggregate amount of the capital stock of the merged or consolidated 12
companies nor less than the minimum amount specified in said sections 13
forty-eight and fifty-one, and the number of shares into which said capital 14
stock is to be divided. In all respects, the new corporation shall be sub- 15
ject to the provisions of this chapter, except as otherwise expressly provi- 16
ded in this section. Such agreement shall be assented to by a vote of 17
the majority of the board of directors of each company and approved 18
by the votes of the stockholders, if any, owning at least two thirds of the 19
stock of each company at a meeting called for the purpose, notice of which 20
meeting shall be given in accordance with law, and also published at least 21
once a week for three successive weeks in some newspaper printed in the 22
commonwealth, and if any of the merging or consolidating companies are 23
domiciled outside of the commonwealth at least once a week for three 24
successive weeks in some newspaper printed in the town where such 25
company has its principal office, or, if there are no stockholders, such 26
agreement shall be assented to by a vote of the majority of the board of 27
directors of each company and approved by the votes of at least two 28
thirds of the policyholders of each company, actually present or repre- 29
sented at a meeting called for the purpose, notice of which meeting shall 30
be given as hereinbefore provided. Such agreement shall be subject to 31
the written approval of the commissioner, shall be executed in duplicate 32
by the president and secretary and by a majority of the board of directors 33
of each company under its corporate seal, shall be accompanied by copies 34
of the resolutions authorizing the merger or consolidation and the execu- 35
tion of the agreement attested by the recording officer of each company 36
and shall, with the records of the companies pertaining thereto, be sub- 37
mitted to the commissioner. If it appears that the requirements of this 38
section have been complied with, the commissioner may so certify and 39
approve the agreement by his endorsement thereon. One of the dupli- 40
cates of such agreement shall thereupon be filed with the state secretary, 41
who shall cause the same to be recorded and shall issue a certificate of 42
reincorporation to the new company with the powers retained and 43
specified in the agreement, and the other duplicate shall be retained by 44
the commissioner. No such agreement shall take effect until it has been 45
filed in the office of the state secretary as aforesaid. The new company 46
may require the return of the original certificates of stock held by each 47
stockholder in each of the companies merged or consolidated and issue in 48
lieu thereof new certificates for such number of shares of its own stock as 49
the stockholder may be entitled to receive. Upon such merger or con- 50
solidation all rights and properties of the several companies shall accrue 51
to and become the property of the new company which shall succeed to 52
all the obligations and liabilities of the merged or consolidated companies, 53
in the same manner as if they had been incurred or contracted by it. The 54
stockholders or policyholders of the merged or consolidated companies 55
shall continue to be subject to all the liabilities, claims and demands 56
existing against them at or before such merger or consolidation. No 57
action or proceeding pending at the time of the merger or consolidation 58
in which any or all of the companies merged or consolidated may be a 59
party shall abate or be discontinued by reason of the merger or consolida- 60
tion, but the same may be prosecuted to final judgment in the same 61
manner as if the merger or consolidation had not taken place, or the new 62
company may be substituted in place of any company so merged or con- 63
solidated by order of the court in which the action or proceeding may be 64

65 pending. Nothing in this section shall authorize the merger or consolida-
 66 tion of stock companies with mutual companies.

1 SECTION 20. Any company, except as herein provided, may reinsure
 2 in any other company any part or all of any risks assumed by it, and
 3 shall file with the annual statement required by section twenty-five and
 4 at such other times as the commissioner may require, schedules of all
 5 reinsurance.

6 Such reinsurance shall not reduce the taxes to be paid by the ceding
 7 company, nor, if a life company, shall it reduce the reserve to be charged
 8 to it, unless effected with a company authorized to issue policies in the
 9 commonwealth covering risks of the same kinds as those reinsured, or
 10 with a company incorporated or formed to reinsure and authorized to
 11 reinsure in the commonwealth risks of the same kinds as those rein-
 12 sured. Such reinsurance shall not reduce the reserve or other liability
 13 to be charged to the ceding company, other than life, unless (a) it is
 14 effected with a company authorized in the commonwealth as aforesaid,
 15 or (b) with a company similarly authorized in another state or terri-
 16 tory of the United States conforming to the same standard of
 17 solvency and fulfilling the same statutory or departmental regulations
 18 which would be required of such company if, at the time such reinsurance
 19 is effected, it were authorized as aforesaid in the commonwealth, or (c)

Reinsurance,
 1854, 453, § 7;
 1874, 109,
 P. S. 119,
 § 152
 1887, 33, § 1.
 1884, 120,
 § 1, 2
 1887, 211,
 § 20, 72, 84,
 102
 1891, 368,
 1892, 47
 1894, 137, § 1;
 522, § 20, 72,
 81, 102
 1895, 59, § 1.
 1898, 537
 R. L. 118,
 § 20, 72, 78,
 84, 102
 1907, 576,
 § 20, 72, 84,
 89, 111, 122,
 1909, 345,
 1914, 448,
 § 1, 2
 1915, 178, § 3.
 1919, 114,
 1920, 288,
 1921, 277, § 2.
 1926, 74,
 1 Op. A. G. 25,
 504, 573.
 2 Op. A. G.
 521.
 Op. A. G.
 (1917) 13.

20 with a company incorporated or formed to reinsure and authorized to
 21 reinsure in the commonwealth; provided, that any contract of reinsur-
 22 ance, other than life, made by any domestic company or by any company
 23 incorporated in a foreign country and having its principal office in the
 24 commonwealth, ceding more than seventy-five per cent of its total out-
 25 standing risks, shall be subject to the written approval of the commis-
 26 sioner; and provided, further, that no domestic life company shall
 27 reinsure its risks without the written permission of the commissioner,
 28 but may reinsure parts of an individual risk not to exceed in any one
 29 company the amount retained by the company first writing the insurance.
 30 When reinsurance is so effected the ceding company, other than a life
 31 company, shall thereafter be charged on the gross premium basis with
 32 an unearned premium liability, and a life company shall be charged
 33 thereafter with a reserve liability, both said unearned premium and
 34 reserve liability representing the proportion of the obligation retained
 35 by it, and the company with which the reinsurance is effected shall be
 36 charged thereafter in like manner with the proportion of the obligation
 37 assumed by it. Both the companies shall together carry the same un-
 38 earned premium liability or reserve which the ceding company would
 39 have carried had it not reinsured the risk.

40 A company ceding reinsurance to a mutual company shall not, unless
 41 the contract of reinsurance so provides, become thereby a member of
 42 the company accepting such reinsurance or be entitled to any dividend
 43 or expiration return of premium or be subject to liability to assessment.

44 This section shall not permit a ceding company, other than life, to
 45 receive through the cession of the whole or any of its risks any advantage
 46 in respect to its unearned premium reserve, or, if a life company, in
 47 respect to the net value of its policies involving life contingencies that
 48 would reduce the same below the actual amount thereof.

49 A company and any officer or agent thereof effecting or acting in the
 50 negotiation of reinsurance in violation of this section shall severally be
 51 punished by a fine of five hundred dollars.

Limit of
single risk.
Penalty.
1818, 120, § 7.
R. S. 37, § 21.
1854, 453, § 7.
1856, 252, § 15.
G. S. 58, § 32.
P. S. 119, § 56.
1887, 214,
§§ 20, 103.
1891, 368.
1892, 47.
1894, 137, § 1;
522, §§ 20, 103.
1895, 59, § 1.

SECTION 21. No company shall insure in a single risk wherever located, excepting transportation, inland navigation and ocean and coast-wise marine risks, a larger amount than one tenth of its net assets, unless it has reinsured, as provided in the preceding section, the excess over said limit to take effect simultaneously with the original contract; but a domestic mutual boiler company may, except as provided in section fifty-four, insure in a single risk an amount not exceeding one fourth of its net assets. A company violating this section shall be punished by a fine of five hundred dollars.

1898, 538, § 3.
R. L. 118, §§ 20, 103.
1907, 576, §§ 20, 112, 122.

1916, 21, § 3.
1919, 114, § 1.
181 Mass. 522.

1 Op. A. G. 315, 573.
2 Op. A. G. 34.

Certain
provisions in
policies void.
1856, 252, § 9.
G. S. 58, § 16.
P. S. 119, § 43.
1877, 214, § 26.
1894, 522, § 26.
R. L. 118, § 26.
1907, 576,
§§ 20, 122.
1910, 493, § 2.
1920, 150.
1924, 406, § 18.
186 Mass. 413.

SECTION 22. No company and no officer or agent thereof shall make, issue or deliver any policy of insurance or any annuity or pure endowment contract containing any condition, stipulation or agreement depriving the courts of the commonwealth of jurisdiction of actions against it; limiting the time for commencing actions against it to a period of less than two years from the time when the cause of action accrues; making any person appointed and licensed as its agent the agent of the applicant or insured or holder of the policy or contract for any purpose; providing that no person shall be deemed an agent of the company unless authorized by the company in writing, or providing that any such policy or contract made in the commonwealth on lives, property or interests therein shall be governed by the laws of any state or country other than this commonwealth. Any such condition, stipulation or agreement shall be void.

Policies providing coverage for more than one class of insurance, approval and contents.
1896, 140, § 2.
1898, 380, § 1.
R. L. 118, § 56.
1902, 340, § 3.
1907, 576,
§§ 34, 122.
1912, 524.
1916, 135.
1918, 36.
1920, 327, § 2.
G. L. (ed. of 1920) 175, § 52.
1928, 106,
§§ 4, 5.
208 Mass. 386.
4 Op. A. G.
38, 505.

SECTION 22A. No company shall issue any policy of insurance which provides coverage against loss or damage caused by hazards specified in more than one of the clauses of section forty-seven, until a copy of the form of the policy has been on file for thirty days with the commissioner, unless before the expiration of said thirty days he shall have approved the form of the policy in writing; nor if the commissioner notifies the company in writing within said thirty days that the form of the policy does not comply with the laws of the commonwealth, specifying his reasons therefor, provided that the opinion of the commissioner shall be subject to review by the supreme judicial court; but nothing in this section shall permit the incorporation in the standard fire policy, prescribed by section ninety-nine, of coverage against loss or damage by any of the hazards specified in any of the clauses of said section forty-seven other than the first, or permit the incorporation in any policy issued under section one hundred and two A, one hundred and eleven A or one hundred and seventeen A or any policy subject to section one hundred and eight or one hundred and thirteen A, of any coverage not otherwise permitted by this chapter to be incorporated therein.

Waivers of provisions of chapter prohibited unless authorized thereby.
Penalty.
1928, 205, § 1.

SECTION 22B. No company and no officer, agent or employee thereof, and no insurance broker, shall make, issue or deliver any policy of insurance or any annuity or pure endowment contract, or make or procure the making of, solicit or accept any oral or written agreement, containing a waiver or a provision for a waiver by an applicant for, or the insured under or holder of, any such policy or contract, of any provision of this chapter,

7 except as expressly authorized thereby. Any such agreement, waiver or
 8 provision shall be void. Whoever violates this section shall forfeit not less
 9 than one hundred nor more than five hundred dollars.

1 SECTION 23. No life company whose actual funds, exclusive of its
 2 capital, are not of a net cash value equal to its liabilities, including the net
 3 value of its policies, computed by the rules of valuation established by
 4 sections nine and eleven, shall issue new policies of life or endowment
 5 insurance or annuity or pure endowment contracts until its funds have
 6 become equal to its liabilities, and it has obtained from the commissioner
 7 a certificate to that effect with authority to resume business. A company
 8 or any officer or agent thereof who issues any such policy or contract in
 9 violation of this section shall forfeit not more than one thousand dollars.

Life company
 to cease busi-
 ness while
 funds are
 insufficient.
 Penalty.
 1863, 118.
 P. S. 119, § 155
 1887, 214.
 §§ 66, 104
 1891, 522.
 §§ 66, 104.
 R. 1, 118,
 §§ 66, 104,
 1907, 576,
 §§ 67, 113, 122.

1925, 154, § 1.

1 SECTION 23A. Every stock company, every foreign company de-
 2 scribed in section one hundred and fifty-five and every mutual company
 3 having a guaranty capital or guaranty fund, other than a life company,
 4 shall forthwith notify the commissioner in writing in such form and detail
 5 as he may require of any impairment of its capital stock or deposit or
 6 guaranty capital or guaranty fund, respectively, on the basis fixed by
 7 sections ten to twelve, inclusive. Every company whose license or au-
 8 thority to transact business in any other state or country is suspended or
 9 revoked or otherwise terminated, every foreign company against which
 10 receivership or liquidation proceedings are instituted in the state or
 11 country under whose laws it is organized, every foreign mutual company,
 12 other than life, whose net cash assets or contingent assets become less
 13 than the amount required of said company by section one hundred and
 14 fifty-one, every domestic mutual company whose amount of insurance or
 15 premiums in force or number of risks on its books become less than the
 16 amount or number required of said company by section seventy-four,
 17 ninety A, ninety-two, ninety-three, ninety-three A or ninety-three B,
 18 every mutual company which levies an assessment on its members, and
 19 every life company whose actual funds, exclusive of its capital, if any,
 20 are not of a net cash value equal to its liabilities, including the net value
 21 of its policies, computed by the rules of valuation established by sections
 22 nine to twelve, inclusive, shall forthwith notify the commissioner in
 23 writing as aforesaid to that effect.

Certain com-
 panies to
 notify com-
 missioner of
 certain occur-
 rences affect-
 ing them.
 1925, 154, § 2;
 267, § 2.
 1926, 5.
 1927, 284, § 5.
 1928, 169, § 1.
 1931, 242, § 4.

24 Every foreign company shall forthwith notify the commissioner in
 25 writing as aforesaid of any change of its corporate name, of the location
 26 of its home or principal office or of the amount of its paid-up capital stock
 27 or guaranty or deposit capital, and of any amendments to its charter or
 28 articles of incorporation relative to the classes of business it may transact
 29 and, in case of a foreign company described in section one hundred and
 30 fifty-five, of any change of its resident manager in the United States, or
 31 of the trustees, if any, appointed under section one hundred and fifty-six,
 32 or of the location of his or their principal office. Every foreign company
 33 shall, within thirty days after the filing of any such notice, or within such
 34 further time as the commissioner may allow, file with him duly certified
 35 documents executed and authenticated in a manner satisfactory to the
 36 commissioner setting forth any such change or amendment, other than a
 37 change of the location of its office or that of its resident manager or
 38 trustees.

Policies of life companies may provide for total, etc., disability and accidental death benefits. Separate policies, approval of form. Section 108 not applicable to certain policies.
 1912, 524.
 1916, 135.
 1918, 36.
 1920, 327, § 2.
 1929, 235.
 220 Mass. 52.
 271 Mass. 365.

SECTION 24. Any life company, whether or not it is authorized to transact accident and health insurance under clause sixth of section forty-seven, may provide in its policies of life, group life or endowment insurance, issued in compliance with this chapter, for the payment of an accidental death benefit consisting of a larger amount if death is caused by accident than if it results from other causes, and may incorporate therein or in its annuity or pure endowment contracts, issued in like compliance, provisions for the waiver of premiums or for the granting of special benefits in the event that the insured, or either of them, or the holder, as the case may be, becomes totally and permanently disabled from any cause. Such provisions shall state the special benefits to be granted thereunder, the cost thereof to the insured or to the holder and shall define what shall constitute total and permanent disability. The consideration for any benefits granted under this section shall be stated separately in the policy or contract.

Any such company may, in conjunction with and supplementary to any policy of life, group life or endowment insurance or annuity or pure endowment contract, issue a separate policy providing solely for any or all of the benefits permitted by this section. No such separate policy shall be issued or delivered in the commonwealth until a copy of the form thereof has been on file for thirty days with the commissioner, unless before the expiration of said thirty days he shall have approved the form of the policy in writing; nor if the commissioner notifies the company in writing, within said thirty days, that in his opinion the form of the policy does not comply with the laws of the commonwealth, specifying his reasons therefor; provided that such action of the commissioner shall be subject to review by the supreme judicial court.

The provisions of section one hundred and eight shall not apply to any policy of life, group life or endowment insurance or annuity or pure endowment contract or separate policy or contract providing for any or all of the benefits permitted by this section.

Annual Statements.

Annual statements
 1837, 192.
 §§ 1, 2.
 1838, 178, § 2.
 1842, 9, § 1.
 1849, 104, § 4.
 1851, 281, § 21.
 1852, 227, § 1;
 231, § 5; 311,
 § 14.
 1854, 453, § 37,
 and forms.
 1856, 252, § 8,
 and forms.
 1859, 146.
 G. S. 58, §§ 25,
 75, and forms.
 1860, 156.
 1862, 181, § 6,
 and forms.
 1867, 267,
 §§ 2, 3.
 1870, 349, § 2.
 P. S. 119,
 §§ 226, 229,
 and forms.
 1883, 33, § 4.
 1884, 58, 217.
 1887, 214,
 § 96, and forms.
 1894, 522, § 96,
 and forms.
 R. L. 118, § 96,
 and forms.
 1907, 576,
 §§ 101, 122.

SECTION 25. Every company shall annually, on or before March first, file with the commissioner a statement showing its financial condition on December thirty-first of the previous year, and its business of that year. But a life company shall not be required to file that part of its annual statement known as the gain and loss exhibit until May first following.

Such annual statement shall be in the form required by the commissioner. He shall embody therein, so far as appropriate to the several companies, the substance of the forms provided for in this section, with any additional inquiries he may require for the purpose of eliciting a complete and accurate exhibit of the condition and transactions of the companies. The assets and liabilities shall be computed and allowed in such statement in accordance with the rules stated in sections nine, ten, eleven and twelve. Such statement shall be subscribed and sworn to by the president and secretary, or, in their absence, by two of its principal officers. The commissioner may at other times require any such statements as he may deem necessary.

Life companies having both industrial and ordinary policies outstanding shall make two annual statements of receipts and disbursements, one of which shall cover the industrial department and the other the

21 ordinary department; but the aggregate income and disbursements of
 22 each department may be carried into its appropriate account in the
 23 statement of the other department, and the assets and liabilities of the
 24 company shall be so entered in both statements that each shall show
 25 the company's entire assets and liabilities. The commissioner may
 26 make such further rules as he shall deem necessary for carrying out as
 27 completely as possible the separation of accounts intended by this
 28 section.

1919, 30.
 1921, 165, § 2
 1923, 89
 1929, 24, § 4
 1 Op. A. G.
 423
 2 Op. A. G.
 381.

29 Such statement of a company of a foreign country shall embrace only
 30 its business and condition in the United States, and shall be subscribed
 31 and sworn to by its resident manager, or if its resident manager is a
 32 corporation, by the president and secretary or other duly authorized
 33 officers thereof.

34 The annual statement made to the commissioner, pursuant to this
 35 section, shall at least include the substance of that required by the
 36 following forms:

FORM A. — FIRE, MARINE, AND FIRE AND MARINE COMPANIES.

Stock companies, except United States branches of companies of foreign countries. 1. Name of company. 2. Location of home office. 3. Date of incorporation. 4. Date on which the company commenced business. 5. Names of officers and directors. 6. Amount of paid-up capital. 7. Amount of ledger assets December thirty-first of the previous year.

Income. — 8. Gross and net premiums on policies written or renewed. 9. Gross amount received from interest and rents. 10. Gross profit on the sale or maturity of ledger assets. 11. Gross increase in the book value of ledger assets. 12. Income from all other sources.

Disbursements. — 13. Gross and net amounts paid policyholders for losses. 14. Dividends to stockholders. 15. Commissions or brokerage. 16. Salaries of officers and employees. 17. Rents. 18. Repairs and expenses on real estate. 19. Taxes on real estate. 20. Insurance department fees and taxes. 21. Gross loss on the sale or maturity of ledger assets. 22. Gross decrease in the book value of ledger assets. 23. All other disbursements.

Assets. — 24. Book and market value of real estate owned. 25. Amount loaned on mortgages on real estate. 26. Loans secured by pledge of collateral. 27. Book and market value of stocks and bonds owned. 28. Cash in the company's office and in bank. 29. Agents' balances, stating separately the amount of the same which represents business written prior to October first next preceding the date of the statement. 30. Bills receivable. 31. Interest and rents due and accrued. 32. All other assets. From the assets of the company there shall be deducted: (a) company's stock owned and loans on the same; (b) agents' balances representing business written within the North American continent, Hawaii, Porto Rico, Cuba and the West Indies, prior to October first and agents' balances representing business written elsewhere prior to July first; (c) bills receivable past due taken for marine, inland and fire risks; (d) loans on personal security; (e) the excess of the book value of ledger assets over the market value; (f) and such other items as the commissioner may deem expedient.

Liabilities. — 33. Gross and net unpaid losses and claims. 34. Unearned premiums. 35. Borrowed money and interest thereon. 36. All liabilities, including the paid-up capital. 37. Surplus over all liabilities. 38. Surplus to policyholders.

The exhibit of risks and premiums shall show the gross amount of the risks in force on December thirty-first preceding, the amount of the risks written or renewed, the amount terminated, the amount reinsured and the amount in force on December thirty-first of the year covered by the statement, and the gross premiums on all of the risks mentioned herein.

FORMS B AND C. — COMPANIES NOT ELSEWHERE PROVIDED FOR AND UNITED STATES BRANCHES OF COMPANIES OF FOREIGN COUNTRIES.

The form of return required from mutual companies and from the United States branches of companies of foreign countries, and from all other companies except

those hereinbefore provided for and except life and those reporting under chapter one hundred and seventy-six or one hundred and seventy-eight, shall be the same as outlined above, with such modifications as the commissioner may deem necessary to make the foregoing form applicable to the business of such companies.

FORM D. — LIFE COMPANIES.

1. Name of company. 2. Location of home office. 3. Date of incorporation. 4. Date on which the company commenced business. 5. Names of officers and directors. 6. Amount of paid-up capital. 7. Amount of ledger assets December thirty-first of the previous year.

Income. — 8. First year's premiums on original policies. 9. Renewal premiums. 10. Gross amount received from interest and rents. 11. Gross profit on sale or maturity of ledger assets. 12. Gross increase in the book value of ledger assets. 13. Income from all other sources.

Disbursements. — 14. Gross and net amounts paid for losses. 15. Annuities involving life contingencies. 16. Premium notes voided by lapse. 17. Surrender values paid in cash. 18. Surrender values applied to payment of new and renewal premiums. 19. Surrender values applied to the purchase of paid-up insurance and annuities. 20. Dividends paid policyholders in cash. 21. Dividends applied to pay renewal premiums. 22. Dividends applied to purchase paid-up additions and annuities. 23. Investigation of claims. 24. Amount paid on claims on supplementary contracts not involving life contingencies. 25. Dividends to stockholders. 26. Commissions and bonuses to agents. 27. Commuted renewal commissions. 28. Salaries and allowances to agents and agencies. 29. Agency supervision. 30. Medical examiners' fees. 31. Inspection of risks. 32. Salaries and all other compensation of officers. 33. Rents. 34. Advertising, printing, stationery and postage. 35. Legal expenses. 36. Furniture, fixtures and safes. 37. Insurance taxes, license and department fees. 38. Taxes on real estate. 39. Repairs and expenses on real estate. 40. Gross loss on sale or maturity of ledger assets. 41. Gross decrease in book value of ledger assets. 42. All other disbursements.

Assets. — 43. Book and market value of real estate owned. 44. Amount loaned on mortgages on real estate. 45. Loans secured by pledge of collateral. 46. Loans made to policyholders on the company's policies assigned as collateral. 47. Book and market value of stocks and bonds owned. 48. Deposits in trust companies and banks on interest. 49. Deposits in trust companies and banks not on interest. 50. Cash in company's office. 51. Agents' balances. 52. Bills receivable. 53. Interest and rents due and accrued. 54. Gross and net uncollected and deferred premiums. 55. All other assets. From the assets of the company there shall be deducted: (a) company's stock owned, and loans on the same; (b) supplies, stationery, printed matter, furniture, fixtures and safes; (c) commuted commissions; (d) agents' debit balances; (e) cash advanced to or in the hands of officers or agents; (f) loans on personal security; (g) bills receivable; (h) premium notes and loans on policies, and net premiums in excess of the net value of their policies; (i) the excess of the book value of ledger assets over the market value; (j) and such other items as the commissioner may deem expedient.

Liabilities. — 56. Net present value of all outstanding policies in force, which shall show the basis of the computation, and the amount of liability upon each basis, if more than one is used. 57. Net value of risks reinsured. 58. Net reserve. 59. Present value of amounts not yet due on supplementary contracts not involved in life contingencies. 60. Liability on policies cancelled and not included in the net reserve upon which a surrender value may be demanded. 61. Claims for death losses due and unpaid. 62. Claims for death losses in process of adjustment. 63. Claims for death losses reported on which no proofs have been received. 64. Claims for matured endowments due and unpaid. 65. Claims for death losses and other policy claims resisted by the company. 66. The amount due on annuity claims involving life contingencies. 67. Amount due on supplementary contracts not involved in life contingencies. 68. Premiums paid in advance. 69. Interest and rents paid in advance. 70. Commissions due agents on premium notes when paid. 71. Cost of collecting uncollected and deferred premiums in excess of the loading thereon. 72. Commissions to agents due or accrued. 73. Salaries, rents, office expenses and miscellaneous bills and accounts due or accrued. 74. Medical examiners' and legal fees due or accrued. 75. State, county and municipal taxes due or accrued. 76. Bor-

rowed money and interest thereon. 77. Dividends or other profits due policyholders, including those contingent on outstanding and deferred premiums. 78. Dividends declared or apportioned, payable to policyholders during the next calendar year, whether contingent upon the payment of renewal premiums or otherwise, under annual dividend policies. 79. Dividends declared or apportioned, payable to policyholders during the next calendar year under deferred dividend policy contracts. 80. Amounts set apart, apportioned, provisionally ascertained, declared, or held awaiting apportionment upon deferred dividend policies. 81. Reserve or surplus funds not otherwise included in liabilities. 82. All other liabilities, including the paid-up capital. 83. Surplus.

37 The annual statements of all companies shall contain schedules fur-
38 nishing the following and such additional information as the commis-
39 sioner may require, all of which shall be arranged in such form as he
40 may deem expedient.

SCHEDULE OF REAL ESTATE.

Part I. — Containing an itemized exhibit of the real estate owned, and which shall show: 1. Quantity, dimensions and locations of lands, with the size and description of buildings, and the nature of the encumbrances on the property, if any. 2. The date acquired. 3. Name of vendor. 4. Amount of encumbrances. 5. The actual cost to the company, including cost of acquiring title, and, if the property was acquired by foreclosure, such costs shall include the amounts expended for taxes, repairs and improvements prior to the date on which the company acquired the title. 6. The book value. 7. The market value. 8. The increase and the decrease in the book value during the year. 9. The gross rental, gross expenditures for repairs and expenses, the net income on each piece of property for each of the last three years, and if any portion of the property is occupied by the company for its own use, the rental value thereof.

Part II. — Containing an itemized exhibit of the real estate acquired during the year, which shall show: 1. Quantity, dimensions and location of lands, with size and description of buildings, and nature of encumbrances, if any. 2. Date of purchase. 3. Name of vendor. 4. Cost to the company. 5. Book value.

Part III. — Containing an itemized exhibit of all real estate sold during the year, which shall show: 1. Quantity, dimensions and location of lands, size and description of buildings, with nature of encumbrances, if any. 2. Date of sale. 3. Name of purchaser. 4. Consideration. 5. Cost to the company. 6. Book value at time of sale. 7. Profit and loss on same.

SCHEDULE OF MORTGAGES.

Containing an itemized exhibit of the mortgage loans on real estate, which shall show: 1. The company's number of the mortgage. 2. The year in which the mortgage was given. 3. The year in which it matures. 4. The record of the mortgage, showing the county or district, book and page. 5. Amount of principal unpaid. 6. Date on which the interest is due and the rate per annum. 7. Amount of interest past due. 8. Amount of interest accrued. 9. Value of lands mortgaged. 10. Value of buildings. 11. Amount of insurance held by the company on the buildings. 12. Location and description of the property.

SCHEDULE OF COLLATERAL LOANS.

Containing an itemized exhibit of the loans on collateral securities, which shall show: 1. Name of the borrower. 2. Date, maturity, and rate of interest on the loan. 3. Description of collateral. 4. Par value of collateral. 5. Market value of collateral. 6. Rate used to obtain market value. 7. Amount loaned thereon. 8. All substitutions of collateral during the year.

SCHEDULE OF BONDS AND STOCKS.

Part I. — Containing an itemized account of the bonds owned, which shall show: 1. Description of the security. 2. Year of maturity and option. 3. Rate of interest and how paid. 4. Cost to the company. 5. Book value. 6. Increase and decrease in the book value during the year. 7. Par value. 8. Market value. 9. Rate used to obtain the market value. 10. Interest due and accrued.

Part II. — Containing an itemized exhibit of the stocks owned, which shall show: 1. The number of shares of each stock owned. 2. Description of the security. 3. Rate of dividend in each of last three years. 4. Cost to the company. 5. Book value. 6. Increase and decrease in the book value during the year. 7. Par value. 8. Market value. 9. Rate used to obtain the market value.

Part III. — Containing an itemized exhibit of the stocks and bonds acquired during the year, which shall show: 1. Date acquired. 2. Name of vendor. 3. Cost to the company. 4. Book value of the same. 5. Par value.

Part IV. — Containing an itemized exhibit of the stocks and bonds disposed of during the year, which shall show: 1. Date of sale. 2. Name of purchaser. 3. Consideration. 4. Par value. 5. Cost to the company. 6. Book value at date of sale. 7. Profit or loss on the same during the year.

In addition to the schedules herein required, every life company shall furnish — 41 42

Schedule showing the largest balance carried in each bank or trust company during each month of the year covered by the statement.

Schedule showing all death claims resisted or compromised during the year covered by the statement, and all death claims resisted on December thirty-first of said year, with the reasons for contesting or resisting said claims.

Schedule showing the salaries, compensation and emoluments, of whatever amount, received during the year covered by the statement by the officers and directors, and, when said compensation or emoluments amounted to more than five thousand dollars, that received by any person, firm or corporation.

Schedule containing a gain and loss exhibit, which shall show the sources of the increase and the decrease in the surplus of the company during the year covered by the statement.

Schedule showing the rates of annual dividends paid during the year covered by the statement, and the annual premiums per one thousand dollars of insurance at ages twenty-five, thirty-five, forty-five and fifty-five, at date of issue, for each kind and plan of insurance.

Schedule showing the rates of dividends paid during the year covered by the statement upon deferred dividend policies completing their dividend periods during said year, and the annual premiums per one thousand dollars of insurance at ages twenty-five, thirty-five, forty-five and fifty-five, for each kind and plan of insurance.

Schedule showing the amounts set apart, apportioned or provisionally ascertained or calculated during the year covered by the statement, or held awaiting apportionment on policies with deferred dividend periods longer than one year, and the annual premiums per one thousand dollars of insurance at ages twenty-five, thirty-five, forty-five and fifty-five, on each kind of policy issued.

Schedule showing the unlisted assets held by the company on December thirty-first of the year covered by the statement, and which are not entered in said statement, which schedule shall show: 1. Description of the property. 2. Date acquired. 3. Date dropped from the statement. 4. Cost to the company. 5. Par value. 6. Market value when dropped. 7. Market value December thirty-first of the year covered by the statement. 8. Reasons for dropping the same.

The commissioner may exempt companies from filing schedules of mortgage loans on real estate, and may as a substitute require such other information in respect to such investments as from time to time he shall deem to be essential for determining their soundness as assets. 43 44 45 46

Penalty for neglect to make annual statement. 1837, 192, § 3. 1842, 9, § 2. 1849, 104, § 5. 1852, 227, § 2. 1854, 453, § 41. 1856, 252, § 8.

SECTION 26. A company neglecting to make and file its annual statement in the form and within the time provided by the preceding section shall forfeit one hundred dollars for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do new business shall cease while such default continues without any proceedings under section five or six. 1 2 3 4 5 6

G. S. 58, § 26.	P. S. 119, §§ 226, 230.	R. L. 118, §§ 96, 101.
1867, 267, § 3.	1887, 214, §§ 96, 101.	1907, 576, §§ 101, 110, 122
1870, 349, § 3.	1894, 522, §§ 96, 101.	1924, 406, § 4.

1 SECTION 27. Every company shall include in its annual statement
 2 under section twenty-five a schedule of all claims under policies issued
 3 by it to persons in the commonwealth which, during the year covered
 4 by the statement, have been made the subject of suits and also of those
 5 which at the time of making the statement are in suit. Such schedule
 6 shall be in such detail as the commissioner shall prescribe.

Companies
to report
suits on
claims.
1912, 162, § 1.

1 SECTION 28. If, upon inspection of a schedule specified in the pre-
 2 ceding section or upon any examination or investigation under section
 3 four, the commissioner is satisfied that a company is making a practice
 4 of unduly engaging in litigation or of unreasonably and unfairly delaying
 5 the adjustment or payment of legally valid claims, he may, after a
 6 hearing to the company, make a special report of his findings thereon to
 7 the general court. Nothing in this section shall affect the provisions of
 8 sections five or six or the right of the commissioner to proceed thereunder.

Report to
General court
of company
delaying, etc.,
claim
1912, 162, § 2.
1928, 133, § 2.

PROVISIONS RESPECTING DOMESTIC COMPANIES.

General.

1 SECTION 29. All companies now or hereafter incorporated or formed
 2 by authority of any general or special law of the commonwealth shall,
 3 except as provided in section one hundred and fourteen and in chapter
 4 one hundred and seventy-six, be subject to this chapter. Trade unions
 5 and other associations of wage workers whose principal objects are to
 6 deal with the relations between employers and employees relative to
 7 wages, hours of labor and other conditions of employment shall not be
 8 subject to this chapter or chapter one hundred and seventy-six.

Companies
subject to
this chapter.
1835, 147,
§§ 1, 2.
R. S. 37,
§§ 1, 24.
1851, 281, § 1.
1854, 453, § 1.
1856, 252, § 1.
G. S. 58, § 12.
1872, 375, § 1.
1873, 167, § 1.

P. S. 119, §§ 22, 23. R. L. 106, § 18; 118, § 2. 1911, 628, § 29, b.
 1887, 214, § 2. 1907, 576, §§ 2, 122. 1913, 617, § 5.
 1894, 522, § 2. 1909, 514, §§ 30, 145. 1929, 24, § 5.
 1899, 468.

1 SECTION 30. The general provisions of law relative to the powers,
 2 duties and liabilities of corporations shall apply to all incorporated
 3 domestic companies, so far as pertinent and not in conflict with other
 4 provisions of law relative to such companies or with their charters.

Companies
subject to gen-
eral corpora-
tion laws.
P. S. 105, § 1
1887, 214, § 22.

1894, 103; 522, § 22. R. L. 118, § 22. 1907, 576, §§ 23, 122.

1 SECTION 31. Domestic companies incorporated by special acts,
 2 whose charters are subject to a limitation of time, shall, after such limi-
 3 tation expires, continue to be bodies corporate, subject to all general
 4 laws applicable to such companies.

Continuation
of certain
companies.
1875, 34.
P. S. 119,
§ 22.

1887, 214, § 23. 1894, 522, § 23. R. L. 118, § 23. 1907, 576, §§ 24, 122.

1 SECTION 31A. Domestic companies incorporated by special acts,
 2 whose charters grant authority to transact insurance within a limited or
 3 defined territory, may, notwithstanding such limitations, transact insur-
 4 ance anywhere outside the limits specified in the charter, subject to all
 5 general laws applicable to such companies.

Extension of
business terri-
torial limits of
domestic com-
panies incor-
porated by
special acts.

1923, 373.

1 SECTION 32. No domestic company shall make or issue any contracts
 2 or policies of insurance or annuity or pure endowment contracts until it
 3 has obtained from the commissioner a certificate, in such form as he may
 4 prescribe, stating that the company has complied with the conditions set
 5 forth in this section and all other provisions of law, and authorizing it to

Domestic
company
to employ
underwriter,
accountant,
etc., and ob-
tain certificate
before issuing
policies.

1871, 297, § 5.
 P. S. 119, § 5.
 1887, 214, § 24.
 1894, 522, § 24.
 1897, 67, § 2.
 R. L. 118, § 24.
 1907, 576,
 §§ 25, 122.
 1917, 113.
 1921, 190.
 1930, 136, § 2.

make or issue such policies or contracts. No such certificate shall be issued until the commissioner is satisfied, by such examination as he may make and such evidence as he may require, that the company has complied with the laws of the commonwealth, adopted a proper system of accounting, employed a competent accountant and a competent and experienced underwriter, and is without liabilities except such organization expenses as the commissioner shall approve as reasonable, and except, in the case of a stock company or a mutual company with a guaranty capital, its liabilities to stockholders for the amount paid in for shares of stock, nor, in the case of a life company, until he is satisfied, as aforesaid, that the company has employed a competent and experienced actuary, and that its officers and directors are of good repute and competent to manage a life company; provided, that if the commissioner is of the opinion that the granting of such a certificate to a life company would, in any case, be prejudicial to the public interest, he may in his discretion refuse to issue it.

Signatures on policies. Facsimile signatures. 1817, 120, § 1. 1835, 147, § 5. R. S. 37, § 13, 29. 1851, 281, § 9. 1854, 453, § 7. 1856, 252, § 15.

SECTION 33. All such policies or contracts issued by such company shall be signed by its secretary, assistant secretary, or in their absence by a temporary secretary, and by its president or vice president or in their absence by two directors. Facsimiles of the signatures of such officers imprinted thereon shall have the same validity as their written signatures.

G. S. 58, § 32. 1887, 214, § 25. 1907, 576, §§ 26, 122.
 1864, 113, § 2. 1894, 522, § 25. 1908, 473.
 P. S. 119, § 56. R. L. 118, § 25.

Location of office and designation. 1851, 281, § 25. 1856, 252, § 5. G. S. 58, § 18. P. S. 119, § 44. 1887, 214, § 25. 1894, 522, § 25.

SECTION 34. Such company shall have its home office in the place specified in its charter or agreement of association; and if it establishes agencies in other places, all signs, cards, pamphlets and advertisements exhibited or issued by it or its agents shall specify the place where the company is located.

R. L. 118, § 25. 1907, 576, §§ 26, 122.

Salaries to be authorized by directors. Limitations. 1907, 576, § 27. 1913, 613.

SECTION 35. No domestic company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, unless such payment be first authorized by a vote of its board of directors. No such company shall make any agreement with any of its officers, trustees or employees whereby it agrees that for any services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of three years from the date of such agreement; nor shall such company pay any pension except as provided in the following section.

Pensions to employees. 1913, 613. 1931, 290.

SECTION 36. Any domestic company, when authorized so to do by a vote in each case of not less than a majority of its directors, at a meeting called for the purpose, recorded in the minutes of the board, may grant a pension to any employee who has been continuously in the service of the company for ten years and who has become incapacitated for further service by reason of physical or mental disability resulting from sickness or injury, and may grant a pension to any employee retiring by reason of the infirmities of age who has been continuously in the service of the company for not less than fifteen years. No such pension shall exceed three fourths of the average salary of the employee for three years pre-

11 ceding the date of retirement, and any such pension shall be discontinued
 12 when any such pensioner substantially recovers his earning capacity.

13 Any such company, with the written approval of the commissioner,
 14 may also establish an employees' savings fund or contributory pension
 15 system for the benefit of its aged or disabled employees, to which fund or
 16 system the employees shall contribute an amount not less than the
 17 amount contributed by the company.

1 SECTION 37. No domestic company shall make any disbursements of
 2 twenty-five dollars or more, except disbursements on account of return
 3 premiums on cancelled policies, unless the same be evidenced by a
 4 voucher signed by or on behalf of the person receiving the money and
 5 correctly describing the consideration for the payment; and if the same
 6 be for services and disbursements, setting forth the services rendered
 7 and an itemized statement of the disbursements made; and if it be in
 8 connection with any matter pending before any legislature or public
 9 body, or before any department or officer of any government, correctly
 10 describing in addition the nature of the matter and of the interest of
 11 such company therein; or if such a voucher cannot be obtained, by an
 12 affidavit stating the reason for not obtaining such voucher, and setting
 13 forth the particulars above mentioned.

Vouchers for
 disbursements
 1907, 576, § 28,
 1921, 144.

1 SECTION 38. [REPEALED, 1923, 120.]

1 SECTION 39. [REPEALED, 1923, 120.]

1 SECTION 40. [REPEALED, 1923, 120.]

1 SECTION 41. [REPEALED, 1923, 120.]

1 SECTION 42. [REPEALED, 1923, 120.]

1 SECTION 43. [REPEALED, 1923, 120.]

1 SECTION 44. If any domestic company shall not commence to issue
 2 policies within one year after the date of its charter or of its certificate of
 3 organization, or if after it has commenced to issue policies it shall cease
 4 for the period of one year to make new insurance, its corporate powers
 5 shall thereby expire; and the supreme judicial court, upon petition of the
 6 commissioner or of any person interested, may fix by decree the time
 7 within which it shall settle and close its affairs. A company incorporated
 8 by special act shall, within one year after the date thereof, file with the
 9 state secretary a written notice of its organization under its charter, or
 10 the same shall be void.

Failure to
 transact
 business,
 effect.
 Notice of
 incorporation
 of certain
 companies
 to be filed.
 1842, 21
 1856, 252, § 3.
 G. S. 58, § 14.
 1863, 249,
 §§ 1, 2.
 1872, 375, § 20.
 P. S. 119,
 §§ 24, 37, 50.

1887, 214, § 28.
 1894, 522, § 28.

R. L. 118, § 28.
 1907, 576, §§ 31, 122.

1 Op. A. G. 111.

1 SECTION 45. No domestic company shall establish an agency or ap-
 2 point an agent or other person to solicit, negotiate, continue or renew
 3 contracts of insurance on lives, property or interests in, or annuity or
 4 pure endowment contracts with residents of, a state, district or territory
 5 where such company has not been lawfully authorized to transact busi-
 6 ness, and no such company or officer or agent thereof shall pay or allow
 7 or offer to pay or allow compensation or anything of value to any such

Unauthorized
 foreign
 agencies
 forbidden.
 Penalty.
 1897, 168.
 R. L. 118,
 § 110.
 1907, 576,
 §§ 119, 122.

person for soliciting, negotiating, continuing or renewing such contracts. 8
 Whoever violates this section shall be punished by a fine of not less than 9
 three hundred dollars. 10

Certain claims
 against in-
 solvent com-
 panies deemed
 preferred.
 1908, 151.
 1928, 171, § 1.
 Op. A. G.
 (1929) 185.

SECTION 46. When any domestic company becomes insolvent, or is 1
 unable to pay in full its liabilities as set forth in sections ten, eleven and 2
 twelve, claims for unpaid losses under its policies, other than life or 3
 endowment policies or annuity or pure endowment contracts, shall, in 4
 the distribution of its assets, whether liquidation is effected by a receiver 5
 or otherwise, be deemed and treated as preferred over claims for return 6
 premiums on cancelled or unexpired policies. Nothing in this section 7
 shall impair the obligation now or hereafter imposed by law upon the 8
 officers of a mutual company, other than a life company, to make assess- 9
 ments on its members to pay its incurred losses and expenses. 10

Preference of
 certain claims
 against insol-
 vent domestic
 liability
 companies.
 1922, 407.
 1928, 171, § 3.

SECTION 46A. When any domestic company which has insured the 1
 payment of the compensation provided for by chapter one hundred and 2
 fifty-two becomes insolvent, or is unable to pay in full its liabilities as 3
 set forth in sections ten and twelve, unpaid losses under its workmen's 4
 compensation policies shall, in the distribution of its assets, whether 5
 liquidation is effected by a receiver or otherwise, be deemed and treated 6
 as preferred over all claims except debts due the United States and debts 7
 or taxes due the commonwealth or any city or town thereof. 8

Domestic com-
 panies to file
 by-laws, etc.,
 with com-
 missioner.
 1923, 118, § 2.

SECTION 46B. Every domestic company incorporated after Septem- 1
 ber first, nineteen hundred and twenty-three, shall, within thirty days 2
 after its incorporation, file with the commissioner a copy of its by-laws 3
 and amendments thereto, if any, certified under its corporate seal by its 4
 secretary, and every such company, whether existing on said date or 5
 incorporated thereafter, shall, within thirty days after the adoption of 6
 any amendment to its by-laws, file with the commissioner a copy of 7
 such amendment, certified as above provided. 8

Organization.

Purposes of
 incorporation.
 Kinds of
 business.

SECTION 47. Companies may be incorporated under and subject to 1
 the provisions of this chapter for the following purposes: — 2

- | | | |
|-----------------------------|------------------|------------------------|
| 1872, 375, § 1. | 1895, 174, § 1. | 1907, 576, §§ 32, 122. |
| P. S. 119, § 26. | 1896, 447, § 1. | 1920, 327, § 1. |
| 1887, 214, § 29. | 1900, 92, § 1. | 1925, 267, § 3. |
| 1894, 133, § 1. | R. L. 118, § 29. | 1928, 106, § 1. |
| cl. 1; 522, § 29,
cl. 1. | | |

1872, 375, § 1.
 P. S. 119, § 26.
 1887, 214,
 § 29, cl. 1.
 1894, 133, § 1,
 cl. 1; 522, § 29,
 cl. 1.
 1895, 174,
 § 1, cl. 1.
 1896, 447,
 § 1, cl. 1.
 1900, 92, § 1,
 cl. 1.
 1901, 296, § 1.
 R. L. 118, § 29,
 cls. 1, 12.
 1907, 576, § 32,
 cl. 1, 12.
 1908, 509
 1910, 499, § 1.

First, To insure against loss or damage to property by fire, smoke, 3
 lightning and other electrical disturbances, wind, tornado, tempest, 4
 cyclone, earthquake, hail, frost, snow, ice, weather or climatic conditions, 5
 including excess or deficiency of moisture, flood, rain or drought, rising 6
 of the waters of the ocean or its tributaries, bombardment, invasion, 7
 foreign enemies, insurrection, riot, sabotage, war, civil war or commotion, 8
 military or usurped power, explosion fire ensuing, and explosion no fire 9
 ensuing except explosion of steam boilers and flywheels; also to insure 10
 against loss or damage by insects, disease or other causes, to trees, crops 11
 or other products of the soil; and against loss of use or occupancy due to 12
 any of said causes. 13

- | | | |
|-------------------------------|---------------------------|-----------------------------------|
| 1913, 174,
1917, 238, § 1. | 1920, 327, § 1,
cl. 1. | 1927, 49,
Op. A. G. (1917) 13. |
|-------------------------------|---------------------------|-----------------------------------|

14 Second, To insure, (a) vessels, freights, goods, money, effects, and
 15 money loaned on bottomry or respondentia, against the perils of the sea
 16 and other perils usually insured against by marine insurance; (b) against
 17 risks of inland navigation and transportation; (c) in connection with
 18 marine or inland navigation or transportation insurance on any property,
 19 against any risk or hazard whether to person or to property, including
 20 legal liability on account of loss or damage to either, arising out of the
 21 construction, repair, operation, maintenance or use of the subject matter
 22 of such primary insurance; (d) a person engaged in the business or trade
 23 of manufacturing, buying, selling or dealing in precious stones, jewels,
 24 jewelry, gold, silver or other precious metals, silverware, musical instru-
 25 ments, furs, fur garments or fine arts, or of cutting or setting precious
 26 stones or jewels, whether as principal, agent, broker, factor or otherwise,
 27 against any and all risks of loss or damage in respect to said articles
 28 wherever the same may be, including deterioration and loss of use, arising
 29 out of or in connection with such business or trade, and against legal
 30 liability on account of any such loss or damage, including deterioration
 31 or loss of use, or a person not so engaged who owns any of the foregoing
 32 named articles or wedding presents, against any and all risks of loss or
 33 damage in respect to said articles or presents wherever the same may be,
 34 including deterioration and loss of use; (e) against loss or damage to, and
 35 loss of use of, motor vehicles, airplanes, seaplanes, dirigibles or other
 36 aircraft, their fittings and contents, whether such motor vehicles or
 37 aircraft are being operated or not, and wherever the same may be, result-
 38 ing from accident, collision, fire, lightning, any larceny, pilferage, theft,
 39 malicious mischief or vandalism, any of the perils usually insured against
 40 by marine insurance or risks of inland navigation and transportation,
 41 against loss or damage caused by the concealment, removal or unlawful
 42 disposition or conversion of such vehicles or aircraft by a conditional
 43 vendee or mortgagor or bailee in possession, and against loss or damage
 44 sustained by a conditional vendor or mortgagee of such vehicles or air-
 45 craft arising from any default in the payment of the vendee's or mort-
 46 gator's indebtedness to the insured in case of the termination of the
 47 vendee's or mortgagor's interest in such vehicles or aircraft; (f) against
 48 loss or damage to any property caused by teams, airplanes, seaplanes,
 49 dirigibles or other aircraft, motor vehicles or other vehicles, and against
 50 legal liability for loss or damage caused thereby to the property of another,
 51 but not including legal liability for bodily injury or death caused thereby.

1872, 375, § 1.
 P. S. 119, § 29;
 1887, 214, § 1.
 cl. 2
 1894, 133, § 1.
 cl. 2; 522, § 29,
 cl. 2.
 1895, 474, § 1.
 cl. 2.
 1896, 447, § 1.
 cl. 2.
 1900, 92, § 1.
 cl. 2.
 R. L. 118, § 29,
 cl. 2.
 1907, 576, § 32,
 cl. 2.
 1908, 599
 1913, 511
 1918, 115, § 1
 1920, 327, § 1.
 cl. 2
 1921, 198
 1927, 53, § 1.
 1931, 91, § 1;
 109, 121, § 1;
 3 Op. A. G. 39.
 Op. A. G.
 (1917) 13.

52 Third, To insure against loss or damage to, and loss of use of, airplanes,
 53 seaplanes, dirigibles or other aircraft, motor vehicles other than motor
 54 boats, their fittings and contents, whether such vehicles or aircraft are
 55 being operated or not, and wherever the same may be, resulting from
 56 accident, collision, fire, lightning, any larceny, pilferage, theft, malicious
 57 mischief or vandalism, any of the perils usually insured against by marine
 58 insurance or risks of inland navigation and transportation, against loss or
 59 damage caused by the concealment, removal or unlawful disposition or
 60 conversion of such vehicles or aircraft by a conditional vendee or mort-
 61 gator or bailee in possession thereof, and against loss or damage sustained
 62 by a conditional vendor or mortgagee of such vehicles or aircraft arising
 63 from any default in the payment of the vendee's or mortgagor's indebted-
 64 ness to the insured in case of the termination of the vendee's or mort-
 65 gator's interest in such vehicles or aircraft.

1914, 642
 1931, 91, § 2.

66 Fourth, (a) To guarantee the fidelity of persons in positions of trust,
 67 private or public, (b) to act as surety on official bonds and for the per-

1884, 206, § 1.
 1887, 214, § 23.
 cl. 3

1894, 133, § 1, cl. 3, 522, § 29, cl. 3, 1895, 474, § 1, cl. 3, 1896, 447, § 1, cl. 3, 1900, 92, § 1, cl. 3, R. L. 118, § 29, cl. 3, 1907, 576, § 32, cl. 3, 1916, 32, 1920, 327, § 1, cl. 3.

formance of other obligations, (*c*) to guarantee or insure to the holders thereof the payment of the principal of, or interest on, bonds, notes or other evidences of indebtedness and to insure against loss or damage arising from any default in the payment of such principal or interest, and (*d*) to insure a bank, banker, investment broker, banking association or corporation against any loss of bills of exchange, notes, profits, bonds, securities, evidences of indebtedness, deeds, mortgages, documents, currency or money, except against the loss thereof during marine transportation or while being transported by a common carrier.

G. L. (ed. of 1920) 175, § 52. 1925, 345. 1928, 106, § 5.

1887, 214, § 29, cl. 4, 1894, 133, § 1, cl. 4; 522, § 29, cl. 4, 1895, 474, § 1, cl. 4, 1896, 447, § 1, cl. 4, 1900, 92, § 1, cl. 4, 1901, 296, § 1, R. L. 118, § 29, cl. 4, 12, 1906, 396, 1907, 576, § 32, cl. 4, 12, 1910, 499, § 1, 1914, 426, 1915, 178, § 1.

Fifth, To insure against loss or damage to any property of the insured, and against legal liability for loss or damage on account of the bodily injury or death of any person or any damage to property of another, caused by the breakage, explosion or rupture of, or any accidental injury to, steam boilers and pipes and containers connected therewith, any lighting, heating or cooking apparatus or their connections, flywheels, power wheels, and engines or other apparatus for applying or transmitting motive or electrical power, tanks or other receptacles under pressure, or their connections, or machinery of any kind, and against loss of use and occupancy caused thereby; and against loss or damage caused by the interruption by any cause of electric current or of water or gas supply furnished by a public utility company or municipality.

1920, 327, § 1, cl. 4.

1887, 214, § 29, cl. 5, 7, 1894, 133, § 1, cl. 5; 522, § 29, cl. 5, 1895, 474, § 1, cl. 5, 1896, 447, § 1, cl. 5, 1900, 92, § 1, cl. 5; 183, § 1, R. L. 118, § 29, cl. 5, 1907, 576, § 32, cl. 5, 1908, 248, 1911, 251, § 1, 1912, 311, 1913, 334; 750, 1918, 115, § 2, 1920, 327, § 1, cl. 5.

Sixth, To insure, (*a*) any person against bodily injury or death by accident, or (*b*) any person against legal liability for loss or damage on account of the bodily injury or death of any person or on account of any damage to property of another, or (*c*) against loss or damage to, or loss of use of, motor vehicles except motor boats, airplanes, seaplanes, dirigibles or other aircraft, their fittings and contents, whether such vehicles or aircraft are being operated or not, and wherever the same may be, resulting from collision or accident, except loss or damage by fire or lightning or while being transported in any conveyance by land or water; (*d*) to make insurance upon the health of individuals; or (*e*) to insure the payment of workmen's compensation benefits under chapter one hundred and fifty-two.

1925, 345. 155 Mass. 404. 2 Op. A. G. 289.
1927, 284, § 6. 199 Mass. 181. 3 Op. A. G. 219.
1931, 121, § 2. 208 Mass. 386. 4 Op. A. G. 505.

1873, 167, § 1, P. S. 119, § 26.

Seventh, To insure against loss or damage caused by the breakage of glass.

1887, 214, § 29, cl. 6. 1895, 474, § 1, cl. 6. R. L. 118, § 29, cl. 6.
1894, 133, § 1, cl. 6; 1896, 447, § 1, cl. 6. 1907, 576, § 32, cl. 6.
522, § 29, cl. 6. 1900, 92, § 1, cl. 6. 1920, 327, § 1, cl. 6.

1895, 474, § 1, cl. 7, 1896, 447, § 1, cl. 7, 1900, 92, § 1, cl. 7, R. L. 118, § 29, cl. 7, 1907, 576, § 32, cl. 7, 1913, 235; 541, 1920, 327, § 1, cl. 7, 1927, 49.

Eighth, To insure against loss or damage to any property of the insured, and against legal liability for any loss or damage to the property of another, caused by the breakage of, or leakage of any fluid or substance from, sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, heating, lighting or cooking apparatus or their connections, or conduits or containers of any fluid; or against loss or damage resulting from accidental injury from other causes than fire, explosion, lightning, bombardment or windstorm, to such sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, heating, lighting or cooking apparatus or their connections, or conduits and containers; against loss or damage to any property of the insured, and against legal liability for

- 115 loss or damage to the property of another, caused by water, hail, rain,
 116 sleet or snow seeping or entering through leaks or openings in buildings,
 117 or caused by the contents of any tank, or impact of any falling tank,
 118 platform or supports erected in or upon any building; and against loss of
 119 use and occupancy due to any of said causes.
- 120 Ninth, To insure against loss or damage to any property caused by 1895, 474, § 1,
 121 elevators, airplanes, seaplanes, dirigibles or other aircraft, motor or other 1896, 447, § 1,
 122 vehicles, except motor boats, and against loss of use and occupancy 1900, 92, § 1,
 123 caused thereby. cl. 8.
- R. L. 118, § 29, cl. 8. 1913, 541. 1931, 121, § 3.
 1907, 576, § 32, cl. 8. 1920, 327, § 1, cl. 8.
- 124 Tenth, To carry on the business commonly known as credit insurance 1896, 447, § 1,
 125 or guaranty, either by agreeing to purchase uncollectible debts, or other- cl. 9.
 126 wise to insure against loss or damage from the failure of persons indebted 1900, 92, § 1,
 127 to the insured to meet their liabilities. cl. 9.
 R. L. 118, § 29,
 cl. 9.
- 1907, 576, § 32, cl. 9. 1920, 327, § 1, cl. 9. 4 Op. A. G. 535.
- 128 Eleventh, To examine titles of real and personal property, furnish 1884, 180, § 1
 129 information relative thereto, and insure owners and others interested 1887, 214, § 62.
 130 therein against loss by reason of encumbrances, defective title or the 1889, 378.
 131 insufficiency of any mortgage held or sold by the insurer as security for 1894, 522,
 132 the amount secured by such mortgage, or against any other loss in con- §§ 62, 64.
 133 nection with any such mortgage or any interest therein, and to buy and R. L. 118,
 134 sell mortgages of real property and interests therein. § 29, cl. 10,
 § 64,
 1907, 576,
 § 32, cl. 10,
 § 65.
 1908, 509.
- 1917, 146, §§ 1, 4. 1920, 327, § 1, cl. 10. 4 Op. A. G. 535.
- 135 Twelfth, To insure against property loss or damage by burglary, 1900, 92, § 1.
 136 robbery, any larceny or theft, any breaking and entry or entry without R. L. 118, § 29,
 137 breaking of any house, building, ship, vessel or railroad car, or any other cl. 11.
 138 criminal act; against loss or damage caused by the concealment, removal 1907, 576,
 139 or unlawful disposition or conversion of property by a conditional vendee § 32, cl. 11.
 140 or mortgagor or bailee in possession; against loss or damage caused by 1919, 96,
 141 forgery; and to make the insurance provided for in subdivision (d) of 1920, 327, § 1,
 142 clause Fourth, as set forth therein. cl. 11.
 1928, 106, § 5.
- 143 Thirteenth, To insure against loss or damage from the death from any 1910, 499, § 1.
 144 cause of horses, live stock or domestic animals, and to furnish veterinary 1920, 327, § 1,
 145 service. cl. 12.
- 146 Fourteenth, To transact outside of the territorial limits of the United 1921, 215, § 1.
 147 States any and all forms of insurance.
- 148 Fifteenth, To reinsure risks of every kind or description undertaken by 1921, 277, § 3.
 149 other companies.
- 150 Sixteenth, To transact life insurance and to make contracts for the 1930, 136, § 1.
 151 payment of annuities and pure endowments.

1 SECTION 48. Ten or more persons residents of this commonwealth
 2 may form a stock company (a) to transact the business set forth in any
 3 one of the clauses set forth in section forty-seven, excepting the third,
 4 (b) to transact the business set forth in the first and eighth clauses thereof,
 5 (c) to transact the business set forth in the first and second clauses thereof,
 6 or in the first, second and eighth clauses thereof, (d) to transact the
 7 business set forth in any two or more of the fourth, fifth, sixth, seventh,
 8 eighth, ninth, tenth, twelfth and thirteenth clauses thereof, or (e) to
 9 transact the business set forth in the sixth and sixteenth clauses thereof.

Organization
 and capital of
 stock com-
 panies.
 1872, 375, § 2
 1873, 167, § 2;
 182, § 1
 P. S. 119,
 §§ 29, 63
 1883, 33, § 4
 1884, 180, § 1;
 296, § 2
 1887, 214,
 §§ 31, 64
 1888, 141.
 1894, 133, § 2;
 522, §§ 31, 64

1895, 474, § 2. 1907, 576, §§ 32, 122. 1923, 39, § 1.
 1896, 447, § 2. 1910, 499, § 1. 1924, 406, § 5.
 1900, 92, § 2; 183, § 2. 1917, 146, § 2. 1926, 114, § 1.
 1901, 296, § 2. 1920, 327, § 1. 1930, 136, § 3.
 R. L. 118, § 31. 1921, 215, § 2; 277, § 4.

	Companies organized under this section shall have a paid-up capital as follows:	10
\$100,000.	Under the sixth clause, to insure only against sickness and against the bodily injury or death by accident of the insured; and under the seventh and thirteenth clauses, not less than one hundred thousand dollars.	11 12 13 14
\$200,000.	Under the first, first and eighth, fourth, fifth, sixth, except as otherwise provided herein, eighth, ninth, tenth, or twelfth clauses, not less than two hundred thousand dollars.	15 16 17
\$300,000.	Under the second clause, and under the first and second clauses excepting ocean marine insurance, and under the first, second excepting ocean marine insurance, and eighth clauses, not less than three hundred thousand dollars.	18 19 20 21
\$400,000.	Under the first and second clauses, and under the first, second and eighth clauses, not less than four hundred thousand dollars.	22 23
	Under the eleventh clause, not less than one hundred thousand dollars; and if insurance against the insufficiency of mortgages as security or against any other loss in connection with mortgages, except insurance of titles is transacted, not less than two hundred thousand dollars.	24 25 26 27
\$500,000.	Under the fourteenth or fifteenth clause, not less than five hundred thousand dollars.	28 29
	Under two or more of the clauses enumerated herein under (d), the paid-up capital shall not be less than the largest amount required for the transaction of the kinds of business specified in any one clause which it is authorized to transact, and an additional amount equal to one half of the minimum capital required above for the transaction of the kinds of business specified in each additional clause which it is authorized to transact.	30 31 32 33 34 35 36
	Under the sixteenth clause, not less than two hundred thousand dollars, or under the sixth and sixteenth clauses as provided under (e), not less than four hundred thousand dollars, together, in either case, with a net cash surplus of not less than two hundred thousand dollars, exclusive of said capital.	37 38 39 40 41

Organization of mutual companies.
 1924, 406, § 6.
 1925, 267, § 4.
 1927, 284, § 7.
 1928, 225, § 1.
 1930, 136, § 4.

SECTION 48A. Ten or more persons, residents of this commonwealth, may form a mutual company, (a) to transact the business set forth in any one of the clauses of section forty-seven, except the eleventh, fourteenth or fifteenth; (b) to transact the business set forth in the first and third, the first and eighth, the third and eighth, or in the first, third and eighth clauses; (c) to transact the business set forth in the first and second, or in the first, second and eighth clauses; (d) to transact the business set forth in any two or more of the fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth clauses thereof; or (e) to transact the business set forth in the sixth and sixteenth clauses thereof, except subdivision (e) of said sixth clause.

Formation of corporation.
 1872, 375.
 §§ 1, 2, 5, 6-8.
 9, 14.
 1873, 167, § 1.
 P. S. 119.
 §§ 26-28,
 32-35.
 1887, 214, § 30.
 1894, 522, § 30.
 R. L. 110, § 16;
 118, § 30.
 1907, 576,
 §§ 33, 122.
 1919, 333,
 § 14; 350,
 §§ 52, 53.

SECTION 49. The company shall be formed in the manner described in and be subject to section nine of chapter one hundred and fifty-five, and sections six and eight to twelve, inclusive, of chapter one hundred and fifty-six, except the provisions thereof relative to the issue of capital stock without a par value and except as otherwise expressly provided in this chapter.
 The name of the corporation shall be subject to approval by the commissioner and shall contain the word "insurance" or "assurance" or, if organized on the mutual plan, the words "mutual insurance" or "mutual assurance" or, if organized under the fifteenth clause of section forty-

11 seven, the word "reinsurance", and, if organized under the sixteenth
 12 clause of said section forty-seven or under the sixth and sixteenth clauses
 13 thereof, the word "life".

1920, 2
 1921, 277, § 5
 1924, 406, § 7.
 450, § 3
 1930, 136, § 5.

14 The agreement of association shall state the classes of insurance it
 15 proposes to transact and on what business plan or principle; and, if a
 16 mutual company, the amount of capital stock and the par value of shares
 17 shall be omitted.

18 At the first meeting, only the directors and such other officers as the
 19 by-laws require shall be chosen, and the president, secretary and such
 20 other officers as the by-laws authorize them to choose shall be chosen by
 21 the directors.

22 The president, secretary and a majority of the directors shall execute
 23 and make oath to the articles of organization specified in section ten of
 24 said chapter one hundred and fifty-six, which shall, with the records and
 25 by-laws of the company, be submitted to the commissioner instead of to
 26 the commissioner of corporations and taxation, and he shall have the
 27 powers and perform the duties relative thereto specified in section eleven
 28 of said chapter one hundred and fifty-six.

29 The certificate issued by the state secretary under section twelve of
 30 said chapter one hundred and fifty-six shall be modified to conform to the
 31 requirements of this section.

32 The fee to be paid to the state secretary by a stock company, or by a
 33 mutual company with a guaranty capital, upon the filing of the articles
 34 of organization, shall be one twentieth of one per cent of the total amount
 35 of the authorized capital, but not less than one hundred dollars. The fee
 36 to be paid upon such filing by any other mutual company shall be one
 37 hundred dollars.

38 The commissioner shall not approve the articles of organization of a
 39 company formed to transact business under the sixteenth clause of section
 40 forty-seven, or under the sixth and sixteenth clauses thereof, until he is
 41 satisfied by such examination as he may make and such evidence as he
 42 may require, that the incorporators are of good repute and intend in good
 43 faith to operate the company. He shall execute a certificate of his find-
 44 ings, in such form as he may prescribe, which shall be attached to the
 45 articles of organization prior to the filing thereof with the state secretary.

1 SECTION 50. A stock company, by a two thirds vote of all its stock
 2 entitled to vote, or a mutual company, by a two thirds vote of those mem-
 3 bers present and voting, at a meeting duly called therefor, may alter, add
 4 to or change, to the extent authorized by this chapter, the classes of
 5 insurance for the transaction of which it was incorporated, may change
 6 the location of its principal office or place of business in the common-
 7 wealth, or, in the case of a stock company, may increase or reduce the par
 8 value of the shares of its capital stock, which value shall be not less than
 9 five nor more than one hundred dollars. Articles of amendment, signed
 10 and sworn to by the president and secretary and a majority of the direc-
 11 tors, setting forth such amendment or change and the due adoption
 12 thereof, shall, within thirty days after their adoption, be submitted to the
 13 commissioner, who shall examine them in the same manner and with the
 14 same powers as in the case of original articles of organization. If he finds
 15 that they conform to the requirements of law he shall so certify and en-
 16 dorse his approval thereon, and they shall thereupon be filed in the office
 17 of the state secretary, who, upon the receipt of a fee of ten dollars, shall
 18 cause them and the endorsement thereon to be recorded, and said articles
 19 of amendment shall then be deemed to be a part of the charter or articles

Change of
 business,
 location, etc.
 Procedure,
 1912, 139.
 1924, 253;
 450, § 4.

of organization of the company. No such amendment or change shall take effect until such articles of amendment have been filed in the office of the state secretary as aforesaid.

Kinds of business which may be combined by stock companies. 1887, 214, § 31. 1891, 195.

SECTION 51. No domestic stock company shall transact any business other than that specified in its charter or agreement of association, except that it may transact the kinds of business specified below by reference to the several clauses of section forty-seven, as follows:

- 1894, 133, §§ 2, 3;
- 522, §§ 31, 80
- 1895, 474, §§ 2, 3
- 1896, 140, § 1; 447, § 2.
- 1898, 380, § 1.
- 1900, 92, § 2; 183, § 2.
- R L. 118, §§ 29, 56, 80.
- 1907, 576, §§ 34, 122.
- 1920, 327, § 2.
- 1 Op. A. G. 19.
- 4 Op. A. G. 535.
- Op. A. G. (1917) 13.

1909, 192, § 1. 1923, 39, § 2. 1927, 53, § 2. 1928, 106, § 2.

(a) The first and second, if authorized to transact either, provided it has a paid-up capital of not less than four hundred thousand dollars, or the first and second excepting ocean marine insurance, if authorized to transact either, provided it has a paid-up capital of not less than three hundred thousand dollars, or subdivision (d) of the second clause, if authorized to transact the first.

1902, 340, § 1. 1905, 401, § 1. 1908, 543; 646. 1909, 488. 1911, 205. 1913, 489.

(b) Any one or more of the fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth, if authorized to transact any one of said clauses, provided it conforms to the requirements of section forty-eight in respect to paid-up capital.

1907, 576, §§ 34, 122.

(c) The eighth, if authorized to transact the first.

1920, 327, § 2 (c).

1920, 152. 1930, 136, § 6.

(d) The sixth, if authorized to transact life insurance, provided it has a paid-up capital of not less than four hundred thousand dollars and net cash assets over all liabilities, computed on the basis fixed by sections nine to twelve, inclusive, of not less than two hundred thousand dollars, exclusive of said capital.

1907, 576, §§ 34, 122.

(e) The first, if authorized to transact fire insurance.

1920, 327, § 2 (c).

1910, 499, § 2.

(f) The fifth, if incorporated by special act to insure against loss or damage caused by the explosion of steam boilers.

1920, 327, § 2. 1924, 298, § 1; 450, § 5.

(g) Such other form or forms of insurance coverage not included in the provisions of section forty-seven and not contrary to law as the commissioner in his discretion may authorize and license and which shall be transacted only upon such terms and conditions as he may from time to time prescribe and upon payment of the fee prescribed by section fourteen.

1928, 106, § 2.

Nothing in this section shall permit any domestic stock company to combine classes of business which may not be combined under section forty-eight.

SECTION 52. [REPEALED, 1928, 106, § 5.]

SECTION 53. [REPEALED, 1922, 76.]

Kinds of business which may be combined by certain mutual companies. 1887, 214, § 31. 1894, 133, § 2; 522, § 31.

SECTION 54. No domestic mutual company shall transact any other kind of business than is specified in its charter or agreement of association, except that it may in addition transact the kinds of business specified below by reference to the several clauses of section forty-seven, as follows: —

- 1896, 140; 447, § 2.
- 1898, 380, § 1.
- 1900, 92, § 2; 183, § 2.
- R L. 118, §§ 29, 56.
- 1907, 576, §§ 34, 122.
- 1920, 327, § 2.
- 1925, 267, § 5.

1907, 576, § 34. 1920, 327, § 2. 1925, 267, § 5. 1928, 225, § 2.

(a) The first, if authorized to transact fire insurance; the first and third, the third and eighth, or the first, third and eighth, if authorized to transact any one of said clauses.

9 (b) The second, if authorized to transact the first and it has two million
10 dollars of insurance in force in not less than eight hundred separate risks
11 in the commonwealth.

1918, 86
1919, 140.
1920, 327, § 2.
1925, 267, § 5.

12 (c) The sixth, excepting subdivision (e) thereof, if authorized to trans-
13 act life insurance, whether or not it has a capital stock, provided it has net
14 cash assets over all liabilities, computed on the basis fixed by sections
15 nine to twelve, inclusive, of not less than four hundred thousand dollars.

1907, 576,
§§ 34, 122.
1920, 152;
327, § 2 (d).
1925, 267, § 5.
1927, 284, § 5.

16 (d) The eighth, if authorized to transact the first.

1907, 576,
§§ 34, 122.

1925, 267, § 5.

17 (e) Any one or more of the fourth, fifth, sixth, seventh, eighth, ninth,
18 tenth, twelfth and thirteenth clauses, if authorized to transact business
19 under any one of said clauses, provided that before transacting business
20 under any such additional clause, other than the fourth, it shall have net
21 cash assets over all its liabilities, computed on the basis fixed by sections
22 ten to twelve, inclusive, of not less than one hundred thousand dollars
23 for each additional clause, which net cash assets shall be maintained as
24 long as it transacts business under such additional clause; and provided
25 further, that before transacting business under the fourth clause, it shall
26 have a fully paid-up guaranty capital as provided in section ninety B or a
27 guaranty fund as provided in section ninety C, and net cash assets, so
28 computed, exclusive of said capital or fund, of not less than one hundred
29 thousand dollars. Any mutual company transacting business under this
30 clause may accumulate and maintain the net cash assets required here-
31 under in addition to the amount permitted by section eighty. The pro-
32 vision of section twenty-one that a mutual boiler company may insure in
33 a single risk an amount not exceeding one fourth of its net assets shall not
34 apply to any mutual company transacting business under this clause.

1916, 21.
1917, 191.
1923, 153.
1925, 267, § 5.
1927, 284, § 5.
1931, 242, § 5.

35 (f) [REPEALED, 1925, 267, § 5.]

36 (g) Such other form or forms of insurance coverage not included in the
37 provisions of section forty-seven and not contrary to law as the commis-
38 sioner in his discretion may authorize and license and which shall be
39 transacted only upon such terms and conditions as he may from time to
40 time prescribe and upon payment of the fee prescribed by section fourteen.

1920, 327, § 2
1924, 298, § 2;
450, § 6.

41 Nothing in this section shall permit any domestic mutual company to
42 combine classes of business which may not be combined under section
43 forty-eight A.

1928, 106, § 3

1 SECTION 55. Mutual companies organized prior to April sixth, nine-
2 teen hundred and eleven, to transact employers' liability insurance may
3 continue such business under the sixth clause of section forty-seven.
4 They may also transact all the kinds of business specified in the said sixth
5 clause if authorized so to do by a vote of two thirds of the policyholders
6 present and voting at a meeting called therefor.
7 Mutual companies organized prior to March first, nineteen hundred
8 and fifteen, to transact steam boiler insurance may transact all the kinds
9 of business specified in the fifth clause of section forty-seven.

Powers of
certain mutual
companies.
1894, 133, § 2;
522, § 31
1895, 47, § 2.
1896, 447, § 2.
1900, 92, § 2;
183, § 2.
R. L. 118, § 29.
1907, 576,
§§ 34, 122.
1908, 81
1911, 251, § 1.

1912, 311.

1913, 750.

1915, 178, § 1.

1 SECTION 56. Any domestic corporation subject to chapter one hun-
2 dred and seventy-six and confining its membership to a particular order
3 or fraternity may by a two thirds vote of its policy or certificate holders
4 voting thereon adopt this section at a meeting called to consider the
5 same, of which meeting written or printed notice shall be mailed to each
6 policy or certificate holder at least thirty days before the day fixed for the

Reincorpora-
tion of frat-
ernal society
subject to
chapter 176.
1907, 576, § 35.
1910, 490, § 1.
1924, 450, § 7.
1929, 24, § 6.
1931, 426, § 274.

meeting, and be reincorporated under this chapter as a stock company to 7
insure only against the disability of the insured by sickness and the bodily 8
injury and death of the insured by accident as provided in subdivisions 9
(a) and (d) of the sixth clause of section forty-seven. The members of 10
such corporation may vote on this proposition by proxy, if the instrument 11
appointing the proxy is filed with the secretary of the corporation at least 12
five days before said meeting, and the aforesaid notice to the policy and 13
certificate holders shall so state. A copy of such vote certified to by the 14
president, secretary and a majority of the directors of the corporation 15
shall be filed with the commissioner. If such vote be in the affirmative 16
the recording officer shall cause a notice to be mailed to each policy or 17
certificate holder at his last known address, reciting the substance of such 18
vote, and stating that books for cash subscriptions for stock in said com- 19
pany have been opened in the home office and will continue open for 20
sixty days from the date of said notice, and that a policy or certificate 21
holder in said corporation may have a prior right within said period to 22
subscribe for said stock; and stating also that no member shall subscribe 23
for more than ten shares thereof, and that the par value shall be twenty- 24
five dollars per share; and stating also, in a form satisfactory to the com- 25
missioner, the financial condition of the corporation at the time of the 26
meeting aforesaid. If within said period of sixty days the capital, as 27
fixed, shall be oversubscribed by policy or certificate holders, the directors 28
shall allot to each his proportionate part of the amount subscribed. At 29
the expiration of said period of sixty days, the said right of priority to 30
subscribe shall cease, and subscriptions for stock then undisposed of may 31
be received from any member or certificate holder or other person and to 32
any amount. Within thirty days after the stock has been subscribed, a 33
meeting of the subscribers shall be called by a notice signed by the re- 34
cording officer of the corporation, stating the time, place and purpose of 35
the meeting, a copy of which notice shall, seven days at least before the 36
day appointed for the meeting, be given to each subscriber, or left at his 37
usual place of business or residence, or deposited in the post office, post- 38
paid, and addressed to him at his usual place of business or residence. 39
Said recording officer shall make an affidavit of his doings, which, with a 40
copy of the notice, shall be recorded in the records of the corporation. At 41
such meeting, including any necessary or reasonable adjournment thereof, 42
by-laws of such stock company shall be adopted, and the secretary, di- 43
rectors and such other officers as the by-laws require shall be chosen. 44
The president, treasurer and other officers that the said by-laws authorize 45
them to choose shall be elected by the directors at a meeting held directly 46
after the adjournment of the stockholders' meeting. A certificate of 47
organization, containing a statement that the capital stock has been paid 48
in in cash, shall be signed and sworn to by the president, secretary and a 49
majority of the directors of such corporation, and shall, with the records 50
of the corporation pertaining to the reincorporation, be submitted to the 51
commissioner. If it appears that the requirements of this section have 52
been complied with, the commissioner shall so certify and approve the 53
certificate by his endorsement thereon. Such certificate shall thereupon 54
be filed with the state secretary, who, upon payment of a fee of one 55
twentieth of one per cent of the total amount of the authorized capital, 56
but not less than one hundred dollars, shall issue to such corporation a 57
certificate of reincorporation as a stock company, with the powers retained 58
and hereby conferred. Upon the issuance of such certificate such com- 59
pany shall cease to issue policies or certificates upon its former plan, and 60

61 shall then be empowered to transact its business under this chapter, with
62 all the obligations, rights and privileges that it would be subject to had
63 it been incorporated thereunder.

64 The company shall be subject to all the liabilities of the former corpora-
65 tion, and be entitled to all its assets. All policies or certificates in force at
66 the date of reincorporation shall continue in full force and effect in all
67 their provisions, agreements and undertakings, and shall be construed ac-
68 cording to the laws under which they were issued, except that the policy
69 or certificate holder shall not be liable to any extra assessment; provided,
70 that the rates for benefits for death from natural causes may from time to
71 time be raised if the experience of the company shows it to be necessary.
72 Any defences or evidence relative to such policies or certificates open
73 under such provisions shall constitute a defence, and shall be received as
74 evidence in any controversy between the parties to or interested in such
75 policies or certificates. No such reincorporated company shall declare a
76 stock dividend unless its surplus thereafter would be equal to the amount
77 of the surplus at the time of reincorporation.

78 Any company reincorporated under this section may increase its capital
79 stock in the manner provided in section seventy, and may, if it has suffi-
80 cient capital, transact all the kinds of business permitted to domestic
81 companies by section fifty-one.

Stock Companies.

1 SECTION 57. The board of directors of each domestic stock company
2 shall consist of not less than five members, a majority of whom shall be
3 residents of the commonwealth, chosen by ballot from the stockholders.
4 They shall hold office for one year or for the term provided in the by-laws
5 as authorized in the following paragraph, and until their successors are
6 qualified. A majority of those in attendance may transact business, and
7 not less than four shall constitute a quorum.

Directors; elec-
tion, number,
quorum, term,
classes.
Vacancies.
1832, 95, §§ 3, 5.
R. S. 37.
§§ 3, 5, 7.
1854, 453,
§§ 3, 4.

1856, 252, § 11.	1887, 214, § 32.	R. L. 118, § 32.
G. S. 58, § 27.	1894, 522, § 32.	1907, 576, §§ 36, 122.
P. S. 119, § 51.	1896, 253.	

8 The by-laws of such a company may divide its board of directors into
9 one, two, three or four classes, and provide for the election thereof at its
10 annual meetings in such manner that one class only shall retire and
11 their successors be chosen each year. Vacancies in any class may be
12 filled by the board by election for the unexpired term.

By-laws may
divide direc-
tors into
classes.
Vacancies,
how filled.
1887, 214, § 25.

1894, 522, § 25.	R. L. 118, § 25.	1907, 576, §§ 26, 122.
------------------	------------------	------------------------

13 Vacancies in any other office may be filled by the directors or the
14 stockholders as the by-laws may provide.

Other
vacancies,
how filled.

1854, 453, § 4.	P. S. 119, § 51.	R. L. 118, § 32.
1856, 252, § 11.	1887, 214, § 32.	1907, 576, §§ 36, 122.
G. S. 58, § 27.	1894, 522, § 32.	

1 SECTION 58. The board of directors shall annually choose by ballot
2 a president, who shall be a member of the board, a secretary, and, if the
3 by-laws so provide, a treasurer, who may also be the president or secre-
4 tary, and such other officers as the by-laws may provide.

Directors;
duties.
1832, 95.
§§ 1, 3-5.
R. S. 37.
§§ 3, 4, 6, 88.

1854, 453, §§ 1, 4.	P. S. 119, § 52.	R. L. 118, §§ 32, 41.
1856, 252, § 12.	1887, 214, § 32.	1907, 576, §§ 36, 44, 122.
G. S. 58, § 29.	1894, 522, § 32.	

5 They shall call special meetings when written requests therefor, signed
6 by owners of one fifth of the capital or by twenty stockholders, are filed

1819, 171.
R. S. 37, § 2.
1854, 453, § 2.

1856, 252, § 9, 13.
 G. S. 58, § 15, 29.
 in the office of the company. All matters proposed to be acted upon at any meeting of the company shall be specified in the call therefor.

P. S. 119, §§ 41, 53.
 1887, 214, §§ 25, 32.
 1894, 522, §§ 25, 32.
 R. L. 118, §§ 25, 32.
 1907, 576, §§ 26, 36, 122.

1854, 453, § 12.
 1856, 252, § 16.
 G. S. 58, § 34.
 P. S. 119, § 58.
 1887, 214, § 32.
 They shall at each annual meeting of the company submit a full statement of the transactions of the company during the previous year and of its financial condition.

1894, 522, § 32.
 R. L. 118, § 32.
 1907, 576, §§ 36, 122.

Duties of president and secretary.
 Records.
 Penalty for false record.
 SECTION 59. The president, or in his absence the vice president, if any, shall preside at all meetings of the directors or stockholders. In the absence of both said officers a temporary president may be chosen.

1856, 252, § 12.
 G. S. 58, § 28.
 1864, 113.
 P. S. 119, § 52.
 1887, 214, § 32.
 1894, 522, § 32.
 R. L. 118, §§ 32, 41.
 1907, 576, §§ 36, 44, 122.
 1908, 471.

1832, 95, § 1.
 R. S. 37, § 4.
 1854, 453, § 4.
 1856, 252, §§ 11, 12.
 G. S. 58, §§ 27, 28.
 P. S. 119, §§ 51, 52.
 1887, 214, § 32.
 1894, 522, § 32.
 R. L. 118, § 32, 41.
 1907, 576, §§ 36, 44, 122.
 The secretary shall keep a list of stockholders and of the number of shares standing in the name of each and a record of the transfers thereof. He shall keep a record of the votes, which shall show whether cast in person or by proxy; a record of all other proceedings of all meetings of the directors or the stockholders; a record of all policies issued and of all authorized assignments, transfers and cancellations thereof; and such other books and records as the president and directors may require. The records so kept shall be evidence of all elections and of the transactions to which they relate, and shall be open to the inspection of any interested person. A secretary who wilfully makes a false record shall be deemed guilty of perjury.

Qualification and bonds of officers.
 Penalty.
 1832, 95, §§ 1, 4.
 R. S. 37, §§ 4, 6.
 1854, 453, § 4.
 SECTION 60. The president, vice president, if any, the secretary, assistant secretary, if any, the treasurer and assistant treasurer, if any, shall be annually sworn and their oaths entered of record in the books of the company.

1856, 252, § 12.
 G. S. 58, § 28.
 1864, 113, § 1.
 P. S. 119, § 52.
 1887, 214, § 32.
 1894, 522, § 32.
 R. L. 118, §§ 32, 41.
 1907, 576, §§ 36, 44, 122.
 1908, 471.

1856, 252, § 11.
 G. S. 58, § 27.
 P. S. 119, § 51.
 1887, 214, § 32.
 Each director shall file with the secretary a written acceptance of the trust before he is qualified to act.

1894, 522, § 32.
 R. L. 118, § 32.
 1907, 576, §§ 36, 122.

1854, 453, § 4.
 1856, 252, § 9.
 G. S. 58, § 17.
 P. S. 119, § 41.
 1887, 214, § 25.
 1894, 522, § 25.
 R. L. 118, § 25.
 1907, 576, §§ 26, 122.
 1926, 44, § 1.
 The secretary, the treasurer, if any, and each assistant secretary and each assistant treasurer of such a company shall, before entering upon his duties, give a bond payable to the company conditioned upon the faithful performance of his duties. The bond shall be executed as surety by a surety company authorized to transact business in the commonwealth and shall be in a form satisfactory to the commissioner and in such penal sum as the directors shall prescribe. If the authority of any such surety company to transact business in the commonwealth is terminated, each officer bonded as aforesaid by such surety company shall forthwith execute a new bond in compliance with this section. A secretary or assistant secretary or treasurer or assistant treasurer who enters upon or performs any of the duties of his office without having previously executed a bond in compliance with this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Rights of stockholders.
 Proxies.
 1832, 95, § 3.
 R. S. 37, § 5.
 SECTION 61. Each stockholder of such a company shall be entitled to one vote for each share he holds in the choice of directors and at all meetings of the company.

4 Proxies may be authorized by written power of attorney.

1856, 252, § 11.
G. S. 58, § 27.
1881, 142.

P. S. 119, § 51.
1887, 214, § 32.
1894, 522, § 32.

R. L. 118, § 32.
1907, 576, §§ 36, 122.
1928, 185.

1854, 453,
§§ 3, 4.

1 SECTION 62. The directors or other officers of such a company making
2 or authorizing an investment or loan in violation of sections sixty-three,
3 sixty-five or sixty-six shall be personally liable to the stockholders for any
4 loss caused thereby.

5 If they allow to be insured on a single risk a larger amount than
6 authorized by section twenty-one, they shall be personally liable for
7 any loss in excess of the amount to which they might lawfully insure.

8 If they make or assent to further insurance knowing that the accrued
9 losses of the company equal its net assets, they shall be personally liable
10 for any loss under such insurance.

R. L. 118, § 33.

1907, 576, §§ 36, 122.

10 Gray, 325.

12 Gray, 355.

Liability of
officers for
certain unau-
thorized acts.
1817, 120, § 4.
R. S. 37, § 14.
1854, 453, § 12.
1856, 252,
§§ 14, 16.
G. S. 58,
§§ 31, 33.
1864, 29.
P. S. 119,
§§ 55, 57.
1887, 214, § 33.
1894, 522, § 33.

Investments of All Companies.

1 SECTION 63. The capital stock and, in the case of a domestic stock
2 life company, the net cash surplus required by section forty-eight shall
3 be paid in cash within twelve months after the date of the charter or
4 certificate of organization, but no certificates of full shares and no policies
5 shall be issued until the whole capital and net cash surplus as aforesaid is
6 paid in. A majority of the directors shall certify on oath that the money
7 has been paid by the stockholders for their respective shares, and that the
8 same is held as the capital of the company, invested and to be invested as
9 required by this section.

1887, 214, § 34.
1894, 522, § 34.
R. L. 118, § 34.

1907, 576, §§ 37, 122.
1921, 215, § 3.
1923, 297, § 1.

1930, 136, § 9.
146 Mass. 224.

Payment and
investment of
capital and
reserve.
1832, 95, § 2.
R. S. 37, § 9.
1854, 453, § 5.
1856, 252, § 14.
G. S. 58, § 30.
1872, 325,
§§ 2, 3.
P. S. 119,
§§ 54, 55.
1885, 308.

10 The capital of any domestic company, other than life, and three fourths
11 of the reserve of any domestic stock or mutual life company, shall be
12 invested only as follows:—

13 1. In the public funds of the United States or District of Columbia, or
14 of any state of the United States.

15 2. (a) In the legally authorized bonds or notes of any county, city,
16 town, school or water district in the commonwealth.

17 (b) In the bonds or notes of any county, city, school or water district,
18 or other political subdivision, located in any other state in the United
19 States, and having a population, according to the last national or state
20 census preceding the date of such investment, of more than one hundred
21 thousand inhabitants, provided that such notes or bonds are legally
22 authorized and are a direct obligation of the county, city, school or water
23 district or political subdivision issuing the same.

24 (c) In the bonds or notes of any county, city, town, school or water
25 district, or other political subdivision, located in any other state of the
26 United States and having an indebtedness, after deducting the amount of
27 its water debt and securities in the sinking funds available for payment
28 of its bonds, not in excess of five per cent of the valuation of property
29 therein as assessed for taxation next preceding the date of such invest-
30 ment, provided that such bonds or notes are legally authorized and are a
31 direct obligation of the county, city, town, school or water district or
32 other political subdivision issuing the same.

33 3. In securities of the same classes as those described in paragraph one
34 and clauses (b) and (c) of paragraph two, and subject to the limitations

1817, 120, § 3.
R. S. 37, § 10.
1836, 208.
1838, 35.
1845, 55.
1856, 252, § 14.
G. S. 58, § 31.
1864, 29.
P. S. 119, § 55.
1887, 214, § 34.
1894, 522, § 34.
1896, 171.
R. L. 118, § 34.
1907, 576,
§§ 37, 122.
1909, 92.
1910, 375, § 1.

therein expressed, issued by the Dominion of Canada or any province thereof, or by any municipality or political subdivision thereof. 35 36

4 Op. A. G. 114.

4. In the bonds or notes of any railroad or street railway corporation incorporated or located wholly or in part in the commonwealth, or in the mortgage bonds of any railroad corporation located wholly or in part in any state of the United States whose capital stock equals at least one third of its funded indebtedness, which has paid regularly for the five years next preceding the date of such investment all interest charges on said funded indebtedness, and which has paid regularly for such period dividends of at least four per cent per annum upon all its issues of capital stock, or in the mortgage bonds of any railroad, railway or terminal corporation which have been, both as to principal and interest, assumed or guaranteed by any such railroad or railway corporation. 37 38 39 40 41 42 43 44 45 46 47

5. In the mortgage bonds of any railroad corporation located wholly or in part in any state of the United States whose liens junior to such mortgage bonds equal at least one third of the funded indebtedness secured by such mortgage bonds and bonds prior thereto which has paid regularly for the five years next preceding the date of such investment all interest charges on the said funded indebtedness, and which has paid regularly for such period at least four per cent interest on such junior securities. 48 49 50 51 52 53 54

6. In the notes of any equipment trust created in behalf of any railroad coming within the terms of paragraph four or five, provided that the plan of such trust, in case of any railroad coming within the terms of paragraph four, includes an initial cash payment of at least twenty-five per cent, and, in case of any railroad coming within the terms of paragraph five, of at least forty per cent, and that such notes mature not later than fifteen years from the date of issue. 55 56 57 58 59 60 61

3 Op. A. G. 147.

4 Op. A. G. 114.

7. In loans upon improved and unencumbered real property in any state of the United States and upon leasehold estates in improved real property for a term of ninety-nine years or more where fifty years or more of the term is unexpired and where unencumbered except by rentals accruing therefrom to the owner of the fee, and where the mortgagee is entitled to be subrogated to all the rights under the leasehold. No loan on such real property or such leasehold estate shall exceed sixty per cent of the fair market value thereof at the time of such loan, and a certificate of the value of such property shall be executed before making such loan by the persons making or authorizing such loan on behalf of the company, which certificate shall be recorded on the books of the company. Real property shall not be deemed to be encumbered within the meaning of this paragraph by reason of the existence of instruments reserving mineral, oil or timber rights, rights of way, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor by the reason that it is subject to lease under which rents or profits are reserved to the owner, provided that the security for such loan is a first lien upon such real property and that there is no condition or right of re-entry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed. 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81

8. In such real property as shall be required for the convenient accommodation in the transaction of its business, subject to section sixty-four. 82 83

9. In bonds of the American Telephone and Telegraph Company and first mortgage bonds of its subsidiary operating companies. 84 85

10. In banker's acceptances and bills of exchange of the kinds and maturities made eligible by law for rediscount with federal reserve banks, provided that the same are accepted by a bank or trust company incorpo- 86 87 88

89 rated under the laws of the United States or this commonwealth or any
 90 other bank or trust company which is a member of the Federal Reserve
 91 System.

92 11. In mortgage bonds issued by light and power companies operating
 93 in states having commissions or other regulating bodies whose approval
 94 is necessary to the issue of such securities, provided that such companies
 95 have gross earnings for the preceding year in excess of one million dollars
 96 and net earnings, after deducting operating expenses, and taxes but not
 97 deducting depreciation charges, of at least twice the interest charges on
 98 the bonds in question and all underlying issues, including rentals.

99 12. In loans upon the security of its own policies not exceeding at the
 100 time of making the loan the legal reserve on the policy.

101 13. In the capital stock of companies organized under the fourteenth
 102 clause of section forty-seven; provided that the above specified propor-
 103 tionate part of the reserve of any domestic stock or mutual life company
 104 shall not be invested in such capital stock.

105 14. In farm loan bonds lawfully issued by federal land banks incorpo-
 106 rated under the act of congress approved July seventeenth, nineteen
 107 hundred and sixteen, entitled "An Act to provide capital for agricultural
 108 development, to create standard forms of investment based upon farm
 109 mortgage, to equalize rates of interest upon farm loans, to furnish a mar-
 110 ket for United States bonds, to create government depositories and finan-
 111 cial agents for the United States, and for other purposes."

112 15. In loans secured by collateral security consisting of any of the 3 Op A G 147
 113 above.

1 SECTION 64. All investments and deposits of the funds of any such
 2 company shall be made in its corporate name; and no director or other
 3 officer thereof, and no member of a committee having any authority
 4 in the investment or disposition of its funds, shall accept, or be the
 5 beneficiary, either directly or remotely, of any fee, brokerage, commis-
 6 sion, gift or other consideration for or on account of any loan, deposit,
 7 purchase, sale, payment or exchange made by or in behalf of such com-
 8 pany, or be pecuniarily interested in any such purchase, sale or loan,
 9 either as borrower, principal, co-principal, agent or beneficiary, except
 10 that, if a policyholder, he shall be entitled to all the benefits accruing
 11 under the terms of his contract.

12 No investment, sale or loan, except loans on its own policies, shall
 13 be made which has not first been authorized by the board of directors,
 14 or by a committee thereof charged with the duty of investing or loaning
 15 the funds of the company; nor shall any deposit be made in a bank or
 16 banking institution unless such bank or banking institution has first
 17 been approved as a bank of deposit by the board of directors or said
 18 committee thereof, and unless the vote authorizing such investment,
 19 sale or loan or approval of the place of deposit has been duly recorded
 20 in the books of the company.

21 No domestic company hereafter acquiring title to real estate under
 22 the conditions of any mortgage owned by it, or by purchase or set-off
 23 on execution upon judgment for debts due it previously contracted in
 24 the course of its business, or by other process in settlement for debts,
 25 shall hold it for a longer period than five years without the written
 26 permission of the commissioner; nor shall any such company invest
 27 in real estate except to the extent that may be necessary for its con-
 28 venient accommodation in the transaction of its business, and then in

Investments,
 deposits, sales
 and loans.
 1817, 120, § 3.
 R. S. 37, § 14.
 1851, 281,
 §§ 11, 12.
 1854, 453, § 6.
 1856, 252,
 §§ 4, 35.
 1858, 48.
 G. S. 58,
 §§ 20, 21, 23.
 1872, 375, § 15.
 1879, 51.
 P. S. 119,
 §§ 36, 46, 47, 49.
 1887, 214, § 25.
 1894, 522, § 25.
 R. L. 118, § 25.
 1907, 576,
 §§ 26, 122.
 141 Mass. 202.
 260 Mass. 485.
 3 Op. A. G. 171.
 4 Op. A. G. 208.

no case to exceed ten per cent of its invested assets, including cash in 29
banks. 30

Such company shall not engage in buying or selling goods, wares or 31
merchandise, except articles insured by it on which losses are claimed, 32
and except in replacing, rebuilding or repairing insured property as pro- 33
vided in its policies. 34

Certain
loans on
mortgages
prohibited.
1910, 375, § 2.
1916, 5.
1923, 297, § 2.

SECTION 65. No domestic company shall, except in effecting the sale 1
of real estate owned by it, and then only with the approval of the commis- 2
sioner, invest any of its funds in loans upon mortgages except upon the 3
conditions expressed in the seventh paragraph of section sixty-three. 4

Investments
of life com-
panies.
1907, 576, § 37.
1909, 95.
1923, 297, § 3.
1931, 286.
3 Op. A. G 147

SECTION 66. Except as otherwise provided, no domestic life company 1
shall invest any of its funds in any unincorporated business or enterprise, 2
or in the stocks or evidence of indebtedness of any corporation the owners 3
or holders of which stock or evidence of indebtedness may in any event 4
be or become liable on account thereof to any assessment except for 5
taxes, nor shall such life company invest any of its funds in its own stock 6
or in the stock of any other insurance company. No such life company 7
shall invest in, acquire or hold directly or indirectly more than ten per 8
cent of the capital stock of any corporation, nor shall more than ten per 9
cent of its capital and surplus be invested in the stock of any one corpora- 10
tion. No such life company shall subscribe to or participate in any under- 11
writing of the purchase or sale of securities or property, or enter into any 12
transaction for such purchase or sale on account of said company jointly 13
with any other person, nor shall any such life company enter into any 14
agreement to withhold from sale any of its property, but the disposition 15
of its property shall be at all times within the control of its board of 16
directors. 17

Nothing in this section or in section sixty-three shall prevent such a 18
life company from investing or loaning any funds, not required to be 19
invested as provided in section sixty-three, in any manner that the 20
directors may determine; provided, that no loan of such funds shall be 21
made to an individual or firm unless it is secured by collateral security 22
and provided further, that such funds shall not be invested in the pur- 23
chase of stock or evidence of indebtedness prohibited by the preceding 24
paragraph, except as hereinafter provided. Any such life company may 25
invest such funds in the capital stock of a trust company incorporated 26
in and doing business in the commonwealth or of a national banking 27
association incorporated under federal law and located in any one of the 28
New England states, if such trust company or association has paid divi- 29
dends in cash of not less than four per cent on its capital stock in each 30
of the five years next preceding the date of the investment and if the 31
amount of surplus of such trust company or association is at least equal 32
to fifty per cent of the amount of its capital stock; but no such life com- 33
pany shall invest in the aggregate an amount in excess of two and one 34
half per cent of its reserve in the purchase of stock of such trust companies 35
and national banking associations, nor shall it invest an amount in excess 36
of two per cent of its reserve in the purchase of the stock of any one such 37
trust company or association, except that if two or more such trust com- 38
panies or associations merge or consolidate or one or more such trust 39
companies is merged or consolidated with one or more such associations, 40
such a life company may acquire stock of the absorbing or consolidating 41
trust company or national banking association to an amount in excess of 42

43 two per cent but not in excess of two and one half per cent of the reserve
 44 of such life company, if such stock is received in exchange for stock of the
 45 consolidating or merging companies or associations owned by the life
 46 company at the time of the merger or consolidation.

47 Nothing in this section or in section sixty-three shall prevent any such
 48 life company from entering into an agreement for the purpose of protect-
 49 ing the interests of the company in securities lawfully held by it, or for
 50 the purpose of reorganization of a corporation which issued securities so
 51 held, and from depositing such securities with a committee or depositaries
 52 appointed under such agreement, nor from accepting corporate stock or
 53 bonds or other securities which may be distributed pursuant to any such
 54 agreement, or to any plan of reorganization; and nothing in this section
 55 or section sixty-three shall prevent any such life company from acquiring
 56 or holding any property acquired in satisfaction of any debt previously
 57 contracted, or that shall be obtained by sale or foreclosure of any security
 58 held by it; provided, that if the property owned be such as is prohibited
 59 for investment by such company, it shall dispose of such property, if
 60 personal, within one year, and if real estate, within five years, from the
 61 date when it acquired title to the same, unless the commissioner shall
 62 extend the time for such disposition for the reason that the interests of the
 63 company will suffer materially by a forced sale of such property.

64 A record of such extension shall be made by the commissioner, which
 65 shall state the time of the extension, and in that event the sale of said
 66 property may be made at any time before the expiration of the time of
 67 such extension.

1 SECTION 67. Nothing in the charter of any domestic mutual life
 2 company shall limit the investments of such company unless such
 3 limitation is contained in the general insurance laws in force at the
 4 time of making the investment.

Charter
 limitations on
 investments,
 when ineffec-
 tive.

1888, 165. 1894, 522, § 28. R. L. 118, § 28. 1907, 576, §§ 31, 122.

1 SECTION 68. All property held by any domestic company the in-
 2 vestment in or loan on which by such company is prohibited by this
 3 chapter shall be sold and disposed of forthwith unless the time be ex-
 4 tended by the commissioner in the manner provided in section sixty-
 5 six or has been so extended.

Prohibited
 investments
 to be sold
 1907, 576, § 37.
 1909, 95.

Provisions as to Capital Stock.

1 SECTION 69. If the net assets of the company do not amount to more
 2 than three fourths of its capital, it may make good its capital by assess-
 3 ment of its stock.

Assessment
 if capital
 impaired
 Authority
 to transact
 new business
 to cease,
 when.

4 Shares on which such assessment is not paid within sixty days after
 5 demand shall be forfeitable, and may be cancelled by a vote of the direc-
 6 tors, and new shares issued to make up the deficiency.

1863, 249,
 §§ 7-9
 1872, 235, § 1.
 1875, 27, § 6.
 P. 8, 119,
 §§ 59-61.
 1887, 214, § 35.
 1894, 522, § 35.

7 If such company shall not, within three months after notice from
 8 the commissioner, make good its capital as aforesaid, or reduce the same
 9 as provided in section seventy-one, its authority to transact new business
 10 shall cease.

R. L. 118, § 35. 1907, 576, §§ 38, 122.

1 SECTION 70. Such company may issue pro rata to its stockholders
 2 certificates of any portion of its actual net surplus it may decide to divide,
 3 which shall be deemed to be an increase of its capital to the amount of

Increase of
 capital
 1872, 375,
 §§ 13, 14
 1875, 27, § 5.

1878, 35,
 §§ 2-4
 P. S. 119,
 §§ 62, 70,
 1887, 214, § 36.
 1894, 522, § 36.
 R. L. 118, § 36.
 1907, 576,
 §§ 39, 122,
 1912, 396
 1924, 450, § S.

such certificates, or such company may, at a meeting called therefor, vote 4
 to increase the amount and number of shares of its capital stock, and to 5
 issue certificates thereof when paid in full. If a company shall vote to 6
 increase its capital in the second of the two ways set forth in this section, 7
 the directors shall fix the price, not less than par, at which, and the time, 8
 not less than thirty days after the date of such vote to increase, within 9
 which the new stock may be taken by the stockholders. And the directors 10
 shall forthwith give written notice to each stockholder who was such at 11
 the time of the vote to increase, stating the amount of the increase, the 12
 number of shares or fractions of shares of new stock that such stockholder 13
 is entitled to take, the price at which and the time within which such new 14
 stock may be taken. Within said time each stockholder may take, at the 15
 price fixed as aforesaid, his proportion of such new shares at the date of 16
 such vote to increase. If at the expiration of such time any shares remain 17
 untaken, the directors may sell the same for the benefit of the corporation 18
 in such manner and for such price, not less than the price fixed as afore- 19
 said, as they may determine. In whichever mode the increase is made, 20
 the company shall, within thirty days after the issue of such certificates, 21
 submit to the commissioner a certificate setting forth the proceedings 22
 thereof and the amount of such increase, signed and sworn to by its 23
 president and secretary and a majority of its directors. If the commis- 24
 sioner finds that the increase is made in conformity to law, he shall endorse 25
 his approval thereon; and upon filing such certificate so endorsed with 26
 the state secretary and the payment of a fee of one twentieth of one per 27
 cent of the amount by which the capital is increased for filing the same, 28
 the company may transact business upon the capital as increased, and the 29
 commissioner shall, upon payment of the fee prescribed by section four- 30
 teen, issue his certificate to that effect. 31

Reduction
 of capital.
 1875, 27,
 §§ 1-4
 P. S. 119,
 §§ 65-68,
 1887, 214, § 37.
 1894, 522, § 37.
 R. L. 118, § 37.
 1907, 576,
 §§ 40, 122
 1924, 450, § 9.
 1927, 248.

SECTION 71. Any company may, upon a vote of a majority of the 1
 stock represented at a meeting legally called for that purpose, reduce its 2
 capital stock by decreasing the number of the shares thereof, or by reduc- 3
 ing the par value of its shares to an amount not less than five dollars 4
 without changing the number thereof; but no part of its assets and prop- 5
 erty shall be distributed to its stockholders, nor shall its capital stock, 6
 except as hereinafter provided, be reduced to an amount less than that 7
 required by section forty-eight or fifty-one. Within ten days after such 8
 meeting, the company shall submit to the commissioner a certificate 9
 setting forth the proceedings thereof, the method of reduction and the 10
 amount thereof and of the assets and liabilities of the company, signed 11
 and sworn to by its president, secretary and a majority of its directors. 12
 If the commissioner finds that the reduction is made in conformity to law 13
 and that it will not be prejudicial to the public, he shall endorse his 14
 approval thereon and, except as hereinafter otherwise provided, upon 15
 filing the certificate, so endorsed, with the state secretary and paying a 16
 fee of twenty-five dollars for the filing thereof, the company may transact 17
 business upon the capital as reduced, and the commissioner shall, upon 18
 payment of the fee prescribed by section fourteen, issue his certificate to 19
 that effect. 20

A company may, by a majority vote of its directors, after a reduction 21
 by a decrease of the number of its shares, require the return of the original 22
 certificates of stock held by each stockholder in exchange for new certifi- 23
 cates which it may issue in lieu thereof for such number of shares as each 24
 stockholder is entitled to in the proportion that the reduced capital bears 25

26 to the original capital, or, after a reduction by reducing the par value of
 27 its shares, require the return of the original certificates of stock held by
 28 each stockholder in exchange for new certificates of stock of the reduced
 29 par value.

30 Any company may temporarily reduce the amount of its capital stock
 31 below the minimum required by section forty-eight or fifty-one, by
 32 decreasing the par value of its shares; provided, that concurrently with
 33 such reduction it also increases its capital stock to an amount at least
 34 equal to said minimum in the second mode prescribed in section seventy;
 35 and, if, after such reduction and increase, the total capital stock actually
 36 paid in is of the same amount as prior thereto, no certificate of such reduc-
 37 tion and increase need be filed with the state secretary, and no certificate
 38 need be issued by the commissioner, but a certificate signed by the secretary
 39 to by the president, secretary and a majority of the directors setting forth
 40 such proceedings shall within sixty days after the meeting at which they
 41 are taken, be filed with the commissioner.

1 SECTION 72. No stock company shall make a dividend, either in
 2 cash or stock certificates, except from its actual net surplus computed
 3 as required by law in its annual statement, nor shall any such com-
 4 pany which has ceased to do new business divide any portion of its
 5 assets, except surplus, to its stockholders until it shall have performed
 6 or cancelled its policy obligations. Any such company may declare
 7 and pay, annually or semi-annually from its surplus, cash dividends to
 8 its stockholders of not more than ten per cent of its capital stock in
 9 a year, and if the dividends in any year are less than ten per cent the
 10 difference may be made up in any subsequent year from surplus accumu-
 11 lations; but any such company may pay such dividend as the directors
 12 may consider prudent out of any surplus remaining after deducting from
 13 the assets all securities and book accounts on which no part of the prin-
 14 cipal or interest has been paid within the last year and for which fore-
 15 closure or suit has not been commenced for collection, or which after
 16 judgment obtained thereon shall have remained more than two years
 17 unsatisfied and on which interest shall not have been paid, and also
 18 deducting all interest due and unpaid on any property of the company.

Dividends
 1817, 120, § 2.
 R. S. 37, § 15.
 1856, 252, § 16.
 G. S. 58, § 34.
 1872, 375, § 17.
 1874, 222.
 1875, 95.
 1877, 36.
 1878, 35,
 §§ 1, 2.
 P. S. 119,
 §§ 69, 70, 72.
 1887, 214, § 38.
 1891, 289
 1894, 522, § 38
 R. L. 118, § 38
 1907, 576,
 §§ 41, 122.
 1918, 69.

Mutual Companies.

1 SECTION 73. No policy shall be issued by a mutual fire company
 2 organized subsequent to April twenty-third, eighteen hundred and
 3 ninety-four, and having no guaranty capital or having a guaranty capital
 4 of less than one hundred thousand dollars, until not less than one million
 5 dollars of insurance, in not less than four hundred separate risks upon
 6 property located in the commonwealth, has been subscribed for and
 7 entered on its books, nor until a list of the subscribers for insurance, with
 8 such other information as the commissioner may require, shall have been
 9 filed with him, nor until the president and secretary of the company shall
 10 have certified on oath that every subscription for insurance in the list so
 11 filed is genuine and made under an agreement in writing with the sub-
 12 scriber for insurance that he will accept the policies subscribed for by him
 13 and pay the full mutual premiums thereon in cash within thirty days of
 14 the granting by the commissioner of a certificate to issue policies as pro-
 15 vided by section thirty-two. If such officers shall make a false oath
 16 relative to such list, they shall be guilty of perjury.

Mutual fire
 companies
 Solicitation of
 subscriptions
 for insurance
 and issue of
 policies
 regulated.
 Penalties.
 1835, 147, § 5.
 R. S. 37, § 28
 1851, 90
 1854, 453, § 22
 1856, 252, § 39.
 1858, 150
 G. S. 58, § 58.
 1872, 375, § 10.
 1878, 33.
 P. S. 119,
 §§ 38, 86.
 1887, 214, § 39.
 1891, 300,
 522, § 39
 1896, 126
 1897, 62
 R. L. 118, § 39.
 1904, 300
 1907, 576,
 §§ 12, 122.

1919, 350,
 §§ 45, 46,
 1926, 53, § 1.
 1927, 284, § 9.
 Op. A. G.
 (1919) 120.

No such company and no officer, director, agent or other representative thereof shall solicit any subscriptions for insurance until a copy of the form of subscription agreement and of the receipt hereinafter mentioned has been filed with and approved by the commissioner, nor until it has furnished security in such form and such amount as the commissioner may require for the repayment of any premiums paid to it or any of its officers, directors, agents or representatives in advance as hereinafter provided nor until it has received from the commissioner a preliminary certificate, in such form as he may prescribe, authorizing it to solicit subscriptions.

If any subscriber shall pay in whole or in part the premium on the policy for which he has subscribed, prior to the issue of the certificate required by section thirty-two, the company or the officer, director, agent or other representative receiving such payment shall at the time of such payment deliver to the subscriber a receipt in a form approved by the commissioner evidencing such payment signed by the officer, director, agent or other representative, and any payment so made, shall be deemed payment to the company.

All premiums or parts thereof paid in advance by the subscribers shall be held in trust by the company pending the issue of the certificate required by said section thirty-two, shall not be used for any purpose prior to the issue thereof and shall, if such certificate is not issued within the time fixed by section forty-four, be refunded in full to the subscribers. Such premiums shall not be deemed a liability under said section thirty-two.

The president and treasurer of the company shall execute under oath and file with the commissioner whenever he shall require in writing a statement in such form as he may prescribe of all moneys received by the company or its officers, directors, agents or other representatives from subscribers prior to the issue of a certificate under said section thirty-two.

The commissioner may at any time prior to the issue of such certificate examine the books, records and accounts of any such company and for this purpose he shall have all of the powers conferred by section four.

The provisions of section one hundred and sixty-three shall apply to all persons, except the officers or directors of the company, soliciting subscriptions on behalf of such company.

Any officer or director who uses or permits the use of such advance payments in violation of this section shall be personally liable to any subscriber for the amount of his payment and shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than two and one half years, or by both.

Any officer, director, agent or other representative who solicits subscriptions in violation of this section, or who uses a form of subscription agreement or receipt not approved by the commissioner, or who accepts a payment in whole or in part of a premium from a subscriber and does not give to such subscriber a receipt as hereinbefore provided, shall be personally liable to any subscriber for the amount of his payment. A company, or any officer, director, agent or other representative thereof violating any provision of this section shall, except as otherwise provided herein, be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment for not more than one year, or by both.

1 SECTION 74. No mutual fire company operating on the cash premium
 2 plan as provided in section eighty-one, nor any mutual fire company with
 3 a guaranty capital of less than one hundred thousand dollars, either of
 4 which has become insolvent, or through reinsurance or cancellation or
 5 expiration of risks has on its books less than one million dollars of insur-
 6 ance in force, not reinsured, or has less than four hundred separate risks
 7 in the commonwealth, shall make any further insurance until it has
 8 secured applications for policies which, together with the unreinsured
 9 risks in force, shall amount to not less than one million dollars in not less
 10 than four hundred separate risks in the commonwealth, said applications
 11 to be subject to the provisions of the preceding section applying to the
 12 subscriptions for insurance in a new company; provided, that whenever
 13 such reinsurance has been effected for the purpose of reducing the com-
 14 pany's liability on account of excessive loss, the number and amount of
 15 said applications for policies shall not be required within one year there-
 16 after. Upon the filing of applications under this section with the com-
 17 missioner, he may make such investigation as he deems proper, and, if
 18 his findings warrant it, grant a certificate to such company to issue
 19 policies.

Same subject.
 Certain com-
 panies not to
 make further
 insurance
 without a
 certificate.
 1904, 300.
 1907, 576,
 §§ 42, 122.
 1912, 403.

1 SECTION 75. No officer or other person whose duty it is to deter-
 2 mine the character of the risks, and upon whose decision the application
 3 shall be accepted or rejected by a mutual fire company, shall receive as
 4 any part of his compensation a commission upon the premiums; but his
 5 compensation shall be a fixed salary, and, if the directors so determine, a
 6 share of the net profits. Nor shall such officer or person aforesaid be an
 7 employee of any officer or agent of the company.

Same subject.
 Compensation
 and status
 of person
 determin-
 ing
 risks.
 1894, 300;
 522, § 39;
 1896, 126,
 1897, 62.
 R. L. 118, § 39.

1904, 300.

1907, 576, §§ 42, 122.

1912, 403.

1 SECTION 76. Every person insured by a mutual fire company shall be
 2 a member while his policy is in force, entitled to one vote for each policy
 3 he holds, and shall be notified of the time and place of holding its meetings
 4 by a written notice or by an imprint, in type not smaller than long primer,
 5 upon the filing-back of each policy, receipt or certificate of renewal, as
 6 follows:

Same subject
 Stockholders
 as members.
 1835, 147, § 6
 R. S. 37, § 39
 1854, 453, § 15
 1856, 252, § 23
 G. S. 58, § 43
 1870, 349, § 7.
 1872, 230.
 P. S. 119,
 §§ 78, 80.
 1887, 214, § 40
 1894, 522, § 40
 R. L. 118, § 40
 1907, 576,
 §§ 43, 122.
 Op. A. G.
 (1920) 258

The assured is hereby notified that by virtue of this policy he is a member of
 the Insurance Company, and is entitled to vote either in person
 or by proxy at any and all meetings of said company. The annual meetings are
 held at its home office on the day of in each year, at
 o'clock.

7 The blanks shall be duly filled in print, and shall be a sufficient notice.
 8 Any city or town or other political subdivision of the commonwealth
 9 or any other corporation becoming a member of such a company may
 10 authorize any person to represent it in such company, and such represent-
 11 ative shall have all the rights of any individual member. The contingent
 12 mutual liability of any city or town or other political subdivision of the
 13 commonwealth becoming a member of such a company shall not be
 14 deemed a liability within the meaning of section thirty-one of chapter
 15 forty-four. The commissioner shall, upon request of any official of a city
 16 or town or other political subdivision of the commonwealth, furnish a list
 17 of the mutual companies authorized to transact business in the common-
 18 wealth.

1851, 170
 1854, 453, § 16
 1856, 252, § 26
 G. S. 58, § 47
 P. S. 119, § 84
 1887, 214, § 40.
 1894, 522, § 40.
 R. L. 118, § 40.
 1907, 576,
 §§ 43, 122
 1929, 156.

1843, 82,
 G. S. 58, § 59.
 P. S. 119, § 85.
 1887, 214, § 40.
 1894, 522, § 40.
 R. L. 118, § 40.

Any person holding property in trust may insure the same in such 19
 company, and as such trustee assume the liabilities and be entitled to 20
 the rights of a member, but shall not be personally liable upon such 21
 contract of insurance. 22

1907, 576, §§ 43, 122.

Proxies
 authorized.
 1835, 147, § 3.
 R. S. 37, § 25.
 1854, 453, § 15.
 1856, 252, § 23.
 G. S. 58, § 43.
 1872, 230
 P. S. 119, § 80.
 1887, 214, § 40.
 1894, 522, § 40.

Members may vote by proxies dated and executed within three months, 23
 and returned and recorded on the books of the company three days or 24
 more, before the meeting at which they are to be used. No person shall, 25
 as attorney or otherwise, cast more than twenty votes, and no officer shall, 26
 himself or by another, ask for, receive, procure to be obtained or use a 27
 proxy to vote. 28

R. L. 118, § 40.

1907, 576, §§ 43, 122.

[Penalty for unlawful use of proxy, § 188.]

Same subject.
 Directors;
 election,
 duties,
 filling of
 vacancies.
 1835, 147,
 §§ 3, 4.
 R. S. 37,
 §§ 25, 27
 1854, 453, § 15.
 1856, 252,
 §§ 23, 25, 37.
 G. S. 58,
 §§ 43, 45, 46.

SECTION 77. Every such company shall elect by ballot a board of 1
 directors as provided in and subject to section fifty-seven, except that it 2
 shall consist of not less than seven members and that five shall constitute 3
 a quorum. After the first election members only shall be eligible, but no 4
 director shall be disqualified from serving the term for which he was 5
 elected by reason of the termination of his policy. Such companies 6
 having a guaranty capital shall choose one half of the directors from the 7
 stockholders. 8

1862, 181, § 5.
 1872, 230.
 1879, 58.
 P. S. 119, §§ 79, 82, 83.

1887, 214, § 40.
 1894, 522, § 40.
 R. L. 118, §§ 40, 41.
 1907, 576, §§ 43, 44, 122.

1915, 7, § 1.
 S. Allen, 217.
 Op. A. G. (1920) 258.

1856, 252,
 §§ 25, 37.
 G. S. 58,
 §§ 45, 46.
 P. S. 119,
 §§ 82, 83.
 1887, 214, § 41.

Such board may call special meetings of the company, of which each 9
 member shall have such notice as the by-laws provide, and they shall 10
 call such meetings when requested in writing by twenty members or by 11
 the owners of one fifth of the guaranty capital, stating the purpose thereof. 12

1894, 522, § 41.

R. L. 118, § 41.

1907, 576, §§ 44, 122.

Vacancies in any office may be filled in such manner as the by-laws 13
 provide. 14

Same subject.
 Companies
 subject to
 certain sections.
 1835, 147, § 4.
 R. S. 37,
 §§ 26, 27.
 1851, 157.
 1856, 252,
 §§ 24, 37.

SECTION 78. Such companies shall be subject to the first paragraph 1
 of section fifty-eight, except that a treasurer shall be chosen, and to 2
 section fifty-nine, except that the secretary shall keep a record of all 3
 proceedings of the meetings of the members, and to the first and third 4
 paragraphs of section sixty. 5

G. S. 58, §§ 44, 46.
 P. S. 119, §§ 81, 83.
 1887, 214, § 41.

1894, 522, § 41.
 R. L. 118, § 41.

1907, 576, §§ 44, 122.
 1908, 471, § 1.

Same subject.
 Guaranty
 capital.
 1872, 375,
 §§ 11, 19.
 1873, 177.
 1877, 175, § 1.
 1879, 52.
 P. S. 119,
 §§ 74-76.
 1887, 214, § 42.
 1890, 26.
 1894, 522, § 42.
 1895, 199.
 R. L. 118, § 42.
 1907, 576,
 §§ 45, 122.
 142 Mass 403.
 Op. A. G.
 (1920) 258.

SECTION 79. A mutual fire company may be formed with, or an exist- 1
 ing mutual fire company may establish, a guaranty capital of not less than 2
 twenty-five thousand nor more than two hundred thousand dollars, 3
 divided into shares of one hundred dollars each, to be invested as pro- 4
 vided by this chapter for the investment of the capital stock of domestic 5
 companies. The stockholders of the guaranty capital shall be entitled 6
 to a semi-annual dividend of not more than three and one half per cent on 7
 their respective shares if the net profits or unused premiums, left after all 8
 expenses, losses and liabilities then incurred, with the reserve for rein- 9
 surance, are provided for, shall be sufficient to pay the same. The guar- 10
 anty capital shall be applied to the payment of losses only when the 11
 company has exhausted its assets, exclusive of uncollected premiums; 12

13 and when thus impaired, the directors may make good the whole or any
 14 part of it by assessments upon the contingent funds of the company at
 15 the date of such impairment. Shareholders and members of such com-
 16 panies shall be subject to the same provisions of law relative to their right
 17 to vote as apply respectively to shareholders in stock companies and
 18 policyholders in mutual companies; and said guaranty capital shall be
 19 retired when the profits accumulated under section eighty equal two per
 20 cent of its insurance in force; and said guaranty capital may be reduced
 21 or retired by vote of the policyholders of the company and the written
 22 assent of the commissioner, if the net assets of the company above its
 23 reinsurance reserve and all other claims and obligations, exclusive of
 24 guaranty capital, for two years last preceding and including the date of
 25 its last annual statement, shall be not less than twenty-five per cent of the
 26 guaranty capital. Due notice of such proposed action on the part of the
 27 company shall be mailed to each policyholder of the company not less
 28 than thirty days before the meeting when such action may be taken, and
 29 shall also be advertised in two papers of general circulation, approved by
 30 the commissioner, not less than three times a week for a period of not less
 31 than four weeks before said meeting. No company with a guaranty
 32 capital which has ceased to do new business shall divide among its stock-
 33 holders any part of its assets or guaranty capital, except income from
 34 investments, until it shall have performed or cancelled its policy obli-
 35 gations.

1 SECTION 80. From time to time the directors of a mutual fire com-
 2 pany may by vote fix and determine the percentages of dividend or expira-
 3 tion return of premium to be paid on expiring or cancelled policies which
 4 may, in their discretion, and with the written approval of the commis-
 5 sioner, and upon such conditions, if any, as he may prescribe, be different
 6 for policies insuring for the same term against the different kinds of risks
 7 mentioned in the several provisions of the clause or clauses of section
 8 forty-seven under which such a company may transact business; and the
 9 percentage aforesaid for fire policies insuring farm risks, fireproof risks,
 10 including risks equipped with automatic sprinkler and fire alarm systems,
 11 or manufacturing or storage risks, or manufacturing or storage risks
 12 confined to lumber and woodworking only, may in like manner be different
 13 from that for policies insuring other risks against fire for the same term.
 14 Policies insuring risks in this commonwealth in the same classification
 15 shall have an equal rate of dividend or return of premium. If an assess-
 16 ment is levied under section eighty-three the rate thereof may be different
 17 for policies insuring risks in any classification from that for policies insur-
 18 ing other classifications of risks for the same term; but policies insuring
 19 risks in the same classification shall have the same rate of assessment,
 20 and all funds of the company, actual and contingent, shall be available
 21 for the payment of any claim against it. Every policy placed in any
 22 classification made under this section shall, when issued, bear an endorse-
 23 ment, satisfactory to the commissioner, to the effect that it is so classified.
 24 Any such company may accumulate and hold profits, but only until
 25 such profits equal four per cent of its insurance in force; and such accumu-
 26 lation shall be subject to the laws relative to the investment of the capital
 27 stock of domestic companies, except that it may also be invested in shares
 28 of co-operative banks, in deposits in savings banks, and in deposits in sav-
 29 ings departments of trust companies, chartered under the laws of this
 30 commonwealth, subject as to such deposits to the laws, rules and regula-

Same subject.
 Dividends,
 accumulated
 profits, etc.
 1835, 147, § 12.
 R. S. 37, § 38.
 1854, 453, § 21.
 1856, 252, § 30.
 G. S. 58,
 § 51.
 1863, 249, § 6.
 1877, 198,
 §§ 3, 5.
 P. S. 119,
 §§ 96, 97.
 1887, 214,
 §§ 13, 44.
 1890, 26,
 1894, 522,
 §§ 43, 44.
 1897, 197, § 1.
 R. L. 118,
 §§ 43, 44.
 1903, 174.
 1907, 576,
 §§ 46, 47, 122.
 1908, 482.
 1909, 390.
 1910, 463.
 1917, 9.
 1921, 160.
 1926, 115.
 1929, 34, § 1.
 1931, 62.
 9 Allen, 29.
 165 Mass. 565.
 4 Op. A. G.
 552.

tions governing the same. Such accumulation may be used from time to time in the payment of losses, dividends and expenses.

Every policyholder of a domestic company and every policyholder in this commonwealth of a foreign company shall be notified, at his last known address, within six months after the expiration of his policy, of the amount of any dividend declared and payable thereon, unless in the meantime such dividend has been paid in cash or applied in payment of the premium on the renewal of the policy.

Same subject. Premiums. Contingent liability. 1876, 120, § 3. P. S. 119, § 97. 1887, 214, § 45. 1894, 522, § 45. R. L. 118, § 45. 1907, 576, §§ 48, 122. 1921, 372. 1927, 284, § 10. 1 Op. A. G. 158. Op. A. G. (1920) 140.

SECTION 81. Mutual fire companies, except as provided in the following section, shall charge and collect upon their policies a full mutual premium in cash or, except as provided in section seventy-three, in notes absolutely payable. Any such company shall in its by-laws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds, which liability shall not be less than an amount equal to and in addition to the cash premium written in his policy. The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-back of each policy. Whenever any reduction is made in the contingent liability of members, such reduction shall apply proportionally to all policies in force.

Same subject. Certain companies may take deposit notes. 1876, 120, § 1, 2. 1877, 198, §§ 1, 2, 45. P. S. 119, §§ 113-115. 1887, 214, § 46.

SECTION 82. Mutual fire companies organized prior to May twenty-first, eighteen hundred and eighty-seven, and now lawfully doing business upon the plan of taking deposit notes for a percentage of the amount insured by their policies, and making a call or assessment thereon for expenses and for the payment of losses only after such losses are incurred, may continue such system of business, and such deposit notes shall constitute the entire liability of their members.

1894, 522, § 46. 1907, 576, §§ 49, 122. Op. A. G. (1920) 140. R. L. 118, § 46. 1 Op. A. G. 158.

Same subject. Assessments. 1835, 147, § 7. R. S. 37, § 31. 1854, 453, § 18. 1856, 252, §§ 27, 30, 33. G. S. 58, §§ 48, 51, 54. 1863, 249, § 4. 1865, 10. 1877, 198. P. S. 119, §§ 97-100, 107. 1887, 214, §§ 44, 47, 48. 1890, 26. 1894, 522, §§ 44, 47, 48. 1897, 197, § 2. R. L. 118, §§ 44, 47, 48. 1907, 576, §§ 50, 122. 1913, 313. 3 Gray, 208, 210. 7 Allen, 235. 8 Allen, 27. 9 Allen, 319, 483. 10 Allen, 110. 112 Mass. 116. 142, 150, 192. 117 Mass. 30. 179 Mass. 10.

SECTION 83. If a mutual fire company is not possessed of assets above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment upon its members liable to assessment therefor, in proportion to their several liabilities, for the amount needed to pay such losses and expenses.

The company shall cause to be recorded in a book kept therefor the order for such assessment, with a statement setting forth the condition of the company at the date of the order, the amount of its cash assets and of its deposit notes or other contingent funds liable to the assessment, the amount which the assessment calls for, and the particular losses or other liabilities for which it is to provide. The said record shall be made and signed by the directors voting for the order, before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same.

If by reason of any depreciation or loss of its funds or otherwise the assets of such a company, after providing for its other debts, are less than the unearned premiums upon its policies, it shall make good the deficiency by assessment in the mode above provided; or the directors may, instead of such assessment, make two assessments, the first determining what each policyholder must equitably pay or receive in case of his withdrawal from the company and the cancellation of his policy, the second determining what further amount each must pay to continue the policy for its

23 unexpired term, and being for such proportion of the unearned premium
 24 as the directors may fix by vote, but in no event to exceed the amount of
 25 such unearned premium. Each policyholder shall pay or receive accord-
 26 ing to the first assessment, and his policy shall then be cancelled unless
 27 he pays the further amount determined by the second assessment, in
 28 which case his policy shall continue in force for its unexpired term; but
 29 in neither case shall a policyholder receive or have credited to him more
 30 than he would have received on having his policy cancelled by the com-
 31 pany in accordance with the terms of the policy.

32 If within two months after such alternative assessments have become
 33 collectible the amount of the policies whose holders have settled for both
 34 assessments is less than one million dollars, the company shall cease to
 35 issue policies; and all policies whose holders have not settled for both
 36 assessments shall be void, and the company shall continue only for the
 37 purpose of adjusting the deficiency or excess of premiums among the
 38 members and settling outstanding claims.

39 Each policyholder shall be liable to pay his proportional part of any
 40 assessments laid by the company in accordance with law and his contract,
 41 on account of losses and expenses incurred while a member, if he is
 42 notified of such assessment within one year after the expiration or cancel-
 43 lation of his policy; and when an assessment is ordered, the directors
 44 shall forthwith cause written notice and demand for payment to be made
 45 upon each person subject thereto, by mail or personal service.

1 SECTION 84. If the directors by authority of law make an assessment
 2 or call on the members for money, or vote that there exists a necessity
 3 therefor, they or any person interested in the company as an officer,
 4 policyholder or creditor may apply to the supreme judicial court for
 5 any county, by a petition in equity, praying the court to examine such
 6 assessment or call, the necessity therefor, and all matters connected
 7 therewith, and to confirm, amend or annul the assessment or call, or to
 8 order the same to be made as law and justice may require; but if an
 9 application is made by any party except the company, or a receiver,
 10 or the commissioner, the court may decline to exercise jurisdiction
 11 thereof. If the directors unreasonably neglect to make an assessment
 12 or call to satisfy an admitted or ascertained claim upon the company, any
 13 judgment creditor, or any person holding such claim, or the commis-
 14 sioner, may make the application to the court. Upon such application,
 15 if made by the directors, or upon an order of the court, if made by any
 16 other person, the directors shall set forth the claims against the com-
 17 pany, its assets, and all other facts and particulars appertaining thereto.
 18 The court shall order notice by publication or otherwise to all parties
 19 interested, and upon the return thereof shall examine the assessment
 20 or call, or the necessity therefor, and all matters connected therewith.
 21 Any parties interested may appear and be heard thereon. All questions
 22 arising shall be heard and determined as in other equity cases.
 23 The application shall be referred to an auditor, who shall appoint a
 24 time and place to hear all parties interested, and shall give personal
 25 written notice thereof to the commissioner, and by mail, so far as he is
 26 able, to all persons liable upon said assessment or call. The auditor
 27 shall hear the parties, and report upon the correctness of the assessment
 28 or call, and all matters connected therewith. The court may confirm,
 29 amend or annul the assessment or call, or order one to be made, and
 30 may make such orders and decrees as under all the circumstances justice

Same subject.
 Application
 to supreme
 judicial court
 to review
 or order
 assessment.
 1862, 181,
 §§ 1-3,
 1863, 249,
 §§ 3, 5,
 1864, 161,
 1872, 379,
 P. S. 119,
 §§ 101-103,
 1887, 214, § 49,
 1894, 522, 49,
 R. L. 118, § 49,
 1907, 576,
 §§ 51, 122,
 9 Allen, 319,
 11 Allen, 571,
 112 Mass. 142,
 192,
 171 Mass. 484.

and equity require. If the assessment or call is altered or amended, or one is ordered to be made, the directors shall forthwith proceed to vote the same in legal form, and the record of such vote shall be set forth in a supplemental bill or answer.

When an assessment or call has been so confirmed, ascertained or established, a decree shall be entered which shall be final and conclusive upon the company and all persons liable to the assessment or call as to its necessity, the authority of the company to make or collect it, the amount thereof, and all formalities connected therewith. An assessment or call altered or amended by vote of directors and decree of the court thereon shall be binding upon all parties who would have been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call. All such proceedings shall be at the cost of the company unless the court for cause otherwise orders, and in all cases the court may control the disposition of the funds collected under such proceedings.

If the court finds that the net proceeds of any assessment or call will be insufficient to furnish substantial relief to those having claims against the company, it may decree that no assessment shall be collected; and if, upon the application of the commissioner or a member of the company or of any person interested, the court is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the company, it may stay the further collection of said assessment.

Same subject.
Penalty for guaranty against assessments.
Personal liability of officers.

SECTION 85. A director or other officer of a mutual fire company who officially or privately gives a guaranty to a policyholder thereof against an assessment to which he would otherwise be liable shall be punished by a fine of not more than one hundred dollars.

1860, 149
P. S. 119, § 105

1887, 214, §§ 50, 106,
1894, 522, §§ 50, 106.

R. L. 118, §§ 50, 106
1907, 576, §§ 52, 115, 122.

1868, 317, § 2.
P. S. 119, § 109.
1887, 214, § 50.
1894, 522, § 50.
R. L. 118, § 50.
1907, 576,
§§ 52, 122.

If the directors of any such company neglect or omit for six months to lay and collect with all practicable diligence any assessment they are required to make by sections eighty-three and eighty-four, they shall be personally liable for all debts and claims then outstanding against the company, or that may accrue until such assessment is laid and put in process of collection.

1835, 147, § 9.
R. S. 37, § 33.
1854, 453, § 19
1856, 522, § 28.
G. S. 58, § 49.
P. S. 119,
§ 112
1887, 214, § 50.
1894, 522, § 50.
R. L. 118, § 50.

If the treasurer of such company unreasonably neglects to collect an assessment made by order of the directors, and to apply the same to the payment of the claims for which it was made, he shall be personally liable to the person having such claims for the amount of the assessment, and he may repay himself out of any money afterward received for the company on account of said assessment.

1907, 576, §§ 52, 122.

1835, 147, § 8.
R. S. 37, § 32.
1854, 453, § 18.
1856, 522, § 27.
G. S. 58, § 48.
P. S. 119, § 110.
1887, 214, § 50.
1894, 522, § 50.
R. L. 118, § 50.
1907, 576,
§§ 52, 122
103 Mass. 551.

If sufficient property of any such company cannot be found to satisfy an execution against it, and it has property belonging to the period assessed the proceeds of which can be applied to satisfy such execution, if the directors neglect to pay the same, or neglect for thirty days after the rendition of judgment to make an assessment and deliver the same to the treasurer for collection, or to apply such assessment when collected to the payment of the execution, they shall be personally liable for the amount of the execution.

25 If the directors of any such company are liable to pay an execution
 26 against it, the creditor may recover the same by a suit in equity or by
 27 an action at law against the directors. The director who pays an execu-
 28 tion against the company for which he is personally liable may sue in
 29 equity for contribution any of the directors for their proportion, and
 30 also the company or the individual members thereof to the extent of
 31 their several liability to assessment therefor.

1907, 576, §§ 52, 122.

106 Mass. 344.

1835, 147, § 10.
 R. S. 37,
 §§ 34, 35.
 1834, 453, § 20
 1856, 252, § 29.
 G. S. 58, § 50.
 P. S. 119, § 111.
 1887, 214, § 50
 1894, 522, § 50.
 R. L. 118, § 50.

1 SECTION 86. A mutual marine company formed under the second
 2 clause of section forty-seven shall have an agreement under the seal of
 3 each subscriber thereto, substantially as follows:

Mutual marine
 companies.
 1831, 281, § 15.
 1852, 137,
 §§ 1, 2.
 1854, 453, § 25
 1856, 252, § 18
 G. S. 58,
 §§ 35, 40, 41
 1868, 317, § 3.
 P. S. 119,
 §§ 116, 117,
 125-127.
 1887, 214, § 52.
 1894, 522, § 52.
 R. L. 118, § 52.
 1907, 576,
 §§ 53, 122.

The subscribers severally agree to pay to the Insurance Com-
 pany on demand the whole or such part of the amounts set against our names
 as may be called from time to time for the use of said company in the payment
 of its losses and expenses not otherwise provided for.

4 Such company shall not issue policies until the amount of three hun-
 5 dred thousand dollars, which shall be the total of such subscriptions, shall
 6 have been so subscribed, and a certificate, signed by the president and a
 7 majority of the directors, certifying that the subscribers are known to
 8 them and that they believe them to be solvent and able to pay their sub-
 9 scriptions, has been deposited with and approved by the commissioner.
 10 If a subscriber dies or becomes insolvent, his subscription shall be can-
 11 celled; and if the amount of the subscription fund is thereby or other-
 12 wise reduced, the deficiency shall be made good by new subscriptions
 13 certified in the same manner as the original. Subscribers shall be entitled
 14 to annual dividends of two per cent upon the amount of their subscrip-
 15 tions from the profits of the company, and shall also be reimbursed from
 16 future profits for all amounts of money they may pay the company for
 17 its uses under their agreement, with lawful interest thereon.

18 The net profits or divisible surplus of such companies shall annually
 19 be divided among the insured whose policies terminated within the year,
 20 in proportion to the contribution of each to such profits or surplus, and
 21 such dividends shall be made only in scrip certificates payable only out
 22 of the accumulation of net profits or surplus, which accumulation shall
 23 constitute and be kept and invested by the company as a separate fund
 24 in trust for the redemption of such scrip certificates and the contingent
 25 payment of losses and expenses as herein provided. Such certificates
 26 until redeemed shall be subject to future losses and expenses of the com-
 27 pany and to be reduced if the redemption fund is drawn upon for the
 28 payment of such losses and expenses. But no part of the redemption
 29 fund shall be used for the payment of losses or expenses unless the cash
 30 assets of the company are insufficient therefor, and except to the extent
 31 of the deficiency; and if any portion thereof shall be used for such pay-
 32 ment, the outstanding certificates shall be reduced in proportion, so that
 33 the redemption fund shall at all times equal the amount of the unre-
 34 deemed certificates. The net income of the redemption fund shall be
 35 divided annually among the holders of its certificates, or the company
 36 may make such certificates with a specific rate of interest payable from
 37 the income of its invested funds. As such profits accumulate and are
 38 invested, subscriptions of an equal amount shall be cancelled. The
 39 maximum of such accumulation of profits shall be three hundred thou-

said dollars, and all excess of profits above said amount shall be applied 40
 annually to the payment of the certificates in the order of their issue. 41
 The certificates shall forthwith be payable when the company shall cease 42
 to issue policies and the fund is no longer liable to be drawn upon for the 43
 payment of losses. 44

Certain mutual companies subject to certain provisions of Public Statutes, etc. 1887, 214, § 53. 1894, 522, § 53. R. L. 118, § 53. 1907, 576, §§ 54, 122. 205 Mass. 303.

SECTION 87. A mutual marine and a mutual fire and marine company organized prior to May twenty-first, eighteen hundred and eighty-seven, under any law of the commonwealth shall remain subject to the provisions applicable to each contained in sections one hundred and seventeen to one hundred and thirty, inclusive, of chapter one hundred and nineteen of the Public Statutes, notwithstanding the repeal of said chapter. Any such company may redeem its certificates of dividends of profits when its permanent fund has been paid in cash and invested and its surplus is sufficient therefor. The shareholders of the permanent fund of any such company shall be entitled to not more than five per cent semi-annual dividends thereon. 1 2 3 4 5 6 7 8 9 10 11

Mutual marine companies subject to certain sections. 1851, 281, §§ 2-8. 1854, 473, § 25. 1856, 252, § 19.

SECTION 88. Sections seventy-six, seventy-seven and seventy-eight shall apply to all domestic mutual marine companies, and each subscriber to the agreement specified in section eighty-six shall be a member of the company during the term of his subscription and entitled to one vote. 1 2 3 4 5

G. S. 58, § 36. 1887, 214, § 54. R. L. 118, § 54. P. S. 119, § 121. 1894, 522, § 54. 1907, 576, §§ 55, 122.

Liability of president and directors for certain acts. 1851, 281, §§ 16, 19. 1856, 252, §§ 20, 21. G. S. 58, §§ 37, 38. P. S. 119, §§ 119, 123. 1887, 214, § 55. 1894, 522, § 55. R. L. 118, § 55.

SECTION 89. If a subscriber to the agreement specified in section eighty-six fails to pay his subscription or any assessment thereon, and it is proved that the president or a director certified falsely under said section in regard to such subscriber, the person certifying shall be liable to the company for such amount as the subscriber fails to pay. 1 2 3 4 5 6 7 8

If any such company is at any time liable for losses beyond the amount of its assets, the president and directors shall personally be liable for all losses on insurance effected while the company was in such condition. 9

1907, 576, §§ 56, 122. 10 Gray, 325. 12 Gray, 355.

Certain mutual companies subject to laws relative to mutual fire companies. Liability of holders to assessment regulated. 1911, 251, §§ 2, 3. 1914, 642. 1915, 178, §§ 1, 2, 181. 1925, 154, § 4, 267, § 6. 1927, 284, § 11. 1929, 34, § 3.

SECTION 90. Mutual companies, other than life, formed to transact or transacting business under any one or more of clauses three, four, five, six, seven, eight, nine, ten, twelve and thirteen of section forty-seven, or under clause (a), (b), (d) or (e) of section fifty-four, and the officers, directors, agents and members of such companies shall, except as provided in clause (e) of said section fifty-four and in sections ninety A, ninety B, ninety-two, ninety-three, ninety-three A, ninety-three B, ninety-three C, ninety-three D and one hundred and thirteen B, be subject to all the provisions of this chapter relating to mutual fire companies and their officers, directors, agents and members, so far as applicable. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

A policyholder in any domestic mutual company specified in the first paragraph of section fifty-five or in any domestic mutual company incorporated on or after April sixth, nineteen hundred and eleven and prior to January first, nineteen hundred and twenty-seven under a special charter and authorized to transact the same kinds of business as the mutual companies specified as aforesaid shall not be liable to pay his proportionate part of any assessments which may be laid by such companies unless he is notified of such assessment within one year after the expiration or cancellation of his policy. 19

1 SECTION 90A. No policy shall be issued by a mutual company formed
 2 to transact business under the third clause of section forty-seven, or under
 3 clause (b) or (c) of section forty-eight A, and having no guaranty capital
 4 or having a guaranty capital of less than one hundred thousand dollars,
 5 until not less than one million dollars of insurance in not less than four
 6 hundred separate risks upon property located in the commonwealth, in
 7 case of a company formed under said third clause or said clause (b), or
 8 not less than two million dollars of insurance in not less than eight hun-
 9 dred separate risks as aforesaid, in case of a company formed under said
 10 clause (c), has been subscribed for and entered on its books.

Mutual fire and
 marine, mutual
 automobile,
 companies.
 Issue of
 policies.
 1925, 267, § 7.
 1926, 53, § 2.

1 SECTION 90B. No policy shall be issued by a mutual company formed
 2 to transact business under the fourth clause of section forty-seven until
 3 it has established a fully paid-up guaranty capital of not less than two
 4 hundred thousand dollars, which shall be subject to the provisions of sec-
 5 tion seventy-nine, except as hereinafter and in section ninety-three D
 6 provided. Such guaranty capital shall be maintained while the com-
 7 pany transacts business under said clause and the provisions of said sec-
 8 tion seventy-nine relative to the retirement of the guaranty capital of a
 9 mutual fire company shall not apply thereto.

Mutual fidelity
 and corporate
 surety com-
 panies. Issue
 of policies.
 Principals on
 certain bonds,
 etc., deemed
 members.
 1925, 267, § 7.

10 The principal on any bond or obligation executed by a mutual com-
 11 pany as surety shall be deemed the member of the company under sections
 12 seventy-six, seventy-nine, eighty, eighty-one, eighty-three to eighty-five,
 13 inclusive, and ninety.

1 SECTION 90C. Any mutual company empowered by subdivision (c)
 2 of section fifty-four to transact the kinds of business set forth in the
 3 fourth clause of section forty-seven, which has not established a guaranty
 4 capital under section ninety B as required by said subdivision (c) and
 5 which has net cash assets, computed on the basis fixed by sections ten to
 6 twelve, inclusive, of not less than two million dollars may, in lieu of estab-
 7 lishing a guaranty capital as aforesaid, if previously authorized by a vote
 8 of its policyholders at any meeting and with the written approval of the
 9 commissioner, segregate a portion of its net cash assets to an amount of
 10 not less than two hundred thousand nor more than five hundred thousand
 11 dollars and constitute said amount a guaranty fund.

Certain do-
 mestic mutual
 companies may
 create guaranty
 fund in lieu of
 establishing
 guaranty
 capital.
 1931, 242, § 1.

12 Any such fund shall be maintained so long as the company transacts
 13 business under said clause fourth, shall be invested as provided by this
 14 chapter for the investment of the capital stock of domestic stock com-
 15 panies, and shall not be reduced or dissolved except with the written
 16 approval of the commissioner.

17 The said fund shall be applied solely to the payment of claims under
 18 policies or contracts issued or executed under said clause fourth, but only
 19 in case the company has exhausted its assets, exclusive of uncollected
 20 premiums.

21 No company with such a guaranty fund which ceases to transact busi-
 22 ness shall divide among its policyholders any of its assets or guaranty
 23 fund, until it shall have performed or cancelled all obligations under its
 24 policies and contracts.

25 Any company whose guaranty fund aforesaid is less than five hundred
 26 thousand dollars may, subject to the provisions of this section, from time
 27 to time increase it to an amount not exceeding said sum; provided, that
 28 no such increase shall be made unless the net cash assets of the company,

computed as aforesaid, inclusive of the amount of such fund, amount to 29
at least two million dollars at the time the increase is made. 30

SECTION 91. [REPEALED, 1924, 406, § 17.] 1

Mutual boiler
companies.
Issue of
policies.
1915, 178, § 3.
1925, 154, § 5;
267, § 8.

SECTION 92. No policy shall be issued by a mutual company formed 1
to transact business under the fifth clause of section forty-seven until 2
insurance has been applied for to the amount of one million dollars 3
upon not less than one hundred separate risks, nor until such company 4
has made arrangements for its protection from extraordinary losses 5
caused by any one disaster by reinsurance as provided in section twenty. 6

Mutual
liability
companies.
Issue of
policies.
1911, 251, § 3.
1915, 181.
1921, 486, § 30.
1925, 267, § 9.
1927, 284, § 1.

SECTION 93. No policy shall be issued by a mutual company formed 1
to transact business under any one or more of the several subdivisions 2
of the sixth clause of section forty-seven until it has secured applications 3
for insurance on risks in the commonwealth the premiums on which shall 4
amount to not less than one hundred thousand dollars and it has satisfied 5
the commissioner that such premiums have been actually paid to it 6
in full in cash, nor, if it proposes to transact business under subdivision 7
(e) of said clause, until it has made arrangements satisfactory to the 8
commissioner, by reinsurance, as provided in section twenty, to protect 9
it from extraordinary losses caused by any one disaster. 10

The liability of any policyholder in such a company to pay his pro- 11
portionate part of any assessments which may be laid by the company, 12
in accordance with law and his contract, on account of losses and ex- 13
penses incurred while he was a member, shall continue so long as there 14
are outstanding any obligations incurred while he was such a member. 15

Mutual plate
glass, sprinkler,
etc., leakage,
elevator, credit,
burglary or
livestock
companies.
Issue of
policies.
1925, 267, § 10.

SECTION 93A. No policy shall be issued by a mutual company formed 1
to transact business under the seventh, eighth, ninth, tenth, twelfth or 2
thirteenth clause of section forty-seven until it has secured applications 3
for insurance upon not less than two hundred separate risks in the com- 4
monwealth against the hazards specified in said clause, the premiums 5
on which shall amount to not less than twenty-five thousand dollars. 6

Mutual surety,
liability and
casualty
companies.
Issue of
policies.
1925, 267, § 10.
1926, 53, § 3.

SECTION 93B. No policy shall be issued by a mutual company 1
formed to transact business under clause (d) of section forty-eight A, 2
until it has secured the applications for insurance required by sections 3
ninety-two, ninety-three and ninety-three A, or any of them, in respect 4
to the classes of business which it proposes to transact and until it has 5
established the guaranty capital required by section ninety B, if it pro- 6
poses to transact business under the fourth clause of section forty-seven. 7

Guaranty
capital,
establishment
by mutual
surety, li-
ability and
casualty
companies.
1925, 267, § 10.

SECTION 93C. Any mutual company formed or authorized to trans- 1
act business under the third, fifth, sixth, seventh, eighth, ninth, tenth, 2
twelfth or thirteenth clause of section forty-seven or under clause (b), 3
(c) or (d) of section forty-eight A may, except as provided in section ninety 4
B, at any time establish a guaranty capital as provided in and subject 5
to the provisions of section seventy-nine. 6

Mutual surety,
liability and
casualty com-
panies to
cease busi-
ness if number,
etc., of risks,

SECTION 93D. No domestic mutual company transacting business 1
under clause three five, six, seven, eight, nine, ten, twelve or thirteen 2
of section forty-seven, or under clause (b), (c) or (d) of section forty- 3
eight A, whose amount of insurance in force or premiums or number of 4

5 risks on its books become at any time from any cause less than the
 6 amounts or number required by section ninety A, ninety-two, ninety-
 7 three, ninety-three A or ninety-three B, and no mutual company trans-
 8 acting business under the fourth clause of said section forty-seven whose
 9 guaranty capital required by section ninety B or whose guaranty fund
 10 established under section ninety C is impaired on the basis fixed by
 11 sections ten to twelve, inclusive, shall make any further insurance until
 12 it has secured applications for policies which shall restore the amount of
 13 insurance or premiums or number of risks to the amounts and number
 14 required by said section ninety A, ninety-two, ninety-three, ninety-
 15 three A and ninety-three B, nor until such guaranty capital or guaranty
 16 fund is restored to the amount required by said section ninety B or
 17 ninety C, nor until such company in any case has obtained a certificate
 18 as provided in section seventy-four.

etc., or guar-
 anty capital
 impaired
 1925, 267, § 10.
 1927, 283, § 12.
 1931, 242, § 6.

1 SECTION 93E. No policy shall be issued by a mutual company formed
 2 to transact business under the sixteenth clause of section forty-seven,
 3 or under clause (c) of section forty-eight A, until it has established a
 4 fully paid-up guaranty capital of not less than two hundred thousand
 5 dollars, if it proposes to transact business under said sixteenth clause, or
 6 four hundred thousand dollars, if it proposes to transact business under
 7 said clause (c), together, in either case, with a net cash surplus of not
 8 less than two hundred thousand dollars, exclusive of said guaranty capi-
 9 tal. Such guaranty capital shall be divided into shares of one hundred
 10 dollars each, to be invested as provided by this chapter for the invest-
 11 ment of the capital stock of domestic companies, other than life. Stock-
 12 holders of such guaranty capital and policyholders of such a company
 13 shall be subject to the same provisions of law relative to their right to
 14 vote as apply respectively to stockholders in stock companies and policy-
 15 holders in mutual companies. The stockholders of such guaranty capi-
 16 tal shall be entitled to annual dividends, not exceeding eight per cent,
 17 payable from the net surplus of the company, and such guaranty capital
 18 shall be redeemed by an appropriation of net surplus for that purpose
 19 whenever the net surplus, computed on the basis fixed by sections nine
 20 to twelve, inclusive, is twice the amount of said guaranty capital.

Mutual life,
 liability and
 casualty
 companies.
 Issue of
 policies.
 1854, 453, § 27.
 1856, 252, § 40.
 G. S. 58, § 60.
 1870, 349, § 6.
 P. S. 119, § 145.
 1887, 214, § 72.
 1894, 522, § 72.
 R. L. 118, § 75.
 1907, 576,
 §§ 82, 122.
 G. L. 175, § 94.
 1930, 136, § 7.

1 SECTION 94. Except as provided in section one hundred and thirty-
 2 seven, every person insured by a domestic mutual life company shall
 3 be a member entitled to one vote, and one vote additional for each five
 4 thousand dollars of insurance in excess of the first five thousand dollars,
 5 and shall be notified of its annual meetings by written notice or by an
 6 imprint in the form prescribed in section seventy-six upon the filing-back,
 7 or, in case of policies on which the premiums are payable monthly or
 8 oftener, on some other prominent place of each policy, and also upon
 9 receipts or certificates of renewal.

Mutual life
 companies.
 Members.
 Proxies.
 Directors.
 1870, 349, § 7.
 P. S. 119, § 153.
 1887, 214, § 74.
 1894, 522, § 74.
 R. L. 118, § 74.
 1907, 576,
 §§ 82, 122.
 1922, 77.
 1930, 136, § 8.

10 Members and shareholders may vote by proxies dated and executed
 11 within three months and returned and recorded on the books of the
 12 company seven days or more before the meeting at which they are to
 13 be used; but no person shall, as attorney or otherwise, cast more than
 14 twenty votes, and no officer shall, himself or by another, ask for, receive,
 15 procure to be obtained or use a proxy vote.

[Penalty, § 188]

16 Two thirds of the directors shall always be residents of the common-
 17 wealth, and, after the first election, the directors shall be chosen by and
 18 from the policyholders; provided, that in case of a company having

outstanding a guaranty capital, one third of the directors may be chosen 19
 by and from the stockholders thereof. No person shall be qualified to 20
 serve as a director after he ceases to be such a policyholder or stock- 21
 holder, as the case may be. 22

The provisions of section sixty shall apply to the officers of every such 23
 company. 24

FIRE INSURANCE.

Over-insurance 1
 prohibited. 2
 Term of fire 3
 policy. 4
 1835, 147, § 5. 5
 R. S. 37, § 28. 6
 1854, 453, § 22. 7
 1856, 252, § 31. 8
 G. S. 58, § 24. 9
 1875, 72, § 1. 10
 1878, 132, § 1. 11

SECTION 95. No company, and no officer or agent thereof, and no 1
 insurance broker shall knowingly issue, negotiate, continue or renew or 2
 cause or permit to be issued, negotiated, continued or renewed any fire 3
 insurance policy upon property or interests within the commonwealth 4
 of an amount which, with any existing insurance thereon, exceeds the 5
 fair value of the property, nor for a longer term than seven years. 6

P. S. 119, §§ 136, 178. 1894, 522, § 57. 1907, 576, §§ 57, 122.
 1887, 214, § 57. R. L. 118, § 57.

Liability for 1
 fire loss 2
 limited. 3
 1898, 571. 4
 R. L. 118, § 57. 5
 1907, 576, 6
 §§ 57, 122. 7
 221 Mass. 518. 8

SECTION 96. If buildings within the commonwealth insured against 1
 loss by fire are totally destroyed by fire, the company shall not be liable 2
 beyond the actual value of the insured property at the time of the loss 3
 or damage; and if it shall appear that the insured has paid premiums 4
 on an amount in excess of said actual value, he shall be reimbursed the 5
 proportionate excess of premiums paid on the difference between the 6
 amount named in the policy and said actual value, with interest at six 7
 per cent per annum from the date of issue; and said excess of premiums 8
 and interest thereon shall be allowed the insured from the time any 9
 companies carrying said insurance at the time of the loss have continu- 10
 ously carried the insurance on the destroyed buildings, whether under 11
 policies existing at the time of the loss or under previous policies in the 12
 same companies. 13

Payment of 1
 mortgages 2
 1878, 132, § 2. 3
 P. S. 119, § 137. 4
 1887, 214, § 58. 5
 1894, 522, § 58. 6
 R. L. 118, § 58. 7
 1907, 576, 8
 §§ 58, 122. 9
 168 Mass. 147. 10

SECTION 97. If, by an agreement with the insured or by the terms 1
 of a fire insurance policy taken out by a mortgagor, the whole or any 2
 part of the loss thereon is payable to mortgagees of the property or for 3
 their benefit, the company shall, upon satisfactory proof of the rights 4
 and title of the parties, in accordance with such terms or agreement, 5
 pay all mortgagees protected by such policy in the order of their priority 6
 of claim as their claim shall appear, not beyond the amount for which 7
 the company is liable, and such payment shall be to the extent thereof 8
 payment and satisfaction of the liability of the company under such 9
 policy. 10

Statements in 1
 application 2
 and by-laws 3
 not part of 4
 contract 5
 unless, etc. 6
 1861, 152. 7
 1864, 196. 8
 P. S. 119, § 138. 9

SECTION 98. In all insurance against loss by fire, neither the applica- 1
 tion of the insured nor the by-laws of the company shall be considered 2
 as a warranty or a part of the contract except so far as they are incor- 3
 porated in full in the policy as provided in the ninth clause of the fol- 4
 lowing section. 5

1887, 214, § 59. 1907, 576, §§ 59, 122. 112 Mass. 116. 131 Mass. 1.
 1894, 522, § 59. 7 Allen, 42, 45. 118 Mass. 393. 145 Mass. 426.
 R. L. 118, § 59. 98 Mass. 420. 120 Mass. 254. 172 Mass. 278.

Standard form 1
 of fire policy. 2
 1873, 331. 3
 § 1, 2. 4
 1880, 175. 5
 1881, 166. 6
 § 1, 3. 7

SECTION 99. No fire company shall issue fire insurance policies on 1
 property or interests in the commonwealth, other than those of the 2
 standard form herein set forth, except as provided in section one hun- 3
 dred and two A and except as follows: 4

5 First, A company may print on or in its policies its name, location, P S 119, § 139.
6 date of incorporation, plan of operation, whether stock or mutual, and, 1887, 214, § 60.
7 if the former, the amount of its paid-up capital stock. A company 1894, 522, § 60.
8 may also print on or in its policies the names of its officers and agents, 1895, 59,
9 the number and date of the policy, the words, "Amount § § 3, 4.
10 Rate , Premium § , " and, if the policy is issued R L 118, § 60
11 through an agent, the words, "This policy shall not be valid until 1904, 240.
12 countersigned by the duly authorized agent of the company at 1907, 576,
13 said standard form, add to the phrase hereinbefore quoted the words, § 5 60, 122.
14 "Countersigned at , this day of , 19 1910, 552, § 2.
15 Agent." A mutual company shall fix the contingent mu- 1913, 625, § 2.
16 tual liability of its members for the payment of losses and expenses not 1916, 150, § 1.
17 provided for by its cash funds and shall print on the filing-back of its 1923, 137,
18 policies the notice required by section seventy-six, the endorsement re- 1924, 285, § 3.
19 quired by section eighty and the statement required by section eighty- 165 Mass. 462
20 one. 184 Mass. 177,
21 215 Mass. 425,
22 232 Mass. 214,
23 268 Mass. 28,
24 272 Mass. 62,
25 232,
26 1 Op. A. G. 34,
27 104,
28 2 Op. A. G.
29 157, 471, 545.
30 Op. A. G.
31 (1917) 13.
32 Op. A. G.
33 (1920) 286.

22 A company described in the first paragraph of section one hundred
23 and fifty-five may in lieu of said teste clause use the following:—"In
24 witness whereof, the said company has caused this policy
25 to be signed by its resident manager in the United States at their office
26 in (date)."
27 Second, A company may print or use in its policies printed forms of
28 description and specification of the property insured.
29 Third, A company insuring against damage by lightning may print,
30 in the clause enumerating the perils insured against, the additional
31 words "Also any damage by lightning, whether fire ensues or not", and,
32 in the clause providing for an apportionment of loss in case of other
33 insurance, the words "whether by fire, lightning or both".
34 Fourth, A domestic company may print in its policies any provisions
35 which it is authorized or required by law to insert therein; and any for-
36 eign company may, with the approval of the commissioner, so print
37 any provision required by its charter or deed of settlement, or by the
38 laws of its own state or country not contrary to the laws of this com-
39 monwealth; but the commissioner shall require any provision which
40 in his opinion modifies the contract of insurance in such way as to affect
41 the question of loss to be appended to the policy by a slip or rider as
42 hereinafter provided.
43 Fifth, The blanks in said standard form may be filled in print or
44 writing.
45 Sixth, A company may print upon policies issued in compliance with
46 this section the words "Massachusetts Standard Policy".
47 Seventh, There shall be printed or stamped on the filing-back of every 265 Mass. 509
48 policy, in clear type not smaller than long primer, the words "In case of
49 fire notify the company or its local agent at once in writing".
50 Eighth, There shall be printed on the margin of the policy near the
51 part thereof that relates to cancellation, in type not smaller than long
52 primer, or attached to such policy by rider as hereinafter provided, the
53 following: "If the premium on this policy has not been paid to the com-
54 pany or its agent or to the duly licensed insurance broker through whom
55 the contract of insurance was negotiated, this policy may be cancelled
56 by the company in the manner herein provided without tendering to the
57 assured any part of the premium".

166 Mass. 210.
 180 Mass. 560.
 228 Mass. 301.
 234 Mass. 301.
 1 Op. A. G.
 431, 540
 2 Op. A. G.
 545.
 3 Op. A. G. 70.

Ninth, A company may write upon the margin or across the face of 58
 a policy, or write, or print in type not smaller than long primer, upon 59
 separate slips or riders to be attached thereto, provisions adding to or 60
 modifying those contained in the standard form; and all such slips, 61
 riders and provisions shall be signed by the officers or agents of the 62
 company so using them. 63

Said standard form of policy shall be plainly printed, and no portion 64
 thereof shall be in type smaller than long primer, and shall be as follows: 65

No. §
 (Corporate name of the company; its principal place or places of business.)
 This company shall not be liable beyond the actual value of the insured prop-
 erty at the time any loss or damage happens.

166 Mass. 67.
 259 Mass. 450.

In consideration of dollars to it paid by the insured, hereinafter
 named, the receipt whereof is hereby acknowledged, does insure
 and legal representatives against loss or damage by fire, to the
 amount of dollars.

(Description of property insured.)
 Bills of exchange, notes, accounts, evidences and securities of property of
 every kind, books, wearing apparel, plate, money, jewels, medals, patterns,
 models, scientific cabinets and collections, paintings, sculpture and curiosities
 are not included in said insured property, unless specially mentioned.

234 Mass. 301.

Said property is insured for the term of beginning on the
 day of , in the year nineteen hundred and , at noon,
 and continuing until the day of , in the year nineteen
 hundred and , at noon, against all loss or damage by FIRE originat-
 ing from any cause except invasion, foreign enemies, civil commotions, riots or
 any military or usurped power whatever; the amount of said loss or damage to
 be estimated according to the actual value of the insured property at the time
 when such loss or damage happens, but not to include loss or damage caused
 by explosions of any kind unless fire ensues, and then to include that caused by
 fire only.

140 Mass. 38.
 144 Mass. 43
 145 Mass. 265,
 389, 426
 149 Mass. 116.
 150 Mass. 374
 153 Mass. 553.
 156 Mass. 587.
 158 Mass. 475.
 162 Mass. 479.
 170 Mass. 492.
 178 Mass. 535.
 179 Mass. 434
 190 Mass. 233.
 201 Mass. 350.
 205 Mass. 88.
 207 Mass. 337.
 234 Mass. 23.
 263 Mass. 181

This policy shall be VOID if any material fact or circumstance stated in writing
 has not been fairly represented by the insured; or if the insured now has or
 shall hereafter make any other insurance on the said property without the assent
 in writing or in print of the company; or if, without such assent, the said prop-
 erty shall be removed, except that, if such removal shall be necessary for the
 preservation of the property from fire, this policy shall be valid without such
 assent for five days thereafter; or if, without such assent, the situation or cir-
 cumstances affecting the risk shall, by or with the knowledge, advice, agency or
 consent of the insured, be so altered as to cause an increase of such risks, or if,
 without such assent, the said property shall be sold, or this policy assigned, or if
 the premises hereby insured shall become vacant by the removal of the owner or
 occupant, and so remain vacant for more than thirty days without such assent,
 or if it be a manufacturing establishment, running, in whole or in part, extra time,
 except that such establishments may run, in whole or in part, extra hours not
 later than nine o'clock P.M., or if such establishments shall cease operation for
 more than thirty days without permission in writing endorsed hereon, or if the
 insured shall make any attempt to defraud the company either before or after
 the loss; or if gunpowder or other articles subject to legal restriction shall be
 kept in quantities or manner different from those allowed or prescribed by law;
 or if camphene, benzine, naphtha, or other chemical oils or burning fluids shall
 be kept or used by the insured on the premises insured, except that what is known
 as refined petroleum, kerosene or coal oil may be used for lighting, and in dwell-
 ing houses kerosene oil stoves may be used for domestic purposes, to be filled
 when cold, by daylight, and with oil of lawful fire test only.

If the insured property shall be exposed to loss or damage by fire, the insured
 shall make all reasonable exertions to save and protect the same.

140 Mass. 38.
 142 Mass. 142.
 145 Mass. 582.
 150 Mass. 169
 152 Mass. 263.
 164 Mass. 382
 166 Mass. 210.
 186 Mass. 589.
 196 Mass. 230.

In case of any loss or damage under this policy, a STATEMENT in writing, signed
 and sworn to by the insured, shall be forthwith rendered to the company, setting
 forth the value of the property insured, the interest of the insured therein, all
 other insurance thereon in detail, the purposes for which and the persons by
 whom the building insured, or containing the property insured, was used, and the
 time at which and manner in which the fire originated, so far as known to the

insured. The company may also examine the books of account and vouchers of the insured, and make extracts from the same.

206 Mass. 217, 591. 227 Mass. 132. 267 Mass. 571
 208 Mass. 378. 245 Mass. 509. 268 Mass. 28.
 212 Mass. 318. 266 Mass. 545.

In case of any loss or damage, the company, within sixty days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount, if not agreed upon, shall be ascertained by award of referees as hereinafter provided, or replace the property with other of the same kind and goodness; or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately insured by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property insured to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

166 Mass. 210
 170 Mass. 492
 184 Mass. 177
 208 Mass. 378
 226 Mass. 236.

If there shall be any OTHER INSURANCE on the property insured, whether prior or subsequent, the insured shall recover on this policy no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon. And whenever the company shall pay any loss, the insured shall assign to it, to the extent of the amount so paid, all rights to recover satisfaction for the loss or damage from any person, town or other corporation, excepting other insurers; or the insured, if requested, shall prosecute therefor at the charge and for the account of the company.

166 Mass. 210
 213 Mass. 487.
 232 Mass. 214
 252 Mass. 432.

If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee or his agents, or those claiming under him, shall affect such mortgagee's right to recover in case of loss on such real estate: provided, that the mortgagee shall on demand pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy, for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the companies interested, upon such payment, the said mortgage, together with the note and debt thereby secured.

142 Mass. 142.
 166 Mass. 189.
 210
 178 Mass. 535
 185 Mass. 419
 196 Mass. 230.
 208 Mass. 378.
 219 Mass. 132
 238 Mass. 250.
 247 Mass. 20
 251 Mass. 509
 2 Op. A. G. 582

This policy may be CANCELLED at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force. The company also reserves the right, after giving written notice to the insured and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks.

190 Mass. 586.
 197 Mass. 19.
 252 Mass. 336
 269 Mass. 225.

In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested men, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen; the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference, unless waived by the parties, shall be a condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee, against the objection of either party, who has acted in a like capacity within four months.

138 Mass. 572.
 141 Mass. 298.
 153 Mass. 335.
 154 Mass. 77.
 159 Mass. 118.
 170 Mass. 492.
 171 Mass. 433.
 196 Mass. 230.
 208 Mass. 577.
 212 Mass. 318.
 215 Mass. 425.
 216 Mass. 154.
 221 Mass. 518.
 224 Mass. 310.
 226 Mass. 236.
 265 Mass. 440.
 267 Mass. 430.
 2 Op. A. G.
 582.

No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this Commonwealth unless commenced within two years from the time the loss occurred: provided, however, that if, within said two years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action,

to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

In witness whereof the said _____ company has caused this policy to be signed by its president and attested by its secretary (or by such proper officers as may be designated), at their office in _____ (date).

The word "noon", occurring in the standard form above set forth, shall be construed to be the noon of standard time of the place where the property covered by the policy is situated.

Referees.
Appointment.
1888, 151.
1891, 291.
1894, 522, § 60.
1896, 137.
1897, 357.
R. L. 118, § 60.
1907, 576.
§§ 60, 122.
1911, 406.
1923, 152;
198, § 1.
1924, 406, § 8.
1927, 285, § 1.
204 Mass. 90.
224 Mass. 310.
238 Mass. 462.
267 Mass. 430.
271 Mass. 34.
272 Mass. 232.

SECTION 100. If a claim is presented under any policy of fire insurance issued on property or interests in the commonwealth in the standard form set forth in the preceding section, and if the parties fail to agree as to the amount of loss, the company shall, within ten days after receiving a written demand from the insured for the reference of the amount of loss to three referees as provided in such policy, submit in writing the names and addresses of three persons to the insured, who shall, within ten days after receiving such names, notify the company in writing of his choice of one of the said persons to act as one of said referees.

The insured shall submit in writing the names and addresses of three persons to the company, which shall, within ten days after receiving such names, notify the insured in writing of its choice of one of said persons to act as one of said referees.

If, at the expiration of ten days from the choice of the second referee, the two referees chosen as hereinbefore provided, shall not have agreed upon and selected a person to act as the third referee, then either of the said referees or parties may make written application on oath to the commissioner in such form as he may prescribe, for the appointment of the third referee and the commissioner shall, after such summary inquiry or hearing, if any, as he may deem expedient, appoint a person to serve as the third referee and shall notify such person and the parties in writing of such appointment.

Same subject.
Filling of
vacancies.
1927, 285, § 1.

SECTION 100A. If, before an award is determined upon by the referees, any referee, including a referee appointed under this section, dies, resigns, is incapacitated, removes from the commonwealth or for any other reason is unable or refuses to serve, the company, if such referee was chosen by the insured, or the insured, if such referee was chosen by the company, or the company, the insured or the two referees chosen by the insured and the company, if such referee is a third referee chosen by the said two referees, or the company, the insured or either of said two referees, if such referee is the third referee appointed by the commissioner, shall forthwith make written application on oath to the commissioner in such form as he may prescribe for the appointment of another referee. The application, unless it seeks the appointment of a third referee to succeed a third referee appointed by the commissioner, shall specify the full names and addresses of three persons. The commissioner shall, after such summary inquiry or hearing, if any, as he may deem expedient, appoint a referee to fill the vacancy, but if the application specifies names as aforesaid, he shall appoint one of the persons so specified. The commissioner shall give written notice of the appointment to the appointee, to the parties and to the other referees. Nothing in this section shall be construed to prohibit the insured and the company from filling any vacancy by mutual agreement.

1 SECTION 100B. Every person nominated, specified or appointed under
 2 either of the two preceding sections shall be disinterested, a resident of the
 3 commonwealth and willing to act as referee. Service as referee for either
 4 party within four months prior to the date of nomination or specification
 5 for appointment, or, in case of a third referee chosen by the two referees,
 6 the date of the choice of the second referee, or, if appointed by the com-
 7 missioner without specification, the date of application for appointment,
 8 shall be a disqualification for nomination, specification or appointment as
 9 aforesaid, unless with the written consent of the insured in case of a referee
 10 nominated by the company, of the company in case of a referee nomi-
 11 nated by the insured, and of both in case of a third referee. No person
 12 shall be specified in an application to the commissioner who has been
 13 previously nominated by either party in connection with the reference
 14 proceedings to which the application relates.

Same subject.
 Qualifications
 for nomina-
 tion, etc.
 1927, 285, § 1.

1 SECTION 101. The referees chosen, selected or appointed under section
 2 one hundred or one hundred A shall within ten days after the selection or
 3 appointment of the third referee meet to hear the evidence in the case.
 4 They may adjourn the hearing from time to time but not more than one
 5 week shall elapse between hearings except by unanimous agreement of
 6 said referees.

Same subject.
 Meetings.
 1910, 489
 1927, 285, § 2.
 221 Mass. 522.
 229 Mass. 10.
 267 Mass. 430.
 272 Mass. 73.

1 SECTION 101A. The referees shall reduce their award to writing and
 2 execute it in duplicate. The third referee shall forthwith publish the
 3 same by delivering one of the duplicates to the company, and one to the
 4 insured, but the same may be published in any other lawful manner.

Same subject.
 Awards.
 1927, 285, § 3.

1 SECTION 101B. The company and the insured shall, if an award is
 2 rendered by the referees in favor of the insured, each be liable to the third
 3 referee for one half of his charges for compensation and expenses. The
 4 company shall, if an award is rendered in its favor or if no award is ren-
 5 dered, be liable to the third referee for the full amount thereof, but in such
 6 case, if the company makes any payment to the insured in settlement of
 7 his claim, it may deduct therefrom one half of such charges. The third
 8 referee shall forthwith, upon the publication of an award in favor of the
 9 insured, furnish the company and the insured with a written statement
 10 specifying in detail his charges for compensation and expenses, and he
 11 shall forthwith upon the publication of an award in favor of the company,
 12 or if no award is rendered, furnish such a statement to the company
 13 alone. The company or the insured, if aggrieved by said charges, may
 14 within ten days from such publication, or, if no award is rendered, from
 15 the rendition of said statement, file with the commissioner, in such form
 16 as he may prescribe, a petition for a review thereof. After due hearing,
 17 notice of which shall be given forthwith by the commissioner to all parties
 18 in interest, the commissioner shall forthwith review and approve or dis-
 19 approve said charges, in whole or in part, and his findings and decision
 20 shall be forthwith communicated in writing to the parties and shall, as
 21 well as all findings of fact made by him under section one hundred, one
 22 hundred A or one hundred B, be final and conclusive.

Same subject.
 Compensation,
 etc., of third
 referee.
 1927, 285, § 3.

1 SECTION 101C. Payment of the third referee's charges, which shall
 2 be due and payable, except as hereinafter provided, upon the expiration
 3 of the ten day period provided by section one hundred and one B for

Same subject.
 Payment of
 such compen-
 sation, etc.
 Effect on

right to con-
test validity
of award
1927, 285, § 3.

filing a petition for review, shall in all cases be made by the company, 4
deducting from any award in favor of the insured his share of such 5
charges. Neither payment of such charges to the referee or of an award 6
to the insured, whether or not the sixty day period prescribed in said 7
standard form of policy or in section one hundred and two has expired, 8
shall be made prior to the expiration of said ten day period unless the 9
insured in writing waives his right to petition for a review under section 10
one hundred and one B, nor until notice of the commissioner's decision on 11
such review if a petition therefor is filed as aforesaid; but the company 12
shall not be liable for interest on an award during said period of ten days 13
or pending said decision. 14

The payment of the compensation or expenses, or both, of any referee 15
shall not in any case preclude the insured or the company from contesting 16
the validity of the award. 17

Same subject.
Referees to
determine
sound value,
when.
1919, 31.
G. L. 175, § 100.
1924, 406, § 8.
1927, 285, § 3.

SECTION 101D. If a policy of fire insurance contains a reduced rate 1
or co-insurance clause, and if, in case of loss, the parties do not agree as to 2
the sound value of the property affected, such value shall be determined 3
by the referees chosen to determine the loss. If the parties agree as to the 4
loss, but do not agree as to the amount of the sound value, said value shall 5
be determined by referees appointed as provided in and subject to the 6
provisions of sections one hundred to one hundred and one G, inclusive, 7
and of said standard form. An award in writing of a majority of the 8
referees shall be final and conclusive on the parties as to the amount of 9
the sound value. 10

Legal defences
not waived by
company join-
ing in refer-
ence proceed-
ings, etc.
1927, 285, § 3.

SECTION 101E. A company which in compliance with section one 1
hundred or one hundred and one D joins in reference proceedings shall 2
not thereby be held to have waived any legal defence to the claim in 3
respect to which the reference proceedings are held and such proceedings 4
shall fix only the amount of the loss sustained by the insured or the sound 5
value of the property, as the case may be, unless both parties shall agree 6
in writing that the reference shall be held and shall proceed under the 7
provisions of chapter two hundred and fifty-one. 8

Penalty for
refusal to
comply with
provisions
relative to
reference
proceedings.
1927, 285, § 3.

SECTION 101F. A company, or an officer, agent, adjuster or repre- 1
sentative thereof having authority to represent the company in respect to 2
a reference proceeding, who willfully refuses to comply with the provi- 3
sions of sections one hundred, one hundred A, or one hundred and one D, 4
shall be punished by a fine of not less than one hundred nor more than 5
five hundred dollars. 6

Receivership
as affecting
reference pro-
ceedings.
Preference
of referees'
claims.
1927, 285, § 3.

SECTION 101G. The appointment of a receiver for a domestic fire 1
company, whether before or after any referees are chosen, selected or 2
appointed under sections one hundred to one hundred and one E, inclu- 3
sive, shall not affect the requirements of said sections, and the receiver 4
shall be under the same duties and obligations and have the same rights 5
and powers in relation to referees as are imposed and conferred by said 6
sections upon the company. Any claim of a referee, whether chosen or 7
appointed before or after the receiver's appointment, for his compensa- 8
tion and expenses due from the company or the receiver shall be deemed 9
and treated as preferred over claims for losses. 10

1 SECTION 102. In case of loss under any fire insurance policy in the
 2 standard form prescribed by section ninety-nine, the company shall not,
 3 in defence of any action, avail itself of the omission on the part of the
 4 insured to furnish forthwith to the company the sworn written statement
 5 required by said standard form, provided the insured has, after such loss,
 6 forthwith in writing notified the company, at its home office or at the
 7 office of the agency issuing the policy, of the fire, and the location thereof,
 8 and provided further that the insured, if the company, after receiving
 9 notice in writing as aforesaid, requests him in writing so to do, furnishes
 10 the company with said sworn statement. If, after receiving written notice
 11 as aforesaid from the insured, the company does not forthwith request of
 12 the insured said sworn statement, the periods of time within which the
 13 company shall, as provided in the policy, pay the amount for which it is
 14 liable, or replace the property, or notify the insured of its intention to
 15 rebuild or repair the premises, shall be computed from the time when the
 16 company received said written notice.

Lack of sworn
 statement of
 loss not to be
 taken advantage
 of by
 company,
 when,
 1910, 552, § 1
 206 Mass. 249
 221 Mass. 524
 227 Mass. 134
 254 Mass. 1
 265 Mass. 509
 267 Mass. 571
 268 Mass. 28
 272 Mass. 62,
 587

1 SECTION 102A. Two or more stock or two or more mutual fire com-
 2 panies may issue a single policy of insurance against loss or damage by
 3 fire, or by fire and lightning, on property or interests in the commonwealth
 4 on which each company shall be severally liable for a specified percentage
 5 of any loss or claim. Such policy shall be executed by the duly author-
 6 ized officers of each company, subject to the provisions of section thirty-
 7 three in the case of a domestic company.

Combination
 fire policies,
 approval and
 contents,
 1924, 285, § 1.

8 No such policy shall be issued or delivered until a copy of the form
 9 thereof has been on file for thirty days with the commissioner, unless
 10 before the expiration of said thirty days he shall have approved the form
 11 of the policy in writing; nor if the commissioner notifies the company in
 12 writing within said thirty days that in his opinion the form of the policy
 13 does not comply with the laws of the commonwealth, specifying his
 14 reasons therefor; provided, that such action of the commissioner shall be
 15 subject to review by the supreme judicial court; nor unless it is headed
 16 by the corporate name of each company; nor unless it contains in sub-
 17 stance the provisions of the seventh and eighth clauses of section ninety-
 18 nine and is, except as hereinafter provided, in the standard form pre-
 19 scribed by said section; provided, that said provisions and said standard
 20 form may be modified as to form and arrangement but only in such
 21 manner as the commissioner may prescribe; nor unless it contains in
 22 substance:—

23 (1) A provision plainly specifying the percentage of any loss or claim
 24 for which each such company shall be liable.

25 (2) A provision that the sworn statement required by said standard
 26 form, the written request by the insured for a reference under section one
 27 hundred or the notice of any claim authorized by section one hundred and
 28 two may be rendered, made or given to any one of such companies or,
 29 in the case of said notice, to the agent of any one of such companies, and
 30 that such statement, request or notice so rendered, made or given shall
 31 be valid and binding as to all of such companies.

32 (3) A provision that, in any action or suit under the policy, service of
 33 process may be made on any one of such companies and that such service
 34 shall be deemed valid and binding service upon all of such companies.

35 (4) A provision, in the case of a policy issued by mutual companies,
 36 that the contingent mutual liability of the insured to each such company
 37 shall be based on such proportion of the total premium as the amount

insured by each such company bears to the total amount insured under 38
the policy. 39

(5) A provision that upon cancellation by any company of its liability 40
under the policy the return premium, if any, to be paid or tendered to the 41
insured shall be based on such proportion of the total premium stated in 42
the policy as the amount insured by the cancelling company bears to the 43
total amount insured under the policy. 44

The said provisions shall be printed in or on the policy under the cap- 45
tion: — "*Provisions Specially Applicable to this Combination Policy*" or 46
such other distinctive caption as the commissioner may prescribe. 47

Such policies shall be subject to the first to sixth, inclusive, and ninth 48
clauses, of said section ninety-nine, except as otherwise provided herein 49
and except that there may be printed on or in said policies or on the filing- 50
back thereof such device or devices and such distinctive title of the policy 51
as the commissioner may approve, together with the names, locations, 52
dates of incorporation, plan of operation, the amounts of the paid-up 53
capital stock in case of stock companies, and the names of the officers and 54
agents of each such company. 55

Same subject.
Policies issued
by mutual
companies
1924, 285, § 1.

SECTION 102B. The provisions of sections seventy-six, eighty, eighty- 1
one, eighty-three, ninety-six, ninety-eight, one hundred, one hundred and 2
one hundred and two shall apply to policies issued under section 3
one hundred and two A, to dividends and assessments and to reference 4
proceedings and to claims thereunder except as hereinafter provided. 5

The person insured under such a policy issued by mutual companies 6
shall be deemed to be a member of each company while the policy is in 7
force and entitled to one vote at the meetings of each company. 8

The notice, endorsement and statement required by said sections 9
seventy-six, eighty and eighty-one, respectively, shall be in such form 10
and in such place on the policy as the commissioner may prescribe. 11

The dividends under said section eighty, the contingent mutual liability 12
of the insured fixed by said sections eighty-one and eighty-three and the 13
liability of each company for the proportionate excess mentioned in said 14
section ninety-six shall be computed or based on such proportion of the 15
total premium for the policy as the amount insured by such company 16
bears to the total amount insured under the policy. 17

The notice to policyholders required by said section eighty shall be 18
sent by each such company to the insured. The provisions of section 19
ninety-eight shall apply to the application, if any, of the insured to each 20
such company and to their by-laws. 21

The written request by the insured for a reference under said section 22
one hundred, the written notice of a claim authorized by said section one 23
hundred and two or the sworn statement upon the written demand by a 24
company as provided in said section one hundred and two may be made or 25
given to any one of such companies or, in the case of said notice, to the 26
agent of any one of such companies, and such request, notice or statement 27
so made or given shall be deemed valid and sufficient as to all such com- 28
panies. The request for a sworn statement under said section one hun- 29
dred and two may be made by any such company, and such request shall 30
be deemed a sufficient request upon the insured as to all of such com- 31
panies. All such companies shall, upon the written request under section 32
one hundred being made to any one of such companies, join in the refer- 33
ence proceeding and shall jointly exercise the powers and perform the 34
duties imposed upon a company by said section. 35

36 Nothing in this section shall be construed as affecting, except as pro-
 37 vided herein, any provision of law relative to the rights, powers, duties
 38 and liabilities of mutual fire companies and persons insured thereby.

1 SECTION 103. [REPEALED, 1923, 336, § 2.]

1 SECTION 104. Any person aggrieved by any rating of a fire company
 2 or board making premium rates for fire insurance may file a written
 3 complaint with the commissioner, who shall notify the board of appeal
 4 on fire insurance rates. The complaint shall state in detail the grounds
 5 upon which the complainant asks relief. The said board shall notify in
 6 writing all parties whom it deems to be interested, and shall fix a time,
 7 not earlier than seven days after the date of the notice, and a place for
 8 hearing the complaint. After due hearing the board shall make a finding
 9 as to whether the established rate is excessive, unfair or discriminatory,
 10 and shall make such recommendations as it deems advisable. The find-
 11 ing and recommendation in each case shall be made a matter of record
 12 and shall be open to public inspection.

Complaint
 by person
 aggrieved by
 fire rates
 Proceedings
 1911, 493, § 2

FIDELITY INSURANCE AND CORPORATE SURETYSHIP.

1 SECTION 105. A company organized under the fourth clause of sec-
 2 tion forty-seven or corresponding provisions of earlier laws may make
 3 contracts of insurance to guarantee the fidelity of persons holding posi-
 4 tions of trust in private or public employment or responsibility, and
 5 may, if accepted and approved by the court, magistrate, obligee or
 6 person competent to approve such bond, act as joint or sole surety upon
 7 the official bond or the bond, recognizance or other undertaking in civil
 8 and criminal procedure of any person or corporation to the United
 9 States, to the commonwealth or to any county, city, town, judge of
 10 probate and insolvency or other court, sheriff, magistrate or other public
 11 officer, or to any corporation or association public or private; and also
 12 may act as joint or sole surety upon any bond or undertaking to any
 13 person or corporation or to the commonwealth conditioned upon the
 14 performance of any duty or trust, or for the doing or not doing of any-
 15 thing in said bond specified, and upon bonds to indemnify against loss
 16 any person or persons who are responsible as surety or sureties upon a
 17 written instrument or otherwise for the performance by others of any
 18 office, employment, contract or trust. If by law two or more sureties
 19 are required upon any obligation upon which such company is authorized
 20 to act as surety, it may act as joint or sole surety thereon, and may be
 21 accepted as such by the court, justice, magistrate or other officer or
 22 person authorized to approve the sufficiency of such bond or under-
 23 taking; and so much of section nine of chapter two hundred and five
 24 as requires that sureties on bonds to a judge of probate shall be residents
 25 of the commonwealth shall not forbid the acceptance of a qualified
 26 foreign company as joint or sole surety on any such bond. A bond
 27 given by it under section twenty of chapter one hundred and fifty-eight,
 28 section twenty-four of chapter one hundred and sixty-eight or section
 29 nine of chapter one hundred and seventy shall be in a form approved by
 30 the commissioner of corporations and taxation or the commissioner of
 31 banks, respectively, and an attested copy of such bond, with a certifi-
 32 cate of the custodian that the original is in his possession, shall be filed
 33 with the commissioner concerned. No such company shall incur in

Powers of
 fidelity and
 corporate
 surety
 companies.
 1884, 296,
 §§ 3, 4
 1885, 241
 1887, 214, § 61
 1893, 117,
 §§ 1, 2
 1894, 522, § 61
 1896, 346; 361
 1898, 54
 1899, 364, § 1
 R. L. 118,
 §§ 5, 61,
 1907, 576,
 §§ 5, 61, 122
 1909, 256,
 1911, 341
 1912, 330
 1916, 40, § 1
 1919, 350,
 §§ 45, 46, 52
 1924, 106, § 9
 1925, 267, § 11,
 345.

behalf or on account of any one person a liability for an amount larger than one tenth of its net assets, unless it shall be secured from loss thereon beyond that amount by suitable and sufficient collateral agreements of indemnity, by agreements of other joint surety or sureties relative to the amount of liability assumed by it or them, by deposit with it in pledge or conveyance to it in trust for its protection of property equal in value to the excess of its liability over such limit, or, if such liability is incurred in behalf or on account of a fiduciary holding property in a trust capacity, by such deposit or other disposition of a suitable and sufficient portion of the estate so held that no further sale, mortgage, pledge or other disposition can be made thereof without such company's approval, except by the decree of a court having proper jurisdiction.

In cases where an individual surety would be required to make an oral recognizance in open court or before a justice or other magistrate, a company authorized by this section to act on such recognizance as sole surety shall, instead of recognizing orally by an officer or agent, enter into a bond duly executed by the principal, and in behalf of such company acting as surety, by its officer or agent thereto duly authorized, and sealed with its corporate seal, and neither the principal nor the surety shall recognize orally. The condition of the bond shall be the same as that of an oral recognizance taken in such cases from an individual surety, and the bond shall be subject to the approval of the court, justice or other magistrate, who shall endorse his approval on it. Such bond, if approved by the court, justice or other magistrate, shall not be defeated by reason of the failure of the principal to execute the bond, or by any failure to comply with the provisions of this section that would not defeat the bond at common law as against the company acting as surety.

The commissioner shall transmit forthwith to each register of probate and insolvency, to the clerk of each district court, to each clerk of the courts, to the clerks of the superior court for civil and criminal business in the county of Suffolk and to the clerk of the supreme judicial court for the county of Suffolk, the names of all corporate surety companies as they become or cease to be qualified to do business in the commonwealth.

This section shall apply to all companies authorized to transact the business specified in the fourth clause of section forty-seven.

Deposit
required
of foreign
company.
1904, 304.
1907, 576.
§§ 62, 122.

SECTION 106. A foreign company of the class designated in the preceding section shall not be admitted and authorized to transact business in the commonwealth until besides complying with sections one hundred and fifty-one and one hundred and fifty-five it has satisfied the commissioner that it has made a deposit with the state treasurer, or the proper officer or board of some other state of the United States, for the protection of its policy-holders in the United States of an amount not less than one hundred thousand dollars, which, if so on deposit in the commonwealth, shall not be returned to the company while it has any liabilities outstanding in the commonwealth, nor until the commissioner has given his written consent to such return.

Status of
surety bonds.
1919, 90.

SECTION 107. The bonds on which such company becomes surety shall not be deemed insurance contracts as defined in section two, but the company shall otherwise be subject to this chapter so far as appli-

4 cable, and insurance agents and brokers shall in respect to such bonds be
 5 subject to all the provisions of this chapter applying to them in respect
 6 to insurance contracts.

ACCIDENT AND HEALTH INSURANCE.

1 SECTION 108. No policy of insurance against loss or damage from
 2 disease or by the bodily injury or death by accident of the insured shall
 3 be issued or delivered in the commonwealth: (a) until a copy of the
 4 policy and the table of rates or manual of risks of the company has been
 5 on file with the commissioner for at least thirty days, unless before the
 6 expiration of said thirty days the commissioner shall have approved the
 7 policy in writing; nor (b) if the commissioner notifies the company in
 8 writing that in his opinion the form of said policy does not comply with
 9 the laws of the commonwealth, specifying the reasons for his opinion,
 10 provided that such action of the commissioner shall be subject to review
 11 by the supreme judicial court; nor (c) unless every part is plainly printed
 12 in type not smaller than long primer or ten point type; nor (d) unless
 13 there is printed on the first page thereof and on its filing-back, in type
 14 not smaller than eighteen point or great primer, a brief description of
 15 the policy; nor (e) unless the exceptions be printed with the same prom-
 16 inence as the benefits to which such exceptions apply; nor (f) unless it
 17 contains in substance the following provisions:

Accident or
 health policies,
 approval and
 contents.
 1910, 493, § 1.
 1915, 155.
 1916, 28.
 1919, 92, § 1.
 261 Mass. 245.
 266 Mass. 230.
 4 Op. A. G.
 505.
 Op. A. G.
 (1917) 2.

18 1. A provision that such policy and such papers as may be attached
 19 to or endorsed thereon shall constitute the whole contract of insurance,
 20 except as the same may be affected by any table of rates or classification
 21 of risks filed by the company with the commissioner.

22 2. A provision that no statement made by the applicant which is not
 23 incorporated in or endorsed on the policy issued to such applicant shall
 24 avoid the policy or be used in evidence, and that no provision of the
 25 charter, constitution or by-laws shall be used in defense of any claims
 26 arising under any such policy unless such provisions are incorporated in
 27 full in the policy; but this requirement shall not be deemed to apply to
 28 the table of rates or manual of classification of risks of any company filed
 29 with the commissioner prior to the date of the occurrence of the injury
 30 or commencement of the sickness for which indemnity is claimed.

31 3. A provision specifying the time within which notice of accident or
 32 disability shall be given, which shall not be less than twenty days from
 33 the date of the accident nor less than ten days from the date of the be-
 34 ginning of the disability from sickness upon which the claim is based;
 35 provided, that in case of accidental death immediate notice thereof may
 36 be required, unless the notice as herein specified may be shown not to
 37 have been reasonably possible.

38 4. A provision that notice of a claim for indemnity shall be deemed
 39 sufficient when given to the office or agent of the company specified in the
 40 policy.

41 5. A provision that under every such policy, if a past due premium
 42 shall be accepted by the company or by a branch office or by a duly au-
 43 thorized agent of the company in the town or county where the insured
 44 shall reside, or by the duly authorized agent of the company who ac-
 45 cepted the last premium on the policy, if so authorized at the time of the
 46 acceptance of the past due premium, such acceptance shall reinstate
 47 the policy in full as to disability resulting from accidental bodily injuries
 48 thereafter sustained, but shall only reinstate the policy as to disability

from disease beginning more than ten days after the date of such acceptance. 49
50

6. A provision that if the insured is injured or contracts disease after 51
having changed his occupation to one classified by the company as more 52
hazardous than that stated in the policy, or while he is doing any act 53
or thing pertaining to any occupation so classified, except ordinary 54
duties about his residence or while engaged in recreation, the company 55
will pay such proportion of the indemnities provided in the policy as the 56
premium paid would have purchased at the rate, but within the limits 57
fixed by the company, for such more hazardous occupation according to 58
the company's rates and classification of risks filed with the commis- 59
sioner prior to the occurrence of the injury or the commencement of the 60
disease for which indemnity is claimed. As an alternative to the provi- 61
sions of this paragraph the policy may provide that no reduction shall 62
be made in any indemnity therein provided for by reason of any change 63
in the occupation of the insured or by reason of his doing any act or thing 64
pertaining to any other occupation. 65

7. A provision that the company will pay the benefit promised for 66
specified disabilities or accidental death within sixty days of the receipt 67
of due proofs thereof; or in lieu thereof a provision, at the option of the 68
insured, that such benefit for a specified amount shall be payable in instal- 69
ments, the provision to state the time within which the first instalment 70
shall be paid, which shall not exceed sixty days from the receipt of due 71
proofs by the company, the time for payment of subsequent instalments 72
and the number thereof; also a provision, which may be incorporated 73
in the body of the policy or made a part of the contract by an endorse- 74
ment or rider, that the company will pay to any person entitled thereto, 75
at least once in thirty days, the amount which has accrued on account 76
of sickness or accident, upon receipt of due proof thereof. 77

Op. A. G.
(1917) 2.

8. A provision that cancellation may be effected by the company only 78
by written notice delivered to the insured or mailed, postpaid, to him at 79
his last address, as shown by the records of the company, and the tender 80
of cash or the company's check for the unearned portion of the premium, 81
but such cancellation shall be without prejudice to any claim arising on 82
account of disability commencing prior to the date on which the cancel- 83
lation takes effect. The foregoing provision shall be used only in policies 84
providing for cancellation by the company. 85

9. A provision specifying the time within which proofs of claim shall 86
be furnished to the company, which shall be not less than ninety days 87
from the date of death, dismemberment or loss of sight or from the termi- 88
nation of any other disability. 89

A policy shall be deemed to contain any such provision in substance, 90
when, in the opinion of the commissioner, the provision is stated in terms 91
more favorable to the insured or his beneficiary than are herein set forth. 92

Certain
conditions
prohibited.
1910, 493, § 2.

SECTION 109. No policy insuring against accidental bodily injuries or 1
disease or death from accident shall be issued or delivered in the com- 2
monwealth if it contains in substance any of the following provisions: 3

1. A provision that shall authorize the deduction of any premium or 4
assessment from any indemnity payable under the terms of the policy, 5
except such premium or assessment as may be due or covered by written 6
order or note at the time of payment of the indemnity. 7

2. A provision limiting the amount of indemnity to be paid to a sum 8
less than the indemnity as stated in the policy and for which the premium 9

10 has been paid; provided, that if the insured shall carry other insurance
 11 covering the hazard without giving written notice to the companies
 12 issuing the policies, then and in that case each company may stipulate
 13 that it will be liable only for such proportionate amount of benefits as
 14 the indemnity promised bears to the total amount of indemnity in all
 15 the policies covering such hazard and for the return of such part of the
 16 premium paid as shall exceed the pro rata of the premium for the benefits
 17 paid.

1 SECTION 110. Nothing in the two preceding sections shall apply to
 2 or affect any general or blanket policy of insurance issued to any em-
 3 ployer, whether an individual, corporation, co-partnership, or associa-
 4 tion, or to any municipal corporation or department thereof, or to a
 5 police or fire department, or to any college, school or other institution
 6 of learning or to the head or principal thereof, or to any organization
 7 for health, recreational or military instruction or treatment, under-
 8 writers' corps, salvage bureau or like organization, where the officers,
 9 members or employees or classes or departments thereof or the students
 10 or patients are insured against specified accidental bodily injuries or
 11 diseases while exposed to the hazards of the occupation, course of in-
 12 struction or treatment, or otherwise, for a premium intended to cover
 13 the risks of all the persons insured under such policy. Where the pre-
 14 mium is to be paid by the employer and the employees jointly and the
 15 benefits of the policy are offered to all eligible employees, a policy cov-
 16 ering not less than seventy-five per cent of such employees, or covering
 17 members of an association of such employees if the members so insured
 18 in fact constitute not less than seventy-five per cent of all eligible em-
 19 ployees, shall be considered a general or blanket policy within the mean-
 20 ing of this section.

Sections
 108 and
 109 not
 applicable
 to certain
 policies.
 General or
 blanket
 policy
 1910, 493, § 6.
 1919, 92, § 2.
 1921, 136.
 1930, 64.

1 SECTION 111. The beneficiary under a policy of insurance against
 2 loss or damage from disease or by the bodily injury or death by accident
 3 of the insured may maintain an action thereon in his own name.
 1918, 257, § 371. 1919, 5. 1920, 2.

Beneficiary
 under health
 or accident
 policy may
 sue.

LIABILITY INSURANCE.

1 SECTION 111A. Two or more stock companies may issue a single
 2 policy of insurance against loss or damage on account of the hazards
 3 specified in subdivision (b) and (c) of the sixth clause of section forty-
 4 seven on which such companies shall be jointly and severally liable for
 5 any loss or claim, or two or more mutual companies may issue such a
 6 policy on which each such company shall be severally liable for a speci-
 7 fied percentage of any loss or claim. Such policies shall be executed by
 8 the duly authorized officers of each company, subject to the provisions
 9 of section thirty-three in the case of a domestic company.
 10 No such policy shall be issued or delivered until a copy of the form
 11 thereof has been on file for thirty days with the commissioner, unless
 12 before the expiration of said thirty days he shall have approved the
 13 form of the policy in writing; nor if the commissioner notifies the com-
 14 panies in writing within said thirty days, that in his opinion the form of
 15 the policy does not comply with the laws of the commonwealth specify-
 16 ing his reasons therefor; provided, that such action of the commissioner
 17 shall be subject to review by the supreme judicial court, nor unless it is

Combination
 liability
 policies,
 approval and
 contents.
 1925, 164, § 1.
 1928, 80, § 3.

headed by the corporate names of all the companies; nor unless it contains in substance: —

(1) A provision plainly specifying, in the case of a policy issued by stock companies, that the companies are jointly and severally liable for any loss or claim or, in the case of a policy issued by mutual companies, the percentage of any loss or claim for which each such mutual company shall be liable.

(2) A provision that any notice, sworn statement or proof of loss which may be required by the provisions of said policy may be rendered, made or given to any one of such companies or to a duly authorized agent of any one of such companies, and that such notice, sworn statement or proof of loss so rendered, made or given shall be valid and binding as to all of such companies.

(3) The provisions numbered (3) and (5) in section one hundred and two A.

(4) The provision, in the case of a policy issued by a mutual company, numbered (4) in said section one hundred and two A.

Nothing in this section shall permit two or more companies to issue a single motor vehicle liability policy as defined in section thirty-four A of chapter ninety.

Same subject. Policies issued by mutual companies. 1925, 164, § 1.

SECTION 111B. Policies issued by mutual companies under section one hundred and eleven A and persons insured under such policies and dividends and assessments thereunder shall be subject to the provisions of the second, third, fourth and fifth paragraphs of section one hundred and two B and, except as otherwise provided in said paragraphs, sections seventy-six, eighty so far as applicable, eighty-one and ninety-eight, the last paragraph of section ninety-three and so much of section eighty-three as is not inconsistent with said last paragraph of section ninety-three, relative to policies issued by mutual fire companies, persons insured under such policies and dividends and assessments thereunder. Nothing in this section shall be construed as affecting, except as provided herein, any provision of law relative to the rights, powers, duties and liabilities of mutual liability companies and persons insured thereby.

Liability of insurer under liability policy regulated. 1914, 464, § 1. 1923, 149, § 1. 1939, 349, § 3. 228 Mass. 181, 191. 230 Mass. 35. 242 Mass. 367. 253 Mass. 610. 262 Mass. 235. 265 Mass. 158. 267 Mass. 394. 269 Mass. 1. 270 Mass. 233.

SECTION 112. The liability of any company under a motor vehicle liability policy, as defined in section thirty-four A of chapter ninety, or under any other policy insuring against liability for loss or damage on account of bodily injury or death, or for loss or damage resulting therefrom, or on account of damage to property, shall become absolute whenever the loss or damage for which the insured is responsible occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or duty of the company to make payment on account of said loss or damage. No such contract of insurance shall be cancelled or annulled by any agreement between the company and the insured after the said insured has become responsible for such loss or damage, and any such cancellation or annulment shall be void.

Judgment creditor may sue insured under liability policy. 1914, 464, § 2. 1923, 149, § 2. 228 Mass. 184.

SECTION 113. Upon the recovery of a final judgment against any person by any person, including executors or administrators, for any loss or damage specified in the preceding section, if the judgment debtor was at the accrual of the cause of action insured against liability there-

5 for, the judgment creditor shall be entitled to have the insurance money 242 Mass. 367
 6 applied to the satisfaction of the judgment as provided in the tenth 245 Mass. 364
 7 clause of section three of chapter two hundred and fourteen. 253 Mass. 610.

262 Mass. 235. 267 Mass. 394. 269 Mass. 1. 270 Mass. 233. 273 Mass. 529

COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE.

1 SECTION 113A. No motor vehicle liability policy as defined in section 2 Compulsory
 2 thirty-four A of chapter ninety shall be issued or delivered in the com- motor vehicle
 3 monwealth until a copy of the form of the policy has been on file with the liability poli-
 4 commissioner for at least thirty days, unless before the expiration of said cies, approval
 5 period the commissioner shall have approved the form of the policy in and contents
 6 writing, nor if the commissioner notifies the company in writing that in 1925, 346, § 4;
 7 his opinion the form of said policy does not comply with the laws of the 1926, 368,
 8 commonwealth, specifying his reasons therefor, provided that he shall §§ 4, 5
 9 notify the company in writing within said period of his approval or dis- 1928, 187, § 2;
 10 approval thereof, and provided, further, that such action of the com- 381, § 5
 11 missioner shall be subject to review by the supreme judicial court; nor 267 Mass. 391.
 12 if it contains any exceptions or exclusions as to specified accidents or
 13 injuries or causes thereof; nor unless it contains in substance the follow-
 14 ing provisions: —

15 (1) That the policy be subject to the provisions of sections one hun-
 16 dred and twelve and one hundred and thirteen, as respects both the owner
 17 of a motor vehicle or trailer insured thereunder and any person responsi-
 18 ble for its operation with the express or implied consent of such owner.

19 (2) That no cancellation of the policy, whether by the company or by
 20 the insured, shall be valid unless written notice thereof is given by the
 21 party proposing cancellation to the other party and, except when the
 22 intended effective date thereof is the date of expiration of the registration
 23 of the motor vehicle or trailer covered by the policy, to the registrar of
 24 motor vehicles in such form as the department of public works may
 25 prescribe, at least fifteen days in each case prior to the intended effective
 26 date thereof, which date shall be expressed in said notice, and that, in
 27 the event of a cancellation by the insured, he shall, if he has paid the
 28 premium on the policy to the company, or to its agent who issued the
 29 policy, or to the duly licensed insurance broker, if any, by whom the
 30 policy was negotiated, be entitled to receive a return premium after de-
 31 ducting the customary monthly short rates for the time the policy shall
 32 have been in force, or in the event of cancellation by the company, the
 33 insured shall, if he has paid the premium as aforesaid, be entitled to
 34 receive a return premium calculated on a pro rata basis; provided, that
 35 if the insured after receiving a notice of cancellation by the company files
 36 a new certificate under section thirty-four H of said chapter ninety prior
 37 to the intended effective date of such cancellation, the filing of said
 38 certificate shall operate to terminate the policy on the date of said filing,
 39 and the return premium, if any, payable to the insured shall be com-
 40 puted as of the date of said filing, instead of the intended effective date of
 41 cancellation expressed in the notice thereof; and provided further, that
 42 if the final effective date of a cancellation by the company is fixed by an
 43 order of the board of appeal on motor vehicle liability policies and bonds
 44 or of the superior court, or a justice thereof, as provided in section one
 45 hundred and thirteen D, the return premium, if any, payable to the
 46 insured shall be computed as of such final effective date.

(3) That if the company shall cease for any reason to be authorized to transact business in the commonwealth the insured shall, if he has paid the premium as aforesaid, be entitled to a return premium calculated on a pro rata basis as of the effective date of the new certificate, if any, filed by him under said section thirty-four H, or, if no certificate is filed as aforesaid, as of the effective date of the revocation under said section thirty-four H of the registration of the motor vehicle or trailer covered by the policy.

(4) That the policy, the written application therefor, if any, and any rider or endorsement, which shall not conflict with the provisions of this chapter or said section thirty-four A, shall constitute the entire contract between the parties.

(5) That no statement made by the insured or on his behalf, either in securing the policy or in securing registration of the motor vehicle or trailer covered thereby, no violation of the terms of the policy and no act or default of the insured, either prior or subsequent to the issue of the policy, shall operate to defeat or avoid the policy so as to bar recovery within the limit provided in the policy by a judgment creditor proceeding under the provisions of said section one hundred and thirteen and clause (10) of section three of chapter two hundred and fourteen.

(6) That if the death, insolvency or bankruptcy of the insured shall occur within the policy period, the policy during the unexpired portion of such period shall cover the legal representatives of the insured.

Any such motor vehicle liability policy shall be deemed to contain any such provision in substance when in the opinion of the commissioner the provision is stated in terms more favorable to the insured or to a judgment creditor than herein set forth, and such policy may contain such other provisions not inconsistent with this chapter or said section thirty-four A as may be approved by the commissioner.

Motor vehicle liability policies may be issued, subject to the provisions of section thirty-four C of said chapter ninety, covering more than one motor vehicle or trailer.

Any company authorized to issue motor vehicle liability policies, as defined in said section thirty-four A, may, pending the issue of such a policy, execute an agreement, to be known as a binder, which shall during such time provide indemnity or protection in like manner and to the same extent as such a policy. The provisions of this section shall apply to such binders, except that provisions numbered (1) to (6), inclusive, need not be expressly stated therein but may be incorporated by reference in a manner approved by the commissioner, and the provisions of sections one hundred and thirteen B and one hundred and thirteen D relative to such motor vehicle liability policies shall likewise apply to such binders.

The provisions of this section, except provisions numbered (1), (4) and (5), shall apply to motor vehicle liability bonds as defined in said section thirty-four A, and every such bond shall contain a provision that no statement made by the principal on such bond or on his behalf either in securing the bond or in securing registration of the motor vehicle or trailer covered thereby, and no violation of the terms of the bond and no act or default of the principal, either prior or subsequent to the execution of the bond, shall operate to defeat or avoid such bond as against a judgment creditor of such principal or of a person responsible for the operation of the principal's motor vehicle or trailer with his express or implied consent.

1 SECTION 113B. The commissioner shall, annually on or before Sep-
 2 tember fifteenth, after due hearing and investigation, fix and establish
 3 fair and reasonable classifications of risks and adequate, just, reasonable
 4 and non-discriminatory premium charges to be used and charged by
 5 companies in connection with the issue or execution of motor vehicle
 6 liability policies or bonds, both as defined in section thirty-four A of
 7 chapter ninety, for the ensuing calendar year or any part thereof. He
 8 shall, on or before said date, sign memoranda of the classifications and
 9 premium charges fixed and established by him in such form as he may
 10 prescribe and file the same in his office, and cause a duly certified copy
 11 of such classifications and schedule of premium charges forthwith to be
 12 transmitted to each company authorized to issue such policies or to
 13 execute such bonds. During said calendar year, the classifications and
 14 premium charges fixed and established by the commissioner for such
 15 policies shall be used by all companies issuing such policies, and the
 16 classifications and premium charges for such bonds shall be used by all
 17 companies acting as surety on such bonds.

18 The commissioner shall cause notice of every such hearing to be given
 19 by advertising the date thereof once in at least one newspaper printed
 20 in each of the cities of Boston, Worcester, Springfield, Newburyport,
 21 Gloucester, Pittsfield, Fall River, New Bedford, Haverhill and Lawrence,
 22 at least ten days prior to said date, and he shall incorporate in such
 23 notice or publish therewith a schedule clearly and precisely setting forth
 24 the premium charges proposed to be fixed and established for the ensuing
 25 calendar year. Such notice and schedule shall be in such form as the
 26 commissioner may deem expedient.

27 The commissioner may make, and, at any time, alter or amend,
 28 reasonable rules and regulations to facilitate the operation of this section
 29 and enforce the application of the classifications and premium charges
 30 fixed and established by him, and to govern hearings and investigations
 31 under this section. He may at any time require any company to file
 32 with him such data, statistics, schedules or information as he may deem
 33 proper or necessary to enable him to fix and establish or secure and
 34 maintain fair and reasonable classifications of risks and adequate, just,
 35 reasonable and non-discriminatory premium charges for such policies
 36 or bonds. He may issue such orders as he finds proper, expedient or
 37 necessary to enforce and administer the provisions of this section, to
 38 secure compliance with any rules or regulations made thereunder, and
 39 to enforce adherence to the classifications and premium charges fixed
 40 and established by him. The supreme judicial court for the county of
 41 Suffolk shall have jurisdiction in equity upon the petition of the com-
 42 missioner and upon a summary hearing, to enforce all lawful orders of
 43 the commissioner. Memoranda of all actions, orders, findings and
 44 decisions of the commissioner shall be signed by him and filed in his
 45 office as public records open to public inspection.

46 Any person or company aggrieved by any action, order, finding or
 47 decision of the commissioner under this section may, within twenty days
 48 from the filing of such memorandum thereof in his office, file a petition
 49 in the supreme judicial court for the county of Suffolk for a review of
 50 such action, order, finding or decision. An order of notice returnable
 51 not later than seven days from the filing of such petition shall forth-
 52 with issue and be served upon the commissioner. Within ten days after
 53 the return of said order of notice, the petition shall be assigned for a
 54 speedy and summary hearing on the merits. The action, order, finding

Same subject.
 Annual classi-
 fications of
 risks and
 establishment
 of premium
 charges
 Review, etc.,
 by supreme
 judicial court.
 1925, 346, § 4
 1927, 182
 1928, 381, § 6.
 1929, 34, § 2,
 166.
 1930, 343
 265 Mass. 23.
 270 Mass. 7.

or decision of the commissioner shall remain in full force and effect 55
 pending the final decision of the court unless the court or a justice thereof 56
 after notice to the commissioner shall by a special order otherwise direct. 57
 The court shall have jurisdiction in equity to modify, amend, annul, 58
 reverse or affirm such action, order, finding or decision, shall review all 59
 questions of fact and of law involved therein and may make any appropri- 60
 ate order or decree. The decision of the court shall be final and con- 61
 clusive on the parties. The court may make such order as to costs as 62
 it deems equitable. The court shall make such rules or orders as it 63
 deems proper governing proceedings under this section to secure prompt 64
 and speedy hearings and to expedite final decisions thereon. 65

If, for any reason, classifications of risks and premium charges fixed 66
 and established as aforesaid on or before September fifteenth in any year 67
 for the ensuing calendar year are not effective for the said year, the 68
 classifications of risks and premium charges in effect for the then cal- 69
 endar year shall remain in full force and effect, and shall be used and 70
 charged in connection with the issue or execution of motor vehicle lia- 71
 bility policies or bonds for said ensuing calendar year until classifications 72
 of risks and premium charges for said ensuing calendar year are finally 73
 fixed and established. Classifications of risks and premium charges 74
 when finally fixed and established for said ensuing calendar year shall be- 75
 come effective as of January first of said year, and all premium charges 76
 affected by any change thereby made which have been paid or incurred 77
 prior to the time when such charges are finally fixed and established shall 78
 be adjusted in accordance with such change, as of said January first. 79

The commissioner, his deputies or examiners shall at all times have 80
 access to the certificates defined in said section thirty-four A filed with 81
 the registrar of motor vehicles. 82

Every mutual company issuing or executing motor vehicle liability 83
 policies or bonds, both as defined in said section thirty-four A, shall 84
 constitute such policies or bonds as a separate class of business for the 85
 purpose of paying dividends. Any dividends on such policies or bonds 86
 shall be declared on the profits of the company from said class of business. 87

Same subject.
 Notification
 to registrar
 of names of
 companies
 authorized
 to issue
 policies, etc.
 1925, 346, § 4.

SECTION 113C. The commissioner shall forthwith notify the regis- 1
 trar of motor vehicles of the names of all companies as they become or 2
 cease to be authorized to issue motor vehicle liability policies or to act as 3
 surety upon motor vehicle liability bonds, both as defined in section 4
 thirty-four A of chapter ninety. 5

Same subject.
 Proceedings
 on complaints
 relative to
 cancellations
 or refusals
 of companies
 to issue
 policies,
 1925, 346, § 4.
 1928, 381, § 7.

SECTION 113D. Any person aggrieved by the issue by any company 1
 of a notice purporting to cancel a motor vehicle liability policy or bond, 2
 both as defined in section thirty-four A of chapter ninety, or by the refusal 3
 of any company, or an agent thereof on its behalf, to issue such a policy 4
 or to execute or to act as surety on such a bond, may, within ten days 5
 after receiving written notice purporting to cancel such policy or bond, 6
 unless he has secured a certificate as defined in said section thirty-four 7
 A from another company, or within a like period after such refusal, file a 8
 written complaint with the commissioner. The complaint shall be in such 9
 form and contain such information, including the address of the complain- 10
 ant, as the commissioner may prescribe. If it relates to a cancellation, it 11
 shall specify the registration number of the motor vehicle or trailer 12
 covered by the policy or bond and the date on which the complainant 13

14 received said written notice, and, if it relates to a refusal as aforesaid, the
15 date thereof. The board of appeal on motor vehicle liability policies and
16 bonds, hereinafter called the board, may allow such complaint to be
17 amended.

18 The commissioner shall cause the other members of the board to be
19 notified of the complaint and written notice to be given to the parties of
20 the time and place of the hearing thereon, which time shall be not less
21 than five days from the filing of the complaint, unless the parties agree in
22 writing that the hearing may be held sooner.

23 If the complaint relates to the cancellation of such a policy or bond, the
24 filing of the complaint shall operate to continue the policy or bond in full
25 force and effect, but not beyond its date of expiration in any case, pend-
26 ing the finding and order of the board, and pending the decree of the
27 superior court or a justice thereof if an appeal from such finding and order
28 is taken as hereinafter provided; and the commissioner shall cause a copy
29 of such complaint, attested in such manner as he may prescribe, forth-
30 with to be sent to the registrar of motor vehicles or his office and to the
31 company.

32 A complaint may allege that a cancellation is invalid, or improper and
33 unreasonable, or both, or that a refusal to issue or execute such a policy
34 or bond is improper and unreasonable. The board shall after due hearing
35 forthwith make a finding in respect to the issue or issues raised by the
36 complaint, and it may also, in any case, make a finding as to whether or
37 not the complainant is a proper and suitable person to whom to issue
38 such a policy or on behalf of whom to execute such a bond as surety. The
39 board shall in all cases enter, in such form as it may prescribe, an appro-
40 priate order. If the board finds in favor of the company in the case of
41 such a cancellation, the order shall, unless the policy or bond has expired,
42 affirm the cancellation and specify a date, not less than fifteen nor more
43 than twenty days from the filing of a memorandum of the finding and
44 order in the office of the commissioner as hereinafter provided, on which
45 the cancellation shall be effective.

46 The commissioner, as soon as may be after the rendition thereof, shall
47 cause a written memorandum of all findings and the orders entered
48 thereon signed by the assenting members of the board to be filed in his
49 office as a public record, and he shall on the date of said filing cause a
50 copy of the finding and order, duly attested by the board or a member or
51 the secretary thereof, with the date of said filing endorsed thereon, to
52 be sent to each of the parties and, if the finding and order relates to the
53 cancellation of such a policy or bond, to the registrar of motor vehicles or
54 his office.

55 Any person or company aggrieved by any finding or order of the board,
56 other than a finding that the complainant is or is not a suitable and proper
57 person to whom to issue such a policy or on behalf of whom to execute
58 such a bond as surety, may, within ten days after the filing of the memo-
59 randum thereof in the office of the commissioner, unless the policy or
60 bond has expired or will expire prior to the expiration of said period, and
61 any person or company aggrieved by any finding of the board that a
62 complainant is or is not a suitable and proper person as aforesaid may,
63 in any case, within said period, appeal therefrom to the superior court
64 or any justice thereof, in any county. The appellant shall file a duly
65 certified copy of the complaint and of the finding and order thereon, and,
66 if the appeal is taken from a finding and order of the board in respect to
67 a cancellation, the clerk of the court shall forthwith upon the filing of such

an appeal, give written notice of the filing thereof to said registrar. The court or justice shall, after such notice to the parties as it deems reasonable, give a summary hearing on such appeal and shall have jurisdiction in equity to review all questions of fact and law, and to affirm or reverse such finding or order and may make any appropriate decree. The court or justice may allow such complaint, finding or order to be amended. The decision of the court or justice shall be final. A decree of the court or justice affirming a cancellation shall specify in such decree a date not earlier than five days from the entry thereof unless it appears that the policy or bond has expired or will sooner expire, on which the cancellation shall become effective. The clerk shall, within two days after the entry thereof, send an attested copy of the decree to each of the parties and, in the case of a decree rendered upon an appeal in respect to the cancellation of such a policy or bond, to said registrar, or his office. The court or justice may make such order as to costs as it or he deems equitable. The superior court may make reasonable rules to secure prompt hearings on such appeals and a speedy disposition thereof.

The attested copy of a complaint, a finding and order of the board or a decree of the superior court, or a justice thereof, may be sent to the complainant, to the company and to said registrar by registered mail, postage prepaid, and any notice required by this section may be sent by mail, postage prepaid, addressed, in the case of the complainant, to his address specified in the complaint and, in the case of the company, to its last home office address appearing on the records of the commissioner, or, in the case of a company of a foreign country, to its resident manager in the United States, at the last address appearing on said records, or to such other person as may previously have been designated by the company by a written notice filed in the office of the commissioner.

If a company, within ten days after receipt of an attested copy of a finding and order of the board in favor of the complainant in case of a refusal to issue such a policy or to execute such a bond as surety, if no appeal therefrom has been taken as hereinbefore provided, or, if such an appeal has been taken, within five days after the entry of a decree of the superior court, or a justice thereof, affirming such a finding and order, fails to comply with said order or decree, or, if a company after receipt of an attested copy of a finding and order of the board in favor of the complainant in case of a cancellation of such a policy or bond, if no appeal therefrom has been taken as hereinbefore provided, or, if such an appeal has been taken, after the entry of a decree of the superior court, or a justice thereof, affirming such a finding and order, refuses to abide by such order or decree, the commissioner, after such inquiry as he may deem expedient, shall, in the case of a foreign company, revoke or suspend the license issued to it under section one hundred and fifty-one and the licenses issued to all of its agents under section one hundred and sixty-three, as provided in and subject to all the provisions of section five, until it shall comply with such order or decree and, in case of a domestic company, he shall apply to the supreme judicial court for an injunction, and such court shall have jurisdiction to restrain such company from the further transaction of its business until it shall comply with such order or decree.

TITLE INSURANCE.

1 SECTION 114. A company organized under the eleventh clause of Domestic
 2 section forty-seven or under earlier laws relating to such companies shall title insurance
 3 not be subject to this chapter, except this section and sections three A, companies
 4 four, six, fifteen, sixteen, eighteen, nineteen, nineteen A, twenty-two, not subject
 5 twenty-five, twenty-six, thirty, thirty-two, thirty-three, forty-four, forty- to certain
 6 seven to forty-nine, inclusive, fifty-seven to sixty-one, inclusive, sixty- provisions of
 7 nine to seventy-two, inclusive, one hundred and sixteen, one hundred and this chapter
 8 eighty-nine, one hundred and ninety-three A and one hundred and ninety- 1884, 180, § 1.
 9 four, and the first paragraph, so far as applicable to the title guaranty 1887, 214,
 10 fund, and the third paragraph, of section sixty-two. Such company may §§ 62, 64,
 11 transact all the kinds of business specified in said eleventh clause. 1889, 378,
 1894, 522,
 §§ 62, 64,
 R. L. 118,
 §§ 62, 64,
 1907, 576,
 §§ 63, 65, 122,
 1917, 146, § 4.

1924, 406, § 10. 1925, 73. 1928, 157. 1 Op. A. G. 41.

1 SECTION 115. [REPEALED, 1924, 406, § 17.]

1 SECTION 116. Every such company shall set apart an amount not Guaranty
 2 less than two fifths of its capital, and not less than one hundred thou- fund.
 3 sand dollars in any case, as a title guaranty fund, and shall invest it sub- 1884, 180, § 2.
 4 ject to the limitations imposed by this chapter upon the investment of 1887, 214, § 63.
 5 the capital of other domestic insurance companies, and shall issue no 1894, 522, § 63.
 6 title policy and make no contract of title guaranty or title insurance until R. L. 118, § 63.
 7 such amount is so set apart and invested. 1907, 576,
 §§ 64, 122,
 1917, 146, § 3.
 1926, 114, § 3.
 4 Op. A. G. 114.

8 The principal of such title guaranty fund shall be a trust for the pro-
 9 tection of title policyholders, and shall be applied only to the payment
 10 of losses and expenses incurred by reason of the title guaranty or title
 11 insurance contracts of the company. Whenever the company shall in-
 12 crease its capital, two fifths or a sufficient part of the increase shall be
 13 set apart and duly invested and added to the title guaranty fund so that
 14 such fund shall always be not less in amount than two fifths of the entire
 15 capital.

16 If by reason of losses or other cause the title guaranty fund becomes less
 17 than the minimum amount required by this section, the company shall
 18 forthwith give written notice thereof to the commissioner, and shall make
 19 no further contract of title guaranty or title insurance until the said fund
 20 has been restored nor until it has received a certificate from the commis-
 21 sioner to that effect and authorizing it to make such contracts.

1 SECTION 116A. A foreign company admitted to transact business Foreign title
 2 under the eleventh clause of section forty-seven shall not be subject to insurance
 3 this chapter except this section and sections three A, four, five, fifteen, companies
 4 sixteen, eighteen, nineteen, nineteen A, twenty-two, twenty-five, twenty- not subject
 5 six, one hundred and fifty, one hundred and fifty-one, except subdivision to certain
 6 (5) of clause Second, one hundred and fifty-four, one hundred and fifty- provisions of
 7 five, one hundred and fifty-six, one hundred and fifty-eight, one hundred this chapter.
 8 and fifty-nine, one hundred and eighty-nine, one hundred and ninety- 1928, 168.
 9 three A and one hundred and ninety-four; provided, however, that 1930, 83.

10 nothing contained in section one hundred and fifty or one hundred and
 11 fifty-one shall be construed to require any person acting as an insurance
 12 agent of such a company to be licensed under section one hundred and
 13 sixty-three. Such company may transact all the kinds of business
 14 specified in said eleventh clause.

STEAM BOILER INSURANCE.

Term of boiler policies.

SECTION 117. No company shall issue a policy of insurance on a steam boiler for a longer period than three years.

1907, 465, § 18.

1908, 563, § 2.

3 Op. A. G. 585.

SPRINKLER LEAKAGE INSURANCE.

Combination sprinkler leakage policies, approval and contents. 1928, 80, § 1.

SECTION 117A. Two or more stock or two or more mutual fire companies authorized to transact business under the eighth clause of section forty-seven may issue a single policy of insurance against loss or damage caused by any or all of the hazards specified in said eighth clause on property or interests in the commonwealth on which each company shall be severally liable for a specified percentage of any loss or claim. Such policy shall be executed by the duly authorized officers of each company subject to the provisions of section thirty-three in the case of a domestic company.

No such policy shall be issued or delivered until a copy of the form thereof has been on file for thirty days with the commissioner, unless before the expiration of said thirty days he shall approve the form of the policy in writing; nor if the commissioner notifies the company in writing within thirty days that in his opinion the form of the policy does not comply with the laws of the commonwealth, specifying his reasons therefor, provided, that such action of the commissioner shall be subject to review by the supreme judicial court; nor unless it is headed by the corporate name of each company, nor unless it contains in substance the provisions numbered (1), (3), (4) and (5) in section one hundred and two A and a provision that any notice, sworn statement or proof of loss, which may be required by the provisions of said policy may be rendered, made or given to any one of such companies or to a duly authorized agent of any one of such companies, and that such notice, sworn statement or proof of loss so rendered, made or given shall be valid and binding as to all of such companies.

The provisions of sections seventy-six, eighty, eighty-one, eighty-three and ninety-eight applicable to policies issued by mutual fire companies, persons insured under such policies and dividends and assessments thereunder shall apply to each policy issued under this section by mutual companies, to persons insured thereunder and to dividends and assessments thereunder, except as hereinafter provided.

The person insured under such a policy issued as aforesaid by mutual companies shall be deemed to be a member of each such company while the policy is in force and entitled to one vote at the meetings of each company.

The notice, endorsement and statement required by said sections seventy-six, eighty and eighty-one, respectively, shall be in such form and in such place on the policy as the commissioner shall prescribe.

The dividend under said section eighty and the contingent mutual liability of the insured fixed by said sections eighty-one and eighty-three in respect to each such company shall be computed or based on such proportion of the total premium for the policy as the amount insured by such company bears to the full amount insured under the policy.

The notice to policyholders required by said section eighty shall be sent by each such company to the insured. The provisions of said sec-

tion ninety-eight shall apply to the application, if any, of the insured to each such company and to their by-laws.

Nothing in this section shall be construed as affecting, except as provided herein, any provision of law relative to the rights, powers, duties and liabilities of mutual fire companies and persons insured thereby.

LIFE INSURANCE.

SECTION 118. All companies doing business in the commonwealth under any charter, compact, agreement or statute of this or any other state, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities, shall be deemed to be life companies, and shall not make any such insurance, guaranty, contract or pledge in the commonwealth, or to or with any resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment and the consideration therefor, nor any such insurance, guaranty, contract or pledge the performance of which is contingent upon the payment of assessments made upon survivors; provided that corporations incorporated for any educational, charitable, benevolent or religious purpose shall not be deemed life companies and shall not be subject to this chapter. Nothing herein relating to the consideration for the policy shall apply to any extra compensation which may be charged by a company to the insured for engaging in military or naval service in time of war.

Definition of life company. 1870, 349, § 5. 1872, 325, § 7. 1875, 197, § 1. 1877, 204, § 2. 1880, 196, § 4. P. S. 119, § 154. 1887, 214, § 65. 1894, 522, § 65. R. L. 118, § 65. 1907, 576, §§ 66, 122. 1917, 210. 1921, 167. 217 Mass. 47. 226 Mass. 306. 227 Mass. 63. 2 Op. A. G. 480.

All life insurance hereafter transacted by the corporations which formerly issued policies on the assessment plan under chapter four hundred and twenty-one of the acts of eighteen hundred and ninety and acts in amendment thereof shall be carried on in accordance with this chapter; but such corporations may carry out in good faith their assessment contracts made with their members prior to July first, eighteen hundred and ninety-nine.

1899, 229, §§ 4, 5. R. L. 118, § 65. 1907, 576, §§ 66, 122.

SECTION 119. Domestic life companies may make pure endowment contracts, and grant, purchase and dispose of annuities.

1917, 117.

Domestic life companies may grant annuities, etc.

SECTION 119A. If, under the terms of any annuity contract or policy of life insurance, or under any written agreement supplemental thereto, issued by any life company, the proceeds are retained by such company at maturity or otherwise, no person entitled to any part of such proceeds, or any instalment of interest due or to become due thereon, shall be permitted to commute, anticipate, encumber, alienate or assign the same, or any part thereof, if such permission is expressly withheld by the terms of such contract, policy or supplemental agreement; and if such contract, policy or supplemental agreement so provides, no payments of interest or of principal shall be in any way subject to such person's debts, contracts or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof. No such company shall be required to segregate such funds but may hold them as a part of its general corporate funds.

Protection of persons entitled to proceeds of life insurance policy or annuity contract retained by life company. 1921, 168. 1931, 64.

Discrimination prohibited.
1887, 214, § 68.
1894, 522, § 68.
R. L. 118, § 68.
1907, 576.
§§ 69, 122.
2 Op. A. G. 167.
3 Op. A. G. 47.

SECTION 120. No life company and no officer or agent thereof shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or annuity or pure endowment contracts, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes.

1
2
3
4
5
6
7

Certain agreements prohibited.
1887, 214, § 68.
1894, 522, § 68.
R. L. 118, § 68.
1907, 576.
§§ 69, 122.
Op. A. G.
(1919) 43, 88.

SECTION 121. No life company and no officer or agent thereof and no insurance broker shall make any contract of life or endowment insurance or any annuity or pure endowment contract or any agreement as to such contract other than as plainly expressed in the policy issued thereon; or give, sell or purchase, or offer to give, sell or purchase, as inducement to placing or negotiating any such contract or the continuance or renewal thereof or in connection therewith, any stocks, bonds or other securities of any company or other corporation, association or partnership, or any dividends or profits accrued thereon.

1
2
3
4
5
6
7
8
9

Discrimination on account of color prohibited.
Penalty.
1884, 235.
1887, 214.
§§ 69, 109.
1894, 522.
§§ 69, 109.
R. L. 118.
§§ 69, 109.
1907, 576.
§§ 70, 118, 122.

SECTION 122. No life company shall make any distinction or discrimination between white persons and colored persons wholly or partly of African descent as to the premiums or rates charged for policies upon the lives of such persons; nor shall any such company demand or require greater premiums from such colored persons than are at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; nor shall any such company make or require any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored person insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself or his heirs, executors, administrators and assigns to accept any amount less than the full value or amount of such policy in case of a claim accruing thereon, by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases; and any such stipulation or condition so made or inserted shall be void.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Any such company which shall refuse the application of any such colored person for insurance upon such person's life shall furnish such person, on his request therefor, with the certificate of a regular examining physician of such company who made the examination, stating that such refusal was not because such applicant is a person of color, but solely upon such grounds of the general health and prospect of longevity of such person as would be applicable to white persons of the same age and sex.

17
18
19
20
21
22
23
24

A company or an officer or agent thereof who violates any provision hereof shall be punished by a fine of not more than one hundred dollars.

25
26

Medical examination, when required.
Penalty.
1895, 366.
R. L. 118, § 71.
1907, 576.
§§ 71, 122.
1916, 12.
1918, 35.
1924, 268.
1925, 100;
197, § 1.

SECTION 123. No life company shall, except as herein and in sections one hundred and thirty-three and one hundred and thirty-four provided, issue any policy or policies of life or endowment insurance upon a life within the commonwealth without having within ninety days prior thereto made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner; provided, that an inspection by a competent person of a group of employees and their environment may be substituted for such medical examination in case of a

1
2
3
4
5
6
7
8

9 policy of group life insurance as defined in section one hundred and
10 thirty-three. 1927, 93, § 1.
258 Mass. 249

11 The foregoing requirement for medical examination shall not apply to
12 the issuance of a policy or policies of industrial insurance aggregating in
13 amount five hundred dollars or less, exclusive of dividend additions
14 thereon, upon any one life, nor to the issuance of contracts based upon
15 the continuance of life, such as annuity or pure endowment contracts,
16 whether or not they embody an agreement to refund, upon the death of
17 the holder, to his estate or to a specified payee, any sum not exceeding
18 the premiums paid thereon with compound interest; provided, however,
19 that no industrial policy shall be issued without medical examination
20 except upon a written application therefor signed by the person to be
21 insured, or, in the case of a minor, by the parent, guardian, or other per-
22 son having the legal custody of said minor. Any company violating this
23 section, or any officer, agent or other person soliciting or effecting, or
24 attempting to effect, a contract of insurance contrary to the provisions
25 hereof, shall be punished by a fine of not more than one hundred dollars.

1 SECTION 124. In any claim arising under a policy issued in the com- Statements as
to age, etc.,
when binding
on company.
1892, 372.
1893, 434.
1894, 522, § 73.
R. L. 118, § 73.
1907, 576,
§§ 73, 122.
160 Mass. 386.
162 Mass. 236.
258 Mass. 249.
2 monwealth by any life company, without previous medical examination,
3 or without the knowledge and consent of the insured, or, if said insured
4 is a minor, without the consent of the parent, guardian or other person
5 having legal custody of said minor, the statements made in the applica-
6 tion as to the age, physical condition and family history of the insured
7 shall be held to be valid and binding on the company; but the company
8 shall not be debarred from proving as a defense to such claim that said
9 statements were wilfully false, fraudulent or misleading.

1 SECTION 125. If a policy of life or endowment insurance is effected by Rights of
creditor or
beneficiary.
1844, 82,
§§ 2, 3.
1847, 248.
1854, 453, § 28.
1856, 252, § 42.
G. S. 58, § 62.
P. S. 119, § 167.
1887, 214, § 73.
1892, 372.
1893, 434.
1894, 225;
522, § 73.
R. L. 118, § 73.
1907, 576,
§§ 73, 122.
1928, 176, § 1.
11 Allen, 224.
97 Mass. 359.
99 Mass. 154,
157, 342.
118 Mass. 219.
153 Mass. 544.
157 Mass. 47.
159 Mass. 575.
164 Mass. 302.
172 Mass. 498.
185 Mass. 103,
318.
186 Mass. 358.
202 Mass. 562.
207 Mass. 159.
2 any person on his own life or on another life, in favor of a person other
3 than himself having an insurable interest therein, the lawful beneficiary
4 thereof, other than himself or his legal representatives, shall be entitled
5 to its proceeds against the creditors and representatives of the person
6 effecting the same, whether or not the right to change the named benefi-
7 ciary is reserved by or permitted to such person; provided, that, subject
8 to the statute of limitations, the amount of any premiums for said insur-
9 ance paid in fraud of creditors, with interest thereon, shall enure to their
10 benefit from the proceeds of the policy; but the company issuing the
11 policy shall be discharged of all liability thereon by payment of its pro-
12 ceeds in accordance with its terms, unless before such payment the com-
13 pany shall have written notice, by or on behalf of a creditor, of a claim to
14 recover for certain premiums paid in fraud of creditors, with specifica-
15 tion of the amount claimed. No court, and no trustee or assignee for the
16 benefit of creditors, shall elect for the person effecting such insurance to
17 exercise such right to change the named beneficiary.
18 Any person to whom a policy of life or endowment insurance, issued
19 subsequent to April eleventh, eighteen hundred and ninety-four, is made
20 payable may maintain an action thereon in his own name.

210 Mass. 35.
211 Mass. 512.

226 Mass. 306.
228 Mass. 181.

245 Mass. 565.
270 Mass. 424.

1 SECTION 126. Every policy of life or endowment insurance made Policy payable
to married
woman enures
to her benefit.
1844, 82,
§§ 1, 3.
1854, 453, § 28
2 payable to or for the benefit of a married woman, or after its
3 issue assigned, transferred or in any way made payable to a married
4 woman, or to any person in trust for her or for her benefit, whether pro-

1856, 252, § 42. cured by herself, her husband or by any other person, and whether the 5
 G. S. 58, § 62. assignment or transfer is made by her husband or by any other person, 6
 1864, 197. and whether or not the right to change the named beneficiary is reserved 7
 P. S. 119, § 167. by or permitted to the person effecting such insurance, shall enure to her 8
 1894, 120; separate use and benefit, and to that of her children, subject to the 9
 522, § 73. provisions of the preceding section relative to premiums paid in fraud of 10
 R. L. 118, § 73. 1907, 576, 1928, 176, § 2. creditors and to sections one hundred and forty-four to one hundred and 11
 §§ 73, 122. 11 Allen, 224. of creditors and to sections one hundred and forty-four to one hundred and 12
 97 Mass. 359. 99 Mass. 154, 157. forty-eight, inclusive. No court, and no trustee or assignee for the benefit 13
 118 Mass. 219. of creditors, shall elect for the person effecting such insurance to exercise 14
 131 Mass. 294. such right to change the named beneficiary.
 152 Mass. 408.

185 Mass. 318. 202 Mass. 100, 549, 562. 217 Mass. 444
 186 Mass. 358. 210 Mass. 35. 237 Mass. 241.

Penalties for SECTION 127. An insurance agent, examining physician or other 1
 false state- person who knowingly or wilfully makes a false or fraudulent statement 2
 ments, etc. or representation in or relative to any application for life or endowment 3
 1892, 372. insurance, or who makes any such statement for the purpose of obtaining 4
 1893, 434. a fee, commission or money, or benefit in a company transacting such 5
 1894, 522, § 73. business under this chapter, shall be punished by a fine of not less than 6
 R. L. 118, § 73. one hundred nor more than five hundred dollars or by imprisonment for 7
 1907, 576, not less than one month nor more than one year, or both; and a person 8
 §§ 73, 122. who wilfully makes a false statement of any material fact or thing in a 9
 sworn statement as to the death or disability of a policyholder in any 10
 such company, for the purpose of procuring payment of a benefit named 11
 in the policy, shall be guilty of perjury. 12

Avoidance SECTION 128. No party to any contract of life or endowment 1
 of certain insurance made after March thirtieth, nineteen hundred and seventeen, 2
 contracts by infant prohibited. upon the life of such party, for the benefit of the insured, or for the bene- 3
 1917, 37. fit of the wife, husband, children, father, mother, brother or sister of the 4
 insured, shall, because of infancy, be entitled to avoid or repudiate the 5
 contract or to avoid or repudiate any discharge or receipt given by him 6
 for any benefit accrued or accruing, or for any money paid or payable 7
 under the contract; provided, that such party had attained the age of 8
 fifteen when the contract was effected. 9

Life, etc., SECTION 129. No life company and no officer or agent thereof shall 1
 policies. issue a policy of life or endowment insurance or an annuity or pure en- 2
 Description. dowment policy to a resident of the commonwealth not bearing in bold 3
 1894, 442, § 1; letters upon its face a plain description of the policy, so fully defining 4
 522, § 73. its character, including dividend periods and other peculiarities, that the 5
 R. L. 118, § 73. holder thereof shall not be likely to mistake the nature or scope of the 6
 1907, 576, contract. 7
 §§ 74, 122.
 1909, 467.
 263 Mass. 341.

Same subject. SECTION 130. No policy of life or endowment insurance shall be 1
 Incorrect dating for- issued or delivered in the commonwealth if it shall purport to be issued 2
 bidden. or to take effect at an age lower, and no annuity or pure endowment 3
 1912, 119. contract shall be so issued or delivered if it shall purport to be issued or 4
 1931, 426, to take effect at an age higher, than the age of the applicant at his near- 5
 § 275. est birthday at the time of the original written application. 6

Copy of SECTION 131. Unless a correct copy of the application is endorsed 1
 application referred to in upon or attached to a policy of life or endowment insurance, when 2
 life policy to be attached thereto. issued, the application shall not be considered a part of the policy or 3
 1893, 434. received in evidence for any purpose. Every such policy which con- 4

5 tains a reference to the application, either as a part of the policy or as
 6 having any bearing thereon, shall have endorsed thereon or attached
 7 thereto, when issued, a correct copy of the application.

1909, 242.	188 Mass. 212.	193 Mass. 215.	200 Mass. 197.
165 Mass. 462.	191 Mass. 153.	194 Mass. 56, 527.	205 Mass. 200.
172 Mass. 278.	192 Mass. 468.	199 Mass. 190.	208 Mass. 1.
180 Mass. 407.			

1894, 522, 73
 R. L. 118, 73
 1907, 576,
 §§ 73, 122

1 SECTION 132. No policy of life or endowment insurance and no
 2 annuity or pure endowment policy shall be issued or delivered in the
 3 commonwealth until a copy of the form thereof has been on file for
 4 thirty days with the commissioner, unless before the expiration of said
 5 thirty days he shall have approved the form of the policy in writing;
 6 nor if the commissioner notifies the company in writing, within said
 7 thirty days, that in his opinion the form of the policy does not comply
 8 with the laws of the commonwealth, specifying his reasons therefor,
 9 provided that such action of the commissioner shall be subject to review
 10 by the supreme judicial court; nor shall such policy, except policies of
 11 industrial insurance, on which the premiums are payable monthly or
 12 oftener, and except annuity or pure endowment policies, whether or
 13 not they embody an agreement to refund to the estate of the holder
 14 upon his death or to a specified payee any sum not exceeding the premi-
 15 ums paid thereon with compound interest, be so issued or delivered unless
 16 it contains in substance the following:

Life, annuity,
 etc., policies,
 approval and
 contents.
 1907, 576, § 75.
 1916, 47.
 1918, 60;
 112, § 8.
 1922, 75.
 1923, 195.
 1924, 75,
 §§ 1, 2
 1925, 197, § 2.
 1927, 65,
 §§ 1, 2; 93, § 2.
 190 Mass. 181,
 190.
 208 Mass. 386.
 220 Mass. 52.
 269 Mass. 148.

17 1. A provision that the insured is entitled to thirty days of grace
 18 within which the payment of any premium after the first year may be
 19 made, subject at the option of the company to an interest charge not in
 20 excess of six per cent per annum for the number of days of grace elapsing
 21 before the payment of the premium, during which period of grace the
 22 policy shall continue in full force; but if the policy becomes a claim dur-
 23 ing the said period of grace before the overdue premium or the deferred
 24 premiums of the current policy year, if any, are paid, the amount of
 25 such premiums, with interest on any overdue premium, may be taken
 26 from the face of the policy in settlement.

27 2. A provision that the policy shall be incontestable after it has been
 28 in force during the lifetime of the insured for a period of two years from
 29 its date of issue except for non-payment of premiums or violation of the
 30 conditions of the policy relating to military or naval service in time of
 31 war and except, if the company so elects, for the purpose of contesting
 32 claims for total and permanent disability benefits or additional benefits
 33 specifically granted in case of death by accident.

34 3. A provision that the policy and the application therefor shall con-
 35 stitute the entire contract between the parties, and that no statement
 36 made by the insured or on his behalf shall be used in defence to a claim
 37 under the policy unless it is contained in a written application, and a
 38 copy of such application is endorsed upon or attached to the policy
 39 when issued.

40 4. A provision that if the age of the insured has been misstated the
 41 amount payable under the policy shall be such as the premium would
 42 have purchased at the correct age.

43 5. A provision that the policy shall participate in the surplus of the
 44 company annually, beginning not later than the end of the third policy
 45 year.

46 6. A provision specifying the options to which the policyholder is
 47 entitled in the event of default in a premium payment after three full
 48 annual premiums shall have been paid.

7. A provision that not later than the third anniversary of the policy the holder of the policy shall, upon a proper assignment thereof to the company, be entitled to borrow of the company, on the sole security of the policy, a sum not more than ninety-five per cent of the cash surrender value thereof, less any indebtedness to the company, with interest at a rate not exceeding six per cent per annum or, at the option of the company, with interest as aforesaid compounded semi-annually. Said provision shall include such other conditions as, in conformity to the laws of the commonwealth, the company will impose when the application for the loan is made.

8. A table showing in figures the loan values, if any, and the options available under the policy each year upon default in premium payments during at least twenty years of the policy, beginning with the year in which such values and options first become available.

9. A provision that the company may at its option defer the granting of any loan other than to pay premiums on the policies in the company, and may at its option defer the granting of any cash surrender value for a period not exceeding ninety days from the date of the application for such loan or surrender value.

10. In case the proceeds of a policy are payable in instalments or as an annuity, a table showing the amounts of the instalments and annuity payments.

11. A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default, unless the cash surrender value has been duly paid or the extension period has expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon said policy, with interest at the rate of not exceeding six per cent per annum or, at the option of the company, with interest as aforesaid compounded semi-annually.

Group life insurance defined. 1918, 112, § 1. 1921, 141. 1928, 244, § 1. 1929, 121. 267 Mass. 135.

SECTION 133. Group life insurance is hereby defined to be that form of life insurance covering (a) not less than fifty employees, with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof determined by conditions pertaining to the employment, or by duration of service in which case no employee shall be excluded if he has been for one year or more in the employ of the person taking out the policy, for amounts of insurance based upon some plan precluding individual selection, and for the benefit of persons other than the employer, provided, that when the premium is to be paid by the employer and employees jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per cent of such employees may be so insured, or not less than forty per cent if each employee belonging to the insured group has been medically examined and found acceptable for ordinary insurance by an individual policy; or (b) the members of any trade union or other association of wage workers described in section twenty-nine, with or without medical examination, written under a policy issued to such union or association, the premium on which is to be paid by the union or association or by the union or association and the members thereof jointly, and insuring all of the members thereof for amounts of insurance based upon some plan which will preclude individual selection, and for the benefit of persons other than

24 the union or association or any officers thereof, provided, that when the
 25 premium is to be paid by the union or association and its members jointly
 26 and the benefits of the policy are offered to all members, not less than
 27 seventy-five per cent of such members may be so insured, and provided
 28 further that any member or members insured under the policy may apply
 29 for amounts of insurance additional to those granted by said policy, in
 30 which case any percentage of the members may be insured for additional
 31 amounts if they pass satisfactory medical examinations.

1 SECTION 134. No policy of group life insurance shall be issued or
 2 delivered in the commonwealth until a copy of the form thereof has
 3 been on file for thirty days with the commissioner, unless, before the
 4 expiration of said thirty days, he shall have approved the policy in
 5 writing; nor if the commissioner notifies the company in writing, within
 6 said thirty days, that in his opinion the form of the policy does not com-
 7 ply with the laws of the commonwealth, specifying his reasons therefor,
 8 provided, that this action of the commissioner shall be subject to review
 9 by the supreme judicial court; nor shall any such policy be so issued or
 10 delivered unless it contains in substance the following provisions:

Group life
 policies, ap-
 proval and
 contents
 "Employer"
 and "em-
 ployee"
 defined.
 1918, 112, § 2.
 1928, 244, § 2.
 267 Mass. 135.

11 1. That the policy shall be incontestable after two years from its
 12 date of issue except for non-payment of premiums or violation of the
 13 conditions of the policy relating to military or naval service in time of
 14 war.

15 2. That the policy, the application of the employer and the indi-
 16 vidual applications, if any, of the employees insured shall constitute the
 17 entire contract between the parties, and that no statement made by the
 18 employer or any employee or on their behalf shall be used in defence to a
 19 claim under the policy unless contained in a written application.

20 3. That the premium or the amount of insurance payable in the event
 21 of a misstatement of the age of an employee shall be equitably adjusted.

22 4. That the company will issue to the employer, for delivery to the
 23 employee whose life is insured under the policy, an individual certifi-
 24 cate setting forth a statement as to the insurance protection to which
 25 he is entitled and to whom payable, together with a provision to the
 26 effect that if the employment is terminated for any reason whatsoever
 27 the employee shall be entitled to have issued to him by the company,
 28 without evidence of insurability, and upon application made to the
 29 company within thirty-one days after such termination, and upon the
 30 payment of the premium applicable to the class of risk to which he
 31 belongs and to the form and amount of the policy at his then attained
 32 age, a policy of life insurance in any one of the forms customarily issued
 33 by the company, except term insurance, in an amount equal to the
 34 amount of his insurance under such group policy at the time of such
 35 termination.

36 5. That to the group or class thereof originally insured shall be added
 37 from time to time all new employees of the employer eligible to insurance
 38 in such group or class.

39 A policy shall be deemed to contain any such provision in substance
 40 when, in the opinion of the commissioner, the provision is stated in
 41 terms more favorable to the employer or employee than are herein set
 42 forth.

43 The word "employer", as used in this section and in section one hun-
 44 dred and thirty-seven, shall include a trade union or association of wage
 45 workers described in section twenty-nine and the word "employee", as

used in this section and in section one hundred and thirty-five, shall include a member of such a union or association.

Same subject. Not subject to attachment. 1918, 112, § 4.

SECTION 135. No such policy, or the proceeds thereof when paid to any employee or employees thereunder, or to their beneficiaries, shall be liable to attachment, trustee process or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liabilities of such employee or his beneficiary or any other person having right thereunder either before or after payment; nor shall the proceeds thereof, when not made payable to any beneficiary, constitute a part of the estate of the employee for the payment of his debts.

Same subject. Exempt from loan provision, etc. Equity, how applied. 1918, 112, § 5.

SECTION 136. Such policies shall be exempt from any loan provision or requirement. Any equity of the insured in a group life insurance policy at the time of default in the payment of a premium, whether that equity exists by reason of the terms of the policy or by law, shall be applied to purchase extended or paid-up insurance for each of the insured at attained age on the basis of the mortality table and rate of interest used in computing the premium for the group.

Employer only to be member of mutual company issuing policy. 1918, 112, § 6.

SECTION 137. Under any group policy issued by a domestic mutual life company, the employer only shall be a member of the company, and entitled to one vote by virtue of such policy at the meetings of the company.

Sections 133-137 to govern, when. 1918, 112, § 8.

SECTION 138. So much of this chapter as is inconsistent with sections one hundred and thirty-three to one hundred and thirty-seven, inclusive, shall not apply to policies issued under said sections.

Exchange, alteration or conversion of certain life policies. 1908, 436, 1926, 93, § 1.

SECTION 139. Any life company may, at the request of the policyholder, exchange, alter or convert any policy of life or endowment insurance issued by it for or into any policy conforming (a) with the laws in force when said first mentioned policy was issued, if the rewritten policy bear the date thereof, or (b) with the laws in force when said exchange, alteration or conversion is effected, if the rewritten policy bear a then current date; provided, however, that if such rewritten policy bears the date of said original policy, the amount of insurance under said rewritten policy shall not exceed the amount of insurance under said original policy or the amount of insurance which the premium paid for the original policy would have purchased if the rewritten policy had been originally applied for, whichever is the greater. Nothing in section one hundred and twenty shall be construed to prohibit the exchange, alteration or conversion of policies of life or endowment insurance under this section, and sections one hundred and twenty-three and one hundred and thirty shall not apply to the issue of any policy rewritten under authority of this section.

Annual dividends, etc. 1854, 453, § 27. 1856, 252, § 40. G. S. 58, § 60. 1866, 33. P. S. 119, §§ 147, 150. 1887, 214, § 75. 1894, 522, § 75. 1900, 363, § 2.

SECTION 140. Except as provided in this section, every domestic life company heretofore or hereafter organized, anything in its charter or its certificate of incorporation or special act to the contrary notwithstanding, shall provide in every policy of life or endowment insurance hereafter issued that the proportion of the divisible surplus of the company contributed by said policy shall be ascertained and distributed

7 annually, and not otherwise, except as hereinafter provided, beginning
8 not later than the end of the third policy year; but such distribution
9 shall not be made contingent upon the payment of any further premium
10 except that if dividends are allowed on an anniversary of the policy
11 preceding the third, such dividends may be made subject to the pay-
12 ment of the succeeding year's premium. Every such company shall on
13 December thirty-first of each year or as soon thereafter as practicable,
14 after providing for the reserve required by sections nine and eleven and
15 for all other liabilities, including dividends declared upon the capital
16 stock, if any, and such sum as may be held on account of existing deferred
17 dividend policies, and providing also for a contingency reserve not in
18 excess of the limit prescribed in the following section, apportion its
19 remaining funds upon the contribution to surplus plan, as dividends, to
20 all other policies entitled to share therein. Each such dividend shall annu-
21 ally, at the option of the holder of the policy, (a) be payable in cash, or
22 (b) applied in reduction of premiums, or (c) to the purchase of a paid-up
23 addition, or (d) be left with the company to accumulate to the credit of
24 the policy and be payable at the maturity thereof, or be withdrawable
25 in cash on demand by the holder of the policy, or applied as hereinafter
26 set forth; but if no election is made by the holder of the policy prior to
27 any anniversary thereof, the dividend for that anniversary shall be
28 held by the company as provided in option (d); and if any premium on
29 the policy is not paid at the expiration of the days of grace, the company
30 shall keep the policy in force by applying the dividend accumulations
31 to the payment due on the policy if such accumulations are sufficient to
32 make said payment in full, and shall forthwith mail a notice to the
33 holder thereof at his last known address, stating what amount has been
34 so applied, and if a balance of the dividend accumulations remains to
35 the credit of the policy, the amount thereof, provided that the share of
36 the surplus so apportioned to a term policy shall not be available for the
37 purchase of a paid-up addition, and provided that nothing herein con-
38 tained shall operate to continue a policy in force beyond the period which
39 any dividend accumulation so applied would carry the policy under its
40 full premium rate, nor beyond the term for which the policy was origi-
41 nally issued, and that the affidavit of any officer, clerk or agent of the
42 company, or of any one authorized to mail such notice, that the notice
43 required by this section has been duly mailed by the company, shall be
44 prima facie evidence that such notice was duly given.

45 On policies of industrial insurance on which premiums are payable
46 weekly the annual surplus distribution shall begin not later than the end
47 of the fifth policy year, and be applied to the payment of any premiums,
48 or at the option of the holder of the policy be made in cash, but such
49 distribution shall not be made contingent upon the payment of future
50 premiums.

51 This section shall not apply to contracts of pure endowment or an-
52 nuities nor to any stock life company issuing only non-participating
53 policies. A foreign life company which does not provide in every partici-
54 pating policy hereafter issued or delivered in the commonwealth that
55 the proportion of the surplus accruing upon said policy shall be ascer-
56 tained and distributed annually and not otherwise, except as hereinafter
57 provided, either by payment in cash of the amount apportioned to a
58 policy, or by its application to the payment of premiums or to the pur-
59 chase of paid-up additions, or for the accumulation of the amounts from
60 time to time apportioned, said accumulations to be subject to withdrawal

R. L. 118, § 75.
1907, 576,
§§ 76, 122.
1928, 147.

by the policyholder, shall not be permitted to do new business within 61
the commonwealth. 62

Nothing in this section shall be construed to prohibit the payment 63
upon or after the death of the insured of a dividend for the current 64
policy year. 65

Safety fund.
1907, 576, § 77.

SECTION 141. Any domestic life company may from its surplus funds 1
or profits accumulate and hold, or hold if already accumulated, as a 2
safety fund, an amount not in excess of twelve per cent of its reserve or 3
one hundred thousand dollars, whichever is greater, and, in addition 4
thereto any surplus that may have been contributed by the holders of the 5
guaranty stock of the company, or which has been accumulated for the 6
retirement of said guaranty stock and the margin of the market value of 7
its securities over their book value, provided that in cases where the exist- 8
ing surplus or safety fund, exclusive of all accumulations held on account 9
of existing deferred dividend policies, exceeds the limit above designated, 10
the company shall be entitled to retain said surplus or safety fund, but 11
shall not be entitled to add thereto so long as it exceeds said limit, and 12
provided that for cause shown, the commissioner may at any time and 13
from time to time permit any company to accumulate and maintain a 14
safety fund in excess of the limit above mentioned, for a prescribed period 15
not exceeding one year in any one permission, by filing in his office a 16
decision stating his reasons therefor, and causing the same to be pub- 17
lished in his next annual report. 18

This section shall not apply to any company issuing only non-partici- 19
pating policies. 20

Loans on
policies.
1907, 576, § 78.
1916, 47.
1924, 75, § 3.
1927, 65, § 3.
262 Mass. 399.

SECTION 142. After three full annual premiums have been paid on 1
any policy of life or endowment insurance issued by a domestic life 2
company after December thirty-first, nineteen hundred and seven, the 3
holder thereof, upon its proper assignment to the company, shall within 4
ninety days of the application therefor be entitled to a loan from the 5
company, on the sole security of the policy, with interest at a rate not 6
exceeding six per cent per annum or, at the option of the company, with 7
interest as aforesaid compounded semi-annually, of a sum not exceeding 8
its loan value, which loan value shall be not less than ninety-five per 9
cent of the cash surrender value of the policy at the end of the policy 10
year during which the application for the loan is made, computed as 11
prescribed by section one hundred and forty-four, and of all dividend 12
additions thereto, less any indebtedness to the company and any unpaid 13
portion of the premium for the then current policy year. Failure to repay 14
any such loan or to pay interest thereon shall not avoid the policy while 15
the total indebtedness thereon is less than such loan value at the time 16
said default in payment occurs, nor until thirty days after notice has 17
been mailed by the company to the last known address of the insured. 18
The affidavit of any officer, clerk or agent of the company, or of any one 19
authorized to mail such notice, that the notice required by this section 20
has been duly mailed by the company, shall be prima facie evidence 21
that such notice was duly given. Nothing in this section shall require 22
any company to make a loan upon any policy for less than twenty-five 23
dollars. 24

This section shall not apply to term policies nor to those in force as 25
extended insurance as provided in clause (c) of section one hundred and 26
forty-four. 27

1 SECTION 143. All policies of life or endowment insurance issued prior
 2 to January first, nineteen hundred and eight, by any domestic life com-
 3 pany shall be subject to the laws limiting forfeiture applicable and in
 4 force at the date of their issue.

Certain poli-
 cies subject to
 earlier laws
 limiting
 forfeiture.

1880, 232, § 6.
 P. S. 119, §§ 159,
 160, 166.

1887, 214, § 76
 1894, 522, § 76.
 1896, 470.

1900, 363, § 3.
 R. L. 118, § 76.
 1907, 576, §§ 79, 122.

1 SECTION 144. After three full annual premiums have been paid on
 2 any policy of life or endowment insurance issued by a domestic life
 3 company after December thirty-first, nineteen hundred and seven, the
 4 holder thereof, within thirty days after any default in the payment of a
 5 subsequent premium, may elect, by a writing filed with the company
 6 at its home office, (a) to surrender the policy and, with the written assent
 7 of the person to whom it is made payable, receive its value in cash, or
 8 (b) take paid-up insurance which shall be participating if the policy is
 9 on a participating basis, payable at the same time and on the same
 10 conditions as in the original contract, or (c) have the policy continued
 11 in force as extended term insurance from the anniversary date last passed
 12 for its face amount, including any outstanding dividend additions and
 13 less any indebtedness thereon or secured thereby, but without the right
 14 to loans; provided, that a policy whose proceeds are payable in instal-
 15 ments or as an annuity may provide that if either option (b) or (c)
 16 becomes operative the proceeds of the policy shall be payable in one sum.
 17 The cash surrender value shall be the reserve on the policy at the end
 18 of the last policy year for which the premium was paid in full, plus a
 19 proportionate part of the increase in the cash value at the end of the
 20 succeeding year if any instalment not less than a quarterly instalment
 21 of the premium for that year has been paid, and of any dividend addi-
 22 tions thereto, computed on the mortality and interest assumption upon
 23 which the company elects to reserve as prescribed by section nine, less
 24 a surrender charge of not more than five per cent of the present value of
 25 the future net premiums, which by its terms the policy is exposed to
 26 pay in case of its continuance, computed upon the aforesaid mortality
 27 and interest basis, and less any existing indebtedness to the company
 28 on the policy or secured thereby. The company may reserve the right
 29 to defer the payment of such cash value for not exceeding ninety days
 30 after the application therefor is made. The term for which the policy
 31 will be continued or the amount of the paid-up policy will be such as
 32 the cash value will purchase as a net single premium at attained age of
 33 the insured according to the mortality and interest basis heretofore
 34 designated. But in case of an endowment policy, if the sum applicable
 35 to the purchase of extended term insurance shall be more than sufficient
 36 to continue the insurance to the end of the endowment term named in
 37 the policy, the excess shall be used to purchase in the same manner non-
 38 participating paid-up pure endowment, payable at the end of the endow-
 39 ment term on the same conditions.

Cash sur-
 render value,
 extended term
 insurance of
 paid-up policy
 after three
 annual premi-
 ums on certain
 policies have
 been paid
 1861, 186,
 1877, 61,
 1880, 232,
 §§ 1-5,
 P. S. 119,
 §§ 161-166,
 1887, 214, § 76,
 1894, 522, § 76,
 1896, 470,
 1900, 363, § 3
 R. L. 118, § 76,
 1907, 576,
 §§ 80, 122,
 1908, 166,
 1910, 366,
 1916, 47,
 1925, 197, § 3,
 1927, 93, § 3,
 100 Mass. 500,
 103 Mass. 254,
 123 Mass. 113,
 127 Mass. 153,
 170 Mass. 254,
 181 Mass. 341,
 269 Mass. 148.

40 If the holder shall not within thirty days from default surrender the
 41 policy to the company for cash as provided in option (a), or elect, by a
 42 writing filed with the company at its home office, to take extended term
 43 insurance as provided in option (c), the insurance will be binding upon
 44 the company from the date of default without any further stipulation
 45 or act as provided in option (b). The paid-up or extended term insur-
 46 ance granted by the terms of the policy shall have a cash surrender
 47 value which shall be its net value less any indebtedness to the company

on account of such policy or secured thereby, and the holder thereof 48
 may, within ninety days of the application therefor, and with the written 49
 assent of the person to whom the policy is payable, claim and receive 50
 in cash such surrender value. 51

Every such policy which by its terms has become paid up shall have a 52
 cash surrender value which shall be its net value, less not more than five 53
 per cent of one net annual premium on a ten payment life policy at the 54
 age of entry of the insured, and less any indebtedness to the company 55
 on such policy or secured thereby; and the holder thereof may, within 56
 ninety days of the application therefor and with the written assent of 57
 the person to whom the policy is payable, claim and receive in cash 58
 such surrender value. 59

This section shall not apply to annuity or pure endowment contracts 60
 with or without return of premiums, or of premiums and interest, whether 61
 simple or compound, or to survivorship insurance, and, in the case of a 62
 policy providing for both insurance and an annuity, shall apply only to 63
 that part of the contract providing for insurance; but every such con- 64
 tract providing for a deferred annuity on the life of the insured only 65
 shall, unless paid for by a single premium, provide that, in the event of 66
 the non-payment of any premium after three full years' premiums shall 67
 have been paid, the annuity shall automatically become converted into 68
 a paid-up annuity for such proportion of the original annuity as the 69
 number of completed years' premiums paid bears to the total number 70
 of premiums required under the contract. 71

Cash surrender value of certain industrial policies.
 1880, 232, § 4.
 P. S. 119, § 164.
 1887, 214, § 76.
 1894, 522, § 76.
 1896, 470.
 1900, 363, § 3.
 R. L. 118, § 76.
 1907, 576, §§ 80, 122.
 1908, 166.
 1910, 366.
 1911, 361, § 1.
 1912, 52.

SECTION 145. On policies of industrial insurance issued on or before 1
 December thirty-first, nineteen hundred and eleven, by a domestic life 2
 company on which premiums are paid weekly and are not more than 3
 fifty cents each, the surrender value shall in all cases be payable in cash, 4
 which shall be a legal claim for not more than two years from the date 5
 of lapse, and be payable within sixty days after the demand therefor. 6
 Within ninety days after the lapse of any policy which has a surrender 7
 value and upon which a settlement has not been made, the company 8
 shall send a notice thereof to the last known address of the holder of 9
 said policy, which shall state the amount of the surrender value of said 10
 policy. The affidavit of any officer, clerk or agent of the company, or 11
 any one authorized to mail such notice, that the notice required herein 12
 has been duly mailed by the company, shall be prima facie evidence that 13
 such notice was duly given. 14

Extended term insurance after three years' premiums on certain industrial policies have been paid.
 1911, 361, § 1.
 1912, 52.

SECTION 146. After premiums have been paid for three full years on 1
 any policy of industrial insurance issued by a domestic life company 2
 after December thirty-first, nineteen hundred and eleven, in case of 3
 failure to pay any subsequent premium the policy shall be binding upon 4
 the company from the date of default, without any further stipulation 5
 or act, as extended term insurance for its face amount, from the date to 6
 which premiums have been paid, for such term as will be purchased at 7
 the attained age of the insured by a net single premium, which shall be 8
 the full reserve on the policy at the end of the last policy year for which 9
 the premiums were paid in full, plus a proportionate part of the increase 10
 in the reserve of the succeeding year for each additional thirteen weeks' 11
 premium paid, computed upon the mortality and interest assumption 12
 on which the company elects to reserve as prescribed by section nine, 13
 less an amount not exceeding two and one half per cent of the sum in- 14

15 sured, and less any indebtedness to the company on the policy or secured
 16 thereby. But in case of an endowment policy, if the sum applicable to
 17 the purchase of extended term insurance shall be more than sufficient
 18 to continue the insurance to the end of the endowment term named in
 19 the policy, the excess shall be used to purchase in the same manner
 20 non-participating paid-up pure endowment, payable at the end of the
 21 endowment term on the same conditions.

1 SECTION 147. After premiums have been paid for five full years upon
 2 any such policy of industrial insurance, the holder thereof, in case of
 3 any default in the payment of a subsequent premium, may, by writing
 4 filed with the company at its home office, within the term of extension
 5 and not later than thirteen weeks from the date to which premiums
 6 have been paid, elect in lieu of extended term insurance, (1) to surrender
 7 the policy to the company and receive in exchange therefor a paid-up
 8 policy of not less value according to the mortality and interest basis
 9 aforesaid, payable at the same time and on the same conditions as the
 10 original policy, or (2) to surrender the policy, with the written assent of
 11 the person to whom it is payable, and receive its value in cash within
 12 sixty days after the demand therefor. Said cash surrender value shall be
 13 equal to the net single premium computed in the manner provided in
 14 the preceding section in the case of extended insurance. Any such policy
 15 of industrial insurance which shall, after five years from its original date
 16 of issue, become extended term insurance or a paid-up policy shall have
 17 a cash surrender value which shall be its net value at the date of the
 18 application therefor, less any indebtedness to the company then existing
 19 thereon or secured thereby, which the holder thereof may, with the
 20 written assent of the person to whom the policy is payable, claim and
 21 receive in cash within sixty days after written demand therefor.

Paid-up policy
 or cash sur-
 render value
 after five years'
 premiums on
 such policies
 have been
 paid.
 1911, 361, § 2.

1 SECTION 147A. No domestic life company shall issue or deliver any
 2 policy of industrial life or endowment insurance unless it contains a table,
 3 in a form satisfactory to the commissioner, plainly showing in figures the
 4 extended term and paid-up insurance and the cash surrender values pro-
 5 vided for by the two preceding sections.

Industrial life
 and endowment
 policies issued
 by domestic
 life companies
 to contain
 certain in-
 formation.

1928, 148, § 1.

1 SECTION 148. [REPEALED (except as to existing policies), 1928,
 2 148, § 2.]

1 SECTION 149. No domestic stock or mutual life company, issuing or
 2 professing to issue on or after January first, nineteen hundred and eight,
 3 any participating policies, shall issue any policies of life or endowment
 4 insurance which do not by their terms give to the holders thereof full
 5 right to participate in the accumulations of said company as provided
 6 in section one hundred and forty. This section shall not apply to annuity
 7 or pure endowment contracts.

Domestic life
 company not to
 issue both
 participating
 and non-
 participating
 policies.
 Exceptions.
 Excess interest
 on deferred
 payments of
 proceeds of
 non-partici-
 pating policies.
 1907, 576, § 81.
 1928, 182.

8 A domestic life company issuing its policies on the non-participating
 9 plan may provide therein that, in addition to the rate of interest guar-
 10 anteed by the company to be paid on deferred payments of the proceeds,
 11 excess interest may be paid thereon at such rate as the company may
 12 annually declare; and the inclusion in any non-participating policy of
 13 such provision shall not be construed to make the policy participating.

FOREIGN COMPANIES.

Admission to transact business.
 1887, 214, § 77.
 1894, 522, § 77.
 1896, 124.
 R. L. 118, § 77.
 1904, 304.
 1907, 576, § 83, 122.
 1921, 372.
 1927, 284, § 13.
 160 Mass. 413.
 1 Op. A. G. 1, 115, 455.
 2 Op. A. G. 289.
 Op. A. G. (1919) 120.

SECTION 150. Foreign companies, upon complying with the conditions herein set forth applicable to such companies, may be admitted to transact in the commonwealth, as provided in section one hundred and fifty-seven, any kinds of business authorized by this chapter, subject to all general laws now or hereafter in force relative to insurance companies, and subject to all laws applicable to the transaction of such business by foreign companies and their agents; provided, that no provision of law which by its terms applies specifically to domestic life companies shall thereby become applicable to foreign life companies; and provided, further, that the provisions of section eighty-one relative to the contingent mutual liability of members shall not apply to any foreign mutual fire company which had been admitted to transact business in the commonwealth prior to January first, nineteen hundred and twenty-one and was then actually transacting business therein without complying with said provisions.

Conditions of admission, in general.

SECTION 151. No foreign company shall be admitted and authorized to do business until —

1826, 141, § 1.	1867, 267, §§ 1, 4, 7.	R. L. 118, § 78, cl. 1.
R. S. 37, § 40.	1868, 317, § 1.	1907, 576, § 84, cl. 1.
1852, 311, § 6.	1878, 36, § 3.	§ 122.
1854, 453, § 35.	P. S. 119, § 199.	1919, 114, § 2.
1856, 252, § 48.	1887, 214, § 78, cl. 1.	1925, 267, § 12.
G. S. 58, § 71.	1894, 522, § 78, cl. 1.	2 Op. A. G. 64.

2 Allen, 398.
 232 Mass. 214.

First, It has deposited with the commissioner a certified copy of its charter or deed of settlement and a statement of its financial condition and business, in the form prescribed by section twenty-five, and signed and sworn to as provided in said section, and has paid for the filing of such copy and statement the fees prescribed by section fourteen.

1826, 141, §§ 2, 3.
 R. S. 37, §§ 41, 42.
 1847, 273, §§ 2, 3.
 1852, 311, § 7.
 1854, 453, § 31.
 1856, 252, §§ 44, 45.
 G. S. 58, §§ 66, 67.
 1863, 249, § 10.
 1867, 267, § 1.
 1868, 317, § 1.
 1872, 375, § 16.
 1874, 22.
 P. S. 119, §§ 196-198.
 1887, 214, § 78, cl. 2.
 1894, 522, § 78, cl. 2.
 1896, 270, § 1.
 R. L. 118, § 78, cl. 2.
 1907, 576, § 84, cl. 2, § 122.
 1909, 415.
 1913, 247.
 1926, 44, § 1.
 1927, 284, § 14.
 1928, 225, § 3.

Second, It has satisfied the commissioner that (1) it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that (2) it has, if a stock company, other than a life company, a fully paid-up capital, exclusive of stockholders' obligations of any description, unimpaired on the basis fixed by sections ten to twelve, inclusive, of an amount not less than is required by sections forty-eight and fifty-one of domestic stock companies transacting the same classes of business; that (3), it has, if a mutual company, other than a life company, and (a), if it proposes to transact business under any one of the clauses of section forty-seven, except the fourth, sixth, eleventh, fourteenth or fifteenth, or under the first and eighth clauses thereof, net cash assets computed on the basis fixed by sections ten to twelve, inclusive, at least equal to the amount of capital required by sections forty-eight and fifty-one of a domestic stock company transacting the same classes of business, or net cash assets, so computed, of not less than fifty thousand dollars and contingent assets of not less than three hundred thousand dollars, or net cash assets, so computed, of not less than seventy-five thousand dollars and contingent assets of not less than one hundred and fifty thousand dollars; or (b), if it proposes to transact business under the fourth clause of said section forty-seven, a fully paid-up guaranty capital unimpaired on the basis fixed by sections ten to twelve, inclusive, of not less than two hundred thousand dollars and net cash assets, so computed, exclusive of said guaranty capital, of not less than one hundred thousand dollars; or (c), if it proposes to transact business under the sixth

32 clause of said section forty-seven, net cash assets, so computed, of not less
 33 than two hundred thousand dollars, or net cash assets, so computed, of
 34 not less than one hundred thousand dollars and contingent assets of not
 35 less than four hundred thousand dollars; or (d), if it proposes to transact
 36 business under the first and second, or under the first, second and eighth
 37 clauses of said section forty-seven, net cash assets, so computed, at least
 38 equal to the amount of capital required by said sections forty-eight and
 39 fifty-one of a domestic stock company transacting the same classes of
 40 business, or net cash assets, so computed, of not less than two hundred
 41 thousand dollars and contingent assets of not less than four hundred
 42 thousand dollars, or (e), if it proposes to transact business under the first
 43 and third, the third and eighth, or the first, third and eighth clauses of
 44 said section forty-seven, net cash assets computed on the basis fixed by
 45 sections ten to twelve, inclusive, of not less than three hundred thousand
 46 dollars, or net cash assets, so computed, of not less than one hundred and
 47 fifty thousand dollars and contingent assets of not less than three hun-
 48 dred thousand dollars; or (f), if it proposes to transact business under any
 49 two or more of the fourth, fifth, sixth, seventh, eighth, ninth, tenth,
 50 twelfth and thirteenth clauses of said section forty-seven, net cash assets,
 51 computed as aforesaid, at least equal to the amount of capital required by
 52 said sections forty-eight and fifty-one of a domestic stock company
 53 transacting the same classes of business, or net cash assets, computed as
 54 aforesaid, of not less than seventy-five thousand dollars, and contingent
 55 assets of not less than one hundred and fifty thousand dollars, for each
 56 clause under which it proposes to transact business, in addition, in any
 57 case, to the guaranty capital and net cash assets required by (b) hereof
 58 if it proposes to transact business under said fourth clause, and in addition
 59 to the net cash or net cash and contingent assets required by (c) hereof if
 60 it proposes to transact business under said sixth clause; that (4) such
 61 capital and assets, other than contingent, are well invested and available
 62 for the payment of losses in the commonwealth, that the company is in a
 63 sound financial condition and that its business policies, methods and
 64 management are sound and proper; and (5) that it insures in a single risk
 65 wherever located an amount no larger than one tenth of its net assets
 66 except as provided in section twenty-one.

67 Third, It has filed with the commissioner a power of attorney constitut-
 68 ing and appointing the commissioner or his successor its true and lawful
 69 attorney, upon whom all lawful processes in any action or legal proceed-
 70 ing against it may be served, and therein shall agree that any lawful
 71 process against it which may be served upon its said attorney shall be of
 72 the same force and validity as if served on the company, and that the
 73 authority thereof shall continue in force irrevocable so long as any liability
 74 of the company remains outstanding in the commonwealth. The power
 75 of attorney shall be executed by the president and secretary of the com-
 76 pany, or other officers duly authorized thereto, under its corporate seal,
 77 and shall be accompanied by a certified copy of the resolution of the board
 78 of directors of the company making said appointment and authorizing
 79 the execution of said power of attorney which shall be in a form prescribed
 80 by the commissioner. The service of such process shall be made by leav-
 81 ing the same in duplicate in the hands or office of the commissioner. One
 82 of the duplicates of such process, certified by the commissioner as having
 83 been served upon him, shall be deemed sufficient evidence thereof, and
 84 service upon such attorney shall be deemed service upon the principal.

1852, 311.
 §§ 2-5
 1854, 453, § 32.
 1856, 252, § 46.
 G. S. 58,
 §§ 68, 69.
 1867, 267, § 1.
 1868, 317, § 1.
 1875, 79.
 1878, 36.
 P. S. 119, § 202.
 1887, 214.
 § 78, cl. 3.
 1894, 522.
 § 78, cl. 3
 R. L. 118, § 78,
 cl. 3; 126, § 4
 1907, 576.
 § 84, cl. 3, § 122.
 12 Gray, 201.
 10 Allen, 231.
 14 Allen, 336.
 105 Mass. 141.
 132 Mass. 432.
 137 Mass. 252.
 139 Mass. 295.
 149 Mass. 26.
 150 Mass. 556.
 160 Mass. 413.
 167 Mass. 30.
 168 Mass. 569.
 172 Mass. 154

1887, 214, § 78, cl. 4.
1894, 522, § 78, cl. 4.

Fourth, It has appointed as provided in section one hundred and sixty-
three a resident or residents of the commonwealth as its agent or agents
therein.

R. L. 118, § 78, cl. 4
1907, 576, § 84, cl. 4, § 122
8 Gray, 206.
1 Allen, 436.
249 Mass. 511.

1856, 252, § 45.
G. S. 58, § 67.
1867, 267, § § 1, 5.
1868, 317, § 1.
P. S. 119, § 198.
1887, 214, § 78, cl. 5.
1894, 522, § 78, cl. 5.
R. L. 118, § 78, cl. 5.
1907, 576, § 84, cl. 5, § 122.
1926, 44, § 1.
1927, 284, § 14.
2 Op. A. G. 64.

Fifth, It has obtained from the commissioner a license stating that it
has complied with the laws of the commonwealth and specifying the kinds
of business it is authorized to transact, which the commissioner may refuse
to issue if he is of the opinion that such refusal will be in the public
interest. Every such license shall expire on June thirtieth of each year,
unless sooner revoked or suspended as provided in section five, but may
be renewed by the commissioner on or before said date upon written
application of the company, subject to all the provisions of this chapter
excepting the provisions of the first and third clauses of this section,
applicable to the issue of a new license.

Kinds of business which may be combined.
1879, 130.
1881, 51.
P. S. 119, § 201.
1887, 214, § 80.
1889, 356.
1891, 195.
1894, 133, § 3;
522, § 80.
1895, 474, § 3.
1898, 380, § 1.
R. L. 118, § § 56, 80.
1902, 340, § § 1, 3.
1905, 401, § 1.
1907, 576, § § 34, 122.
1908, 543, 646.
1909, 192, § 2, 488.
1911, 205.
1912, 524.
1913, 489.
1916, 32, 135.
1918, 36, 86.
1919, 140.

SECTION 152. No foreign company shall transact in this common-
wealth any kind of business not specified in its charter and in its license.
Any foreign stock company, or any company described in section one
hundred and fifty-five, admitted to the commonwealth, may, if its charter
permits, be licensed to transact the kinds of business permitted to domes-
tic stock companies under section fifty-one, subject to the provisions of
clause (d) of said section fifty-one and of subdivision (2) of the second
clause of section one hundred and fifty-one and of the first clause of said
section one hundred and fifty-five. Any foreign mutual company ad-
mitted to the commonwealth may, if its charter permits, be licensed to
transact the classes of business permitted to domestic mutual companies
under section fifty-four, subject to the provisions of clause (c) of said
section fifty-four and of subdivision (3) of the second clause of said section
one hundred and fifty-one. Any foreign life company admitted to the
commonwealth may, if its charter permits, be licensed to transact the
kinds of business permitted to domestic life companies under section one
hundred and nineteen.

1920, 152; 327, § 2.
1924, 406, § 11.
1925, 267, § 13.
1928, 106, § 6.
155 Mass. 404.
217 Mass. 47.
271 Mass. 365.
1 Op. A. G. 19, 47.
2 Op. A. G. 64.

Conditions of admission of foreign life companies.
1878, 130, § § 1, 7.
P. S. 119, § 218.
1887, 214, § 67.
1894, 522, § 67.
R. L. 118, § 67.
1907, 576, § § 68, 122.
1926, 44, § 2.
1 Op. A. G. 269.

SECTION 153. A company organized under the laws of any other state
of the United States for the transaction of life insurance may, subject to
all the provisions of section one hundred and fifty-one so far as applicable
to a life company, be admitted and authorized to do business in this com-
monwealth if, in the opinion of the commissioner, it has the requisite
funds of a life company and has policies in force upon not less than one
thousand lives in the United States for an aggregate amount of not less
than one million dollars. Any such company organized under the laws
of a state or government other than one of the United States may be so
admitted and authorized, subject to all the provisions of section one hun-
dred and fifty-one as aforesaid, if, in addition to fulfilling all the require-
ments of this section, it complies with section one hundred and fifty-five,
and if it shall have and keep on deposit as provided in section one hun-
dred and fifty-five or in the hands of trustees as provided in section one
hundred and fifty-six, in exclusive trust for the security of its contracts
with policyholders in the United States, funds of an amount equal to the
net value of all its policies in the United States, less all indebtedness
thereon, and not less than two hundred thousand dollars.

1 SECTION 154. When legal process is served upon the commissioner as
 2 attorney for a foreign company under the third clause of section one
 3 hundred and fifty-one, he shall forthwith forward by mail, postage pre-
 4 paid, one of the duplicate copies of the process served on him, addressed
 5 to the company at its last home office address appearing on his records,
 6 or, in the case of a company of a foreign country, to its resident manager
 7 in the United States, addressed to him at the last address appearing on
 8 said records, or to such other person as may previously have been desig-
 9 nated by the company by written notice filed in the office of the commis-
 10 sioner. As a condition of valid and effectual service and of the duty of
 11 the commissioner in the premises, there shall be paid to him, except as
 12 provided in section fourteen, at the time of service thereof the fee pre-
 13 scribed by said section, which the plaintiff shall recover as taxable costs
 14 if he prevails in his suit. The commissioner shall keep a record of all
 15 legal processes showing the day and hour of service.

Service of
 process on
 commissioner
 as attorney.
 1878, 36, § 2.
 1879, 14.
 P. S. 119, § 203.
 1887, 214, § 14.
 1894, 522, § 14.
 R. L. 118, § 14;
 126, § 5.
 1907, 576,
 §§ 14, 122.
 1924, 496, § 12
 1925, 124, § 2.
 215 Mass. 204.

1 SECTION 155. A foreign company, if formed under the laws of any
 2 government or state other than the United States or one of the United
 3 States, shall not be admitted and authorized to do business until, besides
 4 complying with the conditions of section one hundred and fifty-one —
 5 First, It has satisfied the commissioner that it has made a deposit
 6 with the state treasurer or with the proper board or officer of some other
 7 state of the United States of an amount not less than the capital required
 8 of domestic companies by sections forty-eight and fifty-one. Such deposit
 9 shall be in exclusive trust for the benefit and security of all the company's
 10 policyholders and creditors in the United States, and may be made in the
 11 securities and subject to the limitations specified in sections sixty-three
 12 and sixty-six. Of such deposit an amount equal to the capital required
 13 of domestic companies by this chapter shall be regarded as the deposit
 14 capital in the company's annual statement the same as the capital stock
 15 of domestic companies, but the excess of any such deposit shall not be
 16 charged to the company as a liability for deposit capital.
 17 Second, It has appointed, as its resident manager in the United
 18 States, a citizen or corporation of the United States approved by the
 19 commissioner, and has filed with him a certified copy of the record of the
 20 appointment of such manager by the directors of the company and a
 21 duplicate original of the power of attorney to the United States manager
 22 which shall be in a form satisfactory to the commissioner.
 23 Third, It has filed with the commissioner, in such form and detail as
 24 he may require, a statement of its trustees appointed under section one
 25 hundred and fifty-six showing the funds held by such trustees, signed
 26 and sworn to by them, or if the trustee is a corporation, signed and sworn
 27 to by its president and secretary or other duly authorized officers.
 28 The documents required by this section and sections one hundred and
 29 fifty-one and one hundred and fifty-six shall be executed and authenti-
 30 cated in a manner satisfactory to the commissioner.

Conditions of
 admission of
 companies of a
 foreign country
 1878, 130,
 §§ 1-7.
 P. S. 119, § 218
 1887, 214, § 79
 1894, 522, § 79
 R. L. 118, § 79
 1902, 340, § 2.
 1905, 401, § 2.
 1907, 576,
 §§ 85, 122.
 249 Mass. 574

1 SECTION 156. Any such company may appoint trustees, who are
 2 citizens or corporations of the United States and approved by the com-
 3 missioner, to hold funds in trust for the benefit of its policyholders and
 4 creditors in the United States. Said trustees shall be named by the
 5 directors of the company, and a certified copy of the record of the ap-
 6 pointment of such trustees and a duplicate original of the deed of trust

Such company
 may appoint
 trustees.
 1878, 130,
 §§ 2, 3, 7.
 P. S. 119,
 §§ 219, 220.
 1887, 214, § 81
 1894, 522, § 81
 R. L. 118, § 81.

1907, 576,
 §§ 86, 122.
 1922, 81.

on a form approved by him shall be filed with the commissioner, who may
 examine such trustees and the assets in trust and all books and papers
 relative thereto in the same manner as he may examine the officers, agents,
 assets and affairs of companies. The funds so held by such trustees, and
 all assets held by or for such company within the United States for the
 benefit of its policyholders and creditors in the United States, so far as
 the same are in securities, money or credits admissible as sound assets
 in the financial accounts of companies, shall, with its deposits made in
 accordance with the preceding section, constitute the assets of such com-
 pany for the purpose of making its annual statements to the commis-
 sioner. Such company shall file with the annual statement required by
 section twenty-five a statement of the trustees executed as prescribed in
 the preceding section, in such form and detail as the commissioner re-
 quires, showing the funds held by them.

Certain foreign
 companies to
 cease trans-
 acting busi-
 ness, when.
 Penalty.
 1928, 169, § 2.

SECTION 156A. Every foreign company, other than a life company,
 whose capital stock or guaranty or deposit capital is reduced below the
 amounts required by section one hundred and fifty-one, one hundred
 and fifty-two or one hundred and fifty-five, or is impaired on the basis
 fixed by sections ten to twelve, inclusive, or whose net cash assets, com-
 puted on said basis, or whose contingent assets, required by said section
 one hundred and fifty-one or one hundred and fifty-two, become at any
 time from any cause less than the amounts required as aforesaid, or
 whose license has been revoked or suspended as provided in section five,
 shall forthwith cease to issue policies and to make contracts of insurance
 in the commonwealth until such capital stock, guaranty or deposit capi-
 tal or assets have been restored to the amounts required as aforesaid,
 or said license has been restored by the commissioner, as the case may
 be. Any company or any officer or agent thereof, issuing any policy or
 making any contract of insurance contrary to this section shall be pun-
 ished by a fine of not less than one hundred nor more than one thousand
 dollars.

Foreign com-
 panies to act
 through resi-
 dent agents.
 1887, 214, § 84
 1894, 522, § 84.
 1898, 537, § 2.
 R. L. 118, § 84.
 1907, 576,
 §§ 89, 122

SECTION 157. Foreign companies admitted to do business in the
 commonwealth shall make contracts of insurance upon lives, property
 or interests therein, and annuity or pure endowment contracts with
 residents thereof, only by lawfully constituted and licensed resident
 agents.

1919, 114, § 3.

2 Op. A. G. 123.

Policy not
 invalidated
 by war.
 1878, 130,
 §§ 1, 7.
 P. S. 119, § 218.
 1887, 214, § 84.

SECTION 158. No policy of insurance and no annuity or pure endow-
 ment contract issued to a resident of the commonwealth by an authorized
 company organized under the laws of a foreign country shall be invali-
 dated by war between such foreign country and the United States.

1894, 522, § 84.
 1898, 537, § 2.

R. L. 118, § 84
 1907, 576, §§ 89, 122.

1919, 114, § 3
 Op. A. G. (1917) 37.

Reciprocal
 obligations
 and prohibi-
 tions, when
 imposed.
 1832, 140, § 1.
 R. S. 37, § 44
 1854, 453, § 34.
 1856, 252, § 17.
 G. S. 58, § 70.
 1870, 391.

SECTION 159. If by the laws of any other state any taxes, fines,
 penalties, licenses, fees, deposits or other obligations or prohibitions,
 additional to or in excess of those imposed by the laws of this common-
 wealth upon foreign companies and their agents, are imposed on domestic
 companies and their agents doing business in such state, like obligations
 and prohibitions shall be imposed upon all companies of such state and

7 their agents doing business in this commonwealth so long as such laws remain in force. 1871, 297, § 10.
1873, 141, § 6.

P. S. 119, § 215. 1894, 522, §§ 85, 111. 1907, 576, §§ 90, 121, 122.
1887, 214, §§ 85, 111. R. L. 118, §§ 85, 112. 1922, 117, § 2.

1 SECTION 160. Whoever, for a person other than himself, acts or aids
2 in any manner in the negotiation, continuation, or renewal of a policy
3 of insurance or an annuity or pure endowment contract with a foreign
4 company not lawfully admitted to issue such policies or contracts in
5 this commonwealth shall, except as provided in section one hundred and
6 sixty-eight, be punished by a fine of not less than one hundred nor more
7 than five hundred dollars; but this section shall not apply to a duly
8 licensed special insurance broker acting under said section one hundred
9 and sixty-eight, nor to any act of a duly licensed insurance broker in
10 negotiating, continuing or renewing policies of insurance on transporta-
11 tion, inland navigation and ocean and coastwise marine risks, nor to
12 any insurance appertaining thereto which cannot, to the advantage of
13 the insured, be placed in authorized companies. A person, other than
14 the commissioner or his deputy, upon whose complaint a conviction is
15 had for violation of this section, shall be entitled to one half of the fine
16 recovered upon sentence therefor.

Penalty for negotiating, etc., policy in an unlicensed company.
1826, 141, § 3.
R. S. 37, § 43.
1852, 231.
§ 10, 311, § 17.
1854, 453.
§§ 36, 40.
1856, 252.
§§ 19, 51.
G. S. 58.
§§ 72, 77.
1873, 142.
P. S. 119.
§§ 182, 200.
1887, 214.
§§ 97, 98.
1894, 522.
§§ 97, 98.
R. L. 118.
§§ 97, 98.
1907, 576.
§§ 106, 107, 122.
1919, 130.

160 Mass. 413. 175 Mass. 154. 183 U. S. 553.
168 Mass. 596. 212 Mass. 459. 2 Op. A. G. 471.
173 Mass. 119.

LLOYDS ASSOCIATIONS.

1 SECTION 161. [REPEALED, 1929, 6, § 1.]

AGENTS, BROKERS AND ADJUSTERS.

1 SECTION 162. Whoever, for compensation, not being the duly li-
2 censed insurance agent of the company in which any policy of insurance
3 or any annuity or pure endowment contract is effected, or an officer of a
4 domestic company acting under section one hundred and sixty-five, acts
5 or aids in any manner in negotiating policies of insurance or annuity or
6 pure endowment contracts, or placing risks or effecting insurance, or in
7 negotiating the continuance or renewal of such policies or contracts for
8 a person other than himself, shall be an insurance broker.

9 Whoever, for compensation, not being a duly licensed insurance
10 broker or an officer of a domestic company acting under section one
11 hundred and sixty-five, solicits insurance on behalf of any company, or
12 transmits for a person other than himself an application for or a policy
13 of insurance or an annuity or pure endowment contract to or from such
14 company, or offers or assumes to act in the negotiation of any such policy
15 or contract, or in the negotiation of its continuance or renewal, shall be
16 an insurance agent within the intent of this chapter, and shall thereby
17 become liable to all the duties, requirements, liabilities and penalties to
18 which an agent of such company is subject.

19 Whoever, for compensation, not being an attorney at law acting in
20 the usual course of his profession, or a trustee or agent of the property
21 insured, directly or indirectly solicits from the insured or his representa-
22 tive the settlement of a loss under a fire insurance policy shall be an
23 adjuster of fire losses.

Definitions.
1847, 273, § 1.
1854, 453, § 40.
1856, 252, § 54.
1861, 170.
1864, 114, § 1.
1869, 93.
§§ 1, 2.
1871, 297, § 8.
P. S. 119.
§§ 183, 184.
186, 187.
1887, 214.
§§ 87, 93.
1894, 522.
§§ 87, 93.
1895, 59, § 2.
R. L. 118, § 93.
1907, 576.
§§ 98, 122.
1917, 164, § 1.
1919, 38, § 1.
86.
9 Allen, 231.
103 Mass. 78.
133 Mass. 82.
168 Mass. 596.
173 Mass. 119.
175 Mass. 154.
252 Mass. 336.
1 Op. A. G. 74.
2 Op. A. G. 2.
283.
Op. A. G.
(1918) 92.

1 SECTION 163. Upon written notice by a company authorized to trans-
2 act business in the commonwealth of its appointment of a person to act

Licenses of agents.
Penalty

1856, 252, § 51.
 G. S. 58, § 74.
 1867, 267, § 5.
 P. S. 119, § 209.
 1887, 214, § 91.
 1894, 522, § 91.
 1895, 46.
 1897, 64.
 R. L. 118,
 §§ 87, 88.
 1906, 271, § 7.
 1907, 576,
 §§ 92, 93, 122.
 1908, 470.
 1911, 429, § 1.
 1913, 474, § 3.
 1917, 104, § 2.
 1918, 71.
 1919, 46.
 1924, 450, § 10.
 1926, 231.
 1928, 315.
 105 Mass. 149.
 179 Mass. 434.
 190 Mass. 586.
 249 Mass. 511.
 2 Op. A. G. 283.

as its agent herein, the commissioner shall, if he is satisfied that the 3
 appointee is a suitable and competent person of full age and intends to 4
 hold himself out and carry on business in good faith as an insurance agent 5
 and upon payment by the company of the fee prescribed by section four- 6
 teen, issue to him a license which shall state in substance that the com- 7
 pany is authorized to do business in the commonwealth, and that the 8
 person named therein is the constituted agent of the company in the 9
 commonwealth for the transaction of such business as it is authorized to 10
 transact therein. Such notice shall be upon a form furnished by the 11
 commissioner, and shall be accompanied by a statement executed on 12
 oath by the appointee which shall give his name, age, residence, present 13
 occupation, his occupation for the five years next preceding the date of 14
 the notice, and such other information as the commissioner may require 15
 upon a form furnished by him. Such license may limit the authority of 16
 the licensee to one or more of the classes of business which the company 17
 is authorized to transact, in which case the notice of appointment shall 18
 specify, in a manner satisfactory to the commissioner, the class or classes 19
 of business to be transacted by the appointee. One or more of such 20
 licenses may be issued to the same person. The commissioner may, 21
 except as provided in section five, at any time, for cause shown and after 22
 a hearing, revoke the license or suspend it for a period not exceeding the 23
 unexpired term thereof, and may, for cause shown and after a hearing, 24
 revoke the license while so suspended, and shall notify both the company 25
 and the agent in writing of such revocation or suspension. A license issued 26
 hereunder shall expire on the thirtieth day of June next after its issue, 27
 unless sooner revoked or suspended as aforesaid, or unless the company, 28
 by a written notice filed with the commissioner, cancels the authority 29
 of the agent to act for it. Such license may, in the discretion of the com- 30
 missioner and upon payment by the company of said fee, be renewed for 31
 any succeeding year by a renewal certificate without requiring anew the 32
 detailed information hereinbefore specified. Every company shall be 33
 bound by the acts of the person named in the license within the scope of 34
 his apparent authority as its acknowledged agent while such license 35
 remains in force. Whoever, not being a duly licensed insurance broker 36
 or an officer of a domestic company acting under section one hundred and 37
 sixty-five, acts as an insurance agent as defined in the preceding section, 38
 without such license or during a suspension of his license, shall be punished 39
 by a fine of not less than twenty nor more than five hundred dollars. 40

License not
 necessary for
 certain col-
 lectors.
 1913, 510.
 1919, 85; 86.

SECTION 164. A collector of premiums who does not solicit applica- 1
 tions for or the renewal or continuance of insurance contracts, or act or 2
 aid in negotiating such contracts or the continuance or renewal thereof, 3
 may carry on such business without a license therefor, provided that the 4
 collection fee does not exceed five per cent of any amount collected. 5

Authority of
 officer of
 domestic
 company to
 act without
 license.
 1887, 214, § 83.

SECTION 165. An officer of a domestic company may without a li- 1
 cense act for such company in the negotiation of any contract of insurance 2
 or an annuity or pure endowment contract, which it may lawfully make, 3
 or in the negotiation of the continuance or renewal of such contracts. 4

1894, 522, § 88. R. L. 118, § 89. 1907, 576, §§ 94, 122. 1919, 35.

Licenses of
 brokers.
 Penalty.
 1869, 93,
 §§ 2-4.

SECTION 166. The commissioner may, upon the payment of the fee 1
 prescribed by section fourteen, issue to any suitable person of full age 2
 resident in the commonwealth, or resident in any other state of the 3

4 United States granting brokers' licenses or like privileges to residents of
 5 the commonwealth, a license to act as an insurance broker to negotiate,
 6 continue or renew contracts of insurance or annuity or pure endowment
 7 contracts, or to place risks, or effect insurance with any qualified domestic
 8 company or its agents, or with the lawfully constituted and licensed resi-
 9 dent agents in this commonwealth of any foreign company duly admitted
 10 to issue such policies or contracts therein upon the following conditions:
 11 The applicant for the license shall file with the commissioner a written
 12 application upon a form provided by the commissioner, which shall be
 13 executed on oath by the applicant and kept on file by the commissioner.
 14 The application shall state the name, age, residence and occupation of
 15 the applicant at the time of making the application, his occupation for the
 16 five years next preceding the date of the application, that the applicant
 17 intends to hold himself out and carry on business in good faith as an
 18 insurance broker, and such other information as the commissioner may
 19 require. The application shall also contain a statement as to the trust-
 20 worthiness and competency of the applicant, signed by at least three
 21 reputable citizens of this commonwealth. If the commissioner is satisfied
 22 that the applicant is trustworthy and competent and intends to hold him-
 23 self out and carry on business in good faith as an insurance broker, he
 24 shall issue the license, which shall expire in one year from its date, unless
 25 sooner revoked or suspended as provided herein. The license may, in the
 26 discretion of the commissioner, be renewed, upon payment of the fee pre-
 27 scribed by section fourteen, for any succeeding year without requiring
 28 anew the detailed information hereinbefore specified. The commissioner
 29 may at any time, for cause shown and after a hearing, revoke the license
 30 or suspend it for a period not exceeding the unexpired term thereof, and
 31 may, for cause shown and after a hearing, revoke the license while so
 32 suspended, and shall notify the licensee in writing of such revocation or
 33 suspension, and may publish a notice of such revocation or suspension
 34 in such manner as he may deem necessary for the protection of the
 35 public. Whoever, not being a duly licensed insurance agent of the
 36 company in which any policy of insurance or any annuity or pure endow-
 37 ment contract is effected or an officer of a domestic company acting under
 38 section one hundred and sixty-five, acts as an insurance broker as defined
 39 in section one hundred and sixty-two, without such license or during a
 40 suspension of his license, shall be punished by a fine of not less than
 41 twenty nor more than five hundred dollars.

1873, 164.
 P. S. 119,
 §§ 187, 188.
 1887, 214.
 §§ 93, 98.
 1894, 522.
 §§ 93, 98.
 1895, 59.
 § 2, 159.
 1896, 448.
 R. L. 118,
 §§ 90, 98.
 1907, 576.
 §§ 95, 107, 122.
 1911, 429, § 3.
 1913, 474, § 3
 1919, 47
 1924, 150, § 11
 1925, 124, § 3.
 1926, 174, § 2.
 200 A. G.
 299, 471.

1 SECTION 167. The commissioner may, in addition to issuing brokers'
 2 licenses giving full authority to the licensee as set forth in the preceding
 3 section, issue insurance brokers' licenses which limit the authority of the
 4 licensee to the extent agreed upon with him and set forth in the license,
 5 but in other respects the granting of such licenses and the brokers so
 6 licensed shall be governed by the laws relating to insurance brokers.

Limited
 licenses
 of brokers.
 1913, 181.

1 SECTION 167A. No fee for a license issued under section one hundred
 2 and sixty-six, one hundred and sixty-seven or one hundred and seventy-
 3 three shall be required of or on account of any soldier, sailor or marine
 4 resident in this commonwealth who has served in the army or navy of the
 5 United States in time of war or insurrection and received an honorable
 6 discharge therefrom or release from active duty therein, if he presents to
 7 the commissioner satisfactory evidence of his identity.

Veterans ex-
 empt from
 payment of
 certain
 license fees.
 1924, 450, § 12
 1929, 232.

Special brokers' licenses.
 Penalty.
 1894, 147; 522,
 §§ 83, 99.
 1895, 300.
 1897, 214,
 §§ 83, 99.
 1898, 280, § 2.
 1901, 59.
 R. L. 118,
 §§ 83, 99.
 1907, 576,
 §§ 88, 108, 122.
 1908, 165.
 1917, 132.
 1924, 450, § 13.
 1926, 64.
 1927, 29.

SECTION 168. The commissioner may, upon the payment of the fee 1
 prescribed by section fourteen, issue to any suitable person of full age 2
 resident in the commonwealth, a license to act as a special insurance 3
 broker to negotiate, continue or renew contracts of insurance against 4
 any of the hazards specified in clause first, fifth, eighth or thirteenth of 5
 section forty-seven, on property or interests in this commonwealth in 6
 foreign companies not authorized to transact such business therein, 7
 upon the following conditions: The applicant for the license shall file 8
 with the commissioner a written application as prescribed by section 9
 one hundred and sixty-six, which shall be executed on oath by the appli- 10
 cant and kept on file by the commissioner. If the commissioner is satis- 11
 fied that the applicant is trustworthy and competent, he shall issue the 12
 license, subject to suspension or revocation at the pleasure of the com- 13
 missioner, which shall expire in one year from its date, unless sooner 14
 suspended or revoked as aforesaid. The license may, in the discretion 15
 of the commissioner, be renewed for each succeeding year, upon the 16
 payment of the fee prescribed by section fourteen, without requiring 17
 anew the detailed information specified by section one hundred and 18
 sixty-six. Before the person named in such license shall procure any 19
 insurance in such companies on any such property or interests, he shall 20
 in every case execute, and within five days thereafter file with the com- 21
 missioner, an affidavit, which shall have force and effect for one year 22
 only from the date of said affidavit, that he is unable to procure, in 23
 companies admitted to do business in the commonwealth, the amount 24
 of insurance necessary to protect said property or interests, and that 25
 he will procure insurance under such license only after he has procured 26
 insurance in companies admitted to do business as aforesaid to the full 27
 amount which said companies are willing to write on said property or 28
 interests; but such licensed person shall not be required to file such 29
 affidavit if one relative to the same property or interests has been filed 30
 within the preceding twelve months by any broker licensed under this 31
 section, nor to offer any portion of such insurance to any company not 32
 possessed of net cash assets of at least twenty-five thousand dollars, nor 33
 to one which has within the preceding twelve months been in an impaired 34
 condition. Each person so licensed shall keep a separate account of 35
 the business done under the license, a certified copy of which account 36
 he shall forthwith file with the commissioner, showing the exact amount 37
 of such insurance placed for each person, the gross premium charged 38
 thereon, the companies in which the same is placed, the date of the 39
 policies and the term thereof, and also a report in the same detail of all 40
 such policies cancelled, with the gross return premiums thereon, and 41
 before receiving such license shall execute and deliver to the state treas- 42
 urer a bond in the penal sum of two thousand dollars, with such sureties 43
 as he shall approve, conditioned that the licensee will faithfully comply 44
 with all the requirements of this section, and will annually, in January, 45
 file with the state treasurer a sworn statement of the gross premiums 46
 charged for insurance procured or placed and the gross return premiums 47
 on such insurance cancelled under such license during the year ending 48
 on December thirty-first last preceding, and at the time of filing such 49
 statement will pay to the commonwealth an amount equal to four per 50
 cent of such gross premiums, less such return premiums so reported. 51

A person licensed under this section who negotiates, continues or 52
 renews any such contract of insurance in any unauthorized foreign 53

54 company, and who neglects to make and file the affidavit and statements
 55 required by this section, or who wilfully makes a false affidavit or state-
 56 ment, or who negotiates, continues or renews any such contract of
 57 insurance after the revocation or during the suspension of his license,
 58 shall forfeit his license if not previously revoked and be punished by a
 59 fine of not less than one hundred nor more than five hundred dollars or
 60 by imprisonment for not more than one year, or both.

1 SECTION 169. An insurance agent or broker acting for a person other
 2 than himself in negotiating, continuing or renewing any policy of insur-
 3 ance or any annuity or pure endowment contract shall, for the purpose
 4 of receiving any premium therefor, be held to be the agent of the com-
 5 pany, whatever conditions or stipulations may be inserted in the policy
 6 or contract.

R. L. 118, § 91. 1907, 576, §§ 96, 122.	1919, 19. 208 Mass. 214.	252 Mass. 336. Effect of payment to agent or broker. 1878, 166, § 1. P. S. 119, § 191. 1887, 214, § 90. 1894, 522, § 90.
--	-----------------------------	--

1 SECTION 170. An insurance agent or broker who knowingly procures
 2 by fraudulent representations payment or the obligation for the pay-
 3 ment of any premium on any policy of insurance or any annuity or
 4 pure endowment contract shall be punished by a fine of not less than
 5 one hundred nor more than one thousand dollars or by imprisonment
 6 for not more than one year.

P. S. 119, § 185. 1887, 214, § 90.	1894, 522, § 90. R. L. 118, § 91.	1907, 576, §§ 96, 122. 1919, 19.
---------------------------------------	--------------------------------------	-------------------------------------

1 SECTION 171. An insurance agent shall be personally liable on all
 2 contracts of insurance unlawfully made by or through him, directly or
 3 indirectly, for or in behalf of any company not authorized to do business
 4 in the commonwealth.

1864, 114, § 2. 1878, 36, § 4. P. S. 119, § 210.	1887, 214, § 89. 1894, 522, § 89. R. L. 118, § 92.	1907, 576, §§ 97, 122. 160 Mass. 413.
--	--	--

1 SECTION 172. The commissioner may, upon the payment of the fee
 2 prescribed by section fourteen, issue to any suitable person of full age a
 3 license to act as an adjuster of fire losses upon the following conditions:
 4 The applicant for the license shall file with the commissioner a written
 5 application as prescribed by section one hundred and sixty-six, which
 6 shall be executed on oath by the applicant, and kept on file by the com-
 7 missioner. If the commissioner is satisfied that the applicant is trust-
 8 worthy and competent, he shall issue the license, which shall expire in
 9 one year from its date, unless sooner revoked or suspended as provided
 10 herein. The license may, in the discretion of the commissioner and upon
 11 the payment of the fee prescribed by section fourteen, be renewed for
 12 any succeeding year without requiring anew the detailed information
 13 specified by section one hundred and sixty-six. The commissioner may
 14 at any time, for cause shown and after a hearing, revoke the license or
 15 suspend it for a period not exceeding the unexpired term thereof, and
 16 may, for cause shown and after a hearing, revoke the license while so
 17 suspended, and shall notify the licensee in writing of such revocation or
 18 suspension. Whoever acts as an adjuster of fire losses, as defined in sec-
 19 tion one hundred and sixty-two, without such license or during a sus-
 20 pension of his license, shall be punished by a fine of not more than two
 21 hundred dollars or by imprisonment for not more than six months.

Licenses of
 adjusters of
 fire losses.
 Penalty.
 1917, 164.
 1919, 38.
 1924, 450, § 14.

Voluntary
association
as agent,
broker, etc.
Penalty.
1923, 354.
1924, 450, § 15.

SECTION 172A. The licenses described in sections one hundred and 1
sixty-three, one hundred and sixty-six, one hundred and sixty-seven, one 2
hundred and sixty-eight and one hundred and seventy-two may, upon 3
payment of the fees prescribed by section fourteen, be issued to any volun- 4
tary association, as defined in section one of chapter one hundred and 5
eighty-two, which is organized exclusively for the purpose of acting as 6
insurance agent or broker, or adjuster of fire losses and which, in case of 7
an association organized to act as an insurance agent or broker, by its 8
written instrument or declaration of trust limits the holding and owner- 9
ship of shares or certificates of participation therein to resident insurance 10
agents and brokers. All the trustees shall be residents of the common- 11
wealth. Such association and the trustees thereof shall be subject to section 12
six of said chapter one hundred and eighty-two. Such licenses, 13
together with the association and the trustees thereof named in the 14
license, shall be subject to the sections of this chapter hereinbefore men- 15
tioned, except as otherwise provided herein. Each license shall specify 16
the trustees, not exceeding five, who may act thereunder in the name and 17
on the behalf of the association. Each trustee shall file the statement or 18
application required by law. A duplicate original of the written instru- 19
ment or declaration of trust creating the association and a certified copy 20
of the by-laws thereof, if any, shall be filed with said statements or appli- 21
cations. The license may be revoked or suspended as to the association 22
or as to any trustee named therein. The trustees shall file with the com- 23
missioner within thirty days after the adoption thereof, duplicate originals 24
of all amendments to the written instrument or declaration of trust and 25
certified copies of all amendments to the by-laws, if any. The trustees 26
shall at once notify the commissioner in writing in case of the termination 27
of the association, and upon receipt of such notice the commissioner shall 28
forthwith revoke the license of the association without a hearing. Each 29
trustee specified in the license shall be personally liable to the penalties 30
of the insurance laws for any violation thereof, although the act of viola- 31
tion is done in the name or in the behalf of the association, and shall be 32
personally liable for all of the debts and obligations of the association, 33
notwithstanding any provision in the written instrument or declaration 34
of trust of such association limiting the liability of the trustees thereunder, 35
and such provision, if any, shall be deemed to have been waived by the 36
trustees by their filing the aforesaid statements or applications. The 37
commissioner may at any time require such information as he deems 38
necessary in respect to the association, its trustees, agents or affairs, and 39
may make such examination of its books, records and affairs as he deems 40
necessary and for the aforesaid purposes shall have all the powers con- 41
ferred by section four. Whoever, being a trustee of an association licensed 42
under this section, fails to file with the commissioner copies of all amend- 43
ments to the written instrument or declaration of trust, or to the by- 44
laws, if any, or fails to notify the commissioner of the termination of such 45
association, or whoever knowingly or wilfully files with the commissioner 46
false copies of the written instrument or declaration of trust or amend- 47
ments thereof, or of the by-laws, if any, or amendments thereof, or 48
whoever, being specified in the license of such association as a trustee 49
thereof, acts under said license after the termination of such association, 50
shall be punished by a fine of not less than twenty nor more than five 51
hundred dollars. Sections one hundred and seventy-four A and one 52
hundred and seventy-four B shall apply to licenses issued under this 53
section. 54

1 SECTION 173. The licenses described in sections one hundred and
 2 sixty-three, one hundred and sixty-six, one hundred and sixty-seven, one
 3 hundred and sixty-eight and one hundred and seventy-two may, upon
 4 payment of the fees prescribed by section fourteen, be issued to partner-
 5 ships on the conditions specified in and subject to said sections, except as
 6 otherwise provided herein. Each member of the partnership shall file
 7 the statement or application required by law, including a written request
 8 that the license be issued in the partnership name. Together with said
 9 statements or applications, there shall be filed a duplicate original of the
 10 written partnership agreement signed by all the partners. The license
 11 shall be issued in the partnership name, and may be revoked or suspended
 12 as to one or all members of the partnership. Minors who are parties to
 13 the written articles of partnership may be included in the partnership
 14 license, provided that there is one adult member of the firm. If the
 15 partnership is terminated prior to the expiration of the license, the part-
 16 ners shall forthwith give notice thereof to the commissioner, who shall
 17 thereupon without a hearing revoke the license. Each partner shall be
 18 personally liable to the penalties of the insurance laws for any violation
 19 thereof, although the act of violation is done in the name of or in behalf
 20 of the partnership. Whoever, being licensed as a partner under this
 21 section, fails to give notice as required herein of the termination of the
 22 partnership, or after the partnership is terminated acts under such license,
 23 shall be punished by a fine of not less than twenty nor more than five
 24 hundred dollars.

Partnership
 as agent,
 broker, etc.
 Penalty.
 1920, 317, § 1;
 1924, 450, § 16

1 SECTION 174. The licenses described in sections one hundred and
 2 sixty-three, one hundred and sixty-six, one hundred and sixty-seven,
 3 one hundred and sixty-eight and one hundred and seventy-two may,
 4 upon payment of the fees prescribed by section fourteen, be issued to
 5 any corporation which is incorporated exclusively for the purpose of
 6 acting as an insurance agent, broker or adjuster of fire losses, except
 7 that no foreign corporation shall be licensed as an insurance agent of a
 8 foreign company under said section one hundred and sixty-three or as a
 9 special insurance broker under said section one hundred and sixty-eight.
 10 Every such license, together with the corporation and officers or directors
 11 of the corporation named in the license, shall be subject to said sections,
 12 except as otherwise provided herein. Each license shall specify the officers
 13 or directors, not exceeding five, who may act thereunder in the name
 14 and on behalf of the corporation. Minors may be designated as such
 15 officers or directors in the license. Each officer or director to be specified
 16 in the license shall file the statement or application required by law.
 17 A certified copy of the articles of organization and of the certificate of
 18 incorporation shall be filed with the said statements or applications.
 19 The license may be revoked or suspended as to the corporation or as to
 20 any officer or director specified therein. Every officer or director speci-
 21 fied in the license shall be personally liable to the penalties of the insur-
 22 ance laws for any violation thereof, although the act of violation is done
 23 in the name and in behalf of the corporation. The corporation shall be
 24 liable for any such violation, the responsibility for which cannot be
 25 placed on any individual officer or director.

Certain
 corporations
 as agents,
 brokers, etc.
 Penalties.
 1915, 82.
 1916, 11.
 1920, 317,
 §§ 2, 3.
 1924, 406, § 13;
 450, § 17.
 1926, 70, §§ 1, 2.

26 The commissioner may at any time require such information as he
 27 deems necessary in respect to the corporation, its officers, directors or
 28 affairs, and may make such examination of its books and affairs as he
 29 deems necessary, and for this purpose shall have the powers conferred

by section four. Any officer, director, agent or employee of any such corporation, who fails or refuses to furnish the commissioner any such information within ten days after written request therefor, and in such form as he may require, or who refuses to submit to such examination, or who obstructs the commissioner or any of his deputies or examiners in the making of such examination, shall be punished by the penalty provided in section four.

The clerk or other corresponding officer shall file with the commissioner, within thirty days after the adoption thereof, certified copies of all amendments to the articles of organization and shall at once notify the commissioner in writing in case of the dissolution of the corporation. Upon receipt of such notice, the commissioner shall forthwith revoke its license without a hearing. Whoever, being clerk or corresponding officer of a corporation licensed under this section, fails to file with the commissioner duly certified copies of all amendments to the articles of organization of such corporation as provided herein, or fails to notify the commissioner of the dissolution of the corporation, or whoever, being specified in the license of such corporation as an officer or director, acts under said license after the dissolution of such corporation, shall be punished by a fine of not less than twenty nor more than five hundred dollars.

No corporation licensed under this section, and no officer, director, agent or employee thereof, shall directly or indirectly issue, place or negotiate, or negotiate the continuance or renewal of, or offer to issue, place or negotiate, or offer to negotiate the continuance or renewal of, any policy of insurance insuring or in favor of any stockholder in such corporation, except an officer or director thereof specified in its license; and no stockholder thereof, except as aforesaid, shall directly or indirectly place or procure through, or accept from, such corporation or any officer, director, agent or employee thereof, any policy of insurance, or any continuance or renewal thereof, insuring or in favor of such stockholder. No such corporation, and no officer, director, agent or employee thereof, shall directly or indirectly issue, sell or give, or assent to, or record the transfer of, or offer to issue, sell, give or transfer, and no stockholder of such corporation shall directly or indirectly sell, give or transfer, or offer to sell, give or transfer, any of the shares of its capital stock to any person except an officer or director of such corporation specified as aforesaid, if there is in effect a policy of insurance issued, placed or negotiated, or the continuance or renewal whereof was negotiated, by or on behalf of such corporation insuring such person or in his favor, and no person, except an officer or director of such corporation specified as aforesaid, shall directly or indirectly accept or hold any of the shares of such capital stock if there is in effect any such insurance policy insuring him or in his favor. A corporation violating any of the provisions of this paragraph shall be punished by a fine of not less than two hundred nor more than one thousand dollars. Any individual violating any of said provisions shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than thirty days, or both.

Service of notices of hearings, revocations or suspensions of licenses. 1922, 69.

SECTION 174A. Notices of hearings required by section one hundred and sixty-three, one hundred and sixty-six, one hundred and sixty-seven, one hundred and seventy-two, one hundred and seventy-three or one hundred and seventy-four or of the revocation or suspension of any 4

5 license issued under any of said sections shall be deemed sufficient when
 6 sent postpaid by registered mail to the last business or residence address
 7 of the licensee appearing on the records of the commissioner. The affi-
 8 davit of the commissioner or of any person authorized by him to send
 9 such notice that such notice has been sent in accordance with this section
 10 shall be prima facie evidence that such notice was duly given.

1 SECTION 174B. A person licensed under section one hundred and
 2 sixty-three, one hundred and sixty-six, one hundred and sixty-seven,
 3 one hundred and sixty-eight or one hundred and seventy-two shall, upon
 4 the revocation of his license and upon written demand therefor, and a
 5 partnership licensed under section one hundred and seventy-three or a
 6 corporation licensed under section one hundred and seventy-four shall,
 7 upon the revocation of its license as to all the members of the firm or as
 8 to the corporation and upon such demand, forthwith surrender his or
 9 its license or the renewal certificate thereof to the commissioner. Such
 10 partnership or corporation shall, upon the revocation of its license as
 11 to less than all of its members or officers and upon such demand, forth-
 12 with surrender its license or renewal certificate to the commissioner,
 13 and he shall thereupon cancel it, and issue an amended license or renewal
 14 certificate covering the remaining partners or other officers of the cor-
 15 poration and running for the unexpired term of the surrendered license
 16 or renewal certificate. Demands hereunder may be served as provided
 17 in section one hundred and seventy-four A. If the license or renewal
 18 certificate has been lost, stolen or destroyed, an affidavit to that effect
 19 shall be filed with the commissioner in such form as he may require.
 20 Whoever neglects or refuses to comply with this section or know-
 21 ingly and wilfully makes a false affidavit hereunder shall be punished
 22 by a fine of not less than one hundred nor more than five hundred
 23 dollars.

Surrender of
 revoked
 licenses—
 Amended
 license—
 Penalty
 1923, 116.

1 SECTION 175. Whoever, not being duly licensed as an insurance agent
 2 or broker or as an adjuster of fire losses, represents or holds himself out
 3 to the public as being such an agent, broker or adjuster, or as being
 4 engaged in the insurance business, by means of advertisements, cards,
 5 circulars, letterheads, signs or other methods, or whoever, being duly
 6 licensed as such agent, broker or adjuster, advertises as aforesaid or
 7 carries on such business in any other name than that stated in his license,
 8 shall be punished by a fine of not less than ten nor more than one hun-
 9 dred dollars.

Penalty for
 pretending to
 be agent,
 broker, etc.
 1919, 26.

1 SECTION 176. An insurance agent or broker who acts in negotiating
 2 or renewing or continuing a policy of insurance or an annuity or pure
 3 endowment contract issued by a company lawfully doing business in the
 4 commonwealth, and who receives any money or substitute for money
 5 as a premium for such a policy or contract from the insured or holder
 6 thereof, shall be deemed to hold such premium in trust for the company.
 7 If he fails to pay the same over to the company after written demand
 8 made upon him therefor, less his commission and any deductions to
 9 which, by the written consent of the company, he may be entitled, such
 10 failure shall be prima facie evidence that he has used or applied the said
 11 premium for a purpose other than paying the same over to the company,
 12 and upon conviction thereof he shall be guilty of larceny.

Larceny of
 premium by
 agent or
 broker
 1878, 166, § 2.
 P. S. 203, § 47.
 1894, 522,
 § 111.
 R. L. 118,
 § 112.
 1907, 576,
 §§ 121, 122
 1910, 426
 2 Op. A. G. 299.

Compensation to unlicensed persons forbidden. Penalty. 1919, 87. 1928, 205, § 2.

SECTION 177. No company and no officer, agent or employee thereof, and no duly licensed insurance broker, shall, directly or indirectly, pay or allow or offer or agree to pay or allow compensation or anything of value to any person, excepting an officer of a domestic company acting under section one hundred and sixty-five, for acting in this commonwealth as an insurance agent or as an insurance broker, both as defined in section one hundred and sixty-two, who is not then duly licensed as an insurance agent of the company for which he assumes to act or as an insurance broker. Nothing in this section shall affect sections one hundred and eighty-two to one hundred and eighty-four, inclusive. Whoever violates any provision of this section shall be punished by a fine of not less than twenty nor more than two hundred dollars.

RECEIVERS.

Compensation and accounts. 1864, 308, §§ 3, 4. 1872, 362, § 1. 1876, 83, § 1. 1880, 25. P. S. 119, §§ 168, 169, 173. 1883, 33, § 5; 258, §§ 1, 3. 1886, 300, § 2. 1887, 214, § 95. 1894, 522, § 95. R. L. 118, § 95. 1907, 576, §§ 100, 122. 1923, 362, § 88. 1924, 406, § 14.

SECTION 178. The compensation of receivers of insolvent companies shall be fixed by the supreme judicial court. All accounts rendered to the court by such receivers, except those rendered by the commissioner when appointed under section one hundred and seventy-nine, shall be referred to the commissioner.

Such receivers, at the expiration of one year after final settlement ordered by the court, shall report to the court the names and residences, if known, of the persons entitled to money or dividends from the estate of such companies remaining in their hands uncalled for, with the amount due to each. The court shall thereupon order a notice to be given by the receivers and, upon the expiration of one year after the time of giving such notice, the receivers shall in like manner report the amounts still uncalled for. Unless cause shall appear for decreeing otherwise, such amounts shall then be ordered to be paid to the commonwealth, and schedules signed by the receivers shall at the same time be deposited with the state treasurer and comptroller, setting forth the decree of the court and the names and residences, so far as known, of the persons or parties entitled thereto, alphabetically arranged, and the amount due to each. The comptroller shall forthwith cause notice of such deposit to be mailed to such persons, and, upon certification by him that a claimant is entitled to any part of said deposit, it shall be paid in the same manner as other claims against the commonwealth. Upon the payment to the commonwealth of such unclaimed money or dividends by the receiver and the allowance by the court of his final account, or at the expiration of one year after the final settlement ordered by the court, if he then has in his hands no unclaimed money or dividends, he shall deposit with the commissioner all books and papers of such company, including those relative to his receivership, which shall be preserved by the commissioner.

Commissioner, etc., may be appointed. 1918, 72.

SECTION 179. In any proceeding in which application is made by or at the relation of the commissioner for the appointment, either temporary or permanent, of a receiver of a company, the commissioner or one of his deputies or assistants may, in the discretion of the court, be appointed receiver, and when so appointed shall serve without compensation other than his official salary. When authorized in advance by the court, counsel may be employed, and paid, from the assets of the company, such sums as the court may fix. Expenses, other than those incurred for services in the settlement of the affairs of the company shall, subject to the approval of the court, be paid from its assets.

1 SECTION 180. The commissioner, his deputy or examiner shall annu-
 2 ally or oftener examine the accounts and transactions of all receivers
 3 of insolvent companies; and shall also carefully examine all accounts
 4 of such receivers referred to him under section one hundred and seventy-
 5 eight and make report thereof to the court.

Examinations
 of accounts,
 etc.
 1864, 308,
 §§ 1, 3
 1876, 83,
 §§ 1, 2.

P. S. 119, §§ 169, 170.
 1887, 214, § 13.

1894, 522, § 13.
 1898, 53

R. L. 118, § 13.
 1907, 576, §§ 13, 122.

6 For the above purposes, he, his deputy or examiner shall have free
 7 access to the official books and papers of such receivers relative to their
 8 transactions and shall have all the powers conferred by section four.

1876, 83, § 3
 P. S. 119, § 171
 1924, 106, § 15.

9 If in his opinion a receiver has violated his duty in office, or further
 10 proceedings by receivers to collect an assessment will not offer sub-
 11 stantial relief to creditors, the commissioner shall certify the facts to the
 12 court.

1864, 308, § 2
 1876, 83, § 4
 P. S. 119, § 172

1 SECTION 180A. The receiver of any domestic company shall, within
 2 twenty days after his appointment, give notice thereof to all policyholders
 3 of the company by written notice, in a form prescribed by the commis-
 4 sioner, sent by mail, postage prepaid, to the last address of the insured
 5 appearing on the records of the company, to the address or location given
 6 in the policy, or to the last business residence or other address known to
 7 the receiver, and also shall within said period cause notice thereof to be
 8 published in such form and in such newspapers published in the common-
 9 wealth as the commissioner may direct.

Receivers of
 domestic
 companies to
 give notice of
 appointment
 to policy-
 holders.
 1924, 49.

MISREPRESENTATIONS AND REBATES.

1 SECTION 181. No company, no officer or agent thereof and no insur-
 2 ance broker shall make, issue, circulate or use, or cause or permit to be
 3 made, issued, circulated or used, any written or oral statement misrepre-
 4 senting the terms of any policy of insurance or any annuity or pure
 5 endowment contract issued or to be issued by any company, or the
 6 benefits or privileges promised thereunder. No such company, officer,
 7 agent or broker shall make any written or oral statement misrepresent-
 8 ing the terms, privileges or benefits of any policy of insurance or any
 9 annuity or pure endowment contract to any person insured under such
 10 policy or holding such contract in any company, in order to induce, or
 11 which would tend to induce, any such person to lapse, forfeit or sur-
 12 render such policy or contract. Violation of this section shall be pun-
 13 ished by a fine of not more than one hundred dollars.

Misrepre-
 sentations
 to insured
 prohibited.
 Penalty.
 1907, 576, § 74.
 1909, 467.
 1913, 474.
 §§ 1, 2.

1 SECTION 182. No company, no officer or agent thereof and no insur-
 2 ance broker shall pay or allow, or offer to pay or allow, in connection
 3 with placing or negotiating any policy of insurance or any annuity or
 4 pure endowment contract or the continuance or renewal thereof, any
 5 valuable consideration or inducement not specified in the policy or
 6 contract, or any special favor or advantage in the dividends or other
 7 benefits to accrue thereon; or shall give, sell or purchase, or offer to
 8 give, sell or purchase, anything of value whatsoever not specified in the
 9 policy; or shall give, sell, negotiate, deliver, issue, or authorize to issue
 10 or offer to give, sell, negotiate, deliver, issue, or authorize to issue any
 11 policy of workmen's compensation insurance, or any motor vehicle
 12 liability bond or any motor vehicle liability policy, both as defined in
 13 section thirty-four A of chapter ninety, at a rate different from that

Rebates, etc.,
 prohibited.
 1887, 214, § 68.
 1894, 522, § 68
 R. L. 118, § 68.
 1907, 576,
 §§ 69, 122
 1908, 511, § 1.
 1912, 401, § 1.
 1920, 147, § 1.
 1925, 346, § 5.
 1928, 381, § 8.
 266 Mass. 121.
 2 Op. A. G. 167.
 3 Op. A. G. 47.
 4 Op. A. G. 327,
 503.
 Op. A. G.
 (1919) 43, 88.
 Op. A. G.
 (1920) 132,
 185.

fixed, established or approved by the commissioner. No such company, 14
 officer, agent or broker shall at any time pay or allow, or offer to pay or 15
 allow, any rebate of any premium paid or payable on any policy of insur- 16
 ance or any annuity or pure endowment contract. 17

Acceptance of
 such rebates,
 etc., prohibited.
 1907, 576, § 69.
 1908, 511, § 1.
 1912, 401, § 1.
 1920, 147, § 1.
 1925, 346, § 5.
 1928, 381, § 9.
 266 Mass. 121.

SECTION 183. No person shall receive or accept from any company 1
 or officer or agent thereof, or any insurance broker, or any other person, 2
 any such rebate of premium paid or payable on the policy or contract. 3
 or any special favor or advantage in the dividends or other benefits to 4
 accrue thereon, or any valuable consideration or inducement not specified 5
 in the policy or contract or any policy of workmen's compensation insur- 6
 ance, or any motor vehicle liability bond or any motor vehicle liability 7
 policy, both as defined in section thirty-four A of chapter ninety, at 8
 a rate different from that fixed, established or approved by the com- 9
 missioner. No person shall be excused from testifying, or from producing 10
 any books, papers, contracts, agreements or documents at the trial of 11
 any other person charged with violating any provision of this and the 12
 preceding section, on the ground that such testimony or evidence may 13
 tend to incriminate himself; but no person shall be prosecuted for any 14
 act concerning which he shall be compelled so to testify or produce 15
 evidence, documentary or otherwise, except for perjury committed in 16
 so testifying. 17

Application of
 two preceding
 sections.
 1908, 511, § 3.
 1910, 185; 256.
 1912, 401, § 3.
 1920, 147, § 1.
 1926, 93, § 2.
 1930, 18.

SECTION 184. The two preceding sections shall apply to all kinds of 1
 insurance, including contracts of corporate suretyship, except those 2
 specified in subdivisions (a), (b) and (c) of the second clause of section 3
 forty-seven. The said sections shall not prohibit any company from 4
 paying a commission to another company or to any person who is duly 5
 licensed as an insurance agent of such company or as an insurance broker 6
 and who holds himself out and carries on business in good faith as such, 7
 or prohibit any such person or any company from receiving a commis- 8
 sion in respect to any policy under which he or it is insured, or in respect 9
 to any annuity or pure endowment contract held by him; nor shall said 10
 sections apply to (1) a distribution, without special favor or advantage, 11
 by mutual companies to policyholders of savings, earnings or surplus 12
 without specification thereof in the policy, or (2) the furnishing to the 13
 insured of information or advice by any company, officer, agent or broker 14
 with regard to any risk for the purpose of reducing the liability of loss, or 15
 (3) the payment or allowance to the insured of a return premium upon 16
 the cancellation or surrender of a policy, or of a cash surrender or other 17
 value upon the lapse or surrender of a policy of life or endowment insur- 18
 ance or upon the exchange, alteration or conversion of any such policy 19
 under section one hundred and thirty-nine. 20

MISCELLANEOUS PROVISIONS.

Deposits of
 companies.
 1856, 252, § 43.
 G. S. 58, § 63.
 1878, 130, § 1, 7.
 P. S. 119, § 156, 218.
 1883, 107.
 1884, 119.
 1887, 214, § 94.
 1893, 224.
 1894, 522, § 94.
 R. L. 118, § 94.

SECTION 185. The state treasurer in his official capacity shall take 1
 and hold in trust deposits made by any domestic company for the pur- 2
 pose of complying with the laws of any other state or country to enable 3
 such company to do business in such state or country, and also in like 4
 manner take and hold any deposit made by a foreign company under any 5
 law of this commonwealth. The company making such deposit shall be 6
 entitled to the income thereof, and may from time to time, with the con- 7
 sent of the treasurer, when not forbidden by the law under which the 8

9 deposit is made, change in whole or in part the securities composing the
 10 deposit for other approved securities of equal par value.

11 Upon request of any domestic company the state treasurer may return
 12 to such company the whole or any portion of the securities of such
 13 company held by him on deposit if he shall be satisfied that the securities
 14 so asked to be returned are subject to no liability and are not required to
 15 be longer held by any provision of law or for the purpose of the original
 16 deposit. And he may return to the trustees, or other representative
 17 authorized for that purpose, of a foreign company any deposit made by
 18 such company if it shall appear that such company has ceased to do
 19 business in this commonwealth, and is under no obligation to policy-
 20 holders or other persons in this commonwealth or in the United States
 21 for whose benefit such deposit was made.

22 A company which has made such deposit, or its trustees or resident
 23 manager in the United States, or the commissioner, or any creditor of
 24 such company may at any time bring, in the supreme judicial court for
 25 the county of Suffolk, a suit in equity against the commonwealth and
 26 other parties properly joined therein to enforce, administer or terminate
 27 the trust created by such deposit. The process in such suit shall be
 28 served on the state treasurer, who shall appear and answer on behalf of
 29 the commonwealth and perform such orders and decrees as the court may
 30 make thereon.

1 SECTION 186. No oral or written misrepresentation or warranty
 2 made in the negotiation of a policy of insurance by the insured or in his
 3 behalf shall be deemed material or defeat or avoid the policy or prevent
 4 its attaching unless such misrepresentation or warranty is made with
 5 actual intent to deceive, or unless the matter misrepresented or made a
 6 warranty increased the risk of loss.

Misrepresentation by insured.
 Effect.
 1878, 157.
 P. S. 119, § 181.
 1887, 214, § 21.
 1891, 522, § 21.
 1895, 271

R. L. 118, § 21.	188 Mass. 542.	237 Mass. 34.
1907, 576, §§ 21, 122.	189 Mass. 538.	242 Mass. 538.
145 Mass. 426.	194 Mass. 56.	243 Mass. 599.
159 Mass. 514.	198 Mass. 375.	245 Mass. 373.
163 Mass. 108, 117.	202 Mass. 169.	247 Mass. 10.
164 Mass. 448.	207 Mass. 79, 398.	250 Mass. 164.
167 Mass. 109.	208 Mass. 1.	251 Mass. 1.
170 Mass. 224.	213 Mass. 389.	253 Mass. 617.
172 Mass. 498.	224 Mass. 6, 327.	259 Mass. 573.
173 Mass. 197.	228 Mass. 450.	261 Mass. 121.
181 Mass. 139.		

1 SECTION 187. Policies of life or endowment insurance, group life
 2 insurance or insurance against accidental injury or disease issued by a
 3 foreign company in this commonwealth may, with the approval of the
 4 commissioner, contain any provision required by the law of the state,
 5 territory or district of the United States under which the company is
 6 organized, which is not contrary to the laws of this commonwealth; and
 7 such policies of a domestic company issued in any other state, territory,
 8 district or country may contain any provision required by the laws of the
 9 state, territory, district or country in which the same are issued.

Foreign companies may insert conditions required by foreign laws, when.
 1910, 493, § 5.
 1913, 535.
 1916, 47.
 1918, 112, § 3.
 1925, 54.

1 SECTION 187A. If a suit or action on a policy of insurance, duly com-
 2 menced within the time limited by any valid clause of such policy for
 3 commencing suits or actions against the company, shall be enjoined or
 4 abated, suit or action may be commenced at any time within one year
 5 after the dissolution of such injunction or the abatement of such suit
 6 or action, to the same extent as if there were no limitation of time pro-
 7 vided in the policy for the bringing of such suit or action.

Limitation of actions on policies.
 1922, 408

Refusal to pay
return premium
on cancelled
policies.
Penalty.
1923, 336, § 1.

SECTION 187B. A company, or any officer, agent or employee thereof, 1
having actual knowledge that the insured under any policy of insurance 2
has paid the premium thereon to the company, or to its agent who issued 3
the policy, or to the duly licensed insurance broker who negotiated it or 4
its continuance or renewal, who cancels or offers or attempts to cancel 5
any such policy, which provides for cancellation by the company upon 6
giving written notice and paying or tendering to the insured a return 7
premium, without paying or tendering to him with said notice the full 8
return premium thereunder according to its terms without any deduc- 9
tions, or who refuses to pay or tender to the insured the full return pre- 10
mium according to its terms without any deductions upon demand after 11
cancellation by the insured of any such policy which provides for cancel- 12
lation by the insured and for the payment to him of a return premium, 13
or who refuses to pay or tender to the insured the full return premium 14
according to the terms of the policy without any deductions, upon demand 15
after the full return premium has been ascertained, in the case of such a 16
policy which provides for cancellation by the company upon written 17
notice without paying or tendering the return premium until it has been 18
ascertained, or upon demand after cancellation in the case of such a policy 19
which provides for cancellation by the company upon giving written 20
notice and for the payment of the return premium upon demand after 21
cancellation, shall be punished for the first offence by a fine of not less than 22
fifty nor more than two hundred dollars and for each subsequent offence 23
by a fine of not less than one hundred nor more than five hundred dollars 24
and by imprisonment for not more than six months. 25

Cancellation,
how effected.
1923, 336, § 1.
269 Mass. 225.

SECTION 187C. A company issuing any policy of insurance which is 1
subject to cancellation by the company shall effect cancellation by serving 2
the notice thereof provided by the policy and by paying or tendering, 3
except as provided in this and the following section, the full return pre- 4
mium due thereunder in accordance with its terms without any deductions. 5
Such notice and return premium, if any, shall be delivered in hand to the 6
insured, or be left at his last address as shown by the company's records 7
or, if its records contain no such address, at his last business, residence or 8
other address known to the company, or be forwarded to said address by 9
registered mail, postage prepaid. A check of the company or its duly 10
authorized agent shall be deemed a sufficient tender. The affidavit of any 11
officer, agent or employee of the company, duly authorized for that pur- 12
pose, that such notice has been served and such return premium, if any, 13
has been paid or tendered, as provided in this section, shall be prima facie 14
evidence that cancellation has been duly effected. 15

If a policy is made payable to a mortgagee or any person other than the 16
insured, notice shall be given as above provided to the payee as well as to 17
the insured. 18

Policies subject to cancellation by the insured upon giving notice to the 19
company may be cancelled by serving such notice in the manner herein 20
provided upon the company or upon its agent who issued the policy. 21

Whoever knowingly and wilfully makes a false affidavit under this 22
section shall be punished by a fine of not less than one hundred nor more 23
than one thousand dollars or by imprisonment for not more than one 24
year. 25

This section shall not apply to nor be deemed to prevent the termina- 26
tion of any policy by mutual consent of the parties, nor shall it require the 27

28 payment or tender of a return premium upon the cancellation of a policy
29 which provides for the payment of a return premium when ascertained
30 or upon demand after cancellation.

1 SECTION 187D. A company issuing any policy of insurance which
2 provides for cancellation by the company upon giving written notice to
3 the insured and for the payment or tender to the insured of a return
4 premium at any time either before, at or after cancellation, may cancel
5 such policy by giving the notice provided therein in the manner pre-
6 scribed by section one hundred and eighty-seven C without tendering
7 or paying at any time or in any case any return premium thereon, if the
8 insured has not prior to the date of such notice, actually paid the premium
9 thereon either to the company, or to its agent who issued the policy, or
10 to the duly licensed insurance broker who negotiated it or its continuance
11 or renewal.

Cancellation
for non-pay-
ment of
premium.
1923, 336, § 1.

1 SECTION 188. A paid officer of a domestic mutual company who
2 asks for, receives or procures to be obtained or uses a proxy to vote in
3 violation of any provision of section seventy-six or ninety-four shall be
4 punished by a fine of not less than one hundred nor more than three
5 hundred dollars.

Penalty for
unlawful use
of proxy.
1887, 214,
§ 107.
1894, 522,
§ 107.

R. L. 118, § 107.

1907, 576, §§ 116, 122.

1908, 162.

1 SECTION 189. A company or any officer or agent thereof who makes,
2 issues or delivers a policy of insurance or an annuity or pure endowment
3 contract in violation of this chapter shall, except as otherwise provided,
4 forfeit not less than fifty nor more than five hundred dollars.

Penalty for
making, etc.,
policies in
violation of
this chapter.

1907, 576, § 29.

1920, 150.

1924, 406, § 16.

1 SECTION 190. [REPEALED, 1924, 406, § 17.]

1 SECTION 191. The commissioner may require a company to submit
2 for his inspection copies of any policy form used by the company; a
3 form of any rider, endorsement or application used in connection there-
4 with, and copies of any circular or other advertising matter issued by
5 it in the commonwealth. A company, or any officer or agent thereof
6 who, within thirty days after receipt of a written request therefor,
7 neglects or refuses to comply with this section shall be punished by a
8 fine of not less than one hundred nor more than five hundred dollars.

Companies to
file policies,
circulars, etc.,
on request.
Penalty.
1920, 123, § 2

1 SECTION 192. All provisions of law relative to the filing of policy
2 forms with, and the approval of such forms by, the commissioner shall
3 also apply to all forms of riders, endorsements and applications designed
4 to be attached to such policy forms and when so attached to constitute
5 a part of the contract; provided, that riders or endorsements used at the
6 request of individual policyholders in connection with policies of life or
7 endowment insurance relative to the distribution of benefits payable
8 under their policies or to the reservation of rights or benefits thereunder,
9 and riders or endorsements used under the ninth clause of section ninety-
10 nine in connection with policies of fire insurance issued under section
11 one hundred and two A, may be used, so far as consistent with law,
12 without such approval.

Riders, etc.,
subject to
approval of
commissioner.
1920, 123, § 1.
1924, 283, § 4.

Certain policies binding on company though issued contrary to this chapter. 1854, 453, § 36. 1856, 252, § 49. G. S. 58, § 72.

SECTION 193. Any policy of insurance or any annuity or pure endowment contract issued in violation of any provision of this chapter shall be valid and binding upon the company issuing it, and the rights, duties and obligations of the parties thereto shall be determined by this chapter.

1873, 331, § 6	R. L. 118, § 105	160 Mass. 413
1881, 166, § 2	1907, 576, §§ 29,	165 Mass. 501.
P. S. 119, §§ 140,	114, 122	182 Mass. 389
200	1910, 493, § 4	184 Mass. 177
1887, 214, § 105.	1919, 110	232 Mass. 214
1894, 522, § 105	1920, 150.	

Information in equity in superior court to enforce this chapter. 1922, 417, § 1.

SECTION 193A. The superior court shall have jurisdiction in equity, upon an information filed by the attorney general at the relation of the commissioner, to restrain all violations of this chapter and to enforce compliance with the provisions thereof and payment of all fines, forfeitures or penalties provided thereby. The remedy herein provided shall be in addition to all other remedies otherwise provided by law or by this chapter, and not in substitution therefor.

GENERAL PENALTY.

General penalty. 1887, 214, § 110. 1894, 522, § 110.

SECTION 194. Whoever violates any provision of this chapter, the penalty whereof is not specifically provided for herein, shall be punished by a fine of not more than five hundred dollars.

R. L. 118, § 111	1908, 511, § 4	1920, 147, § 3.
1907, 576, §§ 120, 122.	1912, 401, § 4	

CHAPTER 176.

FRATERNAL BENEFIT SOCIETIES.

SECT.	SECT.
1. Definitions.	17. Waiving of mortuary contributions from members. Distribution of surplus.
2. Lodge system defined.	18. Investment of funds.
3. Representative form of government defined.	19. Payment of death benefits, etc.
4. Form of government of certain societies.	20. Certificates, etc.
5. Laws applicable to fraternal societies.	21. Beneficiaries, etc.
6. Formation of corporation.	22. Burial benefits.
7. First meeting.	23. Death benefits on lives of children.
8. Preliminary license, etc., for society on the lodge plan.	24. Medical examination of children, etc.
9. Certificate of organization, etc.	25. Reserves on children's certificates.
10. Effect of failure to do business for a year.	26. Separation of assets, etc., connected with children's insurance.
11. Altering purpose of corporation.	27. Payments to expense fund. Children's certificates.
12. Merger or transfer.	28. Continuation of child's certificate.
13. Creation of death fund, etc.	29. Action by beneficiary.
14. Proportion of payments which may be used for expenses.	30. Money, etc., not liable to attachment.
15. Deferred payments considered as liabilities.	31. Beneficial members.
16. Certain societies may grant extended or paid-up protection, etc.	32. Constitution and by-laws.
	33. Where meetings may be held.

<p>SECT. 34. Subordinate bodies may not waive provision of constitution, etc. 35. Copies of amendments to be filed. 36. Examination of domestic societies. 37. Commissioner not to make public financial statements pending examination, etc. Admissibility in evidence of report of examination. May act before examination in certain cases. 38. Annual statement. 39. Reports by societies on the lodge system. 39A. Valuation of securities. 40. Extra rates in case of deficiency. Class of members at higher rates. 41. Foreign societies. 42. Appointment of commissioner as attorney for service of process. 43. Revocation of license of foreign society. 44. Examination of foreign societies.</p>	<p>SECT. 45. Domestic societies with limited membership, etc., regulated. Penalty. 46. Same subject. Certain societies exempt from certain provisions of law. Payment upon death of wife of member. Furnishing physicians and nurses permitted. Incorporation. Filing copy of by-laws. Financial statements. Penalty. 46A. Payment of disability benefits by subordinate lodges. 47. Unlawful business may be enjoined, etc. 47A. Validity of certain contracts of insurance. Rights, etc., of parties, how determined. 48. Penalties for false statements. 49. Acting or advertising as representative of unauthorized society penalized. 50. General penalty.</p>
--	---

1 SECTION 1. In this chapter the following words shall have the fol-
 2 lowing meanings:
 3 "Commissioner", the commissioner of insurance.
 4 "Fraternal benefit society" or "society", any corporation, associa-
 5 tion, society, order, fraternity or other organization without capital
 6 stock, organized and carried on solely for the mutual benefit of its mem-
 7 bers or their beneficiaries, and not for profit, and either with a lodge
 8 system, with ritualistic form of work and representative form of govern-
 9 ment, or without a lodge system, under the direct control of its members,
 10 which makes provision for the payment of death or disability benefits
 11 or both.

Definitions,
 1911, 628, § 1
 1919, 350,
 §§ 45, 46.

1 SECTION 2. Any such society shall be deemed to be operating on the
 2 lodge system when it has a supreme governing or legislative body, and
 3 subordinate lodges or branches, by whatever name known, to which
 4 members are elected, initiated and admitted in accordance with its
 5 constitution, by-laws, and prescribed ritualistic ceremonies, and the
 6 subordinate lodges or branches of which are required by the by-laws
 7 of such society to hold regular or stated meetings at least once in each
 8 month.

Lodge system
 defined,
 1901, 422, § 11.
 R. L. 119, § 2
 1911, 628, § 2
 1 Op. A. G. 54.

1 SECTION 3. Any such society shall be deemed to have a representa-
 2 tive form of government when it shall provide in its constitution and
 3 by-laws for a supreme legislative or governing body, composed of repre-
 4 sentatives elected either by the members or by delegates elected directly
 5 or indirectly by the members, together with such other members as
 6 may be prescribed by its constitution and by-laws; provided, that
 7 the elective members shall have not less than two thirds of the votes
 8 nor less than the number of votes required to amend its constitution
 9 and by-laws; and provided, further, that the meetings of the supreme
 10 or governing body and the election of officers, representatives or dele-
 11 gates shall be held as often as once in four years. The members, offi-

Representative
 form of gov-
 ernment
 defined,
 1901, 422,
 §§ 1, 11, 16.
 R. L. 119,
 §§ 1, 2, 11.
 1911, 628, § 3.

cers, representatives or delegates of a fraternal benefit society shall not vote by proxy. 12 13

Form of government of certain societies. 1901, 422, § 1. R. L. 119, § 1. 1911, 628, § 12, div. b. 1913, 617, § 2. 1915, 39 1916, 4 206 Mass. 180.

SECTION 4. A corporation which limits its membership to the members of a particular fraternal beneficiary corporation, fraternity or religious denomination, or to the graduates of a designated professional or vocational school, or to the employees or ex-employees of cities or towns or of the commonwealth or of the federal government, or to the employees or ex-employees of a designated firm, business house or corporation, or of any department of a designated firm, business house or corporation, or to persons of the same foreign extraction retaining common national interests and designation, or to persons of the same occupation, may be on the lodge system, and if not on the lodge system shall be governed by a direct vote of its members without the lodge system. A corporation not so limiting its membership shall be on the lodge system, with a representative form of government as defined in sections two and three. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

Laws applicable to fraternal societies. 1875, 107, 1. 1877, 204, 2. 1880, 196, § 4. P. S. 115, § 10. 1885, 183, 1. 1888, 429, 19. 1890, 421, 1. 1894, 367, 18. 1898, 474, 22.

SECTION 5. Societies shall be governed by this chapter, and shall be exempt from all other provisions of the insurance laws of the commonwealth except sections sixteen and one hundred and seventy-eight to one hundred and eighty, inclusive, of chapter one hundred and seventy-five, not only in governmental relations with the commonwealth, but for every other purpose; and no law hereafter enacted shall apply to them unless they are expressly designated therein. 1 2 3 4 5 6 7

1899, 442, § 27. R. L. 119, § 22; 1910, 493, § 3. 1901, 422, § 27. 120, § 1. 1911, 628, § 4.

Formation of corporation. 1888, 429, §§ 1, 2. 1894, 367, §§ 1, 2. 1898, 474, §§ 1, 2. 1899, 442, §§ 1, 2. 1901, 422, §§ 1, 2. R. L. 109, § 8; 110, §§ 15, 16; 119, §§ 1, 2. 1905, 315 1911, 628, § 12, divs. a and b. 1913, 617, § 2. 1915, 39 1916, 4 151 Mass. 558.

SECTION 6. Seven or more persons, residents of the commonwealth, may form a corporation for the purposes set forth in this chapter. The agreement of association shall state that the subscribers thereto associate themselves with the intention of forming a corporation, the corporate name assumed, the purpose for which it is formed, and the town, which shall be in the commonwealth, in which it is established or situated. The name shall not so closely resemble the name of any corporation or insurance company already transacting business in the commonwealth as to mislead the public or lead to confusion. Any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the corporation. If the corporation limits its membership as provided in section four, the agreement of association shall state the maximum amounts of benefits to be paid, and shall designate to which one of the classes mentioned in said section its membership is restricted. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

First meeting. 1888, 429, §§ 3, 5, 7. 1894, 367, §§ 3-5, 7. 1898, 474, §§ 3-5, 7. 1899, 442, §§ 3-5, 7. 1901, 422, §§ 3, 4, 7. R. L. 110, §§ 17, 19, 20; 119, § 2; 125, § 4. 1911, 628, § 12, div. c. 192 Mass. 150 1 Op. A. G. 411.

SECTION 7. The first meeting of the associates shall be called by a notice, signed by one or more of the subscribers to the agreement, stating the time, place and purpose of the meeting; a copy of the notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his usual place of business or place of residence, or deposited in the post office, postpaid, addressed to him at his usual place of business or residence. Whoever gives such notice shall make an affidavit of his doings, which shall be recorded in the records of the corporation. At such first meeting, including any reasonable adjournment thereof, an organization shall be effected by the choice by ballot of a temporary clerk, who shall be sworn, and by the adoption 1 2 3 4 5 6 7 8 9 10 11

12 of by-laws, and the election by ballot of directors, president, secretary
 13 and treasurer, or other officers corresponding thereto, with powers and
 14 duties similar to those of such officers, and such other officers as the
 15 by-laws may provide for; but at such election no person shall be eligi-
 16 ble as a director or other officer who has not subscribed the agreement
 17 of association. The temporary clerk shall make and attest a record of
 18 the proceedings until the secretary has been chosen and sworn, including
 19 a record of such choice and qualification. The president, secretary
 20 and a majority of the directors, or other officers corresponding thereto,
 21 shall forthwith make, sign and swear to a certificate of organization
 22 in duplicate, setting forth a true copy of the agreement of association,
 23 with the names of the subscribers thereto, the date of the first meeting
 24 and of the successive adjournments thereof, if any; and said certificate
 25 of organization and duly certified copy of the by-laws, and copies of all
 26 proposed forms of benefit certificates, applications therefor and litera-
 27 ture to be issued by the corporation shall be filed with the commis-
 28 sioner, who may require such further information as he deems neces-
 29 sary; and if the purposes and by-laws of the corporation conform to
 30 the requirements of this chapter and all its provisions have been com-
 31 plied with, the commissioner shall so certify, and place on file the agree-
 32 ment of association, one of the duplicate certificates of organization,
 33 and a copy of the by-laws approved by him.

1 SECTION 8. The commissioner shall then furnish the incorporators
 2 of any such society, if on the lodge plan, with a preliminary license,
 3 authorizing it to solicit members for the purpose of completing its or-
 4 ganization. It shall collect from each applicant the amount of not
 5 more than one periodical benefit assessment or payment, in accordance
 6 with its tables of rates as provided by its constitution and by-laws,
 7 and shall issue to every such applicant a receipt for the amount so
 8 collected. But no such society shall incur any liability other than
 9 for such advance payments, nor issue any benefit certificate, nor pay or
 10 allow, or offer or promise to pay or allow, to any person any death or
 11 disability benefit until actual bona fide applications for death or dis-
 12 ability benefit certificates, as the case may be, have been secured from
 13 at least five hundred persons, and all such applicants for death bene-
 14 fits shall have been regularly examined by legally qualified practicing
 15 physicians, and certificates of such examinations have been duly filed
 16 and approved by the chief medical examiner of the society; nor until
 17 there shall be established ten subordinate lodges or branches, in which
 18 said five hundred applicants have been initiated; nor until there has
 19 been submitted to the commissioner, on oath of the president and secre-
 20 tary or corresponding officers of such society, a list of the said appli-
 21 cants, giving their names, addresses, date of examination, date of ap-
 22 proval, date of initiation, name and number of the subordinate branch
 23 of which each applicant is a member, amount of benefits to be granted,
 24 and rate of regular payments or assessments, which for societies offering
 25 death benefits shall not be lower for death benefits than those required
 26 by the National Fraternal Congress Table of Mortality as adopted by
 27 the National Fraternal Congress August twenty-third, eighteen hundred
 28 and ninety-nine, or any higher standard at the option of the society,
 29 with an interest assumption not higher than four per cent per annum;
 30 nor until it shall be shown to the commissioner, by the sworn statement
 31 of the treasurer or corresponding officer of such society, that at least five

Preliminary
 license, etc.,
 for society
 on the lodge
 plan.
 1895, 340, § 2.
 1898, 474, § 8.
 1899, 412, § 8.
 1901, 422, § 8.
 R. L. 119, § 4.
 1911, 628, § 12.
 div. d.
 1918, 105.
 1920, 257, § 1.

hundred applicants for death benefits have each paid in cash one regular 32
 payment or assessment as herein provided, and the payments in the 33
 aggregate shall amount to at least twenty-five hundred dollars, all of 34
 which shall be credited to the mortuary or disability fund on account of 35
 the applicants, and no part of which may be used for expenses. Such 36
 advance payments shall, during the period of organization, be held in trust 37
 for the applicants, and, if the organization is not completed within one 38
 year as hereinafter provided, shall be returned to them. The commis- 39
 sioner may make such examination and require such further information 40
 as he deems advisable; and upon presentation of satisfactory evidence 41
 that the society has complied with all the provisions of this chapter, he 42
 shall issue to the society a certificate to that effect. 43

Certificate of organization, etc.
 1888, 429, § 7.
 1894, 367, § 7.
 1898, 474, § 7.
 1899, 442, § 7.
 1901, 422, § 7.
 R. L. 110, § 20;
 119, § 2.
 1911, 628, § 12, div. e.
 1931, 394, § 179.
 149 Mass. 436.
 151 Mass. 55S.

SECTION 9. The society shall file a certificate of organization, with the 1
 certificate of the commissioner endorsed thereon, and if on the lodge plan 2
 also the certificate required by the preceding section, in the office of the 3
 state secretary, who, upon the receipt of five dollars, shall issue a certifi- 4
 cate in the following form: 5

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas (here the names of the subscribers to the agree-
 ment of the association shall be inserted) have associated themselves with the
 intention of forming a corporation under the name of (here the name of the
 corporation shall be inserted), for the purpose (here the purpose declared in
 the agreement of association shall be inserted), and have complied with the
 provisions of the statutes of the commonwealth in such case made and pro-
 vided, as appears from the certificate of officers of said corporation, duly
 certified by the commissioner of insurance and recorded in this office: Now,
 therefore, I (here the name of the secretary shall be inserted), secretary of the
 commonwealth of Massachusetts, do hereby certify that said (here the names
 of the subscribers to the agreement of association shall be inserted), their asso-
 ciates and successors, are legally organized and established as, and are hereby
 made a corporation, under the name of (here the name of the corporation shall
 be inserted), with the powers, rights and privileges, and subject to the limita-
 tions, duties and restrictions which by law appertain thereto. Witness my
 official signature hereunto subscribed, and the great seal of the commonwealth
 of Massachusetts hereunto affixed, this day of in the
 year . (In these blanks the day, month and year of the execution of the
 certificate shall be inserted.)

The state secretary shall sign the same and cause the seal of the com- 6
 monwealth to be affixed thereto, and the certificate shall be conclusive 7
 evidence of the existence of the corporation at the date of the certificate. 8
 He shall also cause a record of the certificate to be made, and a certifi- 9
 ed copy of the record may be given in evidence with like effect as the 10
 original. 11

Effect of failure to do business for a year
 1889, 429, § 17.
 1894, 367, § 16.
 1898, 474, § 29.
 1899, 442, § 25.
 1901, 422, § 25.
 R. L. 119, § 20.
 1911, 628, § 12, div. f.

SECTION 10. If any society fails to secure its certificate of incorpora- 1
 tion and to begin business within one year after the date of receiving 2
 the certificate of the commissioner, as provided in section seven, its 3
 agreement of association and all proceedings thereunder shall become 4
 null and void; and if any domestic corporation subject to this chapter 5
 ceases to do business for the period of one year, its charter or certificate 6
 of incorporation shall become null and void. 7

Altering purpose of corporation.

SECTION 11. A domestic fraternal benefit corporation may, with the 1
 approval of the commissioner, change the purposes for which it was 2

3 incorporated so as to permit it to transact any business authorized by
 4 this chapter. Upon such approval the presiding, financial and recording
 5 officers, and a majority of its other officers having the powers of di-
 6 rectors, shall file in the office of the state secretary a certificate, with
 7 the approval of the commissioner endorsed thereon, setting forth the
 8 change in the purposes of the corporation. The state secretary shall,
 9 upon receipt of five dollars, cause such certificate to be filed in his office.
 10 Every domestic fraternal beneficiary corporation may exercise all the
 11 rights, powers and privileges conferred by this chapter, including the
 12 powers specified in section thirty-two, or its certificate of incorporation
 13 or charter, not inconsistent herewith, and shall be subject to this chapter,
 14 as if reincorporated hereunder.

1888, 429, § 17.
 1894, 367, § 16.
 1898, 474, § 20.
 1899, 442, § 25.
 1901, 422, § 25.
 R. L. 119, § 20.
 1911, 628, § 13.
 1931, 394,
 § 180.

1 SECTION 12. No domestic society shall merge with or accept the
 2 transfer of the membership or funds of any other society unless such
 3 merger or transfer is evidenced by a written contract, setting out in
 4 full the terms and conditions of the merger or transfer, and filed with
 5 the commissioner, together with a sworn statement by the president and
 6 secretary, or corresponding officers, of each of said societies of its finan-
 7 cial condition, and a sworn certificate of the said officers of each of
 8 the contracting societies that the merger or transfer has been approved
 9 by a vote of two thirds of the members of the supreme legislative or
 10 governing body of each of said societies.

Merger or
 transfer.
 1882, 195, § 4.
 1888, 429, § 10.
 1890, 341.
 1893, 47.
 1894, 367, § 9.
 1898, 474, § 12.
 1899, 442, § 16.
 1901, 422, § 16.
 R. L. 119, § 11.
 1908, 463.
 1911, 628, § 14.
 215 Mass. 347.

11 Upon the submission of said contract, financial statements and cer-
 12 tificates, the commissioner shall examine them, and if he shall find the
 13 said financial statements correct, and the said contract in conformity
 14 with this section, and that the merger or transfer is just and equitable
 15 to the members of each of said societies, he shall approve the merger or
 16 transfer, issue his certificate to that effect, and thereupon the said con-
 17 tract of merger or transfer shall be of full force and effect; provided,
 18 that no such merger proposed by two societies not incorporated in the
 19 same state shall go into effect until approved by the commissioner, or
 20 corresponding officer, of each state incorporating the societies involved
 21 in the proposed transaction, nor until their joint certificate of approval
 22 of the contract therefor is issued.

1 SECTION 13. Any society may create, maintain, invest, disburse
 2 and apply a death fund, any part of which may in accordance with
 3 the by-laws of the society be designated and set apart as an emergency,
 4 a surplus or other similar fund, and a disability fund. Such funds shall
 5 be held, invested and disbursed for the use and benefit of the society,
 6 and no member or beneficiary shall have or acquire individual rights
 7 therein, or become entitled to any part thereof, except as provided in
 8 section sixteen, seventeen or nineteen. The funds from which benefits
 9 shall be paid shall be derived and the fund from which the expenses of
 10 the society shall be defrayed may be derived from periodical or other
 11 payments by the members of the society and accretions of said funds;
 12 provided, that no society shall be incorporated, and no society not
 13 authorized on January first, nineteen hundred and twelve, to do busi-
 14 ness in the commonwealth shall be admitted to transact business therein,
 15 which does not provide for stated periodical contributions sufficient to
 16 meet the mortuary obligations contracted, when valued upon the basis
 17 of the National Fraternal Congress Table of Mortality as adopted by
 18 the National Fraternal Congress August twenty-third, eighteen hun-

Creation of
 death fund,
 etc.
 1890, 341,
 § 1; 400.
 1894, 367, § 8.
 1897, 228.
 1898, 474, § 11.
 1899, 442,
 §§ 11, 12.
 1901, 275;
 422, §§ 11, 12.
 R. L. 119,
 §§ 6, 7.
 1911, 628, § 9,
 subs. 1.
 159 Mass. 9.
 196 Mass. 151.
 215 Mass. 185.
 256 Mass. 502.

dred and ninety-nine, or any higher standard, with interest assumption not more than four per cent per annum, except societies providing benefits for disability or death from accident only.

Proportion of payments which may be used for expenses. 1894, 367, § 8. 1897, 228. 1898, 474, § 11. 1899, 442, § 13. 1901, 422, §§ 12, 13.

SECTION 14. Every provision of the by-laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purposes of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

R. L. 119, §§ 7, 8. 1911, 628, § 11. 244 Mass. 556. 256 Mass. 502.

Deferred payments considered as liabilities. 1911, 628, § 9, subs. 2.

SECTION 15. Deferred payments or instalments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or instalments are thereafter to be paid. Such liability shall be the present value of such future payments or instalments upon the rate of interest and mortality assumed by the society for establishing contributions and for valuation; and every society shall at once, upon the filing of due proofs of the happening of the contingency, set apart a fund to meet such deferred payments, regardless of proposed future collections to meet any such payments, and hold such fund, with its interest accretions, in trust for the beneficiary entitled thereto.

No society shall provide for such deferred payments or instalments unless it possesses the full reserve specified in the following section, or, if paying accident benefits only, has assets sufficient to pay all its liabilities.

Certain societies may grant extended or paid-up protection, etc. 1911, 628, § 5, subs. 2. 1917, 105. 1919, 68. 1926, 207. 256 Mass. 502. Op. A. G. (1918) 86.

SECTION 16. Any society which shows by the annual valuation hereinafter provided for that it is accumulating and maintaining the tabular reserve required by a table of mortality not lower than the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress August twenty-third, eighteen hundred and ninety-nine and four per cent interest, and which has provided for stated periodical mortuary contributions based on said standard, or which shows that its stated periodical mortuary contributions for the period of the five years next preceding, at rates at no time higher than those in use following said period, were sufficient to pay the actual claims and maintain the aforesaid reserve for said period without recourse to the reserves released by the lapsing of certificates, and without falling below said standard for any two consecutive years of said period, may grant to its members such extended or paid-up protection or such withdrawal equities as its constitution and by-laws may provide; provided, that such grants shall be equitable, and shall in no case exceed in value the portion of the reserve derived from the payments of the individual members to whom they are made.

Waiving of mortuary contributions from members. Distribution of surplus. 1911, 628, § 5, subs. 3. 1926, 206.

SECTION 17. Whenever it appears by a valuation certified to by a competent actuary that the actual assets of a society exceed its liabilities, including in liabilities the tabular reserves computed on the basis specified in the preceding section, by an amount equal to five per cent of said reserves, increased by an amount equal to all its other mortuary

6 liabilities, it may, by vote of its officers having the powers of directors, 1928, 186.
 7 and for such period as its assets are maintained as aforesaid, waive the 256 Mass. 502.
 8 further collection of the regular mortuary contributions from its mem-
 9 bers. A society maintaining a surplus of assets in excess of such amount
 10 as enables it to waive contributions as aforesaid may pay back to its
 11 several members an equitable portion of such surplus in such manner as
 12 may be determined by vote of said officers.

1 SECTION 18. Every society shall invest its funds in securities per- Investment
 2 mitted by chapter one hundred and seventy-five for the investment of of funds
 3 the capital of insurance companies or may deposit the same in any sav- 1888, 429, § 9.
 4 ings bank, or savings department of a trust company, chartered under 1890, 341
 5 the laws of the commonwealth; provided, that any foreign society per- 1894, 367, § 8.
 6 mitted or seeking to do business in the commonwealth may invest its 1897, 228.
 7 funds in accordance with the laws of the state where it is incorporated, 1898, 474, § 11.
 8 and provided, further, that a part thereof, not exceeding twenty per 1899, 442, § 12.
 9 cent of its death fund, may be invested in a building for use and occu- 1901, 422, § 12.
 10 pation by the society as its home office; and that a society having R. L. 119, § 7.
 11 branches situated in the Dominion of Canada may invest a part of its 1910, 649
 12 death fund in the public funds of the Dominion of Canada, or of any 1911, 628, § 10.
 13 province of the Dominion of Canada, not exceeding in the aggregate an 1920, 359
 14 amount equal to the sum of its collected premiums for the four months 1928, 156, § 1.
 15 last past. 1 Op. A. G. 4,
 32, 155.

1 SECTION 19. Every society may provide for the payment of death Payment of
 2 benefits, and may provide for the payment of benefits in case of tempo- death benefits,
 3 rary or permanent physical disability, either as the result of disease, etc.
 4 accident or old age; provided, that the period of life at which the pay- 1877, 204, § 1.
 5 ment of benefits for disability on account of old age shall commence P. S. 115, § 8.
 6 shall not be under seventy years. Such society may give a member, 1882, 192,
 7 when permanently disabled, or on attaining the age of seventy, all or §§ 1, 2
 8 such portion of the face value of his certificate as the by-laws of the 1888, 429, § 8.
 9 society may provide; provided, that this chapter shall not prevent the 1890, 341.
 10 issuing of benefit certificates, for a term of years less than the whole 1894, 367, § 8.
 11 of life, which are payable upon the death or permanent disability of the 1897, 228.
 12 member occurring within the term for which the benefit certificate is 1898, 474, § 11.
 13 issued. Such society may, upon written application of a member, accept 1899, 442,
 14 a part of the periodical contributions for mortuary purposes in cash and §§ 11, 12, 16.
 15 charge the remainder, not exceeding one half of the periodical contri- 1901, 275; 422,
 16 butions, against the certificate, with interest payable or compounded §§ 1, 11, 12, 16.
 17 annually at a rate not lower than four per cent per annum; provided, R. L. 119,
 18 that this privilege shall not be exercised except by societies which have §§ 1, 6, 7, 11.
 19 readjusted or may hereafter readjust their rates of contributions, and 1911, 628, § 5,
 20 then only as to contracts affected by such readjustment, and provided, subs. 1.
 21 further, that the yearly amount and the amount in the aggregate of 175 Mass. 396.
 22 such charges against the certificates of members, including interest 181 Mass. 111.
 23 charged, as cannot be collected on account of the lapsing of members 206 Mass. 131,
 24 against whose certificates such charges have been made, shall be stated 158, 168.
 25 in the records of the proceedings of the annual or other regular meet- 215 Mass. 185.
 26 ings of the society. Such society providing on January first, nineteen 256 Mass. 502.
 27 hundred and twelve, for tombstones to the memory of deceased members
 28 may continue such provision, but not at an expense in excess of one
 29 hundred dollars for any member.

Certificates,
etc.
1899, 412, § 11.
1901, 275, 442,
§ 11.
R. L. 119, § 6.
1911, 628, § 8.
244 Mass. 556.
2 Op. A. G. 212.

SECTION 20. A certificate issued by any society shall specify the amount of death benefit provided thereby; and the certificate, the charter or articles of organization, or, if it is a voluntary association, the articles of association, the constitution and by-laws of the society and the application for membership and medical examination, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the members; and copies of the same, certified by the secretary of the society or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter, articles of incorporation, or articles of association, constitution or by-laws duly made or enacted subsequent to the issuance of a benefit certificate shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects in the same manner as if such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. The foregoing provision shall be incorporated in substance in every benefit certificate hereafter issued.

Beneficiaries,
etc.
1877, 204, § 1.
P. S. 115, § 8.
1882, 195,
§§ 1, 2
1888, 429, § 8.
1890, 341.
1894, 328;
367, § 8.
1897, 228
1898, 474, § 11.
1899, 442,
§§ 11, 13.
1901, 275;
422, §§ 11,
13; 487.
R. L. 119,
§§ 6, 8.
1911, 628, § 6.
1913, 617, § 1.
140 Mass. 580.
142 Mass. 224
145 Mass. 134.
146 Mass. 217,
286
152 Mass. 272.
153 Mass. 314.
156 Mass. 431,
435.
158 Mass. 224,
322.
162 Mass. 98.
178 Mass. 25,
145.
192 Mass. 477.
196 Mass. 151.
206 Mass. 131,
158, 294.
212 Mass. 224
222 Mass. 237.
223 Mass. 237.
234 Mass. 299.
244 Mass. 189.
255 Mass. 252.
262 Mass. 7.

SECTION 21. Death benefits shall be payable only to the wife, husband, relative by blood, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, betrothed, adopted children or adoptive parents, or to persons dependent upon the member; provided, that if after the issuance of the original certificate the member, his wife or minor children shall become dependent upon an incorporated charitable institution or upon a home situated within the commonwealth and incorporated under the laws thereof and maintained and supported by any secret fraternity or order for the care and maintenance of its aged, infirm, indigent or unfortunate members, or for the care and support of a wife or widow of such a member, or for the care, support and education of minor children of such members or of deceased members, the member shall have the privilege, with the consent of the society, of making such institution or home his beneficiary to the full amount becoming due or payable under said certificate, or to the extent of the amount disbursed for the benefit of said member, his wife, widow or child, by such charitable institution or home at the rate of average cost of maintenance or care thereof during the period such member, his wife, widow or children shall be so cared for, together with any sums expended by such institution or home for assessments, dues, tax or other payments by reason of such benefit certificate and, subject to the limitation of this section, another person as beneficiary of the remainder. Within the above restrictions each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the by-laws of the society; and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may by its by-laws limit the scope of beneficiaries within the above classes. If a benefit certificate has been lawfully issued and the beneficiary therein named, and the husband, wife, betrothed, child, adopted child, parent, adoptive parent, or persons dependent upon the member named in the benefit certificate have all died, the member, with the consent of the officers of the society and under such rules as they may prescribe,

35 may have any other person substituted as beneficiary therein. No con-
 36 tract under this chapter, except where an incorporated charitable in-
 37 stitution or home is made beneficiary as aforesaid, shall be valid which
 38 shall be conditioned upon an agreement or understanding that the per-
 39 son to whom the death benefit is made payable shall pay the periodical
 40 or other contributions of the member.

1 SECTION 22. Any society may provide in its by-laws that a part of
 2 the amount payable as a death benefit may be used to pay the funeral
 3 expenses of the insured; provided, that the amount so paid shall not
 4 exceed one hundred dollars, and shall be deducted from the amount
 5 payable as a death benefit.

Burial
benefits
1917, 107.

1 SECTION 23. Any society operating on the lodge system may provide
 2 in its constitution and by-laws, in addition to other benefits provided
 3 for therein, for the payment of death, endowment or annuity benefits
 4 upon the lives of children between the ages of one and eighteen years at
 5 the next birthday, for whose support and maintenance a member of the
 6 society is responsible. Any such society may at its option organize and
 7 operate branches for such children, and membership in local lodges and
 8 initiation therein shall not be required of such children, nor shall they
 9 have any voice in the management of the society. The total death bene-
 10 fits payable as above provided shall in no case exceed the following
 11 amounts at ages at the next birthday after death, respectively, as fol-
 12 lows: one, twenty-five dollars; two, fifty dollars; three, seventy-five
 13 dollars; four, one hundred dollars; five, one hundred and thirty dollars;
 14 six, one hundred and seventy-five dollars; seven, two hundred dollars;
 15 eight, two hundred and fifty dollars; nine, three hundred and twenty-
 16 five dollars; ten, four hundred dollars; eleven, five hundred dollars;
 17 twelve, six hundred dollars; thirteen, seven hundred dollars; fourteen,
 18 eight hundred dollars; fifteen, nine hundred dollars; and sixteen to
 19 eighteen years, where not otherwise authorized by law, one thousand
 20 dollars.

Death benefits
on lives of
children
1917, 128, § 1;
1927, 21.

1 SECTION 24. No death benefit certificate as to any child shall take
 2 effect until after medical examination or inspection by a licensed medical
 3 practitioner, in accordance with the by-laws of the society, nor shall any
 4 such benefit certificate be issued unless the society shall simultaneously
 5 put in force at least five hundred such certificates, on each of which at
 6 least one assessment has been paid, nor where the number of lives repre-
 7 sented by such certificates falls below five hundred. The death benefit
 8 contributions to be made upon such certificate shall be based upon the
 9 Standard Industrial Mortality Table or the English Life Table Number
 10 Six, with a rate of interest not greater than four per cent per annum, or
 11 upon a higher standard; provided, that contributions may be waived
 12 or returns may be made from any surplus held in excess of reserve and
 13 other liabilities, as provided in the by-laws; and provided, further,
 14 that extra contributions shall be made if the reserves provided for in
 15 the following section become impaired. Such a society may grant to the
 16 holder of such a certificate such extended or paid-up protection or such
 17 withdrawal equities as its constitution and by-laws may provide, but in
 18 no case to exceed in value the reserve held against the individual
 19 certificate.

Medical ex-
amination of
children, etc
1917, 128, § 2;
1928, 179.

Reserves on
children's
certificates.
1917, 128, § 3.

SECTION 25. Any society entering into insurance agreements under section twenty-three shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section twenty-four; and the funds representing the benefit contributions and all accretions thereto shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for payment of the debts and obligations of the society other than the benefits herein authorized; provided, that a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued under sections twenty-three to twenty-eight, inclusive, may be surrendered for cancellation and exchanged for any other form of certificate issued by the society; provided, also, that such surrender will not reduce the number of lives insured in any children's branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership.

Separation of
assets, etc.,
connected with
children's
insurance.
1917, 128, § 4.

SECTION 26. An entirely separate financial statement of the business transactions, and of assets and liabilities arising therefrom, shall be made in its annual statement to the commissioner by any society availing itself of sections twenty-three to twenty-eight, inclusive. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in the preceding section, as long as any certificates issued under sections twenty-three to twenty-eight, inclusive, remain in force; and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger or other change in the condition or status of the society.

Payments to
expense fund.
Children's
certificates.
1917, 128, § 5.

SECTION 27. Any society may provide in its by-laws and in the certificate issued under sections twenty-three to twenty-eight, inclusive, for specified payments on account of the expense or general fund, which may be mingled with the general fund of the society or not as its constitution and by-laws may provide.

Continuation
of child's
certificate.
1917, 128, § 6.

SECTION 28. In case of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate has been issued under sections twenty-three to twenty-eight, inclusive, the certificate may be continued for the benefit of the estate of the child, or for the benefit of any other person responsible for the support and maintenance of such child, provided the contributions are continued.

Action by
beneficiary.
1918, 257, § 371

SECTION 29. The beneficiary under a certificate issued by any society may maintain an action thereon in his own name.

1 SECTION 30. Money or other benefit, charity or relief or aid, to be
 2 paid, provided or rendered by any society, shall not be attached or taken
 3 upon execution or other process or by operation of law to pay any debt
 4 or liability of a member or beneficiary, or of any other person who may
 5 have a right thereunder, either before or after payment.

Money, etc.,
 not liable to
 attachment
 1877, 204, § 1
 1881, 115, § 8
 1882, 195,
 §§ 1, 2.

1888, 429, § 15.	R. L. 119, § 17.	139 Mass. 473
1894, 367, § 14.	1903, 332.	144 Mass. 306
1898, 474, § 17.	1909, 407.	159 Mass. 259
1899, 442, § 22.	1910, 339.	175 Mass. 396
1901, 422, § 22.	1911, 628, § 20.	202 Mass. 549.

1 SECTION 31. Except as provided in sections twenty-three to twenty-
 2 eight, inclusive, any society may admit to beneficial membership any
 3 person, not less than sixteen and not more than sixty years of age, who
 4 has been examined by a legally qualified physician if the examination
 5 has been supervised and approved in accordance with the by-laws of
 6 the society; provided, that any member of such society who shall apply
 7 for a certificate providing for benefits on account of disability from
 8 sickness or injury, or death by accident only, need not be required to
 9 pass a medical examination therefor. This section shall not prevent
 10 such society from accepting general or social members.

Beneficial
 members
 1911, 628, § 7.

1 SECTION 32. Every society may, subject to this chapter, make a
 2 constitution and by-laws for its government, admission of members,
 3 management of its affairs, and the fixing and readjusting of the rates
 4 and contributions of its members from time to time, and may amend
 5 its constitution and by-laws, and it shall have such other powers as
 6 are necessary or incidental to carry into effect its objects and purposes.
 7 The constitution and by-laws may prescribe the officers and elected
 8 members of standing committees, who may be ex officio directors or
 9 other officers corresponding thereto.

Constitution
 and by-laws.
 1888, 429, § 5
 1894, 367, § 5.
 1898, 474, § 5
 1899, 442, § 5.
 1901, 422, § 5.
 R. L. 119, § 2.
 1911, 628, § 12.
 div. g.
 1914, 320.
 244 Mass. 556.
 1 Op. A. G. 411
 2 Op. A. G. 347.

1 SECTION 33. Any domestic society may provide that the meetings
 2 of its legislative or governing body may be held in any state or province
 3 wherein such society has subordinate branches, and all business trans-
 4 acted at such meetings shall be as valid in all respects as if such meetings
 5 were held in this commonwealth. But its principal office shall be situ-
 6 ated in this commonwealth.

Where meetings
 may be held
 1898, 474, § 10
 1899, 442, § 10
 1901, 422, § 10
 R. L. 119, § 5.
 1911, 628, § 18.

1 SECTION 34. The constitution and by-laws of the society shall be
 2 binding on it, on every member thereof, and on all beneficiaries of mem-
 3 bers, and shall provide that no subordinate body nor any of its subor-
 4 dinate officers or members shall have power or authority to waive any
 5 provision thereof, and otherwise there shall be no waiver excepting as
 6 the constitution and by-laws of the supreme body shall specifically
 7 permit.

Subordinate
 bodies may
 not waive pro-
 vision of con-
 stitution, etc
 1911, 628, § 19

1 SECTION 35. The recording officer of every society shall file with the
 2 commissioner a duly certified copy, in English, of all amendments of or
 3 additions to its constitution and by-laws, within ninety days after their
 4 adoption. Printed copies of the constitution and by-laws, as amended,
 5 changed or added to, certified by the secretary or corresponding officer
 6 of the society, shall be prima facie evidence of the same and of the legal
 7 adoption thereof.

Copies of
 amendments
 to be filed
 1899, 442, § 21.
 1901, 422, § 21.
 R. L. 119, § 16.
 1907, 472
 1910, 296
 1911, 628, § 21.

Examination
of domestic
societies.
1880, 196, § 2.
P. S. 115, § 12.
1862, 435, § 1.
1895, 340, § 1.
1898, 474, § 19.
1899, 442, § 24.
1901, 422,
§§ 19, 24.
R. L. 119,
§§ 15, 19.
1911, 628,
§§ 24, 25.
1930, 31, § 1.
159 Mass. 9.
196 Mass. 151.
206 Mass. 139.
244 Mass. 556.

SECTION 36. The commissioner, or any person designated by him, may examine the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he or any person designated by him shall have free access to all the books, papers and documents relating to the business of the society, and may summon and qualify as witnesses on oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and condition of the society. Whoever, without justifiable cause, neglects, when duly summoned as aforesaid, to appear and testify before the commissioner or his authorized representative, or whoever obstructs the said commissioner or his representative in making an examination under this section, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Whenever the commissioner is satisfied that any domestic society has failed to comply with any provision of this chapter, or that it has exceeded its powers, or that it is not carrying out its contracts in good faith, or that it is transacting business fraudulently, or that its management or condition is such as to render its further transaction of business hazardous to the public, its members or creditors, or whenever any such society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, or whenever any such society, or any of its officers or agents, refuses to submit to an examination under this section or to perform any legal obligation relative thereto, the commissioner may present the relevant facts to the attorney general, who shall, if he deems the circumstances warrant, begin a quo warranto proceeding in the supreme judicial court. The court may forthwith issue a temporary injunction restraining the society from further transacting any business, and it may, after a full hearing, if it then appears that the society should be dissolved, make the injunction permanent, and appoint one or more receivers to take possession of the books, papers, moneys and other assets of the society, and to settle its affairs, and to distribute its funds to those entitled thereto, subject to such rules and orders as the court may prescribe.

No such proceedings shall be begun by the attorney general until after the commissioner has given written notice to the chief executive officers of the society and has afforded a reasonable opportunity, on a date named in such notice, to show cause why such a proceeding should not be begun, nor shall such a proceeding be entertained unless brought by the attorney general.

Commissioner
not to make
public financial
statements
pending ex-
amination, etc.
Admissibility
in evidence of
report of
examination.
May act before
examination in
certain cases.
1911, 628, § 27.
1930, 79, § 2.

SECTION 37. After an examination of any society, either domestic or foreign, has been begun, the commissioner shall make public no financial statement, report or finding affecting the status, standing or rights of the society until a copy thereof shall have been served upon the society at its home office, and the society shall have been afforded a reasonable opportunity to be heard regarding such financial statement, report or finding; but the commissioner may use such facts as come to his knowledge for the purpose of securing an injunction as provided in the preceding section.

A report of an examination made under section thirty-six or forty-four may, as far as material and relevant, be admitted, in the discretion of the court, in any judicial proceeding under section thirty-six or forty-three, as prima facie evidence of the facts set forth in such report; but nothing in this paragraph shall be construed to require the commissioner to make

15 an examination of a domestic society under section thirty-six before
 16 presenting the facts to the attorney general under said section, or to make
 17 an examination of a foreign society under section forty-four before re-
 18 fusing to issue a license to such a society under section forty-one or re-
 19 voking the license of such a society under section forty-three.

1 SECTION 38. Every society shall annually, on or before March
 2 first, file with the commissioner, in such form as he may require, a state-
 3 ment on oath of its president, secretary, treasurer and chief accountant,
 4 or corresponding officers, of its condition and standing on December
 5 thirty-first next preceding, and of its transactions for the year ending
 6 on that date; and also shall furnish such other information as the com-
 7 missioner may deem necessary to a proper exhibit of its business and
 8 plan of working. The commissioner may at other times require any
 9 further statement relating to such society which he may deem necessary.

Annual
 statement
 1880, 196, § 11.
 P. S. 115, § 11.
 1882, 195, § 3.
 1888, 129, § 12.
 1890, 341, § 1.
 1894, 567, § 11.
 1898, 474, § 14.
 1899, 442, § 19.
 1900, 422, § 19.
 R. L. 119, § 14.
 1911, 628, § 22,
 div. a.

1 SECTION 39. In addition to the annual statement required by the
 2 preceding section, every society on the lodge system authorized to pay
 3 benefits in the commonwealth upon the death of its members, except
 4 those societies which do not pay benefits for death from natural causes,
 5 shall annually report to the commissioner a valuation of its certifi-
 6 cates providing for death benefits in force on December thirty-first next
 7 preceding. The report shall show, as contingent liabilities, the present
 8 mid-year value of the death benefits promised in the outstanding con-
 9 tracts of the society, and as contingent assets, the present mid-year
 10 value of the future net mortuary contributions provided in the con-
 11 stitution and by-laws as the same are in practice actually collected,
 12 not including therein any value for the right to make extra assessments.
 13 At the option of any such society, in lieu of the above, the valuation
 14 may show the net mid-year value of the outstanding contracts; and
 15 said net value, when computed in case of monthly contributions, may
 16 be the mean of the terminal values for the end of the preceding and of
 17 the current insurance years, the right to make extra assessments being
 18 excluded from consideration. The valuation shall be certified by a
 19 competent accountant or actuary, or at the request and expense of the
 20 society, verified by the actuary of the department of insurance of the
 21 home state of the society, and shall be filed with the commissioner on
 22 or before April thirtieth next after the submission of the last preceding
 23 annual statement. The legal minimum standard of valuation shall be
 24 the National Fraternal Congress Table of Mortality as adopted by the
 25 National Fraternal Congress August twenty-third, eighteen hundred
 26 and ninety-nine; or, at the option of the society, any higher mortality
 27 table; or, at its option, it may use a mortality table based on the
 28 society's own experience of at least twenty years, and covering not
 29 less than one hundred thousand lives, with interest assumption not
 30 higher than four per cent per annum, whichever mortality table is
 31 adopted. Every such report shall set forth clearly and fully the mor-
 32 tality and interest basis and the method of valuation. Any society
 33 providing for disability or accidental death benefits, or both, shall keep
 34 the net contributions for such benefits in a fund separate and apart
 35 from all other benefit funds and from expense funds. The valuation
 36 herein provided for shall not be considered or regarded in any action
 37 that may arise as a test of the financial solvency of the society, but
 38 each society shall be held to be legally solvent so long as the funds in

Reports by
 societies on the
 lodge system.
 1911, 628, § 22,
 div. b.
 1913, 617, § 3.
 Op. A. G.
 (1913) 86

its possession are equal to or in excess of its liabilities, not including in 39
the term "liabilities" any charge for reserve computed as in this section 40
required. 41

Such report of valuation and an explanation of the facts concerning 42
the condition of the society thereby disclosed shall be sent to each 43
member of the governing body of the society not later than June first 44
of each year; or in lieu thereof, such report of valuation and showing 45
of the society's condition as thereby disclosed may be published in the 46
society's official paper, and the issue containing the same shall be mailed 47
to each beneficiary member of the society. 48

Valuation of
securities.
1921, 295.

SECTION 39A. Any society may, in the annual statement required by 1
section thirty-eight, value its bonds or other evidences of debt having a 2
fixed term and rate and not in default as to principal or interest and if 3
amply secured, in accordance with the following rule: — If purchased at 4
par, at the par value; if purchased above or below par, on the basis of 5
the purchase price adjusted so as to bring the value to par at maturity 6
and so as to yield meantime the effective rate of interest at which the 7
purchase was made; provided that the purchase price shall in no case 8
be taken at a higher figure than the actual market value at the time of 9
purchase, and provided, further, that the commissioner shall have full 10
discretion in determining the method of calculating values according to 11
the foregoing rule; and provided, also, that any society may return such 12
bonds or other evidences of debt at either their market or their book 13
value but in no event at any aggregate value exceeding the aggregate 14
of the values calculated according to the foregoing rule. 15

Extra rates
in case of
deficiency.
Class of
members at
higher rates
1890, 341, 1.
1893, 47.
1894, 367, 9.
1898, 474, 12.
1899, 442, 16.
1901, 422, 16.
R. L. 119, 11.
1911, 628, 22.
div. b
1920, 217.
1927, 189.
244 Mass. 556.

SECTION 40. If the stated periodical contributions of the members 1
of such society are insufficient to pay all reported death and disability 2
claims in full, and to provide for the creation and maintenance of the 3
funds required by its by-laws or by this chapter, additional contribu- 4
tions or additional, increased or extra rates of contribution shall be 5
collected from its members to meet the deficiency, and the by-laws of 6
the society shall so provide; and such by-laws may provide that upon 7
the written application or consent of the member his certificate may be 8
charged with its proportion of any deficiency disclosed by valuation, 9
with interest not exceeding five per cent per annum. 10

In rating its members or for the purpose of placing itself on a sounder 11
financial basis, any domestic society and any foreign society now ad- 12
mitted to this commonwealth, if it be not in conflict with the laws of its 13
domicile, may, if "legally solvent" as defined in the preceding section, 14
establish by its constitution and by-laws a separate class of members who 15
shall make mortuary contributions on the basis prescribed in section 16
eight, to which class all new members who from time to time join the 17
society shall be assigned, unless such new member or members shall other- 18
wise elect, and all present members may at their option be transferred at 19
the prescribed rates for such class. The mortuary contributions of such 20
class shall be placed in a separate account and used only for the benefit 21
of the members of that class or of their beneficiaries. In case of a society 22
which has established such higher rate class whose contributions are 23
held and used as herein set forth the "additional contributions" or 24
"extra rates" specified in this section shall be required only of the 25
members of the class or classes respectively where the deficiency in con- 26

27 tributions is apparent, and each class shall provide for its own deficiency.
 28 Any class of a domestic society failing so to do shall be subject to the
 29 receivership provisions set forth in section thirty-six. If a society can
 30 show, by an annual valuation as hereinbefore provided, that it is ac-
 31 cumulating and maintaining for all of its members who are not included
 32 in the separate class of members hereinbefore referred to the tabular
 33 reserve required by a table of mortality not lower than the National
 34 Fraternal Congress Table of Mortality as adopted at the National Fra-
 35 ternal Congress August twenty-third, eighteen hundred and ninety-nine,
 36 and four per cent interest, and which has provided for stated periodical
 37 mortuary contributions based on said standard, then such society may
 38 abolish the segregation of members and funds hereinbefore required.
 39 A foreign society which has legally established such a class in its home
 40 state and whose constitution or by-laws require the segregation and use
 41 of the mortuary contributions of its members as herein set forth may
 42 be admitted to this commonwealth with respect to such class upon com-
 43 pliance with the laws of this commonwealth not in conflict with this
 44 provision.

1 SECTION 41. No foreign society shall transact any business in the
 2 commonwealth without a license from the commissioner. Every such
 3 society applying for such a license shall file with the commissioner a duly
 4 certified copy of its charter or articles of association; a copy of its con-
 5 stitution and by-laws, certified by its secretary or corresponding officer;
 6 a power of attorney to the commissioner, as provided in the following
 7 section; a statement of its business, on oath of its president and secre-
 8 tary, or corresponding officers, in the form required by the commissioner,
 9 duly verified by an examination made by the supervising insurance
 10 official of its home state or other state satisfactory to the commissioner;
 11 a copy of its certificate of membership; a certificate from the proper
 12 official of its home state, territory, district or country that the society
 13 is legally organized; and the society shall show that the benefits are pro-
 14 vided for by periodical or other payments by persons holding similar
 15 contracts, and that its assets are invested in accordance with the laws
 16 of the state or country where it is organized, and that it has the qualifi-
 17 cations required of domestic societies on the lodge system incorporated
 18 under this chapter; provided, that a society which grants benefits for
 19 disability arising from accidental injury or from sickness shall be re-
 20 quired to show that it has accumulated funds, usable only for the pay-
 21 ment of such benefits and in excess of accrued claims for such benefits,
 22 not less in amount than three monthly contributions or one quarterly
 23 contribution from members entitled to such benefits, and shall be re-
 24 quired, as a condition for the maintenance of its authority to do business
 25 in this commonwealth, to maintain at all times after admission, as re-
 26 gards disability benefits, funds in amount as above set forth; and shall
 27 furnish the commissioner such other information as he may deem neces-
 28 sary for the proper exhibit of its business and plan of working. Upon
 29 compliance with these requirements, such foreign society shall be entitled
 30 to a license to transact business in the commonwealth until July first
 31 following, and such license shall, upon compliance with this chapter, be
 32 renewed annually, but in all cases to terminate on July first following;
 33 except that it shall continue in full force and effect until the new license
 34 is issued or refused. For every such license or renewal the society shall
 35 pay to the commissioner twenty dollars.

Foreign societies.	
1888, 429,	§ 11.
1890, 341,	
1892, 40,	
1893, 321,	1
1894, 367,	10.
1898, 474,	13
1899, 442,	15
1900, 185,	
1901, 422,	18
R. L. 119,	13
1907, 471,	
1911, 628,	
§§ 16, 28,	
1920, 257,	2
1930, 31,	2
165 Mass.	421
168 Mass.	391
215 Mass.	204.
256 Mass.	502
1 Op. A. G.	579.
2 Op. A. G.	524.

Appointment
of commis-
sioner as
attorney for
service of
process
1888, 429, § 13.
1894, 367, § 12.
1898, 474, § 15.
1899, 442, § 20.
1901, 422, § 20.
R. L. 119, § 13;
126, § 4.
1907, 471.
1911, 628, § 17.
201 Mass. 557.

SECTION 42. Every foreign society applying for admission to the commonwealth shall, by duly executed instrument filed with the commissioner as provided in the third paragraph of section one hundred and fifty-one of chapter one hundred and seventy-five, appoint the commissioner as its attorney for the service of process upon it, which shall be served in accordance with said paragraph and section one hundred and fifty-four of said chapter. All process against a foreign society shall be served at least thirty days before the return day named therein.

1
2
3
4
5
6
7
8
9

Revocation of
license of for-
eign society.
1898, 474, § 19.
1899, 442, § 24.
1901, 422, § 24.
R. L. 119, § 19.
1911, 628, § 28.
1930, 31, § 3.
256 Mass. 502.

SECTION 43. Whenever the commissioner is satisfied that any foreign society has exceeded its powers, or has failed to comply with any provision of this chapter, or that it is conducting business fraudulently, or that it is not carrying out its contracts in good faith, or that its condition or management is such as to render its further transaction of business hazardous to the public, to members or creditors, or that it or its officers or agents have refused to submit to an examination under section forty-four or to perform any legal obligation relative thereto, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and, after reasonable written notice to the society, shall require it, on a date named in such notice, to show cause why its license should not be revoked. If on said date the society does not present to the commissioner good and sufficient reasons why its license to transact business in the commonwealth should not be revoked, he may revoke such license.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Whenever the commissioner refuses to issue a license to a foreign society under section forty-one, or revokes its license under this section, he shall reduce his ruling, order or decision to writing and file it in his office, and he shall furnish a copy thereof, together with a statement of the reasons for his action, to the officers of the society upon request.

16
17
18
19
20

Any such society aggrieved by the refusal of the commissioner to issue a license to it, or by the revocation of its license, may, within thirty days after receiving written notice of such refusal or revocation, file a petition in the supreme judicial court for the county of Suffolk for a review of the commissioner's action. The court shall summarily hear and determine the ease and may make any appropriate order or decree. If the order or decree is adverse to the petitioning society, it may within ten days therefrom appeal to the full court; and in case of such an appeal the refusal or revocation of the license shall continue in full force and effect until the final determination of the question by the full court.

21
22
23
24
25
26
27
28
29
30

The termination of the license of such a society shall not prevent it from continuing in good faith all contracts made by it in the commonwealth during the time when it was legally authorized to transact business therein.

31
32
33
34

Examination
of foreign
societies.
1880, 196, § 2.
P. S. 115, § 12.
1901, 422, § 19.
R. L. 119, § 15.
1911, 628, § 26.
1930, 31, § 4.

SECTION 44. The commissioner, or any person designated by him, may examine any foreign society transacting business in the commonwealth or applying for admission. For this purpose he or the person designated by him shall have the powers given by section thirty-six relative to domestic societies. He may accept in lieu of such examination the examination of the insurance department of the state or country where the society is organized. The actual expenses of the examiners making any such examination shall be paid by the society, upon a statement furnished by the commissioner.

1
2
3
4
5
6
7
8
9

1 SECTION 45. Domestic fraternal benefit corporations governed by
 2 direct vote of their members and limiting their membership as provided
 3 in section four and domestic fraternal benefit corporations limiting their
 4 membership to the permanent employees of cities or towns, the com-
 5 monwealth or the federal government, and not paying death benefits,
 6 but paying annuities or gratuities contingent upon disability or long
 7 service, may continue to transact business in the commonwealth. Such
 8 corporations and like societies incorporated under this chapter shall be
 9 governed by sections four to eleven, inclusive, fourteen and twenty-one,
 10 so far as the same are applicable, twenty-two, twenty-nine, thirty, thirty-
 11 two, thirty-six to thirty-eight, inclusive, forty-seven, forty-seven A,
 12 forty-eight and forty-nine of this chapter and section five of chapter
 13 fifty-nine, and in addition by the following provisions: The officers of
 14 such limited corporations shall be elected by ballot by the members as
 15 often as once in two years. Proxies shall not be used in voting. No
 16 person under sixteen shall be admitted to membership. The recording
 17 officer of such a corporation shall file with the commissioner amendments
 18 to its by-laws, in English, within thirty days after their adoption and
 19 shall likewise file forthwith a duly certified copy of its by-laws when-
 20 ever the commissioner requires in writing. Such equitable assessments,
 21 either periodical or otherwise, shall be made upon the members as shall
 22 be necessary to carry out the purposes of the organization. Paid agents
 23 shall not be employed in soliciting or procuring members, except that
 24 corporations which limit their certificate holders to a particular fra-
 25 ternity or which provide for stated periodical contributions sufficient to
 26 meet the mortuary obligations contracted, when valued upon the basis
 27 of the National Fraternal Congress Table of Mortality as adopted by the
 28 National Fraternal Congress August twenty-third, eighteen hundred
 29 and ninety-nine, or any higher standard, with interest assumption not
 30 more than four per cent per annum may pay members for securing new
 31 members, and any corporation may pay local collectors.
 32 No corporation formed after January first, nineteen hundred and
 33 twelve, unless it confines its membership to that of a particular fra-
 34 ternity in any one county or to a lodge of some fraternity, shall contract
 35 to pay benefits to its members until it shall satisfy the commissioner that
 36 it has received at least five hundred bona fide applications for member-
 37 ship. With the written approval of the commissioner and the consent
 38 of each corporation expressed by vote at a duly called meeting, any
 39 corporation governed by this section may transfer its membership and
 40 funds to any authorized similar corporation.
 41 Whoever violates any provision of this section shall be punished as
 42 provided in section fifty.

Domestic
 societies with
 limited mem-
 bership, etc.,
 regulated
 Penalty
 1888, 329,
 §§ 6, 10
 1890, 341,
 § 1, 100,
 1893, 47,
 1894, 60,
 367, §§ 6, 9,
 1895, 340,
 § 2, 3
 1897, 228
 1898, 371
 §§ 6, 8, 11, 12,
 16
 1899, 142,
 §§ 6, 8, 16, 21
 1901, 275, 422,
 §§ 6, 8, 11, 16,
 21
 R. L. 119,
 §§ 3, 4, 6, 11,
 16
 1907, 472
 1908, 463, § 1,
 1910, 296
 1911, 628, § 29,
 div. a
 1922, 90
 1925, 80, § 2
 1926, 77
 206 Mass. 180.
 243 Mass. 25
 2 Op. A. G. 214.

1 SECTION 46. A domestic society which limits its membership as pro-
 2 vided in section four, or which limits its membership to the members
 3 and ex-members of any social organization having a lodge system and
 4 secret form of work; or a secret order or fraternity which operates on
 5 the lodge system with a representative form of government and grants
 6 insurance benefits as incidental only to the work of the order or fra-
 7 ternity; or a purely charitable association or corporation existing on
 8 May twenty-third, nineteen hundred and one, any one of which pays a
 9 death or funeral benefit limited to not more than two hundred dollars,
 10 disability benefits not exceeding ten dollars a week, or any or all of such
 11 benefits, or a domestic society which limits its membership as provided

Same subject.
 Certain socie-
 ties exempt
 from certain
 provisions
 of law. Pay-
 ment upon
 death of wife
 of member.
 Furnishing
 physicians
 and nurses
 permitted.
 Incorporation.
 Filing copy
 of by-laws.
 Funeral
 statements.
 Penalty.

1896, 136.
 1898, 474, 12.
 1899, 442, 17.
 1901, 422, 17.
 R. L. 119, 12.
 1903, 332.
 1904, 271.
 1909, 407.
 1910, 339.
 1911, 111; 628.
 § 29, div. b.
 1913, 411;
 617, § 5.
 1917, 107.
 1921, 155, § 1.
 1922, 494
 1925, 80, § 3.
 1928, 284.
 1929, 7; 142.
 1931, 426, § 80.
 215 Mass. 204.
 4 Op. A. G. 401.

in said section four to the employees of a designated firm, business house 12
 or corporation, or any department thereof, and pays disability benefits 13
 not exceeding fifteen dollars a week, and which is not conducted as a 14
 business enterprise or for profit, and a subordinate lodge of a secret 15
 fraternity or order as defined in this section which is not conducted as a 16
 business enterprise or for profit, which pays death benefits to families or 17
 dependents of deceased members as fixed by its by-laws, but not more 18
 than two hundred dollars if the lodge membership is two hundred or 19
 less, and if over two hundred not in excess of the amount of an assessment 20
 of one dollar upon each member thereof in good standing at the time of 21
 the death of the member, and a society, either domestic or foreign, which 22
 confines its membership to members of organizations defined in the 23
 second sentence of section twenty-nine of chapter one hundred and 24
 seventy-five, and which embraces therein only persons of the same 25
 occupation, may transact business in the commonwealth without con- 26
 forming to the provisions of this chapter except this section and sections 27
 twenty-nine, thirty, thirty-six, forty-seven, forty-seven A and forty- 28
 nine, or to the provisions of chapter one hundred and seventy-five; 29
 provided, that no proceeding shall be instituted under said section thirty- 30
 six because such society has a membership of less than four hundred. 31
 The seventh clause of section five of chapter fifty-nine shall apply to such 32
 a society. 33

Any society transacting business under this section may, in the event 34
 of the death of the wife of a member, pay to said member a part of the 35
 amount payable at said member's death; provided that the amount 36
 so paid shall be deducted from the amount payable at the member's 37
 death, and that the total amount so paid, both at the death of the mem- 38
 ber and of the member's wife, shall not exceed the amount allowed by 39
 this section to be paid at the death of a member. Any such society may 40
 also furnish physicians and nurses for its members and their families. 41

Any such limited society may be incorporated, and limited fraternal 42
 benefit corporations may be formed, in the manner prescribed in and be 43
 subject to this section and to sections six, seven, nine, ten, eleven, twenty- 44
 nine, thirty, thirty-two, thirty-six, forty-seven, forty-seven A and forty- 45
 nine of this chapter and the seventh clause of section five of chapter 46
 fifty-nine; provided, that no proceeding shall be instituted under said 47
 section thirty-six because such society has a membership of less than 48
 four hundred. 49

The recording officer of any society subject to this section shall forth- 50
 with file with the commissioner, whenever he requires in writing, a duly 51
 certified copy of its by-laws. 52

A society subject to this section shall within thirty days after a written 53
 request therefor by the commissioner file with him a financial statement, 54
 in such form and detail and of such date as he may prescribe, signed and 55
 sworn to by its president and secretary and treasurer. 56

Any person violating any provision of this section, and any such 57
 society, or any officer or agent thereof, paying or agreeing to pay death 58
 or disability benefits in excess of the amounts herein prescribed or col- 59
 lecting dues or assessments therefor, shall be punished as provided in 60
 section fifty. 61

Payment of
 disability
 benefits by
 subordinate
 lodges

SECTION 46A. A subordinate lodge of a society with ritualistic form 1
 of work and representative form of government duly authorized to trans- 2
 act business in the commonwealth under this chapter may pay disability 3

4 benefits not exceeding ten dollars a week without conforming to the
5 provisions of this chapter or chapter one hundred and seventy-five.

1921, 155, § 2
1931, 426, § 81.

1 SECTION 47. The superior court shall have jurisdiction in equity,
2 upon an information filed by the attorney general at the relation of the
3 commissioner, to restrain all violations of this chapter and to enforce
4 compliance with the provisions thereof and payment of all fines, for-
5 feitures or penalties provided thereby. The remedy herein provided
6 shall be in addition to all other remedies otherwise provided by law or
7 by this chapter, and not in substitution therefor.

Unlawful
business may
be enjoined,
etc.
1898, 474, § 19
1899, 442, § 21
1901, 422, § 21
R. L. 119, § 19,
1910, 98,
1942, 82,
1925, 80, § 1.

1 SECTION 47A. Any contract of insurance or any benefit certificate
2 made, issued or delivered by any society in violation of any provision of
3 this chapter, or any provision of its charter, articles of association, con-
4 stitution or by-laws, shall nevertheless be valid and binding upon it
5 and its members, but the rights, duties and obligations of the parties
6 thereto shall be determined by the provisions of this chapter and of the
7 charter, articles of association, constitution and by-laws of the society.

Validity of
certain con-
tracts of
insurance.
Rights, etc.,
of parties,
how deter-
mined
1925, 80, § 1.

1 SECTION 48. Any person, officer, member or examining physician of
2 any society who shall knowingly or wilfully make any false or fraudu-
3 lent statement or representation in or with reference to any application
4 for membership, or in order to obtain money from or benefit in any
5 society, shall be punished by a fine of not less than one hundred nor
6 more than five hundred dollars or by imprisonment in jail for not less
7 than one month or more than one year, or both; and any person wil-
8 fully making a false statement of any material fact or thing in a sworn
9 statement as to the death or disability of a certificate holder in any
10 society for the purpose of procuring payment of a benefit named in the
11 certificate of such holder shall be guilty of perjury; and any person
12 who wilfully makes any false statement in any verified report or declara-
13 tion on oath required or authorized by this chapter shall be punished
14 by a fine of not more than five thousand dollars or by imprisonment
15 for not more than two and one half years, or both.

Penalties for
false state-
ments.
1888, 429, § 16.
1894, 367, § 15.
1898, 474, § 18.
1899, 442, § 23.
1901, 422,
§§ 19, 23.
R. L. 119,
§§ 14, 18.
1911, 184;
628, § 31.
1914, 661, § 1.

1 SECTION 49. Whoever solicits membership in any society not duly
2 authorized to transact business in the commonwealth, or, whoever, for
3 a person other than himself, or as an agent, solicitor, organizer, officer or
4 other representative of any such society or of any local or subordinate
5 lodge or branch thereof, acts or aids in any manner in the issue, delivery,
6 negotiation, continuance or renewal of any contract of insurance or bene-
7 fit certificate in such society, or whoever, as such agent, solicitor, organ-
8 izer, officer or other representative, acts or aids in any manner in the
9 transaction of any business on behalf of such society or of any local or
10 subordinate lodge or branch thereof, by the collection or transmission
11 of dues or assessments, the calling or holding of meetings, or otherwise,
12 shall be punished by a fine of not less than fifty nor more than five hun-
13 dred dollars.

Acting or
advertising as
representative
of unauthor-
ized society
penalized
1888, 429, § 14
1894, 367, § 13.
1898, 474, § 16.
1899, 442, § 21.
1901, 422, § 21.
R. L. 119, § 16.
1907, 472.
1910, 296.
1911, 628, § 31.
1925, 80, § 5.
206 Mass. 180.

14 Whoever, by the means of cards, circulars, letterheads, advertisements,
15 signs or other methods, represents or holds himself out to the public as
16 being an agent, solicitor, organizer, officer or other representative of
17 any such society or of any local or subordinate lodge or branch thereof
18 shall be punished by a fine of not less than twenty nor more than one
19 hundred dollars.

General
penalty.
1888, 429, 18.
1893, 321, 2.
1894, 367, 17.

SECTION 50. Whoever violates any provision of this chapter for which a specific penalty is not provided shall be punished by a fine of not more than two hundred dollars.

1898, 474, § 21.
1899, 442, § 26.

1901, 422, § 26.
R. L. 119, § 21.

1911, 628, § 31.

CHAPTER 177.

ASSESSMENT INSURANCE.

[NOTE:— Section 15 was repealed by 1924, 406, § 17, and the balance of the chapter was repealed by 1929, 24, § 1.]

CHAPTER 178.

SAVINGS BANK LIFE INSURANCE.

SECT.

1. Definitions.
2. Savings banks may establish insurance departments. Procedure.
3. Prerequisites to issue of certificate establishing insurance department.
4. Special expense guaranty fund.
5. Special insurance guaranty fund.
6. Policies of insurance and annuities.
7. License to issue policies, etc. Lists of outstanding policies. Effect of revocation of license.
8. Assets and accounts of insurance department and savings department to be kept separate.
9. Investment of funds of insurance department.
10. Amount of policies or annuity contracts.
11. Policy, etc., not to be forfeited after payment of six months' premiums. Effect of subsequent default.
12. Policies to be issued to residents, etc., only. Policy holder becoming non-resident, effect.
13. Solicitors not to be employed. Agencies, agents.
14. Management of General Insurance Guaranty Fund.
15. Powers and duties of state actuary.
16. Powers and duties of state medical director.

SECT.

17. Reimbursement of commonwealth for certain expenditures for division.
18. Payment of percentage of premiums to General Insurance Guaranty Fund as guaranty. Disposition.
19. General Insurance Guaranty Fund may guarantee insurance risks in certain cases, when.
20. Investments of funds of General Insurance Guaranty Fund.
21. Certain profits of insurance department to be set apart as emergency fund, etc.
22. Insurance policies. By whom signed.
23. Percentage of premiums payable under § 18 may be reduced, etc., when.
24. Suits on policies, etc. Venue; limitation.
25. Discontinuance of issue of policies regulated. Reinsurance.
26. Examinations by commissioner of insurance and commissioner of banks.
27. Summoning witnesses, etc. Penalty.
28. Insurance departments may be restrained from doing business, when. Receivers. Report of examination, when prima facie evidence.
29. Annual, etc., statements of condition. Form.
30. Annual statement of treasurer of General Insurance Guaranty Fund.
31. Annual report of commissioners.

Definitions.
1907, 561, § 1.

SECTION 1. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

3 "Savings bank", a savings bank incorporated under the laws of the
4 commonwealth, including institutions for savings incorporated as such
5 in the commonwealth.

6 "Savings and insurance bank", a savings bank which has established
7 an insurance department.

8 "Savings department", that department of a savings and insurance
9 bank in which the business done by savings banks other than that pro-
10 vided for by this chapter is conducted.

11 "Insurance department", the department of a savings and insurance
12 bank in which the business of issuing life insurance and the granting of
13 annuities is conducted.

14 "Trustees", trustees of the savings bank or savings and insurance
15 bank.

16 "Treasurer", the treasurer of the savings bank or savings and insur-
17 ance bank.

1 SECTION 2. Any savings bank may, upon complying with the pro-
2 visions hereinafter set forth, establish an insurance department if its
3 board of trustees has, at a meeting specially called for the purpose, voted
4 so to do by a majority of two thirds of its trustees present at the meeting
5 and voting, and if such vote has been ratified by vote of a majority of the
6 incorporators present and voting at a meeting duly called therefor. The
7 notice of such trustees' meeting shall be given at least thirty days prior
8 to the date of the meeting, and shall be otherwise in accordance with any
9 laws and by-laws governing the calling of special meetings of trustees.
10 Copies of the vote of the trustees to establish the insurance department
11 and of the vote of the incorporators ratifying the same, certified to by the
12 clerk of the bank and sworn to by the president or vice president and the
13 treasurer or assistant treasurer, shall be filed with the commissioner of
14 banks and with the commissioner of insurance within thirty days after
15 the adoption thereof; and if said commissioners shall find said votes
16 to be in conformity with law, and that the conditions provided by the
17 following section have been complied with, and if in the opinion of the
18 commissioner of banks the financial condition of the bank presents no
19 objection to the establishment of an insurance department, they shall
20 issue a joint certificate declaring said insurance department established.

Savings banks
may establish
insurance
departments.
Procedure.
1907, 561, § 2.
1919, 350, § 46
4 Op. A. G. 499.

1 SECTION 3. The certificate establishing the insurance department
2 shall not be issued until there shall have been provided (a) a special
3 expense guaranty fund as set forth in the following section and (b) either
4 a special insurance guaranty fund as set forth in section five or a guar-
5 anty contract under section nineteen; and until (c) a certificate in dupli-
6 cate, under the oath of the treasurer, shall have been filed with the com-
7 missioner of insurance and the commissioner of banks certifying that
8 said special expense guaranty fund and said special insurance guaranty
9 fund or guaranty contract have been furnished, and (d) said commis-
10 sioners shall, upon investigation, have made a joint finding that said
11 requirements have duly been complied with.

Prerequisites
to issue of
certificate
establishing
insurance
department.
1907, 561, § 3.
1919, 350, § 46.

1 SECTION 4. The special expense guaranty fund mentioned in the
2 preceding section shall consist of not less than five thousand dollars in
3 cash, advanced to and placed at the risk of said department as a guaranty
4 fund to be applied in payment of the expenses thereof, if and so far as
5 the amounts contributed from the loading in the insurance premium and

Special
expense
guaranty
fund.
1907, 561, § 4.
1919, 350, § 46.

in annuity charges, together with any membership fee and surrender and death charges, shall prove insufficient to pay the expenses of said insurance department. The original amount of such guaranty fund shall be fixed by the trustees, with the approval of the state actuary of the division of savings bank life insurance of the department of banking and insurance, and the guaranty fund may be increased at any time thereafter by the trustees. The amounts advanced as a special expense guaranty fund shall be evidenced by certificates of the par value of one hundred dollars, and the holders thereof shall be credited with interest thereon annually, with annual rests, at a rate equal to the average rate paid in that year upon its deposits by the savings department. If in any year ending October thirty-first the profits remaining, after setting aside amounts for surplus as provided in section twenty-one, shall be sufficient therefor, the trustees shall from such profits reimburse said expense guaranty fund for any amounts theretofore drawn from it to defray expenses of the insurance department; and if, after so reimbursing said fund, and after reimbursing the special insurance guaranty fund for amounts theretofore drawn from it, the balance of profits shall be sufficient therefor, the trustees shall pay to the holders of the certificates of said expense guaranty fund the interest accrued thereon, or such part thereof as the amount may suffice to cover. Said expense guaranty fund may be retired, with the approval of the commissioner of banks and the commissioner of insurance, whenever in the opinion of the trustees it is no longer required. The amount so advanced as an expense guaranty fund shall be repaid and the interest credited shall be paid only as above provided, or under section twenty-five, and shall not be deemed a liability of the insurance department in determining the solvency thereof.

Special insurance guaranty fund 1907, 561, § 5 1919, 350, § 46.

SECTION 5. The special insurance guaranty fund mentioned in section three shall consist of not less than twenty thousand dollars in cash, advanced to and placed at the risk of the insurance department, which shall be applicable to the payment and satisfaction of all losses or other obligations arising out of policies or annuity contracts if and whenever the liabilities of said department, including the insurance reserve, are in excess of its assets. The original amount of such special insurance guaranty fund shall be fixed by the trustees, with the approval of the state actuary, and the guaranty fund may be increased at any time thereafter by vote of the trustees. The amounts advanced to such special insurance guaranty fund shall be represented by certificates of the par value of one hundred dollars; and the holders thereof shall be credited with interest thereon annually, with annual rests, at the rate equal to the average rate paid in that year upon its deposits by the savings department. If in any year ending October thirty-first the profits remaining are sufficient therefor, after setting aside amounts for the surplus as provided in section twenty-one, and reimbursing the special expense guaranty fund and said special insurance guaranty fund for all amounts theretofore drawn from them or either of them, and paying interest on the certificates representing the special expense guaranty fund, the trustees may pay the interest accrued on said insurance guaranty certificates or such part thereof as the amount may suffice to cover. After the special expense guaranty fund has been retired as provided in section four, said special insurance guaranty fund may, with the approval of the commissioner of insurance, be retired by the trustees as soon as the insurance department shall have

27 accumulated a surplus in excess of all its liabilities equal to the amount
 28 of such guaranty fund, including any interest accrued thereon remain-
 29 ing unpaid; and said insurance guaranty fund may, with like approval,
 30 be retired from time to time, in part, but the balance of such guaranty
 31 fund, including unpaid interest plus the surplus on hand, shall at no
 32 time be less than the amount of the original insurance guaranty fund.
 33 The amounts so advanced as an insurance guaranty fund shall be re-
 34 paid and the interest credited thereon shall be paid only as above pro-
 35 vided, or under section twenty-five, and shall not be deemed a liability
 36 of the insurance department in determining the solvency thereof.

1 SECTION 6. Any savings and insurance bank acting through its
 2 insurance department, after the issue of the license provided for in the
 3 following section, may make and issue policies upon the lives of persons
 4 and grant or sell annuities with all the rights, powers and privileges
 5 and subject to all the duties, liabilities and restrictions in respect to
 6 the conduct of the business of life insurance conferred or imposed by
 7 general laws relating to domestic legal reserve life insurance companies,
 8 so far as the same are applicable and except as is otherwise provided
 9 herein. The insurance department shall in all respects, except as is
 10 otherwise provided herein, be managed as savings banks are managed
 11 under general laws relating to savings banks. Such insurance depart-
 12 ment may decline particular classes of risks or reject any particular
 13 application.

Policies of
 insurance and
 annuities,
 1907, 561, § 6.

1 SECTION 7. A license to issue policies and make annuity contracts
 2 shall, upon the application of the trustees, be granted by the com-
 3 missioner of insurance to any savings and insurance bank which has
 4 duly complied with the requirement set forth in section three; but the
 5 said license shall be revocable by said commissioner at his discretion,
 6 and after having given thirty days' written notice to said trustees,
 7 provided not more than twenty thousand dollars of insurance on not
 8 less than one hundred lives of residents of the commonwealth, on which
 9 all payments due by the terms thereof have been made thereon, shall
 10 have been applied for and issued, and then remain outstanding. A list
 11 showing the amount of outstanding policies, with the names of the
 12 holders thereof, shall be filed by the treasurer of the said bank with
 13 said commissioner at the close of each month until the above limits as
 14 to amount of insurance and number of persons insured and holding
 15 policies standing in full force by reason of the due payment of premium,
 16 have been exceeded. Upon the filing of every such list, the correctness
 17 of which shall be certified by the treasurer on oath, the said commis-
 18 sioner may make such investigations as he deems proper, in order to
 19 ascertain the truth of the facts thus certified by the treasurer.

License to
 issue policies,
 etc. Lists of
 outstanding
 policies.
 Effect of
 revocation
 of license
 1907, 561, § 7
 1919, 350, § 46

20 The revocation of the license of any bank under the terms of this
 21 section shall not affect the right and the obligation of the bank to con-
 22 tinue and fulfil its existing contracts, or the right, with the approval
 23 of said commissioner, to reinsure them or to transfer them to another
 24 bank or company holding a license to do insurance business in the
 25 commonwealth.

1 SECTION 8. The assets of the savings department shall be liable for
 2 and applicable to the payment and satisfaction of the liabilities, obliga-
 3 tions and expenses of the savings department only. The assets of the

Assets and
 accounts of
 insurance
 department
 and savings

department
to be kept
separate.
1907, 561, § 8.

insurance department shall be liable for and applicable to the payment and satisfaction of the liabilities, obligations and expenses of the insurance department only. The savings department and the insurance department shall be kept distinct also in matters of accounting and of investment. Expenses pertaining to the conduct of both the savings department and the insurance department, such as office rent and the salaries of general officers, shall be apportioned by the trustees equitably between the two departments.

Investment
of funds of
insurance
department.
1907, 561, § 9.

SECTION 9. The funds of the insurance department, whether arising from premiums, annuity contracts, guaranty funds, or from the income thereof, and whether constituting insurance reserve or surplus, shall be invested in the same classes of securities and in the same manner in which the deposits of the savings department are required by law to be invested, except that it may make loans upon any policy of insurance or annuity contract issued by it to the extent specified in section fifteen.

Amount of
policies or
annuity con-
tracts.
1907, 561, § 10.
1915, 32.
1919, 115.
1929, 37.
4 Op. A. G. 499.

SECTION 10. No savings and insurance bank shall write any policy or annuity contract binding it to pay more than one thousand dollars, exclusive of dividends or profits, upon the death of any one person, except for such amount, if any, as it may be bound to pay upon the death of such person under an employees' group policy, or under an annuity contract embodying an agreement to refund, upon the death of the holder, to his estate or to a specified payee, a sum not exceeding the premiums paid thereon with compound interest, nor shall it write any annuity contract otherwise binding it to pay in any one year more than two hundred dollars, exclusive of dividends or profits.

Policy, etc.,
not to be
forfeited after
payment of
six months'
premiums.
Effect of
subsequent
default
1907, 561, § 11.
1908, 222
1922, 79, § 1.

SECTION 11. No policy of life or endowment insurance or annuity contract issued by any savings and insurance bank shall become forfeit or void for non-payment of premium after six full months' premiums have been paid thereon; and in case of default in the payment of any subsequent premium, then, without any further stipulation or act, such policy shall be binding upon the bank at the option of the insured, either (a) for the cash surrender value or (b) for the amount of paid-up insurance which the then net value of the policy and all dividend additions thereon, less any indebtedness to the bank on account of said policy, and less a surrender charge of not more than one per cent of the face value of the policy, will purchase as a net single premium for life or endowment insurance, maturing or terminating at the time and in the manner provided for in the original policy contract, or (c) for the amount of paid-up term insurance which such net value would purchase.

Policies to be
issued to
residents, etc.,
only. Policy
holder becom-
ing non-
resident,
effect.
1907, 561, § 12.
1918, 70.
1927, 92.

SECTION 12. No policy or annuity contract shall be issued except upon the life and for the benefit of a resident of the commonwealth or of a person regularly employed therein. If the holder of any policy or annuity issued by such a bank becomes a resident of another state or country, it shall be necessary, unless the bank otherwise provides, for such a policy holder or such an annuitant, or his duly authorized representative, or the beneficiary entitled to a claim for loss under such a policy, to make or receive payments at the bank, or by correspondence, without notice from the bank. Should a lapse occur by reason of the failure of any such person to do so seasonably, the liability of the bank, in case of a policy of insurance, shall be only for the amount of its previ-

12 ously acquired paid-up insurance value, or, on demand, for the stipulated
 13 cash surrender value thereof.

1 SECTION 13. Savings and insurance banks shall not employ solicitors
 2 of insurance, and shall not employ persons to make house to house col-
 3 lections of premiums; but the trustees may establish such agencies and
 4 means for the receipt of applications for insurance and of deposits and of
 5 premium and annuity payments, at such convenient places and times,
 6 of such nature and upon such terms as the commissioner of banks and
 7 the commissioner of insurance may approve. The trustees may also,
 8 with like approval, appoint any savings bank or savings and insurance
 9 bank its agent to make, so far as thereunto authorized, payments due on
 10 policies of insurance and on contracts for annuities, and to perform other
 11 services for the insurance department. All savings banks and all savings
 12 and insurance banks may, with like approval, act as such agents. The
 13 business of the insurance department may, in the discretion of the trus-
 14 tees, be carried on either in the same building with that of the savings
 15 department or in a different building.

Solicitors
not to be
employed.
Agencies,
agents
1907, 561, § 13
1919, 359, § 46

1 SECTION 14. The General Insurance Guaranty Fund shall be a
 2 body corporate, with the powers specifically provided in this chapter and
 3 with all the general corporate powers incident thereto. It shall be man-
 4 aged by the board of trustees appointed under section ten of chapter
 5 twenty-six. The trustees of the fund shall adopt a code of by-laws.

Management
of General
Insurance
Guaranty
Fund.
1907, 561, § 14

1 SECTION 15. The state actuary, appointed under section eleven of
 2 chapter twenty-six, with the advice of the attorney general as to matters
 3 of legal form, shall prepare standard forms of life insurance policies and
 4 life annuity contracts, including a whole life policy, a limited payment
 5 life policy, a limited term policy, an endowment policy, an annuity con-
 6 tract, and a combination of life insurance policy and deferred annuity
 7 contract, and such others as may from time to time, in the opinion of the
 8 commissioner of insurance, be desirable. Every policy and annuity con-
 9 tract shall provide that the issuing bank may make any payment there-
 10 under by placing to the credit of the account of the registered beneficiary
 11 in the savings department the amount payable. Such standard forms
 12 shall be used as the uniform and exclusive forms of policies by all savings
 13 and insurance banks. He shall also prepare the form of blanks for appli-
 14 cations for life insurance policies and life annuity contracts and for proof
 15 of loss, and all other forms necessary for the efficient prosecution of the
 16 business, also books of record and of account, and all schedules and all
 17 reports, not otherwise provided for, required in the conduct of the busi-
 18 ness, and these shall be used as the uniform and exclusive form of blanks,
 19 books, schedules and reports in the insurance departments of all savings
 20 and insurance banks. He shall also, consistently with the law govern-
 21 ing domestic legal reserve life insurance companies, determine and pre-
 22 pare the table of premium rates for all kinds of life insurance policies,
 23 and the purchase rates for annuities, and the amount of the member-
 24 ship fee, the surrender and any proof of death charges, and the premium
 25 rates for reinsurance. The rates, fees and charges so fixed shall be
 26 adopted as the uniform and exclusive premiums, annuity rates, the initia-
 27 tion, the surrender, and the proof of death charges. He shall also deter-
 28 mine and prepare tables showing the amounts which may be loaned on
 29 insurance policies, and the reinsurance rates to be charged by all savings

Powers and
duties of
state actuary.
1907, 561, § 15.
1914, 246.
1919, 359, § 46

and insurance banks, and the guaranty charges to be made by the Gen- 30
 eral Insurance Guaranty Fund, but the loan value shall in no event ex- 31
 ceed the reserve on any policy. He shall also prepare or procure tables 32
 for computing the legal reserve to be held under insurance and annuity 33
 contracts, and for this purpose may, with the approval of the commis- 34
 sioner of insurance, adopt a table of mortality which may be deemed more 35
 suitable than the American Experience Table for policies of insurance of 36
 the character and amounts to which the risks of the banks are limited; 37
 and shall in all other respects, except as otherwise provided, perform the 38
 duties of insurance actuary for all the savings and insurance banks and 39
 the General Insurance Guaranty Fund. The ordinary actuarial routine 40
 work of the banks, including an annual and other valuations of their 41
 policies, shall be performed by their clerks, guided and assisted, so far 42
 as may be necessary, by the advice and instruction of the state actuary; 43
 but an annual valuation of all the policies of the banks and of the condi- 44
 tion of the General Insurance Guaranty Fund as of October thirty-first 45
 of each year shall be made in the office of the state actuary under his 46
 direction, and from schedules of policy data on blanks furnished by him 47
 and prepared by the banks in accordance with his instructions. The 48
 state actuary shall also furnish to the savings and insurance banks and 49
 to the General Insurance Guaranty Fund all blanks for policies, applica- 50
 tions, schedules, and other papers and books which the state actuary 51
 is required to prepare, as herein provided. The state actuary shall for 52
 each year ending October thirty-first determine the ratio of actual to 53
 expected mortality claims for all of the savings and insurance banks com- 54
 bined, and shall determine a similar ratio for each of the savings and in- 55
 surance banks separately. Both calculations shall be based upon the 56
 mortality tables and the rate of interest used by the banks in the calcu- 57
 lation of the premiums, or upon such other bases as shall be approved by 58
 the commissioner of insurance. If the calculation of the ratio pertaining 59
 to any savings and insurance bank shows that the actual mortality ex- 60
 perience is less than the mortality expected to be experienced by all of 61
 the banks combined, the state actuary shall send to such bank a certifi- 62
 cate setting forth the amount of such difference, and thereupon such 63
 bank shall send to the General Insurance Guaranty Fund in cash the 64
 amount of such certificate. The state actuary shall also furnish to the 65
 trustees of the General Insurance Guaranty Fund a certificate in respect 66
 to any savings and insurance bank in which the ratio of the actual to the 67
 expected mortality has exceeded the ratio of the actual to the expected 68
 mortality for all of the banks combined, and thereupon the trustees of 69
 the General Insurance Guaranty Fund shall pay to such bank the amount 70
 of such excess as evidenced by such certificate. 71

In determining the net profits, as defined in section twenty-one, to be 72
 distributed to the holders of the policies and annuity contracts each 73
 year for each savings and insurance bank, the state actuary shall con- 74
 sider as a mortality factor the ratio of the actual to the expected mortal- 75
 ity for all of the savings and insurance banks combined. 76

Powers and
 duties of
 state medical
 director.
 1907, 561, § 16.
 1919, 350, § 46.

SECTION 16. The state medical director, appointed under section 1
 twelve of chapter twenty-six, shall, subject to the supervision and control 2
 of the commissioner of insurance, prescribe the rules relating to health 3
 or acceptability of the applicant for insurance, and shall act as super- 4
 vising and advising physician for the medical department of all the 5
 savings and insurance banks. 6

1 SECTION 17. There shall be paid to the commonwealth on account of
 2 sums expended by it for the division of savings bank life insurance during
 3 the year ended on November, thirtieth next preceding, the following
 4 amounts: On December fifteenth, nineteen hundred and twenty-nine, a
 5 sum equal to twenty-five per cent thereof; on December fifteenth, nine-
 6 teen hundred and thirty, a sum equal to forty per cent; on December
 7 fifteenth, nineteen hundred and thirty-one, a sum equal to fifty-five per
 8 cent; on December fifteenth, nineteen hundred and thirty-two, a sum
 9 equal to seventy per cent; on December fifteenth, nineteen hundred and
 10 thirty-three, a sum equal to eighty-five per cent; on December fifteenth,
 11 nineteen hundred and thirty-four, and on December fifteenth in each
 12 year thereafter, a sum equal to the total amount. Said sums so to be
 13 repaid to the commonwealth shall be apportioned by the trustees of the
 14 General Insurance Guaranty Fund among the savings and insurance
 15 banks in proportion to their premium income, or on such other basis as
 16 the said trustees shall deem equitable and proper, and said banks shall
 17 be assessed therefor in accordance with such apportionment; provided,
 18 that no savings and insurance bank shall be assessed for any part of said
 19 expenditure unless and until it shall have accumulated in its insurance
 20 department a surplus fund of not less than twenty thousand dollars as
 21 provided in sections five, nineteen and twenty-one, or unless and until
 22 five years shall have elapsed from the date when it shall have been
 23 licensed by the commissioner of insurance to issue policies and make
 24 annuity contracts, whichever event shall sooner happen. Any sum so
 25 apportioned to banks so exempted shall be paid to the commonwealth by
 26 the trustees of the General Insurance Guaranty Fund from the interest
 27 income thereof on or before December fifteenth in each year as above
 28 provided.

Reimbursement
of common-
wealth for cer-
tain expendi-
tures for
division.
1907, 561, § 17
1927, 188.
1929, 162.

1 SECTION 18. Every savings and insurance bank shall, on the third
 2 Wednesday of each month, pay to the General Insurance Guaranty
 3 Fund an amount equal to four per cent of all amounts paid to it as
 4 premiums on policies or in the purchase of annuities during the pre-
 5 ceding month. Said sums shall be held as a guaranty for all obligations
 6 on policies or annuity contracts of the insurance departments of all
 7 savings and insurance banks; and so much thereof shall be paid over
 8 to any bank, to be applied in the payment of losses or satisfaction of
 9 other obligations on said policies or annuity contracts, as may be re-
 10 quired to prevent or to make good an impairment of its insurance reserve.
 11 Any amount so paid to any bank shall be charged to its account, and be
 12 repaid, with interest compounded semi-annually at the rate of five per
 13 cent per annum out of the surplus funds of said insurance department as
 14 soon and so far as an adequate surplus exists. The amounts so advanced
 15 by the General Insurance Guaranty Fund to any bank shall be repaid
 16 only as above provided, and shall not be deemed a liability in determining
 17 the solvency of its insurance department.

Payment of
percentage
of premiums
to General
Insurance
Guaranty
Fund as
guaranty.
Disposition.
1907, 561, § 18.

1 SECTION 19. Whenever the funds held by the General Insurance
 2 Guaranty Fund are, in the opinion of both the commissioner of insur-
 3 ance and the commissioner of banks, sufficient therefor, the trustees of
 4 the fund may enter into a contract with any savings bank desiring to
 5 establish an insurance department to guarantee all the risks of such
 6 bank until such time as it shall have a surplus of not less than twenty
 7 thousand dollars nor less than ten per cent of the aggregate insurance

General
Insurance
Guaranty
Fund may
guarantee
insurance risks
in certain
cases, when.
1907, 561, § 19
1919, 350, § 46

reserve. If such guaranty contract is entered into by any bank, it shall not be necessary to provide the special insurance guaranty fund provided for in section five before the commissioner of insurance and the commissioner of banks are entitled to issue the certificate establishing the insurance department as provided in section three.

Investments of funds of General Insurance Guaranty Fund. 1907, 561, § 20.

SECTION 20. The funds of the General Insurance Guaranty Fund shall be invested in the same classes of securities and in the same manner in which the deposits of the savings department are required by law to be invested; but the trustees of said fund shall be at liberty to deposit in any savings bank any funds on hand which, by reason of the smallness of the amount or for any other reason, cannot, in the opinion of said trustees, otherwise properly be invested at that time.

Certain profits of insurance department to be set apart as emergency fund, etc. 1907, 561, § 21. 1921, 416. 1922, 79, § 2.

SECTION 21. Each savings and insurance bank shall annually set apart as a surplus from the net profits, if any, which have been earned in its insurance department, an amount not less than twenty nor more than seventy-five per cent thereof, until such fund equals ten per cent of its net insurance reserve, or the amount of its special insurance guaranty fund, whichever is the greater. Thereafter each such bank may add in any year to its said surplus fund not more than fifteen per cent of the net profits, if any, which have been earned in its insurance department in such year; provided, that no such bank shall so add to its said surplus fund if it equals ten per cent of the net insurance reserve of said bank. Such surplus fund shall thereafter be maintained and held or used so far as necessary to meet losses in its insurance department whether from unexpectedly great mortality, depreciation in its securities, or otherwise, and for the maintenance of a stable dividend scale. The balance of the net profits of each year shall annually be distributed equitably among the holders of its policies and annuity contracts, such distribution to be made at the option of the policy holder in accordance with section one hundred and forty of chapter one hundred and seventy-five.

Insurance policies. By whom signed. 1907, 561, § 22.

SECTION 22. Life insurance policies and annuity contracts may be signed on behalf of the savings and insurance banks by the treasurer or assistant treasurer, or by such other officer or employee of the savings and insurance banks as the trustees may from time to time determine.

Percentage of premiums payable under § 18 may be reduced, etc., when. 1907, 561, § 23. 1919, 350, § 46.

SECTION 23. Whenever the net assets of the General Insurance Guaranty Fund over all liabilities exceed one hundred thousand dollars or five per cent of the aggregate outstanding insurance reserve of all savings and insurance banks, whichever is the greater, the trustees of said fund may, with the approval of the commissioner of insurance, reduce the percentage of premiums on insurance and annuities so payable to it or altogether discontinue the same; but said trustees may require at any time thereafter said contribution to be made at a rate not exceeding that provided for in section eighteen.

Suits on policies, etc. Venue; limitation. 1907, 561, § 25.

SECTION 24. Any suit brought on or in respect to any policy or annuity contract issued by any savings and insurance bank shall be brought in the county where such bank is located, and within two years after the date of the alleged cause of action.

1 SECTION 25. Any savings and insurance bank may at any time
 2 discontinue the issuing of insurance policies and annuity contracts if
 3 its board of trustees has, at a meeting duly called for the purpose, voted
 4 so to do by a majority of two thirds of its trustees present at the meet-
 5 ing and voting. The notice of such meeting shall be given at least
 6 thirty days prior to the date thereof, and shall be otherwise in accord-
 7 ance with any laws or by-laws governing the calling of special meetings
 8 of trustees. A copy of the vote to discontinue said business, certified
 9 to by the clerk of the bank and sworn to by its president or vice presi-
 10 dent and its treasurer or assistant treasurer, shall be filed with the com-
 11 missioner of banks and also with the commissioner of insurance. A
 12 bank which has so voted may reinsure all outstanding policies and an-
 13 nuity contracts in any other savings and insurance bank, or, with the
 14 approval of the commissioner of insurance and the commissioner of
 15 banks, in any purely mutual legal reserve life insurance company or-
 16 ganized under the laws of the commonwealth, if such company does
 17 not employ solicitors of insurance or make house to house collection of
 18 premiums, and does not provide for the payment of interest on its
 19 guaranty capital of more than four per cent, if it makes provision satis-
 20 factory to the commissioner of insurance for carrying out with reason-
 21 able convenience to policy holders and annuitants its existing con-
 22 tracts. When a bank which has voted to discontinue said business
 23 has so reinsured its outstanding policies and annuity contracts, or fully
 24 performed the same, it shall transfer to the General Insurance Guaranty
 25 Fund all the assets of the insurance department remaining after pay-
 26 ing all its liabilities, including special guaranty fund certificates issued
 27 under section four or five.

Discontinu-
 ance of issue
 of policies
 regulated.
 Reinsurance.
 1907, 561, § 26,
 1919, 350, § 46.

1 SECTION 26. The commissioner of insurance and the commissioner
 2 of banks shall, at least once in each year and whenever they consider it
 3 expedient, either alone or together, personally or by deputy or assistant,
 4 examine the insurance department of each savings and insurance bank
 5 and the General Insurance Guaranty Fund. At such examination they
 6 shall have free access to the vaults, books and papers, and shall thor-
 7 oughly inspect and examine the affairs of any such corporation to ascer-
 8 tain its condition, its transactions, its ability to fulfil its obligations, and
 9 whether it has complied with all the provisions of law applicable to it.
 10 They shall preserve in a permanent form a full record of their proceedings,
 11 including a statement of the condition of the insurance department of
 12 each of said banks.

Examinations
 by commis-
 sioner of
 insurance and
 commissioner
 of banks.
 1907, 561, § 27,
 1919, 350, § 46.

1 SECTION 27. Either of said commissioners, or his deputy or assistant
 2 specially authorized by him in writing, may summon the trustees, officers
 3 or agents of any such corporation, and such other witnesses as he thinks
 4 proper, and examine them relative to the affairs, transactions and con-
 5 dition of the insurance department or of the General Insurance Guar-
 6 anty Fund, and for that purpose may administer oaths. Whoever with-
 7 out justifiable cause refuses to appear and testify when so required, and
 8 whoever obstructs a commissioner in the performance of his duty, shall
 9 be punished by a fine of not more than one thousand dollars or by im-
 10 prisonment for not more than one year.

Summoning
 witnesses, etc.
 Penalty.
 1907, 561, § 28.

1 SECTION 28. If upon examination the insurance department of any
 2 savings and insurance bank appears to both the commissioner of banks

Insurance
 departments
 may be

restrained
from doing
business, when.
Receivers.
Report of
examination,
when prima
facie evidence.
1907, 561, § 29.
1919, 350, § 46.
1930, 79, § 3.

and the commissioner of insurance to be insolvent, or if they find its condition such as to render the continuance of its business hazardous to the public or to the holders of its policies or contracts, the commissioners shall apply or, if such bank appears to have exceeded its powers or failed to comply with any provision of law, may apply to the supreme judicial court, which shall have jurisdiction in equity of such application, for an injunction to restrain such department, in whole or in part, from further proceeding with its business. The court may appoint one or more receivers to take possession of the property of the insurance department, subject to such directions as may from time to time be prescribed by the court, without in any respect affecting the operations of the savings department.

A report of an examination made under section twenty-six may, as far as material and relevant, be admitted, in the discretion of the court, in any proceeding under this section, as prima facie evidence of the facts set forth in such report.

Annual, etc.,
statements
of condition.
Form.
1907, 561, § 30.
1919, 350, § 46.
1931, 130.

SECTION 29. The treasurer shall annually, within fifty days after the last business day in October, file with the commissioner of insurance and the commissioner of banks a statement showing the financial condition of the insurance department on the last business day of October. Such annual statement shall be in the form required by the commissioners, who shall embody therein so much of the forms now prescribed for life insurance companies and for savings banks as may seem to them appropriate, with any additional inquiries they may require for the purpose of eliciting a complete and accurate exhibit of the condition and transactions of the banks. The assets and liabilities shall be computed and allowed in such statement in accordance with the rules governing insurance companies, except as herein otherwise provided. The president or vice president of the savings and insurance bank and five or more of its trustees shall make oath that the report is correct according to the best of their knowledge and belief. The commissioner of insurance and the commissioner of banks may also at any time require the treasurer to make such other statement of condition or furnish such other information concerning the insurance department as they deem necessary.

Annual state-
ment of
treasurer of
General Insur-
ance Guaranty
Fund.
1907, 561, § 31.
1919, 350, § 46.

SECTION 30. The treasurer of the General Insurance Guaranty Fund shall annually, within thirty days after the last business day of October, file with the commissioner of insurance and the commissioner of banks a statement, in such form as said commissioners shall prescribe, showing its financial condition on the last business day of October, and shall also at any time make such statement of condition and furnish such other information concerning its business as said commissioners deem necessary. The president of said fund and three or more trustees thereof shall make oath that the report is correct to the best of their knowledge and belief.

Annual report
of commis-
sioners.
1907, 561, § 32.
1919, 350, § 46.

SECTION 31. The commissioner of insurance and the commissioner of banks shall prepare annually from the said reports concerning insurance departments and the General Insurance Guaranty Fund, and communicate to the general court on or before the first Wednesday in February, a statement of the condition of each savings and insurance bank and of said General Insurance Guaranty Fund, and shall make such suggestions as they consider expedient relative to the general conduct and condition of each bank visited by them.

CHAPTER 179.

PROPRIETORS OF WHARVES, REAL ESTATE LYING IN COMMON, AND GENERAL FIELDS.

SECT.
WHARVES AND REAL ESTATE LYING IN COMMON.

1. Application for incorporation.
2. Notice, etc., of first meeting.
3. Organization.
4. Clerk, oath, duties.
5. Treasurer, duties and powers.
6. Proprietors may sue and be sued, etc.
7. By-laws.
8. Power of moderator.
9. Powers of proprietors at legal meeting.
10. Votes. Proxies.
11. Proprietors may raise money, etc.
12. Assessments, how collected.
13. Redemption of shares.
14. Sale by proprietors.
15. Deposit of records.
16. Corporate powers, etc., after division of property.
17. Same subject.

GENERAL FIELDS.

18. Meetings, etc.
19. Meetings, etc., how called. Votes.
20. Clerk, assessors, etc. Oath.
21. Field drivers.
22. Regulations.

SECT.

23. Limitation on right to vote of proprietors of enclosed land.
24. Trespass.
25. Assessment of money.
26. Clerk to issue warrant for collecting, etc. Collection.
27. Proprietor injured by beasts of stranger.
28. Apportionment of fence, etc.
29. Proprietors, when not to maintain fence.
30. Expense of apportioning fence, etc.
31. Proceedings when part of fence assigned is deficient.
32. Party neglecting to repair liable to double damages, etc.
33. Liability to repair in case of sudden destruction, etc.
34. Proprietor may enclose his land. Effect.
35. Proprietors to run lines once in two years, etc. Penalty.
36. Superior court may order proprietors to fence land as general field.
37. After order, proprietors to have powers as if enclosed by consent.
38. Division of general field upon petition.
39. Same subject.
40. Discontinuance of general fields.

WHARVES AND REAL ESTATE LYING IN COMMON.

1 SECTION 1. Upon written application of five or more proprietors of
 2 lands, wharves or other real estate held in common to a justice of the
 3 peace, stating that they intend to organize themselves as a corporation,
 4 he shall issue his warrant to one of the applicants, directing him to call
 5 a meeting of all the proprietors and expressing in the warrant the time,
 6 place, occasion and purpose of the meeting.

G. S. 67, §§ 1, 2.	1 Mass. 159.	10 Met. 408.
P. S. 111, §§ 1, 2.	8 Pick. 455.	153 Mass. 42.
R. L. 123, § 1.	24 Pick. 304.	270 Mass. 465.

1 SECTION 2. The meeting shall be called by posting a notice contain-
 2 ing the substance of the warrant, signed by the person to whom the
 3 warrant is directed, fourteen days at least before the meeting, in one or
 4 more public places in the town, and by publishing it in a newspaper, if
 5 any, published in the county where the estate lies; otherwise, in a news-
 6 paper published in an adjoining county.

R. L. 123, § 2.	10 Met. 408.	270 Mass. 465.
-----------------	--------------	----------------

1 SECTION 3. At such meeting, by vote of a majority in number and
 2 interest of all the proprietors, they may organize themselves as a cor-
 3 poration under this chapter; and they may thereupon choose a clerk,
 4 treasurer, collector and such committees and other officers as they deem

Application for incorporation
 1712-13, 9, § 1.
 1735-6, 5, § 1.
 1753-4, 1, § 1.
 1783, 39, § 1.
 R. S. 43.
 §§ 1, 2.

Notice, etc., of first meeting.
 1712-13, 9, § 1.
 1735-6, 5, § 1.
 1753-4, 1, § 1.
 1783, 39, § 1.
 R. S. 43, § 3.
 G. S. 67, § 3.
 P. S. 111, § 3.

Organization.
 1712-13, 9, § 1.
 1735-6, 5, § 1.
 1753-4, 1, § 1.
 1783, 39, § 1.
 R. S. 43, § 4, 5.

G. S. 67, § 4, 5.
 P. S. 111, § 4, 5.
 1897, 496, § 7.
 R. L. 123, § 3.
 1931, 394, § 181.

necessary for the management of their affairs, and may agree upon and direct the manner of calling future meetings. Each officer chosen by the proprietors shall hold his office until his successor is qualified. The clerk, treasurer and collector shall forthwith make, sign, swear to and file in the office of the state secretary a certificate setting forth the name of the corporation, its purpose, the town and county where it is located, the date of the meeting for organization and any adjournments thereof, and any other facts of importance contained in the proceedings of organization; otherwise, the organization shall be void.

Clerk, oath, duties.
 1712-13, 9, § 1.
 1753-4, 1, § 1.
 1783, 39, § 1.
 R. S. 43, § 14.
 G. S. 67, § 6.

SECTION 4. The clerk shall be sworn, and shall record all votes, orders and proceedings of the proprietors in books which he shall keep for that purpose until they are delivered to the town clerk as hereinafter provided.

P. S. 111, § 6. R. L. 123, § 4.

Treasurer, duties and powers.
 1726-7, 15, § 1.
 1783, 39, § 7.
 R. S. 43, § 15.
 G. S. 67, § 7.
 P. S. 111, § 7.
 R. L. 123, § 5.

SECTION 5. The treasurer shall demand and receive all money due or belonging to the proprietors, shall sue for and recover in his own name to their use all fines and penalties incurred under sections seven and eight, shall pay out all money in his hands according to the order of the proprietors and shall, from time to time when required, render his accounts thereof.

Proprietors may sue and be sued, etc.
 1694-5, 15, § 1.
 1726-7, 15, § 1.
 1783, 39, § 4.
 1824, 74, § 4.
 R. S. 43, § 12.
 G. S. 67, § 8.

SECTION 6. Such proprietors may sue and be sued as a body corporate; and an action brought by the corporation for trespass on the common property may be pleaded in abatement or answered in bar of an action for the same trespass brought by any of the proprietors in his individual capacity.

P. S. 111, § 8. R. L. 123, § 6. 153 Mass. 42.

By-laws.
 1727, 9, § 1.
 1783, 39, § 11.
 R. S. 43, § 11.
 G. S. 67, § 9.
 P. S. 111, § 9.
 R. L. 123, § 7.

SECTION 7. They may make by-laws consistent with law for the orderly conducting of their business, with penalties for the breach thereof not exceeding three dollars for each offence; but by-laws with penalties annexed shall be approved by the county commissioners for the county where the estate lies.

Power of moderator.
 1783, 39, § 2.
 R. S. 43, § 13.
 G. S. 67, § 10.
 P. S. 111, § 10.
 R. L. 123, § 8.

SECTION 8. The moderator of a meeting of the proprietors shall have the same power as the moderator of a town meeting, except the power of confining a person or causing him to be removed from the meeting. Whoever resists or disobeys his orders shall be subject to the pecuniary penalties provided for the like offences at a town meeting.

Powers of proprietors at legal meeting.
 1712-13, 9, § 2.
 1753-4, 1, § 1.

SECTION 9. The proprietors may, at a legal meeting, exercise any of the powers granted to them in this chapter; but no business shall be acted on unless set forth in the notice for the meeting.

1783, 39, § 1. G. S. 67, § 11. R. L. 123, § 9.
 R. S. 43, § 5. P. S. 111, § 11. 143 Mass. 110.

Votes.
 Proxies.
 1783, 39, § 8.
 R. S. 43, § 6.
 G. S. 67, § 12.
 P. S. 111, § 12.
 R. L. 123, § 10.

SECTION 10. Each proprietor may vote according to the number of his shares or the amount of his interest, if known; and if not known, the proprietors shall vote equally. Absent proprietors may vote by written proxy.

1 SECTION 11. The proprietors may by vote adopt such measures and
 2 levy such assessments in proportion to their respective rights and in-
 3 terests in the property as they deem proper for managing, improving or
 4 dividing their common property and carrying on their business.

R. S. 43, § 7.
 G. S. 67, § 13.
 P. S. 111, § 13.

R. L. 123, § 11.
 2 Mass. 475.

10 Mass. 5.
 111 Mass. 454.

Proprietors may raise money, etc. 1726-7, 15, § 1. 1753-4, 1, § 2. 1783, 39, § 5.

1 SECTION 12. If a proprietor fails to pay an assessment for six months
 2 after demand therefor by the collector or other proper officer, or after a
 3 notice of such assessment posted and published in the manner prescribed
 4 for the first meeting, the committee of the proprietors or other officers
 5 authorized by them for that purpose may sell by public auction and give
 6 to the purchaser a deed of so much of the right or share of such proprietor
 7 as is sufficient to pay the amount so due from him and all the reasonable
 8 charges of the sale, first giving thirty days' notice of the time and place
 9 appointed for such sale in the manner prescribed for notifying the first
 10 meeting.

Assessments, how collected. 1733-4, 1, § 2. 1783, 39, § 5. R. S. 43, §§ 8, 9. G. S. 67, §§ 14, 15. P. S. 111, §§ 14, 15. R. L. 123, § 12.

1 SECTION 13. The proprietor of the share or part sold may, within one
 2 year after the sale, redeem it by paying to the purchaser or his assigns
 3 the purchase price with interest at the rate of twelve per cent a year from
 4 the time of the sale.

G. S. 67, § 16. P. S. 111, § 16. R. L. 123, § 13.

Redemption of shares. 1753-4, 1, § 2. 1783, 39, § 5. R. S. 43, § 10.

1 SECTION 14. If there are ten or more proprietors, they may, by vote of
 2 more than two thirds both in number and interest at a legal meeting, sell
 3 their estate and divide the proceeds thereof.

P. S. 111, § 17. 12 Mass. 415. 8 Allen, 11.
 R. L. 123, § 14. 3 Pick. 396. 143 Mass. 110.
 2 Mass. 476. 8 Pick. 455. 218 Mass. 487.
 10 Mass. 146. 8 Cush. 21. 266 Mass. 101.

Sale by proprietors. 1837, 180. G. S. 67, § 17.

1 SECTION 15. After the final division of their common property, the
 2 proprietors may deposit their records with the clerk of the town
 3 where the land or any part of it lies; and the clerk may make and certify
 4 copies from the records as the clerk of the proprietors might have done.

P. S. 111, § 18. R. L. 123, § 15.

Deposit of records. 1783, 39, § 9. 1790, 40, § 2. R. S. 43, § 17. 1851, 161, § 5. G. S. 67, § 18.

1 SECTION 16. A final division of the common property shall not dis-
 2 solve the corporation until the expiration of ten years thereafter; but
 3 the proprietors at the time of the division and their heirs shall retain their
 4 corporate powers for the purpose of collecting all assessments, debts and
 5 effects due or belonging to the corporation, and shall be liable for its
 6 debts.

261 Mass. 125.

Corporate powers, etc., after division of property. 1790, 40, § 1. R. S. 43, § 18. G. S. 67, § 19. P. S. 111, § 19. R. L. 123, § 16.

1 SECTION 17. The proprietors may, within ten years after such divi-
 2 sion, call and hold meetings and vote and raise money by assessments,
 3 as before provided, for the payment of their debts and all other charges
 4 and demands against them, and may do all other lawful acts necessary
 5 for closing their business.

Same subject. 1790, 40, § 1. R. S. 43, § 19. G. S. 67, § 20. P. S. 111, § 20. R. L. 123, § 17.

GENERAL FIELDS.

1 SECTION 18. If several distinct lots or parcels of land are enclosed
 2 and fenced in one common field, or if all the proprietors of such lands

Meetings, etc. 1783, 53, § 1. R. S. 43, § 20. G. S. 67, § 21.

P. S. 111, § 21. agree so to enclose them, the proprietors, if not less than five, may, in the 3
 R. L. 123, § 18. manner hereinafter provided, hold regular meetings for the purpose of 4
 managing their common concerns. 5

Meetings, etc., SECTION 19. On application of two or more proprietors to a justice of 1
 how called. the peace, he shall issue his warrant for a meeting, as provided in section 2
 Votes. one, which shall be called either in the manner prescribed in section two 3
 1712-13, 9, § 1. or by personal notice served on each proprietor fourteen days at least 4
 1753-4, 1, § 1. before the time appointed for the meeting. Each proprietor may vote 5
 1758-9, 33, § 1. or by personal notice served on each proprietor fourteen days at least 4
 1785, 53, according to the relative amount or value of his interest, if known; other- 6
 § 1, 10. wise, in accordance with section ten. 7
 1820, 1. P. S. 111, §§ 22-24. R. L. 123, § 19. 3 Gray, 487. 119 Mass. 583.

Clerk, SECTION 20. The proprietors may from time to time choose a clerk, 1
 assessors, etc. three or more assessors, a collector and such other officers as they find to 2
 Oath. be necessary; each of whom shall continue in office until removed by the 3
 1727-S, 13, § 2. proprietors or until his successor is qualified. The clerk and assessors 4
 1741-2, 3, § 1. shall be sworn. 5
 1753-4, 1, § 1. P. S. 111, § 25. R. L. 123, § 20.
 1785, 53, § 3. R. S. 43, § 24.
 R. S. 43, § 24. G. S. 67, § 25.
 G. S. 67, § 25.

Field drivers. SECTION 21. They may choose one or more field drivers, who shall 1
 1727-S, 13, § 2. have and exercise the same powers with respect to the general fields as 2
 1785, 53, § 4. field drivers chosen by a town. 3
 R. S. 43, § 34. P. S. 111, § 26. R. L. 123, § 21.
 G. S. 67, § 26.

Regulations. SECTION 22. They may adopt such rules as to pasturing the land and 1
 1785, 53, § 1. as to other matters in which they have a common interest as they consider 2
 R. S. 43, § 27. just and equitable and most for the general good; but in all other respects 3
 G. S. 67, § 27. each proprietor may manage and cultivate his land as he thinks best. 4
 P. S. 111, § 27. R. L. 123, § 22.

Limitation on SECTION 23. At meetings of proprietors for adopting rules or regu- 1
 right to vote lations as to pasturing, land of a proprietor enclosed for his exclusive 2
 of proprietors benefit shall not be valued or reckoned in determining his right to vote 3
 of enclosed land. on questions relative to pasturing his land. 4
 1856, 216. P. S. 111, § 28. R. L. 123, § 23.
 G. S. 67, § 28.

Trespass. SECTION 24. If a proprietor puts horses, cattle or other beasts into 1
 C. L. 211, § 1. the general field contrary to the regulations of the proprietors, either by 2
 1698, 12, § 3. putting in more than the number allowed him, or by putting them in be- 3
 1758-9, 33, § 2. fore the day fixed therefor, or by keeping them therein longer than the 4
 R. S. 43, § 35. time limited, he shall be considered a trespasser, and his beasts may be 5
 G. S. 67, § 29. impounded as taken doing damage. 6
 P. S. 111, § 29. R. L. 123, § 24.

Assessment SECTION 25. The proprietors may from time to time raise money for 1
 of money. defraying their common charges and managing their affairs, which shall 2
 1726-7, 15, § 1. be assessed by the assessors upon the several proprietors in proportion to 3
 1727-S, 13, § 3. their respective interests; and a proprietor aggrieved by such assessment 4
 1741-2, 3. may apply for an abatement to the county commissioners, who shall 5
 1753-4, 1, § 2. hear and determine the case, and whose judgment thereon shall be final. 6
 1785, 53, § 3. R. S. 43, § 25. G. S. 67, § 30. P. S. 111, § 30. R. L. 123, § 25.

Clerk to issue SECTION 26. The clerk shall issue his warrant to the collector, re- 1
 warrant for quiring him to collect all amounts so assessed and to pay them over to 2
 collecting, etc. the clerk or other proper officer according to the orders of the proprietors. 3
 Collection. 1726-7, 15, § 1.

4 The collector shall collect said amounts in the same manner as collectors
5 of towns are authorized to collect town taxes.

1753-4, 1, § 2.
1785, 53, § 3

R. S. 43, § 26.
G. S. 67, § 31.

P. S. 111, § 31.
R. L. 123, § 26.

1727-8, 13, § 2
1741-2, 3, § 1.

1 SECTION 27. A proprietor injured in his lands by the beasts of a
2 stranger shall have the same remedy therefor as if his land had been
3 enclosed and used separately.

Proprietor
injured by
beasts of
stranger.

1698, 6, § 5.
1785, 53, § 6.

R. S. 43, § 37.
G. S. 67, § 32.

P. S. 111, § 32.
R. L. 123, § 27.

1 SECTION 28. The whole fence enclosing such general field shall, so
2 far as found convenient, be apportioned among the proprietors according
3 to the number of acres held and cultivated or otherwise used by each; and
4 the part to be maintained by each proprietor shall be apportioned to him
5 by two or more fence viewers, unless the proprietors agree on such ap-
6 portionment. The proportion of fence of each proprietor shall be re-
7 corded in the books of the proprietors by the clerk, if any; otherwise, by
8 the clerk of the town where the general field is situated.

Apportion-
ment of fence,
etc.
C. L. 17, § 3
1698, 12, § 3.
1785, 53, § 1
R. S. 43, § 28
G. S. 67, § 33
P. S. 111, § 33
R. L. 123, § 28

1 SECTION 29. A proprietor shall not, so long as he declines to cultivate
2 his land or use it for pasturing, for the growth of wood or otherwise, be
3 required to maintain any part of the fence or to pay any assessment on
4 account of his land.

Proprietors,
when not to
maintain fence.
1785, 53, § 12
R. S. 43, § 29

G. S. 67, § 34.

P. S. 111, § 34.

R. L. 123, § 29.

1 SECTION 30. The expense of apportioning the fence and also of
2 making and maintaining such part thereof as cannot be conveniently
3 and justly apportioned to any one proprietor shall be borne by all the
4 proprietors liable to be assessed in proportion to their respective interests;
5 and the part apportioned to each proprietor shall be made and main-
6 tained by him so long as he uses his part of the general field for pasturing,
7 planting, mowing or otherwise.

Expense of
apportioning
fence, etc.
1727-8, 13, § 1.
1785, 53,
§§ 1, 2.
R. S. 43, § 30.
G. S. 67, § 35.
P. S. 111, § 35.
R. L. 123, § 30.

1 SECTION 31. If the part of the fence apportioned to a proprietor be-
2 comes deficient and he does not repair it within three days after notice
3 of such deficiency has been given to him by a fence viewer of the town,
4 it may be repaired by any other proprietor. Two or more fence viewers
5 may examine such repairs, and, if they adjudge them sufficient, may
6 ascertain and determine the cost of the same and make a signed statement
7 thereof and of the amount of their fees.

Proceedings
when part of
fence assigned
is deficient.
1794, 38, § 1
R. S. 43, § 31
G. S. 67, § 36
P. S. 111, § 36
R. L. 123, § 31.

1 SECTION 32. The person making such repairs may demand of the pro-
2 prietor bound to make them, or of the tenant holding under him, double
3 the cost of the repairs and of the fees of the fence viewers so ascertained;
4 and if they are not paid within one month after notice and demand, he
5 may recover them in tort.

Party neglect-
ing to repair
liable to double
damages, etc.
1758-9, 33, § 2.
1794, 38, § 1
R. S. 43, § 32.

G. S. 67, § 37.

P. S. 111, § 37.

R. L. 123, § 32.

1 SECTION 33. If a part of the fence is suddenly blown down or carried
2 away by a flood or tempest at a time when the crops of grain or grass in
3 the field are thereby exposed to immediate destruction or injury, the
4 proprietor to whom such part of the fence was assigned shall repair it
5 within twenty-four hours after notice thereof given to him by a fence
6 viewer; and if he fails so to do, the fence may be repaired by any other

Liability to
repair in case
of sudden de-
struction, etc.
1794, 38, § 2
R. S. 43, § 33.
G. S. 67, § 38.
P. S. 111, § 38.
R. L. 123, § 33.

proprietor, who may recover double the cost of the repairs and fees, as provided in the preceding section. 7 8

Proprietor may enclose his land. Effect. 1796, § 13. R. S. 43, § 36. 1855, 418, § 1. G. S. 67, § 39. P. S. 111, § 39. R. L. 123, § 34.

SECTION 34. A proprietor may enclose his land at his own expense; and, so long as he keeps it enclosed with a sufficient fence, may cultivate and use it as he thinks fit; and during such period, so far as such enclosed land is concerned, he shall neither be assessed for any expenses incident to the common field nor exercise any control over the portion thereof not enclosed. 1 2 3 4 5 6

Proprietors to run lines once in two years, etc. Penalty. 1692-3, 28, § 2. 1785, 53, § 7. R. S. 43, § 38. G. S. 67, § 39. P. S. 111, § 40. R. L. 123, § 35.

SECTION 35. Every proprietor of land lying unfenced in a general field shall once in every two years, if requested by the owner of the adjoining land, run lines with such owner between their lots and make and keep up the boundaries between them by sufficient bound stones, at their joint expense. If he fails so to do after seven days' notice by the adjoining owner, he shall forfeit two dollars to the use of such adjoining owner. 1 2 3 4 5 6 7

Superior court may order proprietors to fence land as general field. 1818, 11. R. S. 43, §§ 39, 40. G. S. 67, §§ 41, 42. P. S. 111, §§ 41, 42.

SECTION 36. If it is for the interest of the proprietors of five or more parcels of land to enclose them in one common field, the superior court for the county where the land or any part of it lies may, upon the application of a majority in interest of the proprietors, after notice to all other persons interested and a hearing, order it to be so enclosed, if it appears to be for the common benefit of the parties. 1 2 3 4 5 6

R. L. 123, § 36.

After order, proprietors to have powers as if enclosed by consent. 1818, 11. R. S. 43, § 41. G. S. 67, § 43. P. S. 111, § 43. R. L. 123, § 37.

SECTION 37. After a common or general field is so established by an order of the court, the further proceedings in relation thereto shall be the same as are provided when a field is so enclosed by the consent of the proprietors; and the proprietors shall be entitled to the privileges and be subject to the duties before provided in this chapter relative to the proprietors of fields enclosed by consent. 1 2 3 4 5 6

Division of general field upon petition. 1785, 53, § 13. R. S. 43, § 43. G. S. 67, § 44. P. S. 111, § 44. R. L. 123, § 38.

SECTION 38. Three or more proprietors of lots in a general field lying within one general fence or enclosure may, by a written petition to the proprietors of such field at a meeting of said proprietors legally warned for the purpose, request to have their lots, either alone or jointly with any other lots in such field, divided from the remainder of the field in order to be enclosed by one common fence and occupied by them as an entire field separately from the other proprietors. If the majority of proprietors in interest present at such meeting withhold or refuse their assent to such division, the superior court may, upon like application, appoint five disinterested and suitable persons within the county where the general field is situated, to be a committee to make the division, if they deem it expedient, and to assign to each field its proportion of the partition fence which by reason of such division should be kept up and maintained by the proprietors of the said general fields respectively. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

Same subject. 1785, 53, § 13. R. S. 43, § 43. G. S. 67, § 45. P. S. 111, § 45. R. L. 123, § 39.

SECTION 39. The committee shall, as soon as may be after their appointment, make return of their doings under their hands to the court; and after its acceptance by the court, the fields so divided shall be deemed separate general fields and the proprietors of the field set off, and the remaining proprietors of the original field, respectively, shall be distinct and separate proprietary bodies, having like powers and privileges and 1 2 3 4 5 6

7 subject to like duties and liabilities as the proprietors of the original
 8 general field before the division; but no order for such division shall
 9 be made, and no such committee appointed, until the other proprietors
 10 have had notice of the petition for such division. Such notice shall be
 11 given by serving upon the clerk of the proprietors a copy of the petition
 12 at least thirty days before such order or appointment is made.

1 SECTION 40. A majority in interest of the proprietors of a common
 2 field, whether established by consent or by order of court, may discon-
 3 tinue it at a legal meeting warned for the purpose; but the discontinu-
 4 ance shall not take effect until the expiration of six months after such
 5 vote.

Discontinu-
 ance of gen-
 eral fields.
 1698, 12, § 5.
 1785, 53, § 8.
 R. S. 43, § 42.
 G. S. 67, § 46.

P. S. 111, § 46.

R. L. 123, § 40.

CHAPTER 180.

CORPORATIONS FOR CHARITABLE AND CERTAIN OTHER PURPOSES.

- | | |
|---|--|
| <p>SECT.</p> <p>GENERAL PROVISIONS.</p> <p>1. Formation.</p> <p>2. Purposes.</p> <p>3. Organization.</p> <p>4. Encouraging agriculture, horticulture, etc.</p> <p>5. Investigation of proposed corporation.</p> <p>6. Investigation of proposed charitable corporations.</p> <p>7. By-laws. Officers.</p> <p>8. Increase of capital.</p> <p>9. Corporations may hold property. Limit of amount.</p> <p>9A. Maintenance of burial grounds by religious corporations.</p> <p>10. Change of purpose of corporation.</p> <p>11. Change of name.</p> <p>12. Reports to department of public welfare.</p> <p>12A. Registration of certain foreign charitable corporations. Annual report. Penalty.</p> <p>MEDICAL CORPORATION.</p> <p>13. Medical corporation forbidden to confer degrees.</p> <p>HORSE BREEDING CORPORATIONS.</p> <p>14. Horse breeding corporations may hold exhibitions.</p> | <p>SECT.</p> <p>LABOR OR TRADE ORGANIZATIONS.</p> <p>15. Labor or trade organizations.</p> <p>16. Commissioner to be satisfied that purpose is lawful.</p> <p>17. By-laws.</p> <p>18. Rights of members.</p> <p>19. Fines on members of unions.</p> <p>MEDICAL MILK COMMISSION.</p> <p>20. Incorporation.</p> <p>21. Name.</p> <p>22. Compensation to members forbidden.</p> <p>23. Contracts for milk.</p> <p>24. Power of department of public health.</p> <p>25. Penalty for breach of five preceding sections.</p> <p>MISCELLANEOUS PROVISIONS.</p> <p>26. Change of location of certain associations.</p> <p>27. Conviction for or violation of liquor or gaming laws to make charter void.</p> <p>28. Illegal boxing match makes charter void.</p> <p>29. Local regulation of entertainments, etc., conducted by incorporated clubs.</p> |
|---|--|

GENERAL PROVISIONS.

1 SECTION 1. Seven or more persons, a majority of whom are residents
 2 of the commonwealth, may form a corporation for any of the purposes
 3 named in the following section.

Formation.
 1857, 56, § 1.
 G. S. 32, § 1.

1869, 276.
 1873, 176.

1874, 375, § 1.
 P. S. 115, § 1.

R. L. 125, § 1.

Purposes.
 1857, 56, § 1.
 G. S. 32, § 1.
 1869, 276.
 1873, 176.
 1874, 375, § 2.
 1875, 107, § 2.
 1877, 204, § 1.
 1878, 153.
 P. S. 115, § 2.
 R. L. 125, § 2.
 1915, 213.
 204 Mass. 487.
 205 Mass. 219.
 261.
 212 Mass. 219.
 14 Op. A. G. 468,
 505, 548, 579.
 3 Op. A. G. 12.
 4 Op. A. G. 352.
 Op. A. G.
 (1918) 21.

SECTION 2. Such corporation may be formed for any civic, educational, charitable, benevolent or religious purpose; for the prosecution of any antiquarian, historical, literary, scientific, medical, artistic, monumental or musical purpose; for establishing and maintaining libraries; for supporting any missionary enterprise having for its object the dissemination of religious or educational instruction in foreign countries; for promoting temperance or morality in the commonwealth; for encouraging athletic exercises or yachting; for encouraging the raising of choice breeds of domestic animals and poultry; for the association and accommodation of societies of Free Masons, Odd Fellows, Knights of Pythias or other charitable or social bodies of a like character and purpose; for the establishment and maintenance of places for reading rooms, libraries or social meetings; for establishing boards of trade, chambers of commerce and bodies of like nature.

Organization.
 1857, 56, § 2.
 G. S. 32, § 2.
 1874, 375, § 3-5.
 P. S. 115, § 3, 4.
 1888, 177.
 1890, 191.
 R. L. 125, § 3.
 1919, 333, § 11.
 1920, 2.
 1925, 226.

SECTION 3. The corporation shall be formed in the manner prescribed in and subject to section nine of chapter one hundred and fifty-five and sections six and eight to twelve, inclusive, of chapter one hundred and fifty-six, except as follows:

The capital stock, if any, shall not exceed five hundred thousand dollars.

The agreement of association of a corporation having no capital stock may omit the statement of the amount of the capital stock and the par value and number of its shares. The par value of its shares, if any, may be ten, twenty-five, fifty or one hundred dollars. The fee to be paid to the state secretary upon the filing of the certificate of organization shall be twenty-five dollars.

Encouraging agriculture, horticulture, etc.
 1853, 312.
 G. S. 66, § 17.
 P. S. 114, § 18.
 1897, 496, § 8.
 R. L. 124, § 19.
 1927, 133, § 1.

SECTION 4. Ten or more persons in any county, city or town may form a corporation under section three for the purpose of encouraging agriculture or horticulture; or for the purpose of improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein and also otherwise improving the physical aspects of such city or town and furthering the recreation and enjoyment of the inhabitants thereof.

Investigation of proposed corporation.
 1890, 439, § 1.
 1893, 226, § 1.
 R. L. 125, § 4.
 1906, 291, § 10.
 1926, 379, § 1.

SECTION 5. Before making and issuing a certificate of incorporation to a corporation formed for any of the purposes described in section two or approving the change of name of any corporation formed as aforesaid which is subject to section twenty-six, the state secretary may forward a statement to the aldermen of any city, except Boston, or to the selectmen of any town, where such corporation occupies or uses or is to occupy or use any premises for the transaction of any of its corporate activities, and, if such premises are or are to be in Boston, to the police commissioner, giving a list of the applicants for incorporation or the officers of the corporation seeking to change its name, the purposes of such proposed incorporation or change of name as stated by them, the location of the premises occupied or used or proposed to be occupied or used, which shall include the street and number, if any, and all other facts which may be stated in the application for incorporation or the petition for approval of change of name. The mayor and aldermen, selectmen or police commissioner, upon the receipt of such statement, shall immediately make an investigation for the purpose of ascertaining whether

18 any of the proposed incorporators, or officers of the petitioning corpora-
 19 tion, or any other persons known to be, or apparently, identified with
 20 the said proposed or petitioning corporation as members, stockholders,
 21 employees or otherwise, and actually participating or to participate in
 22 the management of its affairs, or in the direction of its business, have
 23 been engaged in the illegal selling of intoxicating liquor or in keeping
 24 places or tenements used for illegal gaming, or in any other business or
 25 vocation prohibited by law, or are persons of ill repute, or whether any
 26 location to be occupied is unsuitable, and shall forthwith report to the
 27 state secretary all the facts ascertained. If, in his opinion, it appears
 28 from said report or otherwise that a probable purpose or probable result
 29 of the formation of the proposed corporation or of the proposed change
 30 of name is or will be to cover or shield any illegal business or practices,
 31 or any business not within the scope of the expressed corporate purposes,
 32 he shall refuse to issue a certificate of incorporation or approve the
 33 change of name, as the case may be.

1 SECTION 6. Before making and issuing a certificate for the incor-
 2 poration of a charitable corporation the state secretary shall also forward
 3 the statement described in the preceding section to the department of
 4 public welfare, which shall immediately make an investigation as to the
 5 applicants for incorporation and as to the purposes thereof, and any
 6 other material facts relative thereto, and shall give them a public hearing,
 7 notice of which shall be published once a week for three successive weeks
 8 in some paper published in the county where the corporation is to have
 9 its principal office or rooms, and if said office or rooms are to be in Boston,
 10 in some Boston daily paper, the last publication to be at least three days
 11 before the day set for the hearing, and shall forthwith report to the state
 12 secretary all the facts ascertained by it. If it appears to him from said
 13 report or otherwise that the probable purpose of the formation of the
 14 proposed corporation is to cover any illegal business, or that the persons
 15 asking for incorporation are not suitable persons, from lack of financial
 16 ability or from any other cause, he shall refuse to issue his certificate.
 17 If he refuses, the applicants may appeal to the superior court, which
 18 shall hear the case and finally determine whether or not the certificate
 19 of incorporation shall be issued.

Investigation
of proposed
charitable
corporations.
1901, 405.
R. L. 125, § 5.
1910, 181.
1919, 350, § 87.

1 SECTION 7. The corporation may prescribe by its by-laws the manner
 2 in which, and the officers and agents by whom, its purposes may be ac-
 3 complished, and, instead of the directors and other officers to be chosen
 4 at the first meeting, it may have a board of other officers with the powers
 5 of directors, and presiding, financial and recording officers with the
 6 powers of president, treasurer and clerk; and its certificate of organiza-
 7 tion may be made, signed and sworn to by its presiding, financial and
 8 recording officers and a majority of its other officers having the powers
 9 of directors; and the certificate issued by the state secretary under sec-
 10 tion twelve of chapter one hundred and fifty-six shall be modified to
 11 correspond with the facts in each case.

By-laws.
Officers.
1874, 375, § 6.
1875, 49, § 1.
P. S. 115,
§§ 5, 6.
R. L. 125, § 6.
192 Mass. 159.
205 Mass. 261.
209 Mass. 48.
212 Mass. 23.
214 Mass. 286.
Op. A. G.
(1918) 21.

1 SECTION 8. Such corporation, if organized under general laws, at a
 2 meeting called for the purpose may increase the amount of its capital
 3 stock and the number of shares therein to an amount not exceeding five
 4 hundred thousand dollars.

Increase of
capital.
1888, 177.
R. L. 125, § 7.

Corporations
may hold
property.
Limit of
amount.
1857, 56, § 4.
G. S. 32, § 4.
1874, 375, § 7.
P. S. 115, § 7.
1896, 96.
1897, 97.
1901, 96.
R. L. 125, § 8.
1915, 209,
§§ 1, 2.
1917, 45,
§§ 1-3.
1930, 38.
153 Mass. 77.
194 Mass. 280.

SECTION 9. Any corporation heretofore or hereafter organized under general or special laws for any of the purposes mentioned in this chapter may hold real and personal estate to an amount not exceeding five million dollars, which estate or its income shall be devoted to the purposes set forth in its charter or agreement of association or in any amendment thereof, and it may receive and hold, in trust or otherwise, funds received by gift or bequest to be devoted by it to such purposes. This section shall not limit the amount of property which may be held by a corporation in excess of said amount under the authority of any special law and shall be applicable notwithstanding the specification of a less amount in such a law, heretofore or hereafter enacted.

212 Mass. 555.

3 Op. A. G. 12, 31.

Maintenance
of burial
grounds by
religious
corporations.
1926, 204.

SECTION 9A. Corporations organized under this chapter, or corresponding provisions of earlier laws, exclusively for religious purposes shall have the right to purchase, hold, preserve and maintain burial grounds; provided, that no land shall be so used for burial purposes unless such use shall have been permitted and approved in accordance with the provisions of chapter one hundred and fourteen.

Change of
purpose of
corporation.
1898, 504.
R. L. 125, § 9.

SECTION 10. Such corporation may, at a meeting duly called for the purpose, by vote of all its members, add to or change the purpose for which it was incorporated, if the additional or new purpose is authorized by section two. The presiding, financial and recording officers and a majority of its other officers having the powers of directors shall forthwith make, sign and swear to a certificate setting forth such addition to or change of purpose, which, having been submitted to the commissioner of corporations and taxation and approved by him, shall thereupon be filed and recorded in the office of the state secretary.

Change of
name.
1915, 205.
1926, 379, § 2.

SECTION 11. A corporation organized under general or special laws for any of the purposes specified in section two, if unable to comply with section ten of chapter one hundred and fifty-five, may petition the commissioner of corporations and taxation for a change of name. The petition shall contain a list of the officers and stockholders or members of the corporation, so far as they are known, with their addresses; shall state why the said section cannot be complied with and the name proposed to be adopted by the corporation. It shall be signed and sworn to by the president or one member of the board of directors. The commissioner may require the petitioner to give him information as to what attempt, if any, has been made to secure the approval of two thirds of the stockholders or members, or of such proportion thereof as the by-laws of the corporation may prescribe, for the proposed change of name. The commissioner may also require any other information which may assist in determining the matter before him. He may direct the petitioner or the officers of the corporation to give any further notice to the members thereof of the proposed change of name and to report to him the result of such notice. If the commissioner is satisfied that the proposed name of the corporation is approved by such members or stockholders thereof as have expressed an opinion in relation thereto, or of a reasonable proportion thereof, he shall endorse his approval on the petition, and thereupon it shall be filed in the office of the state secretary, who shall direct publication thereof and grant a certificate of name as

24 provided in said section. No petition hereunder for a change of name of a
 25 corporation subject to section twenty-six shall be considered by the com-
 26 missioner of corporations and taxation until after such change of name has
 27 been approved by the state secretary.

1 SECTION 12. A charitable corporation incorporated in this common-
 2 wealth whose personal property is exempt from taxation shall annually,
 3 on or before November first, make to the department of public welfare
 4 a written report for its last financial year, showing its property, its
 5 receipts and expenditures, the whole number and the average number
 6 of its beneficiaries and such other information as the department requires.
 7 If any corporation subject to this section fails for two successive years
 8 to file said report, the supreme judicial court, upon application by the
 9 department, after notice and hearing, may decree a dissolution of the
 10 corporation.

Reports to
 department
 of public
 welfare.
 1869, 259.
 1901, 179.
 R. L. 84, § 14.
 1903, 492.
 1913, 82.
 1919, 350, § 87.
 1930, 170, § 1.

1 SECTION 12A. A charitable corporation established, organized or
 2 chartered under laws other than those of the commonwealth, except the
 3 Grand Army of the Republic, the United Spanish War Veterans, The
 4 American Legion and the Veterans of Foreign Wars of the United States,
 5 shall, before engaging in charitable work or raising funds in the com-
 6 monwealth, file with the department of public welfare a copy of its
 7 charter, articles or certificate of incorporation, certified under the seal
 8 of the state or country where such corporation is incorporated, by the
 9 secretary of state thereof or by the officer having charge of the original
 10 record therein, and a true copy of its constitution and by-laws, and shall
 11 also file with the department such other information as may from time
 12 to time be required by it. Such a corporation shall annually, on or before
 13 November first, make to said department a written report such as is
 14 required by section twelve to be made by charitable corporations sub-
 15 ject thereto. Every officer of such a corporation which fails to comply
 16 with the requirements of this section who authorizes or transacts, and
 17 every agent of such a corporation who transacts, business in behalf of
 18 such corporation in this commonwealth, shall be punished by a fine of
 19 not more than five hundred dollars. Upon an information in equity in
 20 the name of the attorney general at the relation of the commissioner of
 21 public welfare, the supreme judicial or superior court may restrain the
 22 violation of this section by such a corporation or the transaction of any
 23 business in its behalf by any officer or agent while such violation continues.

Registration
 of certain
 foreign chari-
 table cor-
 porations.
 Annual report.
 Penalty.
 1930, 170, § 2.

MEDICAL CORPORATION.

1 SECTION 13. A corporation organized under this chapter for medical
 2 purposes shall not confer degrees, or issue diplomas or certificates con-
 3 ferring or purporting to confer degrees, unless specially authorized
 4 thereto by the general court. An officer, agent or servant of such cor-
 5 poration or any other person who confers degrees, or signs, issues or
 6 authorizes the signing or issuing of any diploma or certificate purporting
 7 to confer any degree of medicine or surgery, in violation hereof, shall
 8 be punished by a fine of not less than five hundred nor more than one
 9 thousand dollars.

Medical cor-
 poration for-
 bidden to
 confer degrees.
 1883, 268.
 R. L. 125, § 10.
 218 Mass. 167.

HORSE BREEDING CORPORATIONS.

Horse breeding corporations may hold exhibitions. 1900, 409. R. L. 125, § 11.

SECTION 14. Corporations formed under this chapter for encouraging the raising of choice breeds of horses may establish and maintain grounds suitable for exhibitions and trials of the speed or strength of horses; may arrange for and advertise such exhibitions and trials upon such grounds, may collect admission fees thereto and may award purses or premiums to the participants therein, if such purses or premiums are raised only from voluntary subscriptions to the funds of the corporation, admission fees or fees for entering horses in such exhibitions or trials.

1
2
3
4
5
6
7
8

LABOR OR TRADE ORGANIZATIONS.

Labor or trade organizations. 1888, 134, § 1. R. L. 125, § 13. 1 Op. A. G. 548.

SECTION 15. Corporations may be formed under this chapter for improving the condition of any employees in any one or more trades or employments, either relative to their employment or to the promotion of education, temperance, morality or social intercourse among them, or for paying benefits to sick or unemployed members, or to persons dependent upon deceased members or otherwise.

1
2
3
4
5
6

Commissioner to be satisfied that purpose is lawful. 1888, 134, § 2. R. L. 125, § 14.

SECTION 16. The commissioner of corporations and taxation shall not endorse his approval upon the certificate of organization of any such corporation, unless satisfied that the purposes thereof are lawful, that its by-laws are consistent with law and conform to the requirements of the two following sections.

1
2
3
4
5

By-laws. 1888, 134, §§ 3, 4. R. L. 125, § 15.

SECTION 17. The by-laws shall contain clear and distinct provisions relative to the election, admission and expulsion of members; the titles, duties, powers and tenure of the officers of the corporation and their election and removal; the number of members required for a quorum; the call for special meetings; the adoption, amendment and repeal of by-laws; the purposes to which the funds of the corporation may be applied and for which assessments may be laid upon the members; the conditions upon which a member or persons dependent upon a deceased member shall be entitled to benefits, if any are to be given by the corporation; the imposition of fines and forfeitures, if any; the deposit, investment and custody of the funds of the corporation; the periodical audit of the accounts of the treasurer and the method of voting on shares of stock, if any are issued by the corporation. A by-law shall not be repealed or amended, or an additional by-law adopted, unless notice of such proposed action shall have been given at a previous meeting; and such repeal, amendment or adoption shall not take effect until it has been approved by the commissioner of corporations and taxation as conformable to law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Rights of members. 1888, 134, § 4. R. L. 125, § 16.

SECTION 18. No member of such corporation shall be expelled by vote of less than a majority of all the members thereof, nor by vote of less than three quarters of the members present and voting upon such expulsion. Every member of such corporation and every person who has an interest in its funds shall be entitled to examine its books and records.

1
2
3
4
5

Fines on members of unions. 1911, 431. 227 Mass. 382.

SECTION 19. No fine or notice of intention to impose a fine by any union or any other association, incorporated or unincorporated, or by any authorized representative thereof, upon any member, according to the

1
2
3

4 rules to which such member has agreed to conform, shall be held to be
 5 unlawful or coercive as to such member or as to any other person: pro-
 6 vided, that such fine is reasonable in amount and is for a legal purpose.

MEDICAL MILK COMMISSION.

1 SECTION 20. For the purpose of supervising the production of milk,
 2 any five or more registered physicians may form a corporation under this
 3 chapter. The members of the board of health of any town where such
 4 corporation is formed shall be ex officio members of the corporation. At
 5 least one member of said board of health shall be a member of the board
 6 of directors thereof.

Incorporation.
 1911, 506, § 1.
 1923, 252, § 1.

1 SECTION 21. The name of any such corporation shall be "Medical
 2 Milk Commission of _____", designating the name of the
 3 town where such corporation is established, and, if more than one such
 4 corporation shall be organized in any town, the subsequent corpora-
 5 tions shall use the name designated herein, but shall indicate in such
 6 name its proper sequence in incorporation by adding thereto the words
 7 "Number Two" or "Number Three" and so forth.

Name.
 1911, 506, § 2.

1 SECTION 22. No member of any such corporation shall receive di-
 2 rectly or indirectly therefrom, or from any dairymen producing milk
 3 under agreement with the corporation, any salary or emolument or any
 4 compensation of any kind for any services rendered as a member of
 5 such corporation, or for any services rendered under sections twenty to
 6 twenty-five, inclusive. Whoever violates this section shall be punished
 7 by a fine of one hundred dollars, and shall be removed from his office as
 8 a member of said corporation and thereafter be disqualified from be-
 9 coming a member of any such corporation.

Compensation
 to members
 forbidden.
 1911, 506, § 3.

1 SECTION 23. Every such corporation may enter into written agree-
 2 ments with any dairymen for the production of milk under the super-
 3 vision of such corporation and prescribe in such agreements the condi-
 4 tions under which such milk shall be produced, which, however, shall be
 5 approved by the department of public health and shall not fall below the
 6 standards of purity and quality for certified milk as fixed by the American
 7 Association of Medical Milk Commissions and the standards for milk
 8 fixed by law.

Contracts
 for milk
 1911, 506, § 4.
 1923, 252, § 2.

1 SECTION 24. The working methods of any such corporation and the
 2 dairies in which milk is produced under contract with it shall at all times
 3 be subject to investigation by the department of public health.

Power of
 department of
 public health.
 1911, 506, § 5.
 1914, 792, § 1.

1919, 350, § 96.

1 SECTION 25. Whoever sells or exchanges, or offers or exposes for
 2 sale or exchange as and for certified milk any milk not conforming to the
 3 regulations prescribed by and bearing the certification of a corporation
 4 organized under sections twenty to twenty-five, inclusive, shall be pun-
 5 ished by a fine of not more than one hundred dollars.

Penalty for
 breach of five
 preceding
 sections
 1911, 506, § 6.

MISCELLANEOUS PROVISIONS.

Change of location of certain associations. 1907, 337, §§ 1-3. 1926, 247.

SECTION 26. No corporation organized under general laws for the purpose of fostering, encouraging or engaging in athletic exercises or for the establishment and maintenance of places for reading rooms, libraries or social meetings shall change its location from the town where it is located to another town within the commonwealth, nor change its location within any town, until written consent therefor has been obtained from the police commissioner in Boston, the aldermen in any other city or the selectmen in the town where the corporation proposes to acquire a new location. Such consent shall not take effect until a copy thereof, duly attested by the clerk or secretary of the board or officer consenting thereto, has been filed in the office of the state secretary. A change of location by a corporation contrary to this section shall be sufficient cause for the revocation of its charter by the state secretary.

Conviction for or violation of liquor or gaming laws to make charter void. 1902, 524. 1906, 291. 1926, 108, § 1.

SECTION 27. If any person is convicted of exposing and keeping for sale or selling intoxicating liquor on the premises occupied by any club or organization described in section two or of illegal gaming upon said premises or of being present where implements of gaming are found upon said premises, or if any liquor, casks or other vessels or implements of sale and furniture used or kept and provided to be used in the illegal keeping or sale of liquor, or implements of gaming, are seized on said premises and are forfeited, the selectmen, or the aldermen, in the place where such club or organization is situated, except Boston, and in Boston the police commissioner, shall immediately give notice to the state secretary, who, upon receipt thereof, shall declare the charter of such club or organization void, and shall publish a notice in at least one newspaper published in the county where such club or organization is located that such incorporation is void and of no further effect.

Illegal boxing match makes charter void. 1907, 336. 1919, 350, § 100.

SECTION 28. If any person is convicted of illegally engaging in, giving or promoting a public or private boxing match or sparring exhibition, the contestants in which have received or have been promised any pecuniary reward, remuneration or consideration whatsoever, directly or indirectly, under the auspices of or on the premises occupied by any club or organization described in section two, the commissioner of public safety, the selectmen or the aldermen in the town where such club or organization is situated, except in Boston, and in Boston the police commissioner, shall immediately give notice to the state secretary, who, upon receipt thereof, shall declare the charter of such club or organization void, and shall publish a notice in at least one newspaper published in the county where the club or organization is situated that such incorporation is void.

Local regulation of entertainments, etc., conducted by incorporated clubs. 1926, 347.

SECTION 29. Cities and towns may by ordinance or by-law regulate the conducting within their respective limits of entertainments, dances and other diversions and amusements not required by law to be licensed, including the hours of holding the same, by corporations which are subject to section twenty-six, and may affix penalties for breaches thereof not exceeding twenty dollars for each offence, subject as to recovery and disposition to section twenty-one of chapter forty.

CHAPTER 181.

FOREIGN CORPORATIONS.

<p>SECT.</p> <p>1. Definitions.</p> <p>2. Foreign corporations forbidden to do business which domestic corporations may not do.</p> <p>3. Commissioner to be appointed attorney for service of process.</p> <p>3A. Certain foreign corporations failing to register to be deemed to have appointed commissioner attorney for service of process.</p> <p>4. Notice of service of process to be given by commissioner.</p> <p>5. Copy of charter, etc., to be filed.</p> <p>6. Commissioner, etc., shall refuse to receive papers for filing from a foreign corporation doing an illegal business or having same name as domestic corporation.</p> <p>7. Names of certain foreign corporations regulated.</p> <p>8. Suits against foreign corporations.</p> <p>9. Foreign corporations may hold real estate.</p> <p>10. Issue of stock based on property, etc., of domestic corporations regulated.</p>	<p>SECT.</p> <p>11. Certificate of increase or reduction of capital stock.</p> <p>12. Annual certificate of condition.</p> <p>13. Approval of certificate.</p> <p>14. Liability of officers and stockholders of certain foreign corporations.</p> <p>15. Liability of officers and stockholders of certain foreign corporations as to issuing stock for property.</p> <p>16. Enforcement of liability.</p> <p>17. Liability of officers of foreign business corporations.</p> <p>18. Notice of change of date of annual meeting to be filed.</p> <p>19. The supreme judicial court may restrain corporations from doing business not authorized by their charter, etc.</p> <p>20. Penalty for false reports.</p> <p>21. Penalties for neglect to file certificate of condition.</p> <p>22. Recovery of penalties and forfeitures.</p> <p>23. Filing fees.</p>
---	---

SECTION 1. The following words as used in this chapter shall, except when otherwise specifically prescribed, have the following meanings:

"Commissioner", the commissioner of corporations and taxation.

"Foreign corporation", a corporation, association or organization, except an insurance company or a corporation organized for a purpose for which domestic corporations can be organized under chapter one hundred and eighty, which has been established, organized or chartered under laws other than those of the commonwealth.

Definitions.
 R. L. 126, § 1
 1903, 437, § 56.
 1914, 742,
 § 172.
 1919, 333, § 16;
 330, § 53.
 1920, 2.
 1921, 486, § 31.
 168 Mass. 564.
 196 Mass. 603.

SECTION 2. A foreign corporation, including an insurance company, shall not engage or continue in any kind of business in this commonwealth the transaction of which by domestic corporations is not permitted by the laws of this commonwealth.

Foreign corporations forbidden to do business which domestic corporations may not do

1894, 381	1919, 333, § 16.	1 Op. A. G. 304.
R. L. 126, § 2	1920, 2	2 Op. A. G. 31,
1903, 437, § 57.	173 Mass. 252.	55, 401.

SECTION 3. Every foreign corporation, which has a usual place of business in this commonwealth, or owns real property therein without having such a usual place of business, or which is engaged therein, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, or in the construction or repair of roads or highways, shall, before doing business in this commonwealth, in writing appoint the commissioner and his successor in

Commissioner to be appointed attorney for service of process.
 1871, 371, § 1.
 P. S. 73, § 3.
 1882, 106, § 1.
 1884, 330, § 1.
 1895, 311, § 1
 1901, 238.
 R. L. 126, § 4
 1903, 437,
 §§ 3, 58.

1905, 242.
1909, 490,
III, § 2.
1913, 792, § 1.
1918, 195;
257, § 345.
1919, 5, 333,
§ 16; 350, § 53.
1920, 2.
1926, 258.
12 Gray, 201.
10 Allen, 231.
14 Allen, 336.
105 Mass. 141.
132 Mass. 432.
137 Mass. 252.
139 Mass. 294.
149 Mass. 24.
150 Mass. 550.
167 Mass. 28.
172 Mass. 154.
175 Mass. 460.
180 Mass. 270.
188 Mass. 239.
195 Mass. 432.

office to be its true and lawful attorney upon whom all lawful processes 9
in an action or proceeding against it may be served, and in such writing 10
shall agree that any lawful process against it which is served on said 11
attorney shall be of the same legal force and validity as if served on the 12
corporation, and that the authority shall continue in force so long as 13
any liability remains outstanding against the corporation in this com- 14
monwealth. The power of attorney and a copy of the vote authorizing 15
its execution, duly certified and authenticated, shall be filed in the office 16
of the commissioner, and copies certified by him shall be sufficient evi- 17
dence thereof. Service of such process shall be made by leaving a copy 18
of the process with a fee of two dollars in the hands of the commissioner, 19
or of his deputy or second deputy when acting under section six of 20
chapter fourteen or in the office of the commissioner, and such service 21
shall be sufficient service upon the corporation. 22

196 Mass. 458.	215 Mass. 204.	231 U. S. 68.
198 Mass. 212.	216 Mass. 171.	1 Op. A. G. 181, 339.
201 Mass. 557.	264 Mass. 588.	2 Op. A. G. 221, 440.
204 Mass. 327.	94 U. S. 535.	3 Op. A. G. 187, 255.
214 Mass. 363.		

Certain foreign corporations failing to register to be deemed to have appointed commissioner attorney for service of process. 1928, 98, § 1.

SECTION 3A. Any such corporation which does business in this commonwealth without complying with the provisions of section three, including a corporation as to which the commissioner is required by section six to refuse appointment as attorney for service, shall, without affecting any penalty, liability or disability imposed by section five, be deemed and held, in relation to any cause of action or proceeding arising out of such business, to have appointed the commissioner and his successor in office to be its true and lawful attorney, and any process in any such action or proceeding against it served upon the commissioner or his successor in office shall be of the same legal force and validity as if served on such corporation. 1
2
3
4
5
6
7
8
9
10
11

Notice of service of process to be given by commissioner. 1884, 330, § 2. R. L. 126, § 5. 1903, 437, § 59. 1919, 333, § 16. 1920, 2. 215 Mass. 204.

SECTION 4. When legal process against any such corporation is served upon the commissioner, he shall immediately give notice to the corporation of such service by mail, postage prepaid, directed, in the case of a corporation established in a foreign country, to the resident manager, if any, in the United States; and shall, within two days after such service, forward in the same manner a copy of the process served upon him to such corporation or manager, or to any other person designated by the corporation by a writing filed in the office of the commissioner. The fee of two dollars paid by the plaintiff to the commissioner at the time of the service shall be taxed in his costs, if he prevails in the suit. The commissioner shall keep a record of all such processes, which shall show the day and hour of service. 1
2
3
4
5
6
7
8
9
10
11
12

Copy of charter, etc., to be filed. 1884, 330, § 3, 4. 1895, 157. 1900, 280. R. L. 126, § 6. 1903, 437, § 60. 1918, 171. 1919, 333, § 16. 1920, 2. 154 Mass. 286. 155 Mass. 259. 157 Mass. 1. 167 Mass. 28. 175 Mass. 460. 192 Mass. 428. 195 Mass. 432. 196 Mass. 458.

SECTION 5. Every foreign corporation of the classes described in section three, before transacting business in this commonwealth, shall, upon payment of the fee provided by section twenty-three, file with the commissioner a copy of its charter, articles or certificate of incorporation, certified under the seal of the state or country where such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, a true copy of its by-laws, and a certificate in such form as the commissioner requires, setting forth: 1
2
3
4
5
6
7
8
9
10
11
12
(a) the name of the corporation; (b) the location of its principal office; (c) the names and addresses of its president, treasurer, clerk or secretary and of the members of its board of directors; (d) the date of its annual

12 meeting for the election of officers; (e) the amount of its capital stock,
 13 authorized and issued, the number and par value of its shares, the amount
 14 paid in thereon to its treasurer, and, if any part of such payment has
 15 been made otherwise than in money, the details of such payment, so
 16 far as practicable, in accordance with section ten of chapter one hun-
 17 dred and fifty-six. Said certificate shall be subscribed and sworn to by
 18 its president, treasurer and a majority of its directors or officers having
 19 the powers usually exercised by directors. The officers and directors of
 20 such corporation shall be subject to the same penalties and liabilities for
 21 false and fraudulent statements and returns as officers and directors of
 22 a domestic corporation subject to said chapter. Every officer of such
 23 a corporation which fails to comply with the requirements of this section
 24 and of sections three and twelve, who authorizes or transacts, and every
 25 agent thereof who transacts business in behalf of such corporation in
 26 this commonwealth, shall, for such failure, be punished by a fine of not
 27 more than five hundred dollars, and shall also be liable, jointly and
 28 severally, in contract, without prior proceedings against the corporation,
 29 for all debts and contracts of the corporation, except such as relate to
 30 interstate commerce, contracted or entered into within this common-
 31 wealth or for the purpose of being performed therein, so long as such
 32 failure continues. Such failure shall not affect the validity of any con-
 33 tract with such corporation, but no action shall be maintained or re-
 34 covery had in any of the courts of this commonwealth by any such foreign
 35 corporation so long as it fails to comply with said sections.

214 Mass. 363.
 215 Mass. 204
 216 Mass. 171.
 258 Mass. 48
 264 Mass. 588.
 2 Op. A. G. 31,
 440.

1 SECTION 6. The commissioner, the commissioner of insurance and
 2 any other officer of this commonwealth whose duty it is to examine and
 3 determine whether a foreign corporation, including an insurance com-
 4 pany, is entitled to file any papers under section three or five, section
 5 forty-one of chapter one hundred and seventy-six, or chapter one hun-
 6 dred and seventy-five, shall refuse to accept or file the charter, financial
 7 statement or other papers of, or accept appointment as attorney for
 8 service for, any such corporation which does a business in this common-
 9 wealth the transaction of which by domestic corporations is not then
 10 permitted by the laws of this commonwealth, or which has the same
 11 name as that of another corporation established under the laws of the
 12 commonwealth or of another corporation or of a firm, association or
 13 person carrying on business in the commonwealth, or a name so similar
 14 thereto as to be likely to be mistaken for it, unless such other corporation
 15 or such firm, association or person shall have previously filed with the
 16 commissioner, the commissioner of insurance or such other officer written
 17 consent to the use of such name.

Commissioner,
 etc., shall refuse
 to receive
 papers for filing
 from a foreign
 corporation
 doing an illegal
 business or
 having same
 name as
 domestic cor-
 poration.
 1894, 381.
 R. L. 126, § 7.
 1903, 437, § 61.
 1919, 333, § 16.
 1920, 2.
 1923, 28.
 1931, 426, § 82
 1 Op. A. G. 181,
 339.

1 SECTION 7. A foreign corporation which carries on a banking, mort-
 2 gage, loan and investment or trust business shall indicate in letters
 3 equally conspicuous with its name, upon all signs, advertisements, cir-
 4 culars, letterheads and other documents which contain its name, the
 5 state or country where it is chartered or incorporated. No such corpora-
 6 tion and no person who is engaged in such business shall carry it on in or
 7 under a name which, previous to such use, was in lawful use by a cor-
 8 poration established under the laws of this commonwealth and carrying
 9 on the same or a similar business or in or under a name so similar thereto
 10 as to be likely to be mistaken for it. The supreme judicial or superior
 11 court shall have jurisdiction in equity to enforce the foregoing provisions

Names of cer-
 tain foreign
 corporations
 regulated.
 1889, 452,
 §§ 2, 3.
 1890, 329.
 R. L. 126, § 8.
 153 Mass. 271.

of this section. Whoever violates any provision of this section shall be punished by a fine of not more than one thousand dollars.

Suits against foreign corporations. 1839, 158. G. S. 68, § 15. P. S. 105, § 28. R. L. 126, § 9. 1903, 437, § 62. 1919, 333, § 16. 1920, 2. 10 Mass. 91. 16 Pick. 274. 3 Met. 420.

SECTION 8. Foreign corporations having property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as individuals who are residents of other states and who have property in this commonwealth. The service of the writ shall be made in the manner provided in chapters two hundred and twenty-three and two hundred and twenty-seven, with such further service as the court to which the writ is returnable orders.

6 Met. 391. 15 Gray, 491. 215 Mass. 341. 10 Gray, 164. 150 Mass. 550. 220 Mass. 285.

Foreign corporations may hold real estate. 1888, 321.

SECTION 9. Foreign corporations which have complied with sections three and five may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business.

1895, 387. 1903, 437, § 63. 1920, 2. R. L. 126, § 10. 1919, 333, § 16.

Issue of stock based on property, etc., of domestic corporations regulated. 1894, 476. R. L. 126, § 41. 1903, 437, § 61. 1906, 463, III, §§ 58, 158. 1914, 742, §§ 172, 199. 1919, 333, § 16. 1920, 2.

SECTION 10. If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas or electric company issues stock, bonds or other evidences of indebtedness based upon or secured by the property, franchise or stock of such domestic company, unless such issue is authorized by the law of this commonwealth, the supreme judicial court shall have jurisdiction in equity to dissolve such domestic company. If it appears to the attorney general that such issue has been made, he shall institute proceedings for such dissolution and for the proper disposition of the assets of such company. This section shall not affect the right of foreign corporations, their officers or agents to issue stock and bonds in fulfilment of contracts existing on July fourteenth, eighteen hundred and ninety-four.

Certificate of increase or reduction of capital stock. 1891, 341, §§ 1, 3, 4. 1895, 311, § 1. R. L. 126, § 12. 1903, 437, § 65. 1919, 333, § 16. 1920, 2. 1931, 426, § 276. 1 Cp. A. G. 583.

SECTION 11. All foreign corporations of the classes described in section three, other than those required by section eleven of chapter one hundred and sixty-six to make annual returns to the department of public utilities shall, within thirty days after the payment into its treasury for an increase of capital stock, upon paying the fee provided in section twenty-three, file in the office of the state secretary a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer and a majority of its directors or officers having the powers usually exercised by directors. Within thirty days after the vote of such corporation authorizing a reduction of its capital stock, a copy of such vote, signed and sworn to by the clerk of the corporation, shall, upon paying the fee provided in section twenty-three, be filed in the office of the state secretary.

Annual certificate of condition. 1891, 341, § 1. 1895, 311, § 1. R. L. 126, § 13. 1903, 437, § 66. 1905, 253. 1909, 490, III, § 54. 1915, 167. 1916, 83. 1917, 89. 1918, 133. 1919, 154. 353, §§ 28, 29. 1931, 426, § 277.

SECTION 12. Every foreign corporation, other than one which is required by section eleven of chapter one hundred and sixty-six to make annual returns to the department of public utilities shall annually, within thirty days after the date fixed for its annual meeting, or within thirty days after the final adjournment thereof, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the state secretary, upon payment of the fee provided in section twenty-three, a certificate signed and sworn to by its president, treasurer, and by a majority of its board of directors, showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than

11 ninety days prior to said annual meeting, in such form as is required of
 12 domestic business corporations under section forty-seven of chapter one
 13 hundred and fifty-six, and the changes, if any, in the other particulars
 14 included in the certificate required by section five of this chapter, made
 15 since the filing of said certificate or of the last annual report.

182 Mass. 530
 188 Mass. 239
 195 Mass. 432.
 232 Mass. 22
 237 Mass. 269
 1 Op. A G 583.
 3 Op. A G 163.

1 SECTION 13. A certificate required to be filed under the preceding
 2 section shall be accompanied by a written statement on oath by an
 3 auditor as provided in section forty-nine of chapter one hundred and
 4 fifty-six, except that such auditor shall in all cases be chosen by the
 5 board of directors. Before the certificate is filed as required by the
 6 preceding section it shall be submitted to the commissioner, who shall
 7 endorse his approval thereon if he finds that it complies with the pre-
 8 ceding section.

Approval of
 certificate
 1891, § 341, § 5.
 1897, 492
 R. L. 126, § 14
 1903, 437, § 67
 1908, 300, § 2.
 1909, 499,
 111, § 55.
 182 Mass. 530
 188 Mass. 239
 237 Mass. 269

1 SECTION 14. The officers and members or stockholders of all foreign
 2 corporations which have a usual place of business in this commonwealth,
 3 except those mentioned in section seventeen, and except such as had
 4 such place of business on May twelfth, eighteen hundred and ninety-six,
 5 shall be jointly and severally liable for its debts and contracts on the
 6 same conditions and in the same manner as is provided for domestic
 7 corporations by sections forty-four to fifty-four, inclusive, of chapter
 8 one hundred and fifty-eight, except the fourth clause of section forty-four.

Liability of
 officers and
 stockholders of
 certain foreign
 corporations
 1896, 391, § 1
 R. L. 126, § 17.
 195 Mass. 461.

1 SECTION 15. If the capital stock of a foreign corporation subject to
 2 the preceding section has been paid in by a conveyance to the corpora-
 3 tion of property, real or personal, at an unfair valuation, the officers,
 4 members or stockholders who participate in such conveyance or in the
 5 taking of such property at such unfair valuation, or who have purchased
 6 or received shares with knowledge of said fact, shall be jointly and sever-
 7 ally liable for its debts or contracts.

Liability of
 officers and
 stockholders of
 certain foreign
 corporations as
 to issuing stock
 for property
 1896, 391, § 2.
 1897, 423.
 R. L. 126, § 18.
 190 Mass. 35.

1 SECTION 16. The extent, conditions and manner of enforcing the
 2 liability imposed by either of the two preceding sections shall be the
 3 same as is provided by sections forty-four to fifty-four, inclusive, of chap-
 4 ter one hundred and fifty-eight, except the fourth clause of section forty-
 5 four. No officer, member or stockholder shall be liable under any pro-
 6 vision of the two preceding sections for any bonded or mortgage debt of
 7 a foreign corporation.

Enforcement
 of liability.
 1896, 391,
 §§ 1, 2.
 1897, 423.
 R. L. 126, § 19.
 190 Mass. 35.

1 SECTION 17. The officers of foreign corporations organized for the
 2 purposes for which domestic corporations may be organized under sec-
 3 tion six of chapter one hundred and fifty-six, and coming within the
 4 classes described in section three, shall be jointly and severally liable
 5 for all the debts and contracts of the corporation contracted or entered
 6 into while they are officers thereof, if any statement or report which is
 7 required by this chapter is made by them which is false in any material
 8 representation and which they know to be false; but only the officers
 9 who sign such statement or report shall be so liable. Such liability shall
 10 be enforced upon the conditions and in the manner prescribed by sec-
 11 tions thirty-eight and thirty-nine of chapter one hundred and fifty-six.

Liability of
 officers of
 foreign busi-
 ness corpora-
 tions.
 1896, 391, § 1
 R. L. 126, § 17.
 1903, 437, § 79.
 196 Mass. 458.

1 SECTION 18. Whenever any change is made altering the date fixed
 2 in the by-laws for the annual meeting of a foreign corporation organized

Notice of
 change of date
 of annual

meeting to be filed.
1905, 222.
1918, 257.
§§ 356, 357.
1919, 5.
1920, 2.

for the purposes for which domestic corporations may be organized under section six of chapter one hundred and fifty-six, the corporation shall forthwith file in the office of the commissioner a certificate of such change signed and sworn to by the clerk of the corporation. Any corporation which omits to make and file a certificate as aforesaid within thirty days after such a change has been made shall forfeit not more than one hundred dollars, to be recovered in the manner prescribed by section twenty-two.

The supreme judicial court may restrain corporations from doing business not authorized by their charter, etc.

SECTION 19. Upon an information in equity in the name of the attorney general, at the relation of the commissioner, the supreme judicial court may restrain any foreign corporation from assuming or exercising any corporate rights, privileges or franchises in this commonwealth until sections three and five have been complied with.

1906, 372.
196 Mass. 458.

197 Mass. 194.
198 Mass. 413.

201 Mass. 370.
220 Mass. 536.

Penalty for false reports.
1914, 661.
§§ 1, 2.

SECTION 20. Foreign corporations shall be subject to sections forty-eight and forty-nine of chapter one hundred and fifty-five.

Penalties for neglect to file certificate of condition
1891, 341, § 2.
1894, 541, § 1-3.
R. L. 126, § 15, 16.
1903, 437, § 68, 69.
1906, 346, § 2.
1909, 490, III, § 58.
196 Mass. 458.
231 U. S. 78.

SECTION 21. If a foreign corporation omits to file a certificate as required by section twelve, the commissioner shall give notice by mail, postage prepaid, to the corporation of its default, directed, in the case of a corporation established in a foreign country, to the resident manager, if any, in the United States, or to any other person designated by the corporation by a writing filed in the office of the commissioner. The notice shall contain a copy of this section and sections twelve and thirteen. If such foreign corporation fails to file such certificate within thirty days after such notice of default has been given or mailed, it shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the said thirty days, and not less than ten nor more than two hundred dollars for each day thereafter during which such default continues, or any other sum, not greater than the maximum penalty of forfeiture, which the court may deem just and equitable, which shall be recovered as provided in the following section.

Recovery of penalties and forfeitures.
1891, 341, § 2.
1894, 541, § 1-3.
R. L. 126, § 15.
1903, 437, § 50.
1909, 490, III, § 58.

SECTION 22. Penalties and forfeitures incurred by a foreign corporation which omits to file a certificate required by section five or twelve may be recovered in an action brought in Suffolk county in the name of the commonwealth or they may be recovered by an information in equity in the name of the attorney general at the relation of the commissioner brought in the supreme judicial court in Suffolk county. Upon such information, the court may issue an injunction restraining the further prosecution of the business of the corporation until such penalties and forfeitures with interest and costs have been paid and until the certificates required by said sections have been filed.

Filing fees.
1882, 106, § 3, 5.
1884, 339, § 3.
1891, 341, § 6.
1895, 157.
1900, 280.
R. L. 126, § 20.
1903, 437, § 91.

SECTION 23. Every foreign corporation shall pay for filing a copy of its charter, by-laws and the certificate required by section five, fifty dollars to the commissioner, and for filing all other certificates and statements, including the annual certificate of condition required by section twelve, ten dollars to the state secretary.

1919, 333, § 16.

1920, 2; 598, § 4.

1926, 189.

232 Mass. 22.

CHAPTER 182.

VOLUNTARY ASSOCIATIONS AND CERTAIN TRUSTS.

<p>SECT.</p> <p>1. Definitions.</p> <p>2. Copy of declaration, etc., to be filed with commissioner and town clerk. Fees. Penalty.</p> <p>2A. Use of names regulated. Relief by injunction.</p> <p>3. Copy of declaration, etc., of association or trust owning gas or electric stock to be filed with department. Penalty.</p> <p>4. Annual statements. Penalty.</p> <p>5. [Repealed.]</p>	<p>SECT.</p> <p>6. Suits against associations or trusts. Seals.</p> <p>7. Examination by department.</p> <p>8. Examination of corporation, etc., under same management as public service corporation.</p> <p>9. Penalty for refusing to submit to examination, etc.</p> <p>10. Court enforcement of orders of department, etc.</p> <p>11. Shares owned by an association or trust not to be considered in fixing rates, etc.</p>
--	--

1 SECTION 1. The following words, as used in this chapter, shall, Definitions.
 2 except as otherwise expressly provided in section two A, have the follow- 1909, 441, § 1.
 3 ing meanings: "Association", a voluntary association under a written 1914, 471.
 4 instrument or declaration of trust, the beneficial interest under which is 1919, 350,
 5 divided into transferable certificates of participation or shares. "Com- § 117.
 6 missioner", the commissioner of corporations and taxation. "Depart- 1926, 290, § 1.
 7 ment", the department of public utilities. When used in sections two 1931, 426,
 8 to seven, inclusive, of this chapter, the word "trust" shall, except as § 278.
 9 otherwise expressly provided in section two A, mean a trust operating 253 Mass. 351.
 10 under a written instrument or declaration of trust, the beneficial interest
 11 under which is divided into transferable certificates of participation or
 12 shares, other than a trust established for the sole purpose of exercising the
 13 voting rights pertaining to corporate stock or other securities in accord-
 14 ance with the terms of a written instrument.

1 SECTION 2. The trustees of an association or trust shall file a copy of Copy of
 2 the written instrument or declaration of trust creating it with the com- declaration,
 3 missioner and with the clerk of every town where such association or trust etc., to be filed
 4 has a usual place of business. The fee for filing said copy with the com- with commis-
 5 missioner shall be fifty dollars. Such trustees shall also, within thirty sioner and
 6 days after the adoption of any amendment thereof, file a copy of said town clerk.
 7 amendment with said commissioner and said clerk. The trustees of Fees. Penalty.
 8 every association or trust, whose written instrument or declaration of 1909, 441, § 1.
 9 trust creating it is not filed as required in this section shall be punished 1914, 471.
 10 by a fine of not more than five hundred dollars or by imprisonment for 1922, 272.
 11 not more than three months. 1926, 290, § 2.

1 SECTION 2A. No association or trust shall assume the name of any Use of names
 2 corporation established under the laws of the commonwealth, or of a regulated.
 3 corporation, firm, or association or trust whether or not as defined in Relief by
 4 section one, or of an individual, carrying on business in the commonwealth injunction.
 5 at the time when the association or trust is created or within three years 1929, 45.
 6 prior thereto, or assume a name so similar thereto as to be likely to be
 7 mistaken for it, except with the written consent of such existing corpora-

tion, firm, association or trust or of such individual, previously filed with the commissioner; and the commissioner shall refuse to receive for filing the written instrument or declaration of trust of an association or trust if it appears to him to have assumed a name in violation hereof. The supreme judicial or superior court shall have jurisdiction in equity, upon the application of any person interested or affected, to enjoin an association or trust from doing business under any name assumed in violation hereof, although the written instrument or declaration of trust of such association or trust has been received for filing as aforesaid.

Copy of declaration, etc., of association or trust owning gas or electric stock to be filed with department. Penalty. 1913, 454. 1914, 742. § 148. 1915, 20, § 2.

SECTION 3. The trustees of an association or trust who own or control a majority of the capital stock of a gas or electric company shall also file a copy of the written instrument or declaration of trust creating it with the department and shall also within thirty days after the adoption of any amendment of such instrument or declaration file a copy thereof with the department. Every such trustee who fails to comply with the foregoing requirements shall be punished by a fine of not more than five hundred dollars or by imprisonment for three months.

1926, 290, § 3.

Annual statements. Penalty. 1909, 441. §§ 1, 2, § 1913, 454. 1914, 742. § 148. 1915, 20, § 2. 1926, 290, § 4.

SECTION 4. The trustees of an association or trust who own or control a majority of the capital stock of a railroad, street railway, gas or electric company shall annually on or before April first file with the commissioner and with the department a statement showing the number of shares of such company owned or controlled by them and the stockholders of record on the books of such company in whose names such shares are held. Every such trustee who fails to comply with this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for three months.

SECTION 5. [REPEALED, 1924, 190, § 1.]

Suits against associations or trusts. Seals. 1916, 184. 1926, 290, § 5. 1929, 107, § 2. 253 Mass. 351.

SECTION 6. An association or trust may be sued in an action at law for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, or by any duly authorized officer of the association or trust, in the performance of their respective duties under such written instruments or declarations of trust, and for any damages to persons or property resulting from the negligence of such trustees, agents or officers acting in the performance of their respective duties, and its property shall be subject to attachment and execution in like manner as if it were a corporation, and service of process upon one of the trustees shall be sufficient.

An association or trust may have a seal, which it may alter at pleasure, and which may be used by the trustee or trustees of such association or trust as his or their seal. An impression of a seal purporting to be the seal of such an association or trust shall be sufficient for all purposes without the use of a wafer or wax.

Examination by department. 1913, 509. §§ 1, 2. 1914, 742. §§ 150, 199. 1926, 290, § 6.

SECTION 7. The department may by its members or duly authorized employees investigate and examine the books, accounts, contracts, records and memoranda of the trustees of any association or trust, who own or hold the capital stock or any part thereof of a railroad, street railway, electric railroad or elevated railway corporation or gas or

6 electric company, and may require said trustees to furnish such reports
 7 and information as the department shall from time to time direct with
 8 respect to the relations and dealings between such trustees and any
 9 such corporation or company.

1 SECTION 8. The department may by its members or duly author-
 2 ized employees investigate and examine the books, accounts, contracts,
 3 records and memoranda of any partnership, express trust, voluntary
 4 association or corporation which is under the same ownership, control
 5 or management as a railroad, street railway, electric railroad or elevated
 6 railway corporation or gas or electric company, in respect of the relations
 7 and of any contracts and dealings between such railroad, street rail-
 8 way, electric railroad or elevated railway corporation or gas or electric
 9 company and such partnership, express trust, voluntary association or
 10 corporation, and in relation thereto may require from such partnership,
 11 express trust, voluntary association or corporation such reports and in-
 12 formation as the department shall from time to time direct.

Examination of
 corporation,
 etc., under
 same manage-
 ment as public
 service cor-
 poration.
 1913, 509,
 §§ 3, 4
 1914, 742,
 §§ 151, 199
 253 Mass. 351

1 SECTION 9. A railroad, street railway, electric railroad, elevated
 2 railway, gas or electric company, or a partnership or corporation or the
 3 trustees of an express trust or voluntary association, described in the
 4 two preceding sections, which refuses or neglects to submit its or their
 5 books, accounts, contracts, records and memoranda to the investiga-
 6 tion and examination of the department, or to furnish such reports and
 7 information as it shall from time to time direct and require, shall be
 8 punished by a fine of not more than five thousand dollars.

Penalty for
 refusing to
 submit to
 examination,
 etc.
 1913, 509, § 5.
 1914, 742,
 §§ 152, 199.
 253 Mass. 351.

1 SECTION 10. The supreme judicial court shall have jurisdiction in
 2 equity to enforce compliance with the three preceding sections, and with
 3 all orders of the department made under authority thereof.

1913, 509, § 6.

1914, 742, §§ 153, 199.

Court enforce-
 ment of orders
 of depart-
 ment, etc.

1 SECTION 11. Nothing contained in this chapter shall be construed
 2 as authorizing, requiring or justifying the department in making any
 3 recommendations, rulings or orders with respect to the rates charged
 4 or the service furnished by any corporation subject to its supervision,
 5 to take into consideration in any respect whatsoever any certificates of
 6 participation or shares issued under a declaration of trust and repre-
 7 senting the beneficial interest in the stock, bonds, notes or other securi-
 8 ties of such corporation, or the investment in such certificates or shares.

Shares owned
 by an associa-
 tion or trust
 not to be
 considered in
 fixing rates, etc.
 1913, 509, § 7.
 1914, 742,
 § 151.

PART II.

REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS.

TITLE I.

TITLE TO REAL PROPERTY.

- CHAPTER 183. Alienation of Land.
 CHAPTER 184. General Provisions relative to Real Property.
 CHAPTER 185. The Land Court and Registration of Title to Land.
 CHAPTER 186. Estates for Years and at Will.
 CHAPTER 187. Easements.
 CHAPTER 188. Homesteads.
 CHAPTER 189. Dower and Curtesy.

CHAPTER 183.

ALIENATION OF LAND.

SECT.	CONVEYANCE BY DEED.	SECT.	
1.	Sufficiency of deed.	15.	Easements, appurtenances, etc., to pass unless otherwise stated.
2.	Effect of quitclaim deed.	16.	Meaning of "warranty covenants".
3.	Estate created without writing to have effect of estate at will.	17.	Meaning of "quitclaim covenants" or "limited covenants".
4.	Effect of unrecorded deed, or lease for more than seven years.	18.	Statutory form of mortgage.
5.	Record to be evidence of delivery.	19.	Meaning of "mortgage covenants".
5A.	Certain affidavits relative to title to land; recording, admissibility in evidence.	20.	Statutory condition in mortgage.
6.	Grantee's name, residence and post office address to be contained in or endorsed upon deed.	21.	Statutory power of sale in mortgage.
7.	Effect of conveyance by disseisee.	22.	Statutory form of co-operative bank mortgage.
	SHORT FORMS.	23.	Statutory co-operative bank mortgage condition.
8.	General provisions as to statutory forms.	24.	Statutory co-operative bank power of sale.
9.	Meaning of words and phrases.	25.	Holder of mortgage may purchase at foreclosure sale.
10.	Statutory form of warranty deed.	26.	Mortgagor entitled to possession until default.
11.	Statutory form of quitclaim deed.	27.	Disposition of proceeds of foreclosure sale.
12.	Word "grant" to be a sufficient word of conveyance.	28.	Assignment of mortgage.
13.	Word "heirs" or "assigns" not necessary to convey a fee.		ACKNOWLEDGMENT AND RECORDING OF DEEDS.
14.	Uses and trusts.	29.	Acknowledgment of deed before record. Exception.

- SECT.
- 30. Acknowledgment, how made.
 - 31. Acknowledgment by married woman.
 - 32. Acknowledgment of powers of attorney to convey real estate.
 - 33. Certificate of authority of officer.
 - 34. Proof of execution if grantor is dead or non-resident.
 - 35. Proof if witnesses are dead or non-resident.
 - 36. Proof if grantor refuses to acknowledge.
 - 37. Proof if grantor refuses to acknowledge and witnesses are dead or non-resident.
 - 38. Copy of deed not acknowledged may be filed in registry of deeds. Effect.
 - 39. Unwitnessed deeds not to be so proved.
 - 40. Endorsement of certificate of proof.
 - 41. Proof of deed outside the commonwealth.
 - 42. Forms of acknowledgment, etc.

TITLE BY DECREE OF COURT.

- 43. Final decree in equity to vest title if deed, etc., is not executed as directed.
- 44. Recording of certified copy of decree to have same effect as recorded deed, etc.

BARRING OF ESTATES TAIL.

- 45. Tenant in tail may convey in fee simple.
- 46. Life tenant and remainderman in tail may convey in fee simple.
- 47. Barring of equitable estates tail.
- 48. Trustee may be required to convey legal estate.

CONVEYANCE OF ESTATES SUBJECT TO REMAINDER, ETC.

- 49. Probate court may appoint trustees to convey or mortgage.
- 50. Notice and appointment of guardian ad litem or next friend.

- SECT.
- 51. Trustee to give bond, and hold or apply proceeds of sale or mortgage.
 - 52. Sale of land subject to charges for payment of annuities, etc., and decrees ensuring such payments.

INSTRUMENTS OF DEFEASANCE.

- 53. Effect of unrecorded instruments of defeasance.

DISCHARGE OF MORTGAGES.

- 54. Discharge on margin of record or by separate instrument, etc.
- 55. Mortgagee liable for refusing to discharge.

APPENDIX.

Statutory Forms of Instruments relating to Real Estate.

- (1) Warranty Deed.
- (2) Quitclaim Deed.
- (3) Deed of Executor, Administrator, Trustee, Guardian, Conservator, Receiver or Commissioner.
- (4) Release.
- (5) Mortgage Deed.
- (6) Co-operative Bank Mortgage.
- (7) Extension of Mortgage.
- (8) Partial Release of Mortgage.
- (9) Assignment of Mortgage.
- (10) Discharge of Mortgage.
- (11) Foreclosure Deed under Power of Sale in Mortgage.
- (12) Affidavit of Sale under Power of Sale in Mortgage.

Forms of Acknowledgments, etc.

- (13) Acknowledgment of Individual acting in his Own Right.
- (14) Acknowledgment of Individual acting by Attorney.
- (15) Acknowledgment of a Corporation or Joint Stock Association.
- (16) Certificate of Authority of Officer taking Acknowledgment.

CONVEYANCE BY DEED.

1 SECTION 1. A deed executed and delivered by the person, or by the
 2 attorney of the person, having authority therefor, shall, subject to the
 3 limitations of section four, be sufficient, without any other act or cere-
 4 mony, to convey land.

Sufficiency
 of deed
 1697, 21, § 1.
 1783, 37, § 1.
 R. S. 59, § 1.

G. S. 89, § 1.	6 Mass. 24	13 Met. 79	16 Gray, 309
P. S. 120, § 1.	11 Pick. 224.	4 Cush. 345.	157 Mass. 584
R. L. 127, § 1.	12 Met. 157.		

1 SECTION 2. A deed of quitclaim and release shall be sufficient to
 2 convey all the estate which could lawfully be conveyed by a deed of
 3 bargain and sale.

Effect of quit-
 claim deed
 R. S. 59, § 5.

G. S. 89, § 8.	7 Mass. 381.	131 Mass. 200.	244 Mass. 1.
P. S. 120, § 2.	8 Pick. 143.	168 Mass. 201.	211 U. S. 208.
R. L. 127, § 2.	15 Pick. 82.	187 Mass. 315.	

Estate created without writing to have effect of estate at will.
C. L. 32, § 1.
1692-3, 15, § 1.
1783, 37, § 1.
R. S. 59, § 29.

SECTION 3. An estate or interest in land created without an instrument in writing signed by the grantor or by his attorney shall have the force and effect of an estate at will only, and no estate or interest in land shall be assigned, granted or surrendered unless by such writing or by operation of law.

- | | | |
|-----------------|---------------------|----------------|
| G. S. 89, § 2. | 171 Mass. 329. | 227 Mass. 175, |
| P. S. 120, § 3. | 178 Mass. 172. | 562. |
| R. L. 127, § 3. | 185 Mass. 607. | 233 Mass. 127, |
| 11 Mass. 533. | 186 Mass. 14. | 234. |
| 1 Pick. 43. | 189 Mass. 285. | 235 Mass. 156. |
| 9 Met. 462. | 190 Mass. 101. | 237 Mass. 249. |
| 11 Met. 251. | 213 Mass. 380. | 242 Mass. 371. |
| 1 Gray, 571. | 220 Mass. 186, 324. | 249 Mass. 59. |
| 1 Allen, 133. | 221 Mass. 326. | 263 Mass. 554. |
| 117 Mass. 351. | 223 Mass. 556. | 267 Mass. 285. |
| 150 Mass. 19. | 225 Mass. 510. | 272 Mass. 547. |

Effect of unrecorded deed, or lease for more than seven years.
C. L. 32, § 4.
1697, 21, § 2.
1783, 37, § 4.
R. S. 59, §§ 1, 28.
G. S. 89, §§ 1, 3.

SECTION 4. A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, is recorded in the registry of deeds for the county or district in which the land to which it relates lies.

- | | | |
|------------------|---------------------|--------------------|
| P. S. 120, § 4. | 6 Gray, 520. | 133 Mass. 511. |
| R. L. 127, § 4 | 9 Gray, 306. | 140 Mass. 112. |
| 14 Mass. 296. | 11 Gray, 267, 495. | 141 Mass. 181. |
| 15 Mass. 439. | 15 Gray, 461. | 489. |
| 16 Mass. 406. | 16 Gray, 48. | 146 Mass. 610. |
| 2 Pick. 184. | 1 Allen, 373. | 149 Mass. 310. |
| 4 Pick. 253. | 2 Allen, 115. | 162 Mass. 108, |
| 5 Pick. 280. | 3 Allen, 487. | 473. |
| 8 Pick. 329. | 4 Allen, 406. | 167 Mass. 443. |
| 9 Pick. 105. | 5 Allen, 382. | 168 Mass. 118. |
| 11 Pick. 193. | 7 Allen, 16. | 181 Mass. 218. |
| 13 Pick. 460. | 8 Allen, 186, 584. | 183 Mass. 382. |
| 14 Pick. 224. | 9 Allen, 80. | 185 Mass. 107. |
| 22 Pick. 295. | 11 Allen, 134. | 197 Mass. 267. |
| 23 Pick. 80. | 12 Allen, 472. | 200 Mass. 498. |
| 24 Pick. 221. | 101 Mass. 179, 444. | 209 Mass. 359. |
| 1 Met. 212. | 102 Mass. 375. | 211 Mass. 526. |
| 2 Met. 258, 619. | 103 Mass. 491. | 225 Mass. 97, 491. |
| 3 Met. 405. | 111 Mass. 270. | 229 Mass. 467. |
| 6 Met. 475. | 113 Mass. 72. | 232 Mass. 491. |
| 11 Met. 244. | 129 Mass. 210. | 233 Mass. 158. |
| 12 Met. 17, 157. | 130 Mass. 83, 128. | 235 Mass. 14. |
| 2 Cush. 494. | 131 Mass. 540. | 243 Mass. 414. |
| 6 Cush. 163. | 132 Mass. 320. | 265 Mass. 30. |

Record to be evidence of delivery.
1892, 256.
R. L. 127, § 5.
161 Mass. 381.

SECTION 5. The record of a deed, lease, power of attorney or other instrument, duly acknowledged or proved as provided in this chapter, and purporting to affect the title to land, shall be conclusive evidence of the delivery of such instrument, in favor of purchasers for value without notice claiming thereunder.

Certain affidavits relative to title to land; recording, admissibility in evidence.
1924, 227.

SECTION 5A. A statement of a person's married or unmarried status, kinship or lack of kinship, or of the date of his birth or death, which relates or purports to relate to the title to land and is sworn to before any officer authorized by law to administer oaths may be filed for record and shall be recorded in the registry of deeds for the county where the land or any part thereof lies. Any such statement, if so recorded, or a certified copy of the record thereof, in so far as the facts stated therein bear on the title to land, shall be admissible in evidence in support of such title in any court in the commonwealth in proceedings relating to such title.

Grantee's name, residence and post office

SECTION 6. Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the

3 grantee, and shall also state whether the grantee is married or unmarried.
 4 If the statements required are not contained in the body of the deed but
 5 are endorsed upon it they shall be entered in the margin of the record.
 6 Failure to comply with this section shall not affect the validity of any
 7 deed or prevent it from being recorded.

address to be
 contained in or
 endorsed upon
 deed
 1917, 62.

1 SECTION 7. A conveyance of land, if otherwise valid, shall, notwith-
 2 standing disseisin or adverse possession, be as effectual to transfer the
 3 title of the grantor as if he were actually seized and possessed of such
 4 land, and shall vest in the grantee the rights of entry and of action for
 5 recovery of the estate incident to such title.

Effect of con-
 veyance by
 disseisin
 1891, 354
 P. L. 127, § 6
 191 Mass. 179
 172 Mass. 395,
 175 Mass. 355

SHORT FORMS.

1 SECTION 8. The forms set forth in the appendix to this chapter may
 2 be used and shall be sufficient for their respective purposes. They shall
 3 be known as "Statutory Forms" and may be referred to as such. They
 4 may be altered as circumstances require, and the authorization of such
 5 forms shall not prevent the use of other forms. Wherever the phrase
 6 "incorporation by reference" is used in the following sections, the method
 7 of incorporation as indicated in said forms shall be sufficient, but shall
 8 not preclude other methods.

General pro-
 visions as to
 statutory
 forms.
 1912, 502, § 1
 225 Mass. 329

1 SECTION 9. For the purpose of avoiding the unnecessary use of
 2 words in deeds or other instruments relating to real estate, whether said
 3 statutory form or other forms are used, the rules and definitions con-
 4 tained in sections ten to twenty-eight, inclusive, shall apply to all such
 5 instruments executed or delivered on or after January first, nineteen
 6 hundred and thirteen.

Meaning of
 words and
 phrases
 1912, 502,
 §§ 13, 26.

1 SECTION 10. A deed in substance following the form entitled "War-
 2 ranty Deed" shall when duly executed have the force and effect of a deed
 3 in fee simple to the grantee, his heirs and assigns, to his and their own
 4 use, with covenants on the part of the grantor, for himself, his heirs,
 5 executors, administrators and successors, with the grantee, his heirs,
 6 successors and assigns, that, at the time of the delivery of such deed, (1)
 7 he was lawfully seized in fee simple of the granted premises, (2) that the
 8 granted premises were free from all encumbrances, (3) that he had good
 9 right to sell and convey the same to the grantee and his heirs and assigns,
 10 and (4) that he will, and his heirs, executors and administrators shall,
 11 warrant and defend the same to the grantee and his heirs and assigns
 12 against the lawful claims and demands of all persons.

Statutory
 form of war-
 ranty deed
 1912, 502, § 2
 [See Appendix,
 Form (1).]

1 SECTION 11. A deed in substance following the form entitled "Quit-
 2 claim Deed" shall when duly executed have the force and effect of a deed
 3 in fee simple to the grantee, his heirs and assigns, to his and their own
 4 use, with covenants on the part of the grantor, for himself, his heirs,
 5 executors, administrators and successors, with the grantee, his heirs,
 6 successors and assigns, that at the time of the delivery of such deed the
 7 premises were free from all encumbrances made by him, and that he will,
 8 and his heirs, executors and administrators shall, warrant and defend the
 9 same to the grantee and his heirs and assigns forever against the lawful
 10 claims and demands of all persons claiming by, through or under the
 11 grantor, but against none other.

Statutory form
 of quitclaim
 deed
 1912, 502, § 3
 259 Mass. 315
 [See Appendix,
 Form (2).]

- Word "grant" to be a sufficient word of conveyance. 1912, 502, § 14. SECTION 12. In a conveyance of real estate the word "grant" shall be a sufficient word of conveyance without the use of the words "give, bargain, sell and convey", and no covenant shall be implied from the use of the word "grant". 1 2 3 4
- Word "heirs" or "assigns" not necessary to convey a fee. 1912, 502, § 19. 273 Mass. 164. SECTION 13. In a conveyance or reservation of real estate the terms "heirs", "assigns" or other technical words of inheritance shall not be necessary to convey or reserve an estate in fee. A deed or reservation of real estate shall be construed to convey or reserve an estate in fee simple, unless a different intention clearly appears in the deed. 1 2 3 4 5
- Uses and trusts. 1912, 502, § 15. SECTION 14. When a conveyance or devise of real estate is made to a grantee or devisee to a use intended to be executed by the statute of uses, the word "use" shall be employed in declaring the use; and provisions introduced by the words "in trust", or other expressions that might otherwise create uses, shall be deemed to create trusts and not uses. If no use is declared in a conveyance or devise of real estate, the same shall take effect as if it were expressed to be for the use of the grantee or devisee. 1 2 3 4 5 6 7 8
- Easements, appurtenances, etc., to pass unless otherwise stated. 1912, 502, § 21. 268 Mass. 172. SECTION 15. In a conveyance of real estate all rights, easements, privileges and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary shall be stated in the deed, and it shall be unnecessary to enumerate or mention them either generally or specifically. 1 2 3 4 5
- Meaning of "warranty, covenants". 1912, 502, § 16. SECTION 16. In a conveyance of real estate the words "warranty covenants" shall have the full force, meaning and effect of the following words: "The grantor, for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns, that he is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that he has good right to sell and convey the same, and that he will, and his heirs, executors, administrators and successors shall, warrant and defend the same to the grantee and his heirs, successors and assigns forever against the lawful claims and demands of all persons". 1 2 3 4 5 6 7 8 9 10
- Meaning of "quitclaim covenants" or "limited covenants". 1912, 502, § 17. 264 Mass. 392. SECTION 17. In a conveyance of real estate the words "quitclaim covenants" or the words "limited covenants" shall have the full force, meaning and effect of the following words: "The grantor, for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns, that the granted premises are free from all encumbrances made by the grantor, and that he will, and his heirs, executors, administrators and successors shall, warrant and defend the same to the grantee and his heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other". 1 2 3 4 5 6 7 8 9 10
- Statutory form of mortgage. 1912, 502, § 6. 1913, 369. [See Appendix, Form (5).] SECTION 18. A deed in substance following the form entitled "Mortgage Deed" shall when duly executed have the force and effect of a mortgage deed to the use of the mortgagee and his heirs and assigns with mortgage covenants and upon the statutory condition and with the statutory power of sale, as defined in the three following sections, to secure the payment of the money or the performance of any obligation 1 2 3 4 5 6

7 therein specified. The parties may insert in such mortgage any other
8 lawful agreement or condition.

1 SECTION 19. In a conveyance of real estate the words "mortgage
2 covenants" shall have the full force, meaning and effect of the following
3 words, and shall be applied and construed accordingly: "The mort-
4 gator, for himself, his heirs, executors, administrators and successors,
5 covenants with the mortgagee and his heirs, successors and assigns, that
6 he is lawfully seized in fee simple of the granted premises; that they
7 are free from all encumbrances; that the mortgagor has good right to
8 sell and convey the same; and that he will, and his heirs, executors,
9 administrators and successors shall, warrant and defend the same to
10 the mortgagee and his heirs, successors and assigns forever against the
11 lawful claims and demands of all persons; and that the mortgagor and
12 his heirs, successors or assigns, in case a sale shall be made under the
13 power of sale, will, upon request, execute, acknowledge and deliver to
14 the purchaser or purchasers a deed or deeds of release confirming such
15 sale; and that the mortgagee and his heirs, executors, administrators,
16 successors and assigns are appointed and constituted the attorney or
17 attorneys irrevocable of the said mortgagor to execute and deliver to
18 the said purchaser a full transfer of all policies of insurance on the build-
19 ings upon the land covered by the mortgage at the time of such sale".

Meaning of
"mortgage
covenants".
1912, 502, § 18.
251 Mass. 595.

1 SECTION 20. The following "condition" shall be known as the
2 "Statutory Condition", and may be incorporated in any mortgage by
3 reference:

Statutory
condition in
mortgage.
1912, 502, § 6.
1913, 369.
237 Mass. 180.

(CONDITION.)

4 Provided, nevertheless, except as otherwise specifically stated in the
5 mortgage, that if the mortgagor, or his heirs, executors, administrators,
6 successors or assigns shall pay unto the mortgagee or his executors,
7 administrators or assigns the principal and interest secured by the
8 mortgage, and shall perform any obligation secured at the time provided
9 in the note, mortgage or other instrument or any extension thereof,
10 and shall perform the condition of any prior mortgage, and until such
11 payment and performance shall pay when due and payable all taxes,
12 charges and assessments to whomsoever and whenever laid or assessed,
13 whether on the mortgaged premises or on any interest therein or on
14 the debt or obligation secured thereby; shall keep the buildings on
15 said premises insured against fire in a sum not less than the amount
16 secured by the mortgage or as otherwise provided therein for insurance
17 for the benefit of the mortgagee and his executors, administrators and
18 assigns, in such form and at such insurance offices as they shall approve,
19 and, at least two days before the expiration of any policy on said
20 premises, shall deliver to him or them a new and sufficient policy to
21 take the place of the one so expiring, and shall not commit or suffer
22 any strip or waste of the mortgaged premises or any breach of any
23 covenant contained in the mortgage or in any prior mortgage, then the
24 mortgage deed, as also the mortgage note or notes, shall be void.

1 SECTION 21. The following "power" shall be known as the "Statu-
2 tory Power of Sale", and may be incorporated in any mortgage by ref-
3 erence:

Statutory
power of sale
in mortgage.
1912, 502, § 6.

(POWER.)

1913, 369.
1927, 104, § 1.
245 Mass. 291.

But upon any default in the performance or observance of the foregoing 4
or other condition, the mortgagee or his executors, administrators, suc- 5
cessors or assigns may sell the mortgaged premises or such portion thereof 6
as may remain subject to the mortgage in case of any partial release 7
thereof, either as a whole or in parcels, together with all improvements 8
that may be thereon, by public auction on or near the premises then 9
subject to the mortgage, or, if more than one parcel is then subject 10
thereto, on or near one of said parcels, or at such place as may be desig- 11
nated for that purpose in the mortgage, first complying with the terms 12
of the mortgage and with the statutes relating to the foreclosure of 13
mortgages by the exercise of a power of sale, and may convey the same 14
by proper deed or deeds to the purchaser or purchasers absolutely and 15
in fee simple; and such sale shall forever bar the mortgagor and all 16
persons claiming under him from all right and interest in the mortgaged 17
premises, whether at law or in equity. 18

Statutory form
of co-operative
bank mortgage.
1913, 369.
273 Mass. 477.
[See Appendix,
Form (6).]

SECTION 22. A co-operative bank mortgage following in substance 1
the form entitled "Co-operative Bank Mortgage" shall when duly execu- 2
ted have the force and effect of a mortgage deed to the use of the 3
mortgagee and its successors and assigns, with mortgage covenants and 4
upon the statutory co-operative bank mortgage condition and with the 5
statutory co-operative bank power of sale, as defined in the two follow- 6
ing sections, to secure the payment of the money or the performance of 7
any obligation therein specified. If any buildings on the mortgaged 8
premises shall be wholly or partly destroyed by a fire in respect to which 9
the company or companies insuring the same shall deny liability to the 10
insured, the mortgagee may at its option forfeit said shares, and, after 11
applying the withdrawal value thereof to the payment of said loan, inter- 12
est and fines, may assign the mortgage with the note and debt thereby 13
secured to such company or companies upon payment by it or them of 14
the balance then owing to the mortgagee on account of said loan; where- 15
upon said note and mortgage shall forthwith become a note and mortgage 16
payable on demand with interest at the rate set forth in said mortgage, 17
payable semi-annually, the first payment of such interest to become due 18
six months after the date of such assignment. 19

The parties may insert in such co-operative bank mortgage any lawful 20
agreement or condition. 21

Statutory
co-operative
bank mortgage
condition.
1913, 369.

SECTION 23. The following "co-operative bank mortgage condition" 1
shall be known as the "Statutory Co-operative Bank Mortgage Condi- 2
tion", and may be incorporated in any co-operative bank mortgage by 3
reference: 4

(CO-OPERATIVE BANK MORTGAGE CONDITION.)

Provided, nevertheless, that if the mortgagor or his heirs, executors, 5
administrators, successors or assigns shall pay unto the said mortgagee, 6
its successors or assigns, at its place of business, the monthly dues, 7
interest and premium, if any, together with all fines on payments in 8
arrears, monthly at or before the stated meetings of said bank, until 9
said shares shall reach their matured value, or, if the mortgagor or his 10
heirs, executors, administrators or assigns shall otherwise sooner pay 11

12 said loan unto the said mortgagee, its successors or assigns, together
 13 with the said interest and fines to the time of the next stated monthly
 14 meeting after such payment, and shall pay when due all taxes and as-
 15 sessments levied or assessed on the mortgaged premises, and all taxes
 16 which the said mortgagee may be required to pay as holder of this
 17 mortgage, shall keep the buildings thereon insured against fire in a
 18 sum satisfactory to and for the benefit of the said mortgagee, its suc-
 19 cessors or assigns, at such insurance office and by such insurance com-
 20 pany as it or they shall approve, or, in default thereof, shall on demand
 21 pay to the said mortgagee, its successors or assigns all such sums as it
 22 shall reasonably pay for such taxes, assessments and insurance, with
 23 interest, and shall not commit or suffer any strip or waste of the mort-
 24 gaged premises, or any breach of any covenant herein contained or in
 25 any prior mortgage, then the mortgage deed, as also the mortgage note,
 26 shall be void.

1 SECTION 24. The following "co-operative bank power" shall be
 2 known as the "Statutory Co-operative Bank Power of Sale", and may be
 3 incorporated in any mortgage by reference:

Statutory
 co-operative
 bank power
 of sale.
 1913, 369
 1927, 101, § 2

(CO-OPERATIVE BANK POWER.)

4 But in case of non-payment of the aforesaid monthly dues, interest or
 5 fines and premiums, if any, for more than four months after any payment
 6 thereof shall be due, or upon any other default in the performance or
 7 observance of the foregoing or other condition, the mortgagee or its suc-
 8 cessors or assigns may sell the mortgaged premises or such portion thereof
 9 as may remain subject to the mortgage in case of any partial release
 10 thereof, either as a whole or in parcels, together with all improvements
 11 that may be thereon, by public auction on or near the premises then
 12 subject to the mortgage, or, if more than one parcel is then subject thereto,
 13 on or near one of said parcels, or at such place as may be designated for
 14 that purpose in the mortgage, first complying with the terms of the mort-
 15 gage and with the statutes relating to the foreclosure of mortgages by the
 16 exercise of a power of sale, and may convey the same by proper deed or
 17 deeds to the purchaser or purchasers absolutely and in fee simple; and
 18 such sale shall forever bar the mortgagor and all persons claiming under
 19 him from all right and interest in the mortgaged premises, whether at
 20 law or in equity.

1 SECTION 25. The holder of a mortgage of real estate, or any person
 2 acting in his behalf, may purchase at a foreclosure sale unless the con-
 3 trary is stated in the mortgage.

Holder of
 mortgage may
 purchase at
 foreclosure sale.

1912, 502, § 22

245 Mass. 291.

1 SECTION 26. Until default in the performance or observance of the
 2 condition of a mortgage of real estate, the mortgagor and his heirs and
 3 assigns may hold and enjoy the mortgaged premises and receive the
 4 rents and profits thereof, unless otherwise stated in the mortgage.

Mortgagor
 entitled to
 possession
 until default.
 1912, 502, § 23.

1 SECTION 27. The holder of a mortgage of real estate, or his representa-
 2 tives, out of the money arising from a sale under the power of sale shall
 3 be entitled to retain all sums then secured by the mortgage, whether
 4 then or thereafter payable, including all costs, charges or expenses in-
 5 curred or sustained by him or them by reason of any default in the per-

Disposition of
 proceeds of
 foreclosure sale.
 1912, 502, § 24
 256 Mass. 250.
 262 Mass. 302.

formance or observance of the condition of the mortgage or of any prior 6
 mortgage, rendering the surplus, if any, to the mortgagor, or his heirs, 7
 successors or assigns, unless otherwise stated in the mortgage. No person 8
 other than the holder of the mortgage shall be bound to see to the ap- 9
 plication of the money arising from such sale. 10

Assignment of mortgage. 1912, 502, § 20. SECTION 28. In an assignment of a mortgage of real estate the word 1
 "assign" shall be a sufficient word to transfer the mortgage, without 2
 the words "transfer and set over". 3

ACKNOWLEDGMENT AND RECORDING OF DEEDS.

Acknowledgment of deed before record. Exception. C. L. 32, § 4. 1697, 21, § 1. 1783, 37, § 4. R. S. 59, § 22. G. S. 89, § 28. SECTION 29. No deed shall be reorded unless a certificate of its 1
 acknowledgment or of the proof of its due execution, made as herein- 2
 after provided, is endorsed upon or annexed to it, and such certificate 3
 shall be reorded at length with the deed to which it relates; but this 4
 section shall not apply to conveyances from the United States. 5

1869, 167. 4 Mass. 541. 23 Pick. 80.
 P. S. 120, § 5. 10 Pick. 72. 2 Cush. 494.
 R. L. 127, § 7. 22 Pick. 85. 215 Mass. 156.

Acknowledgment, how made. 1783, 37, § 4. 1829, 125, § 1. R. S. 59, §§ 12, 13, 22. 1856, 253, § 1. G. S. 89, §§ 18, 19, 28. SECTION 30. The acknowledgment of a deed or other written in- 1
 strument required to be acknowledged shall be by one or more of the 2
 grantors or by the attorney executing it. The officer before whom the 3
 acknowledgment is made shall endorse upon or annex to the instrument 4
 a certificate thereof. Such acknowledgment may be made — 5

1867, 250, § 1. 1895, 460. 9 Gray, 56.
 1875, 142. R. L. 127, §§ 8, 19, 22. 165 Mass. 359.
 P. S. 120, § 6. 1902, 289. 270 Mass. 313.
 1894, 253, §§ 3, 4, 6. 1931, 394, § 186.

14 Allen, 109. (a) If within the commonwealth, before a justice of the peace or 6
 notary public. 7

13 Pick. 523. 11 Cush. 147. 208 Mass. 236. (b) If without the commonwealth, in any state, territory, district or 8
 dependency of the United States, before a justice of the peace, notary 9
 public, magistrate or commissioner appointed therefor by the governor 10
 of this commonwealth, or, if a certificate of authority in the form pre- 11
 scribed by section thirty-three is attached thereto, before any other 12
 officer therein authorized to take acknowledgments of deeds. 13

(c) If without the United States or any dependency thereof, before 14
 a justice of the peace, notary, magistrate or commissioner as above pro- 15
 vided, or before an ambassador, minister, consul, vice consul, chargé 16
 d'affaires or consular officer or agent of the United States accredited 17
 to the country where the acknowledgment is made; if made before an 18
 ambassador or other official of the United States, it shall be certified 19
 by him under his seal of office. 20

Acknowledgment by married woman. 1894, 253, § 2. SECTION 31. The acknowledgment by a married woman may be taken 1
 in the same form as if she were sole, and without any examination sepa- 2
 rate and apart from her husband. 3

R. L. 127, § 9.

Acknowledgment of powers of attorney to convey real estate. SECTION 32. The law relative to the acknowledgment and recording 1
 of deeds shall apply to letters of attorney for the conveyance of real 2
 estate. 3

1849, 205. P. S. 120, § 14. 22 Pick. 85.
 G. S. 89, § 29. R. L. 127, § 17. 262 Mass. 555.
 1879, 86.

1 SECTION 33. Whenever, under clause (b) of section thirty or under
 2 section forty-one, a certificate of authority is required to be attached,
 3 there shall be subjoined or attached to the certificate of proof or ac-
 4 knowledgment a certificate of the secretary of state of the state where
 5 the officer taking the acknowledgment resides, under the seal of such
 6 state, or a certificate of the clerk of a court of record of such state in
 7 the county where said officer resides or where he took such proof or
 8 acknowledgment, under the seal of the court, stating that said officer
 9 was, at the time of taking such proof or acknowledgment, duly author-
 10 ized thereto in said state, and that said secretary of state or clerk of
 11 court is well acquainted with his handwriting and verily believes the
 12 signature affixed to such certificate of proof or acknowledgment is genuine.

Certificate of
 authority of
 officer.
 1894, 253, § 4.
 R. L. 127, § 20.

1 SECTION 34. If the grantor dies or removes from the commonwealth
 2 without having acknowledged his deed, the due execution thereof may be
 3 proved before any court of record in this commonwealth by the testi-
 4 mony of a subscribing witness thereto.

Proof of
 execution if
 grantor is dead
 or non-resident.
 1697, 21, § 2.

1783, 37, § 4.
 R. S. 59, § 14.
 G. S. 89, § 20.

P. S. 120, § 7.
 R. L. 127, § 10.
 1 Mass. 5S.

174 Mass. 292.
 185 Mass. 107.

1 SECTION 35. If all the subscribing witnesses to the deed are also
 2 dead or out of the commonwealth, the due execution thereof may be
 3 proved before such court by proving the handwriting of the grantor
 4 and of a subscribing witness.

Proof if wit-
 nesses are dead
 or non-resident.
 1787, 5.
 R. S. 59, § 15.

G. S. 89, § 21.
 P. S. 120, § 8.

R. L. 127, § 11.
 8 Met. 355.

174 Mass. 292.
 185 Mass. 107.

1 SECTION 36. If a grantor refuses to acknowledge his deed, the
 2 grantee or any person who claims under him may apply to a court of
 3 record in the county where the land lies or where the grantor or a sub-
 4 scribing witness to the deed resides, and such court shall thereupon
 5 issue a summons to the grantor to appear at a certain time and place
 6 to hear the testimony of the subscribing witnesses. Such summons,
 7 with a copy of the deed annexed, shall be served seven days at least
 8 before the time therein assigned for proving the deed, and at such hear-
 9 ing its due execution may be proved by the testimony of one or more of
 10 the subscribing witnesses.

Proof if
 grantor refuses
 to acknowledge.
 C. L. 32, § 4.
 1697, 21, § 3.
 1783, 37, § 5.
 R. S. 59,
 §§ 16, 17.
 G. S. 89,
 §§ 22, 23.
 P. S. 120, § 9.
 R. L. 127, § 12.

1 SECTION 37. If a grantor refuses to acknowledge his deed and the
 2 subscribing witnesses thereto are all dead or out of the commonwealth,
 3 its execution may be proved before any court of record in this common-
 4 wealth by proving the handwriting of the grantor and of a subscribing
 5 witness, the court first summoning the grantor for the purpose and in
 6 the manner provided in the preceding section.

Proof if
 grantor refuses
 to acknowledge
 and witnesses
 are dead or
 non-resident.
 R. S. 59, § 18.
 G. S. 89, § 24.
 P. S. 120, § 10.

R. L. 127, § 13.

1 SECTION 38. A person interested in a deed which has not been
 2 acknowledged may, before or during proceedings before a court for
 3 proof of its execution, file in the proper registry of deeds a copy thereof,
 4 compared with the original by the register; and the filing of such copy
 5 shall for thirty days thereafter have the same effect as the recording
 6 of the deed, if the deed is within that time duly proved and recorded;
 7 or if, at the expiration of said thirty days, such proceedings are pending,
 8 the effect of filing such copy shall continue until the expiration of seven
 9 days after the termination of such proceedings.

Copy of deed
 not acknowl-
 edged may be
 filed in registry
 of deeds.
 Effect.
 C. L. 32, § 4.
 1697, 21, § 3.
 1783, 37, § 5.
 R. S. 59,
 §§ 19, 20.
 G. S. 89,
 §§ 25, 26.
 P. S. 120, § 11.

R. L. 127, § 14.

Unwitnessed deeds not to be so proved. SECTION 39. The execution of a deed shall not be proved in the manner before provided unless it has at least one subscribing witness. 1 2
 R. S. 59, § 21. G. S. 89, § 27. P. S. 120, § 12. R. L. 127, § 15.

Enorsement of certificate of proof. SECTION 40. A certificate of proof of the execution of a deed shall be endorsed upon it or annexed thereto by the clerk or register of the court or by the judge before whom such proof is made, and the certificate shall state whether the grantor was present at the hearing. 1 2 3 4
 1783, 37, § 5. R. S. 59, § 17, 22. G. S. 89, § 23, 28. P. S. 120, § 13. R. L. 127, § 16. 185 Mass. 107.

Proof of deed outside the commonwealth. SECTION 41. The proof of a deed or other instrument, if made without the commonwealth in some state, territory, district or dependency of the United States, may be made before any of the persons enumerated in clause (b) of section thirty; provided, however, that a certificate of authority as provided in section thirty-three shall be attached thereto; if without the United States or any dependency thereof, such proof may be made before any of the persons enumerated in clause (c) of said section thirty. 1 2 3 4 5 6 7 8
 1894, 253, §§ 3, 4, 6. R. L. 127, §§ 19, 20, 22.

Forms of acknowledgment, etc. SECTION 42. The forms set forth in the appendix to this chapter for taking acknowledgments to deeds and other instruments and for certifying the authority of officers taking proofs or acknowledgments may be used; but this shall not prevent the use of any other forms heretofore lawfully used. 1 2 3 4 5
 1894, 253, §§ 1, 5. 1895, 460. R. L. 127, §§ 18, 21, 23.

[See Appendix, Forms (13) to (16).]

TITLE BY DECREE OF COURT.

Final decree in equity to vest title if deed, etc., is not executed as directed. SECTION 43. Whenever a final decree in equity shall be made by the supreme judicial or superior court directing that a deed, conveyance or release of any real estate or interest therein shall be made, and the party directed to make such deed, conveyance or release does not duly execute it within the time specified in the decree, the decree itself shall operate to vest title to the real estate or interest in the party entitled thereto by the decree as fully and completely as if such deed, conveyance or release had duly been executed by the party directed to make it. 1 2 3 4 5 6 7 8
 1910, 376, § 1. 216 Mass. 426, 500. 255 Mass. 607.

Recording of certified copy of decree to have same effect as recorded deed, etc. SECTION 44. The recording or registration of a duly certified copy of such decree, attested by the clerk or assistant clerk of the court where made, in the registry of deeds of the district where said real estate is situated, shall have the same force and effect as if a duly executed deed, conveyance or release had so been recorded or registered. 1 2 3 4 5
 1910, 376, §§ 2, 3. 255 Mass. 607.

BARRING OF ESTATES TAIL.

Tenant in tail may convey in fee simple. SECTION 45. A person seized of land as tenant in tail may convey such land in fee simple by a deed in common form, as if he were seized thereof in fee simple; and such conveyance shall bar the estate tail and all remainders and reversions expectant thereon. 1 2 3 4
 1791, 60, § 1. R. S. 59, § 3. G. S. 89, § 4. P. S. 120, § 15. R. L. 127, § 24. 5 Gray, 523. 147 Mass. 17. 9 Mass. 161. 4 Allen, 466. 158 Mass. 74. 15 Pick. 104. 99 Mass. 364. 159 Mass. 424. 10 Met. 366. 102 Mass. 262. 212 U. S. 208. 3 Gray, 162. 138 Mass. 376.

1 SECTION 46. If land is held by one person for life with a vested re- Life tenant
2 mainder in tail in another, the tenant for life and the remainderman in tail
3 convey such land in fee simple by their deed or deeds in common form, as may convey in
4 if the remainder had been limited in fee simple; and such deed or deeds fee simple.
5 shall bar the estate tail and all remainders and reversions expectant 1804, 59.
6 thereon. R. S. 59, § 4.
G. S. 89, § 5.

P. S. 120, § 16. R. L. 127, § 25. 147 Mass. 17.

1 SECTION 47. Equitable estates tail, in possession or remainder, and Barring of
2 all remainders and reversions expectant thereon, may be barred in the equitable es-
3 same manner as legal estates tail and the remainders and reversions tate-tail.
4 expectant thereon. 1851, 14, § 1.
G. S. 89, § 6.

P. S. 120, § 17. R. L. 127, § 26.

1 SECTION 48. The person to whom an equitable fee simple is conveyed Trustee may
2 pursuant to the preceding section shall, upon request therefor, be en- be required to
3 titled to a conveyance of the outstanding legal estate from the person in convey legal
4 whom such legal estate is then or thereafter vested in trust. estate.
1851, 14, § 2.
G. S. 89, § 7.

P. S. 120, § 18. R. L. 127, § 27.

CONVEYANCE OF ESTATES SUBJECT TO REMAINDER, ETC.

1 SECTION 49. If land is subject to a vested or contingent remainder, Probate court
2 executory devise, conditional limitation, reversion or power of appoint- may appoint
3 ment, the probate court for the county where such land is situated may, trustees to
4 upon the petition of any person having an estate or interest therein, either convey or
5 present or future, vested or contingent, and after notice and other pro- mortgage.
6 ceedings as hereinafter required, appoint one or more trustees and author- 1868, 287,
7 ize him or them to sell and convey such land or any part thereof in fee §§ 1, 2.
8 simple, if such sale and conveyance appears to the court to be necessary 1869, 331.
9 or expedient, or to mortgage the same for such an amount, on such terms, 1871, 322,
10 and for such purposes as may seem to the court judicious or expedient; §§ 1-3.
11 and such conveyance or mortgage shall be valid and binding upon all 1873, 280, § 2.
12 parties. P. S. 120, § 19.
1895, 183, § 1.
1897, 136.
R. L. 127,
§§ 28, 29.
1914, 108.
1917, 306,
§§ 1, 2.
1923, 71.

122 Mass. 243. 123 Mass. 280. 233 Mass. 547. 261 Mass. 373.

1 SECTION 50. Notice of a petition under the preceding section shall Notice and
2 be given in such manner as the court may order to all persons who are appointment
3 or who may become interested in the land to which the petition relates, of guardian
4 and to all persons whose issue, not in being, may become interested ad litem or
5 therein; and the court shall of its own motion in every case appoint a next friend.
6 suitable person to appear and act therein as the next friend of all minors, 1868, 287, § 2.
7 persons not ascertained, and persons not in being, who are or may be- 1871, 322, § 2.
8 come interested in such land; and provisions of sections thirty-four and P. S. 120, § 20.
9 thirty-five of chapter two hundred and one consistent herewith shall 1895, 183, § 2.
10 apply in the case of such appointment. R. L. 127, § 30.
1917, 306, § 3.
191 Mass. 315.

1 SECTION 51. A trustee appointed under section forty-nine shall give Trustee to
2 bond in such form and for such amount as the court appointing him give bond, and
3 may order, and he shall receive and hold, invest or apply the proceeds hold or apply
4 of any sale or mortgage made by him for the benefit of the persons who proceeds of
5 would have been entitled to the land if such sale or mortgage had sale or
6 not been made, and the probate court of any county where any part mortgage.
7 of such land is situated shall have jurisdiction of all matters thereafter 1868, 287,
8 arising relative to such trust. §§ 1, 3.
1871, 322, § 1.
P. S. 120, § 21.
1895, 183, § 2.
R. L. 127, § 31.

1917, 306, § 4. 233 Mass. 547. 261 Mass. 373.

Sale of land subject to charges for payment of annuities, etc., and decrees ensuring such payments.
 1879, 125, §§ 1, 2.
 P. S. 120, § 22.
 R. L. 127, § 32.
 1923, 96.

SECTION 52. If land is charged with the payment of money, either in fixed amounts or in annuities for a life or lives or for years, the supreme judicial or probate court for the county where any part of such land is situated may upon the petition of the persons holding title thereto subject to the charge of such payment, and after notice and a hearing, authorize them to sell and convey by private sale or public auction the whole or any portion of such land in fee simple and free from such charges, whether present or future, certain or contingent; and it shall in such ease provide by its decree for the payment of the amounts charged upon such land by placing the whole or any portion of the proceeds of the sale thereof in the hands of a trustee appointed by it, by the purchase of annuities for the persons entitled to receive the amounts so charged, or by any other means which shall be considered just and reasonable. Such trustees shall give bond in such sum as the court may order, shall, under the direction of the court, manage and account for the trust fund and shall distribute the income thereof according to its decree.

INSTRUMENTS OF DEFEASANCE.

Effect of unrecorded instruments of defeasance.
 1802, 33.
 R. S. 59, § 27.
 G. S. 89, § 15.
 P. S. 120, § 23.
 R. L. 127, § 33.
 5 Pick. 450.
 7 Pick. 157.
 12 Met. 157.
 2 Cush. 494.

SECTION 53. If a deed purports to contain an absolute conveyance of land, but is made defeasible by a deed, bond or other instrument, the original deed shall not be thereby affected, as against any person other than the maker of the instrument of defeasance and his heirs and devisees and persons having actual notice of it, unless such instrument is recorded in the registry of deeds for the county or district where the land to which it relates is situated.

6 Cush. 170. 5 Gray, 505. 130 Mass. 50. 145 Mass. 389.

DISCHARGE OF MORTGAGES.

Discharge on margin of record or by separate instrument, etc.
 1697, 21, § 4.
 1783, 37, § 6.
 R. S. 59, § 33.
 G. S. 89, § 30.
 1870, 171.
 P. S. 120, §§ 24, 26.
 R. L. 127, § 34.
 1907, 294.
 1908, 149.
 15 Gray, 461.
 8 Allen, 165.
 134 Mass. 580.
 226 Mass. 582.
 231 Mass. 270.
 235 Mass. 14.

SECTION 54. A mortgage may be discharged by an entry acknowledging satisfaction thereof, made on the margin of the record of the mortgage in the registry of deeds and signed by the mortgagee, his executor, administrator, successor or assignee, and his signature witnessed by the register of deeds or by the assistant register of deeds, or by some person employed in the registry of deeds designated by the register for that purpose by a writing which shall be recorded in said registry; and such entry shall have the same effect as a deed of release duly acknowledged and recorded. One of two or more joint holders of a mortgage may so discharge it or he may discharge it by a deed of release duly acknowledged and recorded. A mortgage may also be discharged by a written acknowledgment of payment or satisfaction of the debt thereby secured, or of the conditions therein contained, signed and sealed by the mortgagee, his executor, administrator, successor or assignee. Such instrument shall have the same effect as a deed of release, shall be valid if executed by one of two or more joint holders of a mortgage and may be recorded when duly acknowledged or on proof of its execution in accordance with sections thirty-four to forty-one, inclusive.

Mortgagee liable for refusing to discharge.
 1697, 21, § 4.

SECTION 55. If a mortgagee, his executor, administrator, successor or assignee, after full performance of the condition of his mortgage, whether before or after breach of such condition, refuses or neglects for

4 seven days after request therefor and after a tender of his reasonable 1783, 37, § 6.
 5 charges, to make such discharge or to execute and acknowledge a deed R. S. 59, § 34
 6 of release of the mortgage, he shall be liable in tort for all damages G. S. 89, § 31
 7 caused by such neglect or refusal. P. S. 120, § 25.
 R. L. 127, § 35

225 Mass. 75.

APPENDIX.

STATUTORY FORMS OF INSTRUMENTS RELATING TO REAL ESTATE.

(1) *Warranty Deed.*

of _____, County, _____ (being unmarried), for 1912, 502, § 2.
 consideration paid, grant to _____ of _____ with warranty
 covenants _____ the land in _____
 _____ (description and encumbrances, if any)
 wife of said grantor, release to said grantee all rights of
 dower and homestead and other interests therein.
 Witness _____ hand and seal this _____ day of _____
 _____ (Seal.)
 (Here add acknowledgment.)

(2) *Quitclaim Deed.*

of _____, County, _____ (being unmarried), 1912, 502, § 3.
 for consideration paid, grant to _____ of _____ with quitclaim
 covenants _____ the land in _____
 _____ (description and encumbrances, if any)
 wife of said grantor, release to said grantee all rights of
 dower and homestead and other interests therein.
 Witness _____ hand and seal this _____ day of _____
 _____ (Seal.)
 (Here add acknowledgment.)

(3) *Deed of Executor, Administrator, Trustee, Guardian, Conservator, Receiver or Commissioner.*

_____ executor of the will of _____ administrator of the estate 1912, 502, § 4.
 of _____ trustee under _____ guardian of _____ conserva-
 tor of _____ receiver of the estate of _____ commissioner
 by the power conferred by _____, and every other power, for
 dollars paid, grant to _____ the land in _____
 _____ (description)
 Witness _____ hand and seal this _____ day of _____
 _____ (Seal.)
 (Here add acknowledgment.)

(4) *Release.*

of _____, County, _____ for consideration paid, re- 1912, 502, § 5.
 lease to _____ of _____ the land in _____
 _____ (description)
 wife of said _____ release to said _____ all
 rights of dower and homestead and other interests therein.
 Witness _____ hand and seal this _____ day of _____
 _____ (Seal.)
 (Here add acknowledgment.)

(5) *Mortgage Deed.*

1912, 502, § 6. of _____, _____ County, _____ for consideration paid, grant
 1913, 369. to _____, _____ of _____ with mortgage covenants, to secure the pay-
 ment of _____ dollars in _____ years with _____ per cent
 interest per annum, payable semi-annually, as provided in _____ note of
 even date, the land in _____
 _____ (description and encumbrances, if any)
 This mortgage is upon the statutory condition, for any breach of which the mort-
 gagee shall have the statutory power of sale.
 _____ wife of said mortgagor, _____ release to the mortgagee all
 rights of dower and homestead and other interests in the mortgaged premises.
 Witness _____ hand and seal this _____ day of _____ (Seal.)
 (Here add acknowledgment.)

(6) *Co-operative Bank Mortgage.*

1913, 369. of _____, _____ County, Massachusetts (being unmarried), for considera-
 273 Mass. 477. tion paid, grant to _____ Co-operative Bank, situated in _____ County,
 Massachusetts, with mortgage covenants, to secure the payment of _____
 dollars, and interest and fines _____ as provided in _____ note of
 even date, the land in _____ (description and encumbrances, if any).
 _____ hereby transfer and pledge to the said mortgagee
 shares in the _____ series of its capital stock as collateral security for the per-
 formance of the conditions of this mortgage, and _____ said note upon
 which shares said sum of _____ dollars has been advanced to
 by the mortgagee. The monthly payments under this mortgage are
 dollars. In the event of an assignment of this mortgage, interest on the unpaid
 balance of the principal shall be at the rate of _____ per cent per annum.
 This mortgage is upon the statutory co-operative bank mortgage condition, for
 any breach of which the mortgagee shall have the statutory co-operative bank
 power of sale.
 I, _____, wife of said mortgagor, release to the mortgagee all rights of dower
 and homestead and other interests in the mortgaged premises.
 Witness _____ hand and seal this _____ day of _____ (Seal.)
 (Here add acknowledgment.)

(7) *Extension of Mortgage.*

1912, 502, § 7. holder of a mortgage by _____ to _____ dated _____ re-
 corded _____ with _____ Deeds, book _____, page _____,
 and _____ owner of the equity of redemption of the mortgaged premises,
 agree each for _____ sel _____, heirs, representatives and assigns,
 that the time provided in said mortgage for payment of the principal sum now
 secured thereby, namely _____ dollars, is hereby extended to _____,
 and the rate of interest hereafter shall be _____ per cent per annum, and
 said owner agrees to perform and observe the condition and covenants of said
 mortgage as so extended, and to pay the principal and interest secured thereby
 when due hereunder.
 Witness _____ hand and seal this _____ day of _____ (Seal.)
 (Here add acknowledgment.)

(8) *Partial Release of Mortgage.*

1912, 502, § 8. the holder of a mortgage by _____ to _____ dated _____ re-
 corded with _____ Deeds, book _____, page _____, for con-
 sideration paid, release to _____ all interest acquired under said mortgage
 in the following described portion of the mortgaged premises: _____ (description)
 Witness _____ hand and seal this _____ day of _____ (Seal.)
 (Here add acknowledgment.)

(9) *Assignment of Mortgage.*

holder of a mortgage from _____ to _____ dated _____ re- 1912, 502, § 9.
 corded with _____ Deeds, book _____, page _____, assign
 said mortgage and the note and claim secured thereby to _____
 Witness _____ hand and seal this _____ day of _____
 (Here add acknowledgment.) (Seal.)

(10) *Discharge of Mortgage.*

holder of a mortgage from _____ to _____ dated _____ re- 1912, 502, § 10
 corded with _____ Deeds, book _____, page _____,
 acknowledge satisfaction of the same.
 Witness _____ hand and seal this _____ day of _____
 (Here add acknowledgment.) (Seal.)

(11) *Foreclosure Deed under Power of Sale in Mortgage.*

holder of a mortgage from _____ to _____ dated _____ re- 1912, 502, § 11.
 corded with _____ Deeds, book _____, page _____, by the
 power conferred by said mortgage and every other power, for _____ dol-
 lars paid, grant to _____ the premises conveyed by said mortgage.
 Witness _____ hand and seal this _____ day of _____
 (Here add acknowledgment.) (Seal.)

(12) *Affidavit of Sale under Power of Sale in Mortgage.*

_____ named in the foregoing deed, make oath and say that 1912, 502, § 12.
 the principal _____ interest _____ obligation _____ men-
 tioned in the mortgage above referred to was not paid or tendered or performed
 when due or prior to the sale, and that I published on the _____ day of
 19____, in the _____, a newspaper published or by its title
 page purporting to be published in _____ aforesaid and having a circula-
 tion therein, a notice of which the following is a true copy:
 (Insert advertisement.)
 Pursuant to said notice at the time and place therein appointed, I sold the
 mortgaged premises at _____ public auction by _____, an auc-
 tioneer, to _____, above named, for _____ dollars, bid by him,
 being the highest bid made therefor at said auction.
 Sworn to by the said _____ 19____, before me

FORMS OF ACKNOWLEDGMENTS, ETC.

(13) *Acknowledgment of Individual acting in his Own Right.*

(Caption specifying the state and place where the acknowledgment is taken.)

On this _____ day of _____ 19____, before me personally appeared 1894, 253, § 1.
 A B (or A B and C D), to me known to be the person (or persons) described in R. L. 127, § 18.
 and who executed the foregoing instrument, and acknowledged that he (or they)
 executed the same as his (or their) free act and deed.
 (Signature and title of officer taking acknowledgment. Seal, if required.)

(14) *Acknowledgment of Individual acting by Attorney.*

(Caption specifying the state and place where the acknowledgment is taken.)

On this _____ day of _____ 19____, before me personally appeared 1894, 253, § 1.
 A B, to me known to be the person who executed the foregoing instrument in R. L. 127, § 18.
 behalf of C D, and acknowledged that he executed the same as the free act and
 deed of said C D.
 (Signature and title of officer taking acknowledgment. Seal, if required.)

(15) *Acknowledgment of a Corporation or Joint Stock Association.*

(Caption specifying the state and place where the acknowledgment is taken.)

1894, 253, § 1.
R. L. 127, § 18.

On this day of 19 , before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association) and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (or association).

(Signature and title of officer taking acknowledgment. Seal, if required.)

[If the corporation or association has no corporate seal, the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that" shall be omitted, and at the end of the affidavit shall be added the words "and that said corporation (or association) has no corporate seal".]

(16) *Certificate of Authority of Officer taking Acknowledgment.*

(Caption specifying the state, county or place where the authentication is made.)

1894, 253, § 5.
R. L. 127, § 21.

I, , clerk of the in and for said county, which court is a court of record having a seal (or, I, , the secretary of state of such state or territory), do hereby certify that , by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory or district), and further that I am well acquainted with the handwriting of said , and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this day of , 19 .

(Signature and title of officer certifying. Seal.)

CHAPTER 184.

GENERAL PROVISIONS RELATIVE TO REAL PROPERTY.

SECT.

1. Aliens may take and convey real property.
2. Contingent estates to be alienable.
3. Limitation of taking effect of contingent remainders.
4. Estates tail liable for debts, etc.
5. Conveyances, etc., for life, with remainder to heirs.
6. Effect of words "die without issue", etc.
7. Conveyances and devises to two or more persons.
8. Conveyances to grantor and another jointly.
9. Deed of tenant for life or years.
10. Expectant estate not to be defeated by act of owner of precedent estate, etc.
11. Limitation of two preceding sections.
12. Removal of fixtures by life tenant.

SECT.

13. Conditional sales of fixtures, portable or sectional buildings, etc. Notice; contents, recording.
14. Provision for sale of standing wood during life estate, etc.
15. Proceedings affecting title to realty binding on third parties, when. Memorandum; contents, recording.
16. Certificate of final disposition of proceedings. Recording.
17. Judgments affecting land.
18. Foreible entry forbidden.
19. Entry for breach of condition.
20. Effect of descent or discontinuance.
21. Grantor to make encumbrances known to grantee.
22. Grantor liable for damages in removing apparent encumbrance.
23. Restrictions or conditions, etc., on real property.

1 SECTION 1. Aliens may take, hold, transmit and convey real prop-
 2 erty, and no title to real property shall be invalid on account of the
 3 alienage of a former owner.

Aliens may
 take and
 convey real
 property.

1852, 29; 86.
 G. S. 90, § 38.

P. S. 126, § 1.
 R. L. 134, § 1.

15 Pick. 345.
 100 Mass. 527.

1 SECTION 2. If a contingent remainder, executory devise or other
 2 estate in expectancy is so granted or limited to a person that in case of
 3 his death before the happening of the contingency the estate would
 4 descend to his heirs in fee simple, he may, before the happening of the
 5 contingency, sell, assign or devise the land subject to the contingency.

Contingent
 estates to be
 alienable
 R. S. 90, § 30.
 G. S. 90, § 37.
 P. S. 126, § 2.
 R. L. 134, § 2.
 7 Met. 363.

3 Gray, 398.
 8 Allen, 425.
 12 Allen, 345
 101 Mass. 336.

109 Mass. 513.
 121 Mass. 198.
 122 Mass. 535
 125 Mass. 356.

126 Mass. 230.
 132 Mass. 205.
 139 Mass. 262.
 150 Mass. 168.

161 Mass. 506.
 182 Mass. 106.
 200 Mass. 498.
 267 Mass. 203.

1 SECTION 3. A contingent remainder shall take effect, notwithstand-
 2 ing any determination of the particular estate, in the same manner in
 3 which it would have taken effect if it had been an executory devise or
 4 a springing or shifting use, and shall, as well as such limitations, be
 5 subject to the rule respecting remoteness known as the rule against per-
 6 petuities, exclusive of any other supposed rule respecting limitations
 7 to successive generations or double possibilities; but this section, ex-
 8 cept so far as declaratory of existing law, shall apply only to instru-
 9 ments executed on or after April sixth, nineteen hundred and sixteen,
 10 and to wills and codicils revived or confirmed by a will or codicil ex-
 11 ecuted on or after said date.

Limitation of
 taking effect
 of contingent
 remainders.
 1916, 108,
 §§ 1, 2.
 199 Mass. 552.

1 SECTION 4. Land held in fee tail, except an estate tail in remainder,
 2 shall be liable for the debts of the tenant in tail, both in his lifetime
 3 and after his decease, as if held in fee simple; and if taken on execution
 4 or sold by executors, administrators, guardians or conservators, the
 5 creditor or purchaser shall hold such land in fee simple.

Estates tail
 liable for
 debts, etc.
 1791, 60, § 2.
 R. S. 90, § 29.
 G. S. 90, § 36.
 P. S. 126, § 3.

R. L. 134, § 3.

1915, 23.

4 Mass. 189.

3 Gray, 162.

1 SECTION 5. If land is granted or devised to a person and after his
 2 death to his heirs in fee, however the grant or devise is expressed, an
 3 estate for life only shall vest in such first taker, and a remainder in fee
 4 simple in his heirs.

Conveyances,
 etc., for life,
 with remainder
 to heirs.
 1 Co. R. 219.

1791, 60, § 3
 R. S. 59, § 9
 G. S. 89, § 12.
 P. S. 126, § 4
 R. L. 134, § 1.

9 Pick. 135.
 1 Met. 281.
 7 Met. 169
 13 Met. 486.
 4 Gray, 353.

12 Gray, 49
 16 Gray, 568.
 99 Mass. 454
 131 Mass. 321.

149 Mass. 200.
 157 Mass. 52.
 163 Mass. 69.
 214 Mass. 172.

1 SECTION 6. In a limitation of real or personal property by deed, will
 2 or other instrument in writing, executed after April thirtieth, eighteen
 3 hundred and eighty-eight, the words "die without issue", or "die with-
 4 out leaving issue", or "have no issue", or "die without heirs of the
 5 body", or other words importing either a want or failure of issue of
 6 any person in his lifetime or at the time of his death, or an indefinite
 7 failure of his issue, shall, unless a contrary intention clearly appears
 8 by the instrument creating such limitation, mean a want or failure of
 9 issue in the lifetime or at the time of the death of such person, and not
 10 an indefinite failure of his issue.

Effect of words
 "die without
 issue", etc.
 1888, 273.
 R. L. 134, § 5.
 153 Mass. 374.
 183 Mass. 165.
 186 Mass. 336.
 201 Mass. 495.
 202 Mass. 512.

Conveyances and devisees to two or more persons.
1785, 62, § 4.
R. S. 59, §§ 10, 11.
G. S. 89, §§ 13, 14.
P. S. 126, § 5, 6.
1885, 237.
R. L. 134, § 6.
5 Mass. 521.

SECTION 7. A conveyance or devise of land to two or more persons or to husband and wife, except a mortgage or a devise or conveyance in trust, shall create an estate in common and not in joint tenancy, unless it is expressed in such conveyance or devise that the grantees or devisees shall take jointly, or as joint tenants, or in joint tenancy, or to them and the survivor of them, or unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy.

7 Mass. 131.	4 Cush. 111.	13 Allen, 213.	182 Mass. 363.
8 Mass. 274.	5 Cush. 153.	108 Mass. 254.	213 Mass. 50.
11 Mass. 469.	6 Gray, 428.	110 Mass. 273, 396.	216 Mass. 405.
16 Mass. 59.	8 Gray, 154.	141 Mass. 219.	241 Mass. 168.
16 Pick. 491.	16 Gray, 308.	154 Mass. 537.	259 Mass. 486.
22 Pick. 556.	2 Allen, 115.	158 Mass. 11.	265 Mass. 428.

Conveyances to grantor and another jointly.
1918, 93.
265 Mass. 428.

SECTION 8. Real estate, including any interest therein, may be transferred by a person to himself jointly with another person in the same manner in which it might be transferred by him to another person.

Deed of tenant for life or years.
R. S. 59, § 6.
G. S. 89, § 9.
P. S. 126, § 7.
R. L. 134, § 7.

SECTION 9. A conveyance by a tenant for life or years which purports to grant a greater estate than he possesses or can lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant can lawfully convey.

Expectant estate not to be defeated by act of owner of precedent estate, etc.
R. S. 59, § 7.

SECTION 10. No expectant estate shall be defeated or barred by an alienation or other act of the owner of the precedent estate, nor by the destruction of such precedent estate by disseisin, forfeiture, surrender or merger.

G. S. 89, § 10.	P. S. 126, § 8.	R. L. 134, § 8.	171 Mass. 504.
-----------------	-----------------	-----------------	----------------

Limitation of two preceding sections.
R. S. 59, § 8.
G. S. 89, § 11.
P. S. 126, § 9.
R. L. 134, § 9.

SECTION 11. The two preceding sections shall not prevent the barring of estates tail in the manner provided in chapter one hundred and eighty-three, nor an expectant estate from being defeated in a manner provided for or authorized by the person creating such estate.

Removal of fixtures by life tenant.
1870, 170.
P. S. 126, §§ 10, 11.
R. L. 134, § 10.

SECTION 12. Fixtures annexed to the freehold by a life tenant or by his assigns may be removed during the continuance of the life estate or within a reasonable time thereafter; and in determining what are fixtures, the common law rules prevailing between a landlord and a tenant for years shall govern. This section shall not affect the right of the owner of land to make a different provision by will or otherwise as to the removal of fixtures, nor impair or affect the provisions of any will or other instrument by which an estate for life in land is created or limited.

Conditional sales of fixtures, portable or sectional buildings, etc.
Notice; contents, recording.
1912, 271.
1918, 257, § 382.
1919, 5.
1920, 2.
1929, 261.
228 Mass. 205.
240 Mass. 438.

SECTION 13. No conditional sale of heating apparatus, plumbing goods, ranges, buildings of wood or metal construction of the class commonly known as portable or sectional buildings, or other articles of personal property, which are afterward wrought into or attached to real estate, whether they are fixtures at common law or not, shall be valid as against any mortgagee, purchaser or grantee of such real estate, unless not later than ten days after the delivery thereon of such personal property a notice such as is herein prescribed is recorded in the registry of deeds for the county or district where the real estate lies. The notice

10 shall be signed by the vendor or a person claiming under him and shall
 11 contain the names of the contracting parties, the name of the record
 12 owner of the real estate at the time of recording the notice, the fact that
 13 it is agreed that title to such personal property shall remain in the
 14 vendor until the purchase price is paid, the terms of payment and the
 15 amount of such purchase price remaining unpaid, and descriptions, suf-
 16 ficiently accurate for identification, of such real estate and the personal
 17 property delivered or to be delivered thereon. If the sale is of several
 18 articles for a lump sum greater than the value of the personal property
 19 delivered or to be delivered on the real estate, the notice shall also
 20 state such lump sum and such value. The notice shall be indexed
 21 under the name of such record owner, and a release of title in any such
 22 article of personal property may be recorded at any time.

241 Mass. 69.
 259 Mass. 319
 272 Mass. 56.
 273 Mass. 349,
 477.

1 SECTION 14. If the supreme judicial court or the probate court for
 2 the county where the land lies finds that wood or timber, standing on
 3 land the use and improvement of which belongs, for life or otherwise,
 4 to a person other than the owner of the fee therein, has ceased to im-
 5 prove by growth, or ought for any cause to be cut, it may appoint a
 6 trustee to sell and convey said wood or timber to be cut and carried
 7 away within a time to be limited in the order of sale, to hold and invest
 8 the proceeds thereof after paying therefrom the expenses of such sale,
 9 to pay over the income, above the taxes and other expenses of the
 10 trust, to the person entitled to such use and improvement while his
 11 right thereto continues, and thereafter to pay the principal of the fund
 12 to the owner of such land. If wood or timber has been cut as aforesaid,
 13 no more thereof shall be cut on such land by the person entitled to such
 14 use and improvement without permission from said court. Such sale, if
 15 authorized by a probate court, shall be made in the manner provided by
 16 law for the sale of real property by guardians; and if such sale is au-
 17 thorized by the supreme judicial court, the trustees shall give to such
 18 person as the court shall designate a bond, for the use and benefit of the
 19 persons interested in the proceeds of the sale, conditioned on the faith-
 20 ful discharge of the trust; and the court may remove the trustee, and
 21 appoint another in his stead.

Provision for
 sale of standing
 wood during
 life estate, etc.
 1818, 96.
 R. S. 60, §§ 33-
 37
 G. S. 90, §§ 39-
 43.
 1869, 249.
 P. S. 126, § 12.
 R. L. 134, § 11.
 3 Op. A. G. 531.

1 SECTION 15. A writ of entry or other proceeding, either at law or in
 2 equity, which affects the title to real property or the use and occupation
 3 thereof or the buildings thereon, shall not have any effect except against
 4 the parties thereto, their heirs and devisees and persons having actual
 5 notice thereof, until a memorandum containing the names of the parties
 6 to such proceeding, the court in which it is pending, the date of the
 7 writ or other commencement thereof, the name of the town where the
 8 real property liable to be affected thereby lies and a description of such
 9 real property sufficiently accurate for identification is recorded in the
 10 registry of deeds for the county or district where such real property
 11 lies; but this section shall not apply to attachments, levies of execution
 12 or proceedings in the probate courts.

Proceedings
 affecting title
 to realty bind-
 ing on third
 parties, when.
 Memorandum;
 contents,
 recording.
 1877, 229,
 §§ 1, 3.
 P. S. 126, § 13.
 1897, 463.
 R. L. 134, § 12.
 236 Mass. 252.
 263 Mass. 212.

1 SECTION 16. At any time after final judgment or a decree in favor of
 2 the defendant, or after the discontinuance, dismissal or other final dis-
 3 position, by consent of parties or otherwise, of a proceeding mentioned
 4 in the preceding section, or in case of the non-entry of the writ, petition
 5 or bill of complaint, the clerk of the court wherein such judgment, decree,

Certificate of
 final disposition
 of proceedings.
 Recording.
 1877, 229, § 2.
 P. S. 126, § 14
 R. L. 134, § 13

discontinuance, dismissal or other final disposition is recorded, or out of which such writ issued or to which such petition or bill of complaint was addressed, shall upon demand give a certificate of the fact of such judgment, decree, discontinuance, dismissal, final disposal or non-entry, and such certificate may be recorded in the registry in which the original record mentioned in said section was made.

Judgments affecting land. 1700-1, 14, § 1. 1892, 289. R. L. 134, § 14.

SECTION 17. A judgment or decree, at law or in equity, rendered after June eighth, eighteen hundred and ninety-two, affecting the title to real property, shall not have any effect except against the parties thereto, their heirs and devisees and persons having actual notice thereof, unless a certified copy of the record thereof has been recorded in the registry of deeds for the county or district where the land lies, with a memorandum of the town where the land lies and a description thereof sufficiently accurate for identification if the record of the judgment or decree does not give those particulars. If a notice of the pendency of the action has been duly recorded in the registry of deeds, the record of the judgment or decree may be made within sixty days after its rendition, and the entry of an ordinary attachment of real property in the registry of deeds shall be considered notice of the pendency of the action.

Forcible entry forbidden. 1700-1, 14, § 1. 1784, 8, § 1. R. S. 104, § 1.

SECTION 18. No person shall make an entry into land or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but in a peaceable manner.

1851, 233, § 76.
G. S. 137, § 1.
P. S. 126, § 15.

R. L. 134, § 15.
5 Met. 343.
4 Cush. 141.

1 Allen, 215.
121 Mass. 309.
170 Mass. 29.

Entry for breach of condition. 1898, 514. R. L. 134, § 16. 1918, 257, § 383. 1919, 5. 1920, 2.

SECTION 19. If real property has been conveyed by deed on a condition therein expressed, which is not a mortgage, the grantor, his heirs and devisees upon breach of such condition may enter on the granted premises in order to revest the title; and a certificate of such entry, made and sworn to before any officer duly qualified to administer oaths by two competent witnesses and recorded within thirty days after such entry in the registry of deeds for the county or district where the land lies, or a duly certified copy of the record of such certificate, shall, after the expiration of three years from such entry, be prima facie evidence of such breach and entry. If a grantor, his heirs or devisees made such entry and certificate and filed the certificate as herein required prior to June ninth, eighteen hundred and ninety-eight, said certificate or a duly certified copy of the record thereof shall have like force and effect.

Effect of descent or discontinuance.

SECTION 20. No descent or discontinuance shall take away or defeat any right of entry or of action for the recovery of real property.

R. S. 101, § 5; 119, § 13.
G. S. 134, § 4; 154, § 13.

P. S. 126, § 16.
R. L. 134, § 17.

Grantor to make encumbrances known to grantee. 1855, 177, § 1. G. S. 89, § 16. P. S. 126, § 17. R. L. 134, § 18.

SECTION 21. If real property upon which any encumbrance exists is conveyed by deed or mortgage, the grantor, in whatever capacity he may act, shall before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such prior encumbrance so far as he has knowledge thereof.

1 SECTION 22. Whoever conveys real property by a deed or mortgage
 2 which contains a covenant that it is free from all encumbrances shall, if
 3 it appears by a public record that an actual or apparent encumbrance,
 4 known or unknown to him, exists thereon, be liable in an action of con-
 5 tract to the grantee, his heirs, executors, administrators, successors or
 6 assigns, for all damages sustained in removing the same.

136 Mass. 504
 138 Mass. 439.
 148 Mass. 102.

151 Mass. 237.
 204 Mass. 563.

244 Mass. 33
 253 Mass. 430.

Grantor liable
 for damages in
 removing ap-
 parent en-
 cumbrance.
 1855, 177, § 3.
 G. S. 89, § 17.
 P. S. 126, § 18.
 R. L. 134, § 19.

1 SECTION 23. Conditions or restrictions, unlimited as to time, by
 2 which the title or use of real property is affected, shall be limited to the
 3 term of thirty years after the date of the deed or other instrument or
 4 the date of the probate of the will creating them, except in cases of
 5 gifts or devises for public, charitable or religious purposes. This section
 6 shall not apply to conditions or restrictions existing on July sixteenth,
 7 eighteen hundred and eighty-seven, or to those contained in a deed, gift
 8 or grant of the commonwealth.

Restrictions or
 conditions, etc.,
 on real
 property.
 1887, 418.
 R. L. 134, § 20.
 183 Mass. 202
 185 Mass. 589
 206 Mass. 122
 209 Mass. 217.
 234 Mass. 546.
 252 Mass. 513

262 Mass. 70.

CHAPTER 185.

THE LAND COURT AND REGISTRATION OF TITLE TO LAND.

SECT.	THE LAND COURT.	SECT.	
1.	Land court, jurisdiction, sittings, rules, forms, etc.	17.	Certification of determination of issues. Further proceedings.
2.	Judges.	18.	Certification of decision of supreme judicial court.
2A.	Retirement of associate judges to part-time service.	19.	Failure to prosecute appeal, effect.
3.	Sessions.	20.	[Repealed.]
4.	Processes.	21.	Costs.
5.	Associate judge to act as judge, when.	22.	Filing of writs and pleadings.
6.	Recorder and deputy recorders.	23.	Copies of final decrees, etc., to be transmitted to assistant recorder.
7.	Duties and powers of recorder.	24.	Order of reference to examiner.
8.	Recorder and deputy recorders to act in any county.	25.	General law and equity powers of court.
9.	Validity of facsimile signature.		ORIGINAL REGISTRATION.
10.	Register of deeds, duties as assistant recorder.	26.	Petitions for registration.
10A.	Technical assistants.	26A.	Petitions for confirmation of title without registration.
11.	Oath and bond of recorder, etc.	27.	Filing of petition. Record of memorandum.
12.	Examiners of title. Chief title examiner to act as deputy recorder, when.	28.	Form and contents of petition.
13.	Court officers.	29.	Petition as to land bounding on way.
13A.	Stenographers.	30.	Petition subject to mortgage or lease.
14.	Salaries and expenses of judges, etc. Fees, disposition.	31.	Petition may include several parcels, when. Amendment by order of court.
	PROCEDURE.	32.	Amendments to petition.
15.	Issues to superior court and remedies in supreme judicial court.	33.	Filing of plans and muniments. Further survey, etc.
16.	Appeal for jury trial, when permitted. Issues, etc.	34.	Additional facts.
		35.	Agent for non-resident petitioner.

<p>SECT.</p> <p>36. Record of transfers pending petition, etc.</p> <p>37. Reference to examiner. Report, etc.</p> <p>38. Publication of notice of petition. Form of notice.</p> <p>39. Return day, mailing and posting of notice.</p> <p>40. Guardian ad litem.</p> <p>41. Answer.</p> <p>42. Order of general default. Effect.</p> <p>43. Hearing. Reference to master, etc.</p> <p>44. Dismissal, etc., of petition.</p> <p>45. Decree of confirmation and registration. Effect.</p> <p>46. Tenure of holder of certificate of title.</p> <p>47. Contents of decree.</p> <p>48. Transcription of decree in registry. Owner's duplicate certificate.</p> <p>49. Original and transfer certificates.</p> <p>50. Duplicate certificate of estates in common.</p> <p>51. Surrender of certificate, issue of substitute.</p> <p>52. Certificate an agreement running with land.</p> <p>53. Prescription, etc., not to affect registered land.</p> <p>54. Original certificate, etc., as evidence. Effect.</p> <p>55. Contents of certificate.</p> <p>56. Indexes, record books, etc.</p> <p>56A. Petitions for confirmation of title without registration, etc., governed by certain provisions of law.</p> <p>VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION.</p> <p>57. Owner of registered land may convey, etc. Effect of registration.</p> <p>58. Registration of encumbrances. Effect.</p> <p>59. Estate less than fee simple, how registered.</p> <p>60. Reference of doubtful questions.</p> <p>61. Grantee's residence, etc., to be stated.</p> <p>62. Presentation of owner's duplicate on entry of new certificate, etc. Notice of loss of certificate.</p> <p>63. Entry book. Duplicates and certified copies.</p> <p>CONVEYANCES IN FEE.</p> <p>64. Conveyance in fee of registered lands.</p> <p>65. Proceedings if deed conveys only portion of registered fee.</p> <p>66. Statement of encumbrances.</p> <p>MORTGAGES.</p> <p>67. Mortgage of registered land.</p> <p>68. Registration.</p>	<p>SECT.</p> <p>69. Discharge.</p> <p>70. Foreclosure.</p> <p>LEASES.</p> <p>71. Registration of certain leases of registered land.</p> <p>TRUSTS.</p> <p>72. Trusts in registered land.</p> <p>73. Trusts with power of sale, etc., how expressed.</p> <p>74. Proceedings on appointment of new trustee.</p> <p>75. Implied, etc., trusts, how established.</p> <p>76. Petition by trustee for registration of land.</p> <p>LEGAL INCIDENTS OF REGISTERED LAND.</p> <p>77. Incidents of registered land.</p> <p>ATTACHMENTS AND OTHER LIENS.</p> <p>78. Attachment, etc., of registered land.</p> <p>79. Memorandum thereof on owner's duplicate.</p> <p>80. Dissolution, etc., of attachments, etc.</p> <p>81. Provisions applicable to attachments to apply.</p> <p>82. Endorsement of plaintiff's attorney upon writ.</p> <p>83. Registration of orders of court, etc.</p> <p>84. Enforcement of liens on registered land.</p> <p>85. Application for certificate by execution creditors, etc.</p> <p>PENDING SUITS, JUDGMENTS, DECREES AND PARTITIONS.</p> <p>86. Registration of notice of certain proceedings, etc., required to bind third parties.</p> <p>87. Registration of certificate of judgment, etc.</p> <p>88. Registration of judgment for demandant.</p> <p>89. Registration of writ of seisin, etc., and return.</p> <p>90. Registration of certificate of judgment in writ of dower, etc.</p> <p>91. Registration of decrees.</p> <p>92. Proceedings on judgment for partition, etc.</p> <p>93. Registration of prior registered mortgage or lease with decree for partition.</p> <p>BANKRUPTCY AND INSOLVENCY.</p> <p>94. Registration of notice of warrant in insolvency or copy of decree in bankruptcy.</p> <p>95. Registration of discharge, etc.</p>
---	---

SECT.

REVERTER.

96. New certificate upon reverter of land.

TRANSFER BY DESCENT AND DEVISE.

97. Transfer by descent or devise.

98. Executor, etc., right to sell, etc., unaffected.

ASSURANCE FUND.

99. Assurance fund.

100. Custody and investment of fund.

101. Action for compensation from fund.

102. Same subject. Against whom to be brought.

103. Judgments, how satisfied.

104. Proceedings if assurance fund is insufficient.

105. Subrogation of commonwealth to plaintiff's rights, when.

106. Assurance fund, application of income.

107. When fund not liable. Limit of compensation.

108. Limitation, etc., of actions.

109. Assessors' valuation to be evidence.

POWERS OF ATTORNEY.

110. Powers of attorney.

SECT.

LOST DUPLICATE CERTIFICATES.

111. Lost duplicate certificates.

ADVERSE CLAIMS.

112. Adverse claims.

SURRENDER OF DUPLICATE CERTIFICATES.

113. Surrender of duplicate certificates.

AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE.

114. Amendment, etc., of certificates.

PETITIONS, MOTIONS AND NOTICES AFTER REGISTRATION.

115. Filing, etc., of petitions and motions after registration.

116. Service of notice after registration.

SECTIONAL PLANS.

117. Sectional plans and employment of assistance therefor.

PENALTY FOR FRAUDULENT CONVEYANCE.

118. Penalty for fraudulent conveyance.

THE LAND COURT.

1 SECTION 1. The land court shall be a court of record. It shall have
 2 exclusive original jurisdiction of the following matters:

1898, 562, § 2.	1919, 262, § 1.	221 Mass. 372.
1899, 131, § 1.	1931, 387, § 1;	224 Mass. 424.
1900, 354, § 1.	457, § 1.	225 Mass. 217.
R. L. 128, § 1.	175 Mass. 68.	226 Mass. 582.
1904, 448, §§ 1, 5, 10.	192 Mass. 220.	228 Mass. 242.
1905, 249, §§ 1, 5.	198 Mass. 172.	256 Mass. 471.
1906, 50, § 1; 344, § 1.	201 Mass. 97.	262 Mass. 527.
1910, 560, § 3.	212 Mass. 547.	179 U. S. 405.
1915, 112, § 1; 237, § 3.	215 Mass. 76.	

Land court, jurisdiction, sittings, rules, forms, etc.

3 (a) Petitions for the confirmation and registration and petitions for
 4 the confirmation without registration of title to land and easements or
 5 rights in land held and possessed in fee simple within the commonwealth,
 6 with power to hear and determine all questions arising upon such peti-
 7 tions, and such other questions as may come before it under this chapter,
 8 subject to all rights to jury trial and of appeal provided by law. The
 9 proceedings upon such petitions shall be proceedings in rem against the
 10 land, and the decrees shall operate directly on the land and vest and
 11 establish title thereto. A certified copy of the decree of confirmation
 12 and registration shall be filed and registered in the registry district or
 13 districts where the land or any portion thereof lies, as provided in section
 14 forty-eight, and a certificate of title in the form prescribed by law shall
 15 be issued pursuant thereto. Immediately upon the entry of a decree of
 16 confirmation without registration, the recorder shall cause a certified
 17 copy of the same to be recorded in the registry of deeds for the district or
 18 districts where the land or any portion thereof lies, and thereafter the
 19 land therein described shall be dealt with as unregistered land.
 20 (b) Proceedings to foreclose tax titles, under chapter sixty.

251 Mass. 379.
 261 Mass. 47.

212 Mass. 135.
215 Mass. 76.

- (e) Writs of entry, under chapter two hundred and thirty-seven. 21
- (d) Petitions to require actions to try title to real estate, under sections one to five, inclusive, of chapter two hundred and forty. 22-23
- (e) Petitions to determine the validity of encumbrances, under sections eleven to fourteen, inclusive, of chapter two hundred and forty. 24-25
- (f) Petitions to discharge mortgages, under section fifteen of chapter two hundred and forty. 26-27
- (g) Petitions under section twenty-seven of chapter two hundred and forty to establish power or authority to transfer an interest in real estate. 28-29
- (h) Petitions to determine the boundaries of flats, under section nineteen of chapter two hundred and forty. 30-31
- (i) Petitions under sections sixteen to eighteen, inclusive, of chapter two hundred and forty to determine whether or not equitable restrictions are enforceable. 32-34
- (j) Petitions under section twelve of chapter forty-two to determine county, city, town or district boundaries. 35-36

It shall also have original jurisdiction concurrent with the supreme judicial court and the superior court of the following: — 37-38

- (k) Suits in equity to quiet or establish the title to land or to remove a cloud from the title thereto. In the exercise of jurisdiction conferred by this clause, the land court shall have all the powers and jurisdiction conferred by sections six to ten, inclusive, of chapter two hundred and forty. 39-43

Sittings.

The court shall hold its sittings in Boston, but may adjourn from time to time to such other places as public convenience may require. In Suffolk county, the city council of Boston, and in other counties, the county commissioners, shall provide suitable rooms for the sittings of said court in the same building with, or convenient to, the probate court or the registry of deeds, and shall provide necessary books and such printed blanks, forms and stationery as the court may order. 44-50

Seal, orders, etc.

The court shall have jurisdiction throughout the commonwealth, shall always be open, except on Sundays and legal holidays, and shall have a seal with which all orders, processes and papers made by or proceeding from the court and requiring a seal shall be sealed. Its notices, orders and processes may run into any county and be returnable as it directs. 51-55

Rules and forms.

The court shall from time to time make general rules and forms for procedure, which, before taking effect, shall be approved by the supreme judicial court or by a justice thereof. 56-58

Judges.
Const., c. 2,
§ 1, art. 9;
c. 3, art. 1.
(Const. Rev.
arts. 123, 140.)
1898, 562, § 3.

SECTION 2. There shall be three judges of the court, one of whom shall be appointed, commissioned and qualified as judge and the other two as associate judges, and, in addition thereto, such associate judges as shall have retired to part-time service under section two A. 1-4

1900, 354, § 1. R. L. 128, § 2. 1924, 271, § 1. 1931, 419, § 1.

Retirement of associate judges to part-time service.
1931, 419, § 2.

SECTION 2A. An associate judge of the land court who has reached the age of sixty-five years and has served as judge or associate judge of said court for at least fifteen years may, at his request, with the approval of the governor and council, retire to part-time service in said court, subject to the call of the judge thereof. Thereafter such associate judge shall not be required under his commission to serve as an associate judge for more than one half time and for such service he shall receive from the commonwealth one half of the full salary provided in section 1-8

9 fourteen for an associate judge of said court. The judge may also call
 10 upon an associate judge so retired for more than half-time service if he
 11 is able and willing so to serve, and to the extent of the service so ren-
 12 dered he shall receive, upon certificate of the judge, an additional pro-
 13 portionate amount of the full salary of an associate judge.

1 SECTION 3. The court may be held by one judge and simultaneous Sessions,
 2 sessions may be held, either in the same county or in different counties, 1898, 562, § 4
 3 and shall be so arranged as to insure a prompt discharge of its business. R. L. 128, § 3.

1 SECTION 4. Processes issuing from the court shall bear teste of the Process-
 2 judge, shall be under the seal of the court and be signed by the recorder. 1898, 562, § 5
 R. L. 128, § 4.

1 SECTION 5. In case of a vacancy in the office of judge, or of his in- Associate
 2 terest, absence or inability to perform his duties, either of the associate judge to act
 3 judges shall perform them. when.
 1898, 562, § 6. R. L. 128, § 5. 1924, 271, § 2.

1 SECTION 6. The governor, with the advice and consent of the coun- Recorder and
 2 cil, shall appoint a recorder, who shall be clerk of the court and hold deputy
 3 office for five years. He shall attend the sessions of the court, keep a recorders,
 4 docket of all causes, and affix the seal of the court to all processes or 1898, 562, § 7.
 5 papers requiring it. Subject to the approval of the governor and council, R. L. 128, § 6.
 6 the judge may appoint deputy recorders, who shall perform such duties 1930, 418, § 1.
 7 as the court shall assign to them. The recorder may, with the approval 1931, 246.
 8 of the judge, appoint two assistant clerks of court who shall, under his
 9 direction, perform the duties of clerk of court.

1 SECTION 7. The recorder shall be under the direction of the court, Duties and
 2 shall have the custody and control of all papers and documents filed powers of
 3 with him in any petition for registration, action or proceeding in said recorder.
 4 court, and shall carefully number and index them. Said papers and doc- 1898, 562, § 8.
 5 uments shall be kept in Boston in the recorder's office, which shall be R. L. 128, § 7.
 6 near the land court. He may, with the court's approval, employ neces- 1904, 418, § 1.
 7 sary assistants and messengers. 175 Mass. 71.

1 SECTION 8. The recorder and any deputy recorder may act in any Recorder and
 2 county, and after land has been registered, may make all memoranda deputy
 3 affecting the title and enter and issue certificates of title as provided in recorders to act
 4 this chapter. in any county.
 R. L. 128, § 8. 1898, 562, § 9.

1 SECTION 9. A facsimile of the signature of the recorder, imprinted Validity of
 2 by him or by such office assistant as he in writing may designate, on any facsimile-
 3 paper which he is required by law to certify as a true copy, except a copy signature.
 4 of a decree for transcription in a registry of deeds, and such facsimile im- 1885, 321.
 5 printed by the recorder himself upon any writ, summons, order of notice 1886, 13,
 6 or order of attachment, except executions, shall have the same validity §§ 1, 2.
 7 as his written signature. R. L. 165, § 20.
 1907, 225, § 3.
 1910, 94.

1 SECTION 10. The register of deeds in each district where land has been Register of
 2 registered shall have the same authority as the recorder to make memo- deeds, duties
 3 randa affecting the title of such land, and to enter and issue new certifi- as assistant
 recorder
 1898, 562, § 10.

R. L. 128, § 9.
1923, 374, § 1.

cates of title, and to affix the seal of the court to such certificates and duplicate certificates of title; but in executing the provisions of this chapter, registers of deeds shall be subject to the general direction of the recorder, in order to secure uniformity; and, in the performance of their duties under this chapter, the official designation of registers of deeds shall be assistant recorders for their respective registry districts.

Technical assistants.
1930, 418, § 3.

SECTION 10A. The assistant recorder in any registry district may, with the approval of the judge, appoint one or more technical assistants whose compensation shall be fixed by the judge, subject to the provisions of sections forty-eight to fifty-six, inclusive, of chapter thirty-five. Said assistants shall perform such duties as the court may from time to time assign to them.

Oath and bond of recorder, etc.
1898, 562, § 11.
R. L. 128, § 10.
1919, 350,
§§ 52, 54.

SECTION 11. The recorder and all assistant recorders shall be sworn before the judge of the land court, and a record thereof shall be made. They shall give bond in a sum to be fixed by the court, for the faithful performance of their official duties, before entering upon the same. They may administer oaths to persons appearing before them in matters pertaining to the registration of land, if an oath is required. They shall keep accurate accounts of all money received as fees or otherwise, which shall be subject to examination by the director of accounts, in the same manner as accounts of registers of deeds. The recorder shall pay over quarterly to the state treasurer all such money received by him either directly or through the assistant recorders. In case of the absence of an assistant recorder, the assistant register for the district, or if there is no assistant register, the person acting as clerk in the office of the register of deeds, shall perform the duties of the assistant recorder, who shall be responsible for him.

Examiners of title. Chief title examiner to act as deputy recorder, when.
1898, 562, § 12.
R. L. 128, § 11.
1904, 448, § 1.
1923, 374, § 2.

SECTION 12. The judge of the land court may appoint one or more examiners of title who shall be attorneys at law and he may also appoint a chief title examiner who shall perform all the duties of an examiner of title and such other duties in connection with the work of the court as the judge or associate judge may assign. Such chief title examiner shall also in case of the absence, sickness or disability of the recorder perform, under the title of deputy recorder, all of the official duties of the recorder.

Court officers.
1898, 562, § 17.
R. L. 128, § 16.
1904, 448, § 1.
1914, 696.
1919, 155.
1920, 573.

SECTION 13. Upon request of the judges, the sheriff of any county other than Suffolk shall assign a deputy to attend the sittings of the land court in that county. The judges shall appoint an officer for attendance upon the sessions of said court in Suffolk county.

Stenographers.
1924, 157.

SECTION 13A. At the trial of any issue of fact in the land court the presiding judge may appoint a stenographer, who shall be sworn and shall attend the trial, or such part thereof as the judge may direct, and perform like duties and receive the same compensation therefor as a stenographer appointed by the superior court who is not on salary; and the sums so payable for his attendance at court and for any transcript of his notes or part thereof furnished to the judge by his direction shall be paid by the county in which the land in question lies, upon the certificate of the judge.

1 SECTION 14. The judge and associate judges of the land court shall
 2 each receive a salary of ten thousand dollars, except as provided in section
 3 two A, and each shall annually receive, upon the certificate of the judge,
 4 the amount of the expenses incurred by him in the discharge of his
 5 duties, to be paid by the commonwealth. The recorder shall receive a
 6 salary of sixty-five hundred dollars. Each deputy recorder shall receive
 7 such compensation as shall be fixed by the judge, subject to the approval
 8 of the governor and council. Except as provided in section ten A, the
 9 compensation and salaries of examiners of title and all assistants and
 10 messengers shall be fixed by the governor and council. The salary of the
 11 officer in attendance upon the court in Suffolk county shall be twenty-four
 12 hundred and eighty-four dollars, in full for all services performed by him.
 13 All salaries and expenses of the court shall be paid by the commonwealth,
 14 except the salaries of the assistant recorders and the expenses incurred
 15 by them under this chapter and the compensation and expenses of their
 16 technical assistants appointed under section ten A, which shall be paid
 17 by the respective counties. All fees collected by the assistant recorders,
 18 except those received upon the filing of petitions, which shall be trans-
 19 mitted with the petitions to the recorder, shall be paid to their respective
 20 counties.

Salaries and
 expenses of
 judges, etc.
 Fees, dis-
 position.
 1898, 562, § 13.
 1900, 374, § 2.
 R. L. 128, § 12.
 1901, 386.
 1906, 416.
 1913, 738.
 1914, 696.
 1918, 260, § 3;
 287, § 1.
 1919, 155.
 1920, 573;
 627, § 3.
 1921, 486, § 32.
 1923, 385.
 1924, 271, § 3.
 1930, 404.
 418, § 4.
 1931, 419, § 3.

PROCEDURE.

1 SECTION 15. Except as provided in the following section, all causes
 2 in the land court shall be tried and all questions of fact finally determined
 3 by the court, unless a respondent or tenant with his answer, or a peti-
 4 tioner or demandant within ten days after the time limited by law for
 5 filing an appearance and answer, or within ten days after the time al-
 6 lowed by the court for filing an answer, claims a trial by jury. If trial
 7 by jury is claimed, issues therefor upon any material question of fact
 8 shall, upon motion of either party, be framed in the land court, and
 9 within thirty days after the expiration of the time for claiming a trial
 10 by jury, except as otherwise provided in section sixteen and in chapter
 11 two hundred and thirty-seven, copies thereof and of all other material
 12 papers in the case, certified by the recorder, shall be entered by the
 13 moving party in the superior court for the county where the land lies for
 14 a jury trial thereon. Failure to enter the copies and papers required by
 15 this or the following section or by section twenty-three of chapter
 16 two hundred and thirty-seven within the times limited by said sections,
 17 respectively, shall constitute a waiver of the claim to a trial by jury,
 18 and thereafter the superior court shall have no further jurisdiction of the
 19 case. Upon the motion of either party in the superior court the cause
 20 shall be advanced for speedy hearing, but no matters shall be tried in
 21 the superior court except those specified in the issues. Questions of law
 22 arising in the superior court may be taken to the supreme judicial
 23 court for revision by any party aggrieved by any opinion, ruling,
 24 direction or judgment of the court, in the same manner as in proceedings
 25 at law in said court. Questions of law arising in the land court on any
 26 decision or decree may be taken by any party aggrieved directly to the
 27 supreme judicial court for revision in the same manner in which ques-
 28 tions of law are taken to that court from the superior court. The land
 29 court, after any decision or decree dependent upon questions of law, may
 30 report such decision or decree, with so much of the case as is necessary
 31 for understanding such questions of law, for the determination of the
 32 supreme judicial court.

Issues to su-
 perior court
 and remedies
 in supreme
 judicial court
 1898, 562, § 14.
 1899, 131, § 2.
 R. L. 128, § 13.
 1902, 458.
 1904, 448,
 §§ 1, 3, 8.
 1905, 249, § 4;
 288, 291.
 1906, 344, § 3.
 1910, 560,
 §§ 1, 2, 6, 7.
 1919, 262, § 2.
 175 Mass. 68.
 187 Mass. 185.
 190 Mass. 190.
 192 Mass. 8,
 220.
 193 Mass. 486.
 194 Mass. 49,
 277.
 198 Mass. 521.
 200 Mass. 225.
 204 Mass. 117,
 173, 540.
 205 Mass. 458,
 529.
 207 Mass. 133.
 209 Mass. 542.
 214 Mass. 329,
 340.
 215 Mass. 76,
 324.
 218 Mass. 533.
 219 Mass. 157.
 221 Mass. 317.
 222 Mass. 407,
 480.
 223 Mass. 207.
 224 Mass. 424.
 225 Mass. 531.
 229 Mass. 467.
 251 Mass. 379.
 254 Mass. 164.
 255 Mass. 583.
 256 Mass. 471.
 262 Mass. 191,
 527.
 264 Mass. 436.
 266 Mass. 208.
 269 Mass. 497.
 271 Mass. 191.
 273 Mass. 543.

Appeal for jury trial, when permitted. Issues, etc. 1898, 562, § 14. 1899, 131, § 2. R. L. 128, § 13. 1902, 458, § 1. 1910, 560, § 1. 198 Mass. 521. 262 Mass. 191.

SECTION 16. At any time before the expiration of thirty days from the entry of a decree in a case, any party aggrieved by such decree who files an affidavit in court that he has not received notice of the proceedings by registered mail and that any signature of his appearing on any receipt for registered mail filed with the papers in the case is neither his signature nor signed by one having authority so to do, and that in no other way did he receive actual notice, or have knowledge, of the pendency of the proceedings within the time allowed for filing an appearance and answer, may appeal from said decree for a jury trial on any question of fact. Within said thirty days after such decree, issues shall be framed in the land court and the case entered in the superior court for trial as provided in the preceding section.

Certification of determination of issues. Further proceedings. 1899, 131, § 3. R. L. 128, § 14. 1904, 448, § 1.

SECTION 17. The clerk of the superior court, after the determination of issues from the land court, shall certify to the land court such determination, which shall be conclusive upon said court as to such issues; but the land court may hear evidence upon other material questions of fact, and arguments upon the cause, before making its decision.

Certification of decision of supreme judicial court. 1898, 562, § 15. 1899, 131, § 3. R. L. 128, § 14. 1904, 448, § 1. 190 Mass. 90.

SECTION 18. The clerk of the supreme judicial court, upon the determination of proceedings pending therein upon appeal or exceptions from the land court, shall certify to the land court the final decision, and the land court shall enter the final decree in the cause, in accordance with the certificate.

198 Mass. 172.

215 Mass. 324.

Failure to prosecute appeal, effect. 1898, 562, § 16. R. L. 128, § 15.

SECTION 19. If an appellant does not duly prosecute his appeal within the time limited, the original order, decision or decree shall stand as if no appeal had been taken.

1904, 448.

205 Mass. 529.

SECTION 20. [REPEALED, 1931, 387, § 2.]

Costs. 1898, 562, § 18. R. L. 128, § 17.

SECTION 21. Costs shall be taxed and the collection enforced as in the superior court sitting in equity, unless a different provision is made.

Filing of writs and pleadings. 1904, 448, § 2.

SECTION 22. Writs, petitions, bills and pleadings in proceedings in the land court may be filed with the recorder of the land court, or with the register of deeds for the district where the land or any part thereof lies, who shall immediately index the proceedings in the general index by the names of the parties, and transmit the papers to the recorder. The recorder shall cause copies of said papers to be made and transmitted to the said register of deeds, who shall file the same, and, if the original papers were filed with the recorder, index the proceedings as above provided. Whenever such papers contain a reference to any instruments recorded in the registry of deeds where they are filed, the register of deeds shall cause a minute thereof to be made upon the margin of such record.

Copies of final decrees, etc., to be transmitted to assistant recorder. 1904, 448, § 3.

SECTION 23. The recorder shall transmit copies of all final decrees and executions in proceedings mentioned in the preceding section to the register of deeds for the district where the land or any part thereof lies, who shall file and index the same in the manner provided in said section.

1 SECTION 24. The court may refer any such proceeding to one of the
 2 examiners appointed under section twelve, who shall examine and report
 3 on whatever matters of title or fact the court shall designate in its order
 4 of reference. Such reference, if made immediately upon the filing or entry
 5 of the proceeding, shall be subject to section thirty-seven, so far as ap-
 6 plicable, but if made after an appearance is entered for a defendant or
 7 tenant, it shall be subject to section forty-three.

Order of
 reference to
 examiner.
 1904, 448, § 6.
 1905, 195.

1 SECTION 25. In all matters within its jurisdiction, the court shall have
 2 all the powers which the superior court has in actions at law and suits
 3 in equity, including the power to grant injunctions and restraining
 4 orders in accordance with the procedure provided by chapter two hun-
 5 dred and fourteen, as justice and equity may require, except that it
 6 shall hold no trials by jury.

General law
 and equity
 powers of
 court.
 1898, 562, § 17.
 R. L. 128, § 16.
 1904, 448, § 1.
 1914, 696
 1919, 155.

1920, 573.

G. L. (ed. of 1920) 185, §§ 20, 25.

1931, 387, § 2.

ORIGINAL REGISTRATION.

1 SECTION 26. Petitions for registration of title may be made by the
 2 following persons:

Petitions for
 registration
 1898, 562, § 19.
 1900, 354, § 3.
 R. L. 128, § 18.
 1905, 249, § 2
 201 Mass. 495.
 211 Mass. 442.
 214 Mass. 290.
 226 Mass. 582.
 235 Mass. 402.
 244 Mass. 583.

3 First, Persons who claim, singly or collectively, to own the legal estate
 4 or easements or rights in land held and possessed in fee simple.

5 Second, Persons who claim, singly or collectively, to have the power
 6 of appointing or disposing of the legal estate or easements or rights in
 7 land held and possessed in fee simple.

8 Third, Infants and other persons under disability, by their legally ap-
 9 pointed guardians; but the person in whose behalf the petition is made
 10 shall be named as petitioner.

11 Fourth, Corporations, by any officer duly authorized by a vote of the
 12 directors.

13 One or more tenants for a term of years, which is regarded as a fee
 14 simple in section one of chapter one hundred and eighty-six, shall not
 15 petition except jointly with those who claim the reversionary interest
 16 which makes up the fee simple at common law; nor shall a mortgagor,
 17 except as hereinafter provided, petition without the written consent of
 18 the mortgagee; nor shall a married woman petition without the written
 19 consent of her husband, unless she holds the land as her separate prop-
 20 erty or has a power to appoint the land in fee simple, or is living apart
 21 from her husband for a justifiable cause which has been established by
 22 a decree of court; nor shall one or more tenants petition who claim un-
 23 divided shares less than a fee simple in the whole land described in the pe-
 24 tition for registration. If the holder of a mortgage does not consent to
 25 the petition, it may be entered nevertheless, and the title registered,
 26 subject to the mortgage, which may be dealt with or foreclosed as if the
 27 land subject to it had not been registered. The decree of registration
 28 in such case shall describe the mortgage, and shall state that it has not
 29 been registered and that registration is made subject to it, and shall pro-
 30 vide that no subsequent certificate shall be issued and no further papers
 31 registered relative to such land after a foreclosure of such mortgage.

1 SECTION 26A. Petitions for the confirmation of title without regis-
 2 tration may be made by the following persons:

Petitions for
 confirmation
 of title without
 registration.
 1931, 457, § 2.

3 First, Persons who claim, singly or collectively, to own a legal estate
 4 or easement or right in land held and possessed in fee simple.

Second, Persons who claim, singly or collectively, to have the power of appointing or disposing of a legal estate or easement or right in land held and possessed in fee simple.

Third, Infants and other persons under disability, by their legally appointed guardians; but the person in whose behalf the petition is made shall be named as petitioner.

Fourth, Corporations, by any officer duly authorized by a vote of the corporation or its governing board.

Filing of petition.
Record of memorandum.
1898, 562, § 20.
1899, 131, § 4.
R. L. 128, § 19.

SECTION 27. The petition may be filed with the recorder, or with the assistant recorder at the registry of deeds for any district where the land, or any part thereof, lies. Upon filing his petition, the petitioner shall forthwith cause to be filed in the registry of deeds for each district where any part of the land lies a memorandum stating that the petition for registration has been filed, the date and place of filing, and a copy of the description in the petition of the land or of so much thereof as is within the district. Such memorandum shall be recorded and indexed by the register with the records of deeds. Each assistant recorder shall also keep an index of all petitions in his district, and in every case where the petition is filed with him shall transmit the petition, the papers and plans filed therewith and such memorandum, when recorded, to the recorder.

Form and contents of petition.
1898, 562, § 21.
R. L. 128, § 20.

SECTION 28. The petition shall be in writing, signed and sworn to by each petitioner or by a person duly authorized in his behalf. It shall contain a description of the land, and shall state whether the petitioner is married; and if married, the name of the wife or husband; and if unmarried, whether he or she has been married, and if so, when and how the marriage relation terminated; and if by divorce, when, where and by what court the divorce was granted. It shall also state the name in full and the address of the petitioner, and the names and addresses of the adjoining owners and occupants, if known; and if not known, it shall state what search has been made to find them.

Petition as to land bounding on way.
1898, 562, § 25.
R. L. 128, § 24.
192 Mass. 220.

SECTION 29. If the petition describes the land as bounded on a public or private way, it shall state whether or not the petitioner claims any and what land within the limits of the way, and whether the petitioner desires to have the line of the way determined.

Petition subject to mortgage or lease.
1898, 562, § 27.
1900, 354, § 4.
R. L. 128, § 26.

SECTION 30. If a petition is made subject to an existing recorded mortgage, the holder of which has consented thereto, or subject to a recorded lease for a term exceeding seven years, or if the registration is to be made subject to such a mortgage or lease executed after the time of the petition and before the date of the transcription of the decree, the petitioner, before a decree of registration is entered, shall, if required by the court, file a certified copy of such mortgage or lease, and shall cause the original, or, in the discretion of the court, a certified copy thereof, to be presented for registration; and no registration fee shall be charged for registering such original mortgage or lease or such certified copy.

Petition may include several parcels, when Amendment

SECTION 31. A petition may include two or more contiguous parcels of land, or two or more parcels which constitute one holding under one

3 and the same title, within the same registry district. But two or more
 4 persons, who claim in the same parcels different interests which col-
 5 lectively make up the legal estate in fee simple in each parcel, shall not
 6 join in one petition for more than one parcel unless their interests are
 7 alike in each and every parcel. The court may at any time order a peti-
 8 tion to be amended by striking out one or more of the parcels, or by a
 9 severance of the petition.

by order
 of court.
 1898, 562, § 24.
 1899, 131, § 5.
 R. L. 128, § 23.
 201 Mass. 158.

1 SECTION 32. Amendments to the petition, including joinder, substi-
 2 tution, or discontinuance as to parties, shall be allowed by the court at
 3 any time upon just and reasonable terms; but all amendments shall be
 4 in writing, signed and sworn to, like the original.

Amendments
 to petition
 1898, 562, § 23.
 R. L. 128, § 22.
 201 Mass. 158.

1 SECTION 33. The petitioner shall file with the petition a plan of the
 2 land, and all original muniments of title within his control. Such original
 3 muniments as affect land not included in the petition may be withdrawn
 4 upon filing certified copies thereof. If a petition is dismissed or discon-
 5 tinued, the petitioner may, with the consent of the court, withdraw such
 6 original muniments of title. The court may, in any case before decree,
 7 require a further survey to be made for the purpose of determining bound-
 8 aries, and may order durable bounds to be set, and referred to in the
 9 petition, by amendment. The expense of survey and bounds shall be
 10 taxed in the costs of the case and may be apportioned among the parties
 11 as justice may require. If no persons appear to oppose the petition, such
 12 expense shall be borne by the petitioner.

Filing of plans
 and muni-
 ments. Further
 survey, etc.
 1898, 562,
 §§ 26, 36,
 R. L. 128,
 §§ 25, 35.
 204 Mass. 540.

1 SECTION 34. The court may by general rule require additional facts
 2 to be stated in the petition and may require the filing of additional papers.

Additional
 facts.
 1898, 562, § 28.

R. L. 128, § 27.

1 SECTION 35. If the petitioner is not a resident of the commonwealth,
 2 he shall file with his petition a paper appointing an agent residing in the
 3 commonwealth, giving his name in full and post office address, and shall
 4 therein agree that the service of any legal process in proceedings under
 5 or growing out of the petition shall be of the same legal effect if made on
 6 said agent as if made on the petitioner within the commonwealth. If the
 7 agent dies, or removes from the commonwealth, the petitioner shall
 8 forthwith make another appointment; and if he fails so to do, the court
 9 may dismiss the petition.

Agent for non-
 resident
 petitioner.
 1898, 562, § 22.
 R. L. 128, § 21.

1 SECTION 36. After the filing of a petition and before registration, the
 2 land therein described may be dealt with, and instruments relating thereto
 3 shall be recorded in the same manner, as if no such petition had been
 4 filed; but all instruments left for record which relate to such land shall
 5 be indexed in the usual manner in the registry indexes and in the index
 6 of petitions. As soon as a petition is disposed of, the recorder shall make
 7 a memorandum stating the disposition of the case, and shall send the
 8 same to the register of deeds for the proper district or districts, who shall
 9 record and index it with the records of deeds and in the index of petitions.
 10 If a decree of registration of title is entered the land included in the
 11 decree shall, when the decree is transcribed as provided in section forty-
 12 eight, become registered land, and thereafter no deeds or other instru-
 13 ments which relate solely to such land shall be recorded with the records

Record of
 transfers
 pending peti-
 tion, etc.
 1898, 562, § 29.
 R. L. 128, § 28.

of deeds, but shall be registered in the registration book and filed and indexed with the records and documents relating to registered land.

Reference to examiner. Report, etc. 1898, 562, R. L. 128, 1904, 448.

SECTION 37. Immediately after the filing of a petition, the court shall enter an order referring it to one of the examiners of title, who shall search the records and investigate all facts stated in the petition, or otherwise brought to his notice, and shall file in the ease a report thereon, concluding with a certificate of his opinion upon the title. The recorder shall give notice to the petitioner of the filing of such report. If the opinion of the examiner is adverse to the petitioner, he shall be allowed by the court a reasonable time in which to elect to proceed further or to withdraw his petition. The election shall be made in writing and filed with the recorder.

Publication of notice of petition. Form of notice. 1898, 562, R. L. 128, 1904, 448, 1928, 129, 250 Mass.

SECTION 38. If, in the opinion of the examiner, the petitioner has a good title as alleged, and proper for registration, or if the petitioner, after an adverse opinion of the examiner, elects to proceed further, the recorder shall, immediately upon the filing of the examiner's opinion, or upon the filing of the petitioner's election, as the case may be, cause notice of the filing of the petition to be published in a newspaper published in the district where any portion of the land lies. The notice shall be issued by order of the court, attested by the recorder, and shall be in form substantially as follows:

COMMONWEALTH OF MASSACHUSETTS.

Land Court.

To (here insert the names of all persons known to have an adverse interest, and the adjoining owners and occupants so far as known), and to all whom it may concern:

Whereas a petition has been presented to said court by (name or names and address) to register and confirm his (or their) title in the following described land (insert description).

If you desire to make any objection or defense to said petition you or your attorney must file a written appearance and an answer under oath, setting forth clearly and specifically your objections or defense to each part of said petition, in the office of the recorder of said court in Boston, (designation of location) or in the office of the assistant recorder of said court at the registry of deeds at in the county of where a copy of the plan filed with said petition is deposited, on or before the day of next. Unless an appearance is so filed by or for you, your default will be recorded, the said petition will be taken as confessed and you will be forever barred from contesting said petition or any decree entered thereon.

Witness, Esquire, judge of said court, this day of in the year nineteen hundred and Attest with the seal of said court

Recorder.

Return day, mailing and posting of notice. 1898, 562, 1900, 354, R. L. 128, 187 Mass., 192 Mass.

SECTION 39. The return day of said notice shall be not less than twenty nor more than sixty days after the date of issue. The court shall also, within seven days after publication of said notice in a newspaper, cause a copy thereof to be sent by the recorder by mailing a registered letter to every person named therein whose address is known. The court shall also cause a duly attested copy of the notice to be posted in a conspicuous place on each parcel of land included in the petition, by a sheriff or deputy sheriff, fourteen days at least before the return day thereof, and his return shall be conclusive proof of such service. If the petitioner requests to have the line of a public way determined, the court

11 shall order notice to be given by the recorder, by mailing a registered letter
 12 to the mayor of the city or to one of the selectmen of the town or towns
 13 where the land lies, or, if the way is a highway, to one of the county
 14 commissioners of the county or counties where the land lies. If the land
 15 borders on a river, navigable stream or shore, or on an arm of the sea
 16 where a river or harbor line has been established, or on a great pond,
 17 or if it otherwise appears from the petition or the proceedings that the
 18 commonwealth may have a claim adverse to that of the petitioner, notice
 19 shall be given in the same manner to the attorney general. The court may
 20 also cause other or further notice of the petition to be given. The court
 21 shall, so far as it considers it possible, require proof of actual notice to all
 22 adjoining owners and to all persons who appear to have any interest in
 23 or claim to the land included in the petition. Notice to such persons by
 24 mail shall be by registered letter. The certificate of the recorder that
 25 he has served the notice as directed by the court, by publishing or mail-
 26 ing, shall be filed in the case before the return day, and shall be con-
 27 clusive proof of such service.

1 SECTION 40. Upon the return of the notice, and upon proof of service
 2 of all orders of notice issued, the court may appoint a disinterested person
 3 to act as guardian ad litem for minors, and for persons under disability,
 4 and for all persons not in being, unascertained, unknown or out of the
 5 commonwealth, who may have an interest. The compensation of the
 6 guardian shall be determined by the court and paid as part of the expenses
 7 of the court.

Guardian
 ad litem
 1898, 562, § 33
 1899, 131, § 6.
 R. L. 128, § 32.
 1906, 452, § 1.

1 SECTION 41. Any person who claims an interest, whether named in
 2 the notice or not, may appear and file an answer on or before the return
 3 day, or within such further time as the court may allow. The answer shall
 4 state all objections to the petition, shall set forth the interest claimed by
 5 the person who files it, and shall be signed and sworn to by him or by a
 6 person in his behalf.

Answer.
 1898, 562, § 34.
 R. L. 128, § 33.

1 SECTION 42. If no person appears and answers within the time al-
 2 lowed, the court may at once upon motion of the petitioner, no reason
 3 to the contrary appearing, order a general default to be recorded and the
 4 petition to be taken for confessed. By the description in the notice,
 5 "to all whom it may concern", all the world are made parties defendant
 6 and shall be concluded by the default and order. After such default
 7 and order, the court may enter a decree confirming the title of the peti-
 8 tioner and ordering registration thereof. The court shall not be bound
 9 by the report of the examiner of title, but may require other or further
 10 proof.

Order of gen-
 eral default.
 Effect.
 1898, 562, § 35.
 R. L. 128, § 34

1 SECTION 43. If, in any case, an appearance is entered and answer
 2 filed, the case shall be set down for hearing on the motion of either party,
 3 but a default and order shall first be entered against all persons who do
 4 not appear and answer, in the manner provided in the preceding section.
 5 The court may refer the case or any part thereof to one of the examiners
 6 of title, as master, to hear the parties and their evidence, and make report
 7 thereof to the court. His report shall have the same effect as that of a
 8 master appointed by the superior court in equity, and he shall proceed
 9 according to the rules of said court applicable to masters, except as the

Hearing.
 Reference to
 master, etc.
 1898, 562, § 36.
 R. L. 128, § 35.
 1904, 448, § 1.
 1905, 195.
 203 Mass. 68.

same may be modified by the rules of the land court. The compensation 10
of a master appointed under this section, and of an examiner under sec- 11
tion twenty-four, shall be awarded by the land court, and shall be paid 12
by the county where the land involved in the proceedings is situated, 13
except that said compensation may be awarded by the land court in its 14
discretion as a part of the taxable costs of the proceedings, in which case 15
the compensation shall be paid as decreed by said court. 16

Dismissal,
etc., of
petition.

1898, 562, § 37.
R. L. 128, § 36.
1910, 245, § 1.
198 Mass. 172.
201 Mass. 158.
204 Mass. 337.
208 Mass. 510.

SECTION 44. If the court finds that the petitioner has not title proper 1
for registration, a decree shall be entered dismissing the petition, and 2
such decree may be ordered to be without prejudice, in whole or in part, 3
but unless so ordered it shall bind the parties, their privies and the land 4
in respect of any issue of fact which has been tried and determined. The 5
petitioner may withdraw his petition at any time before final decree, 6
upon terms fixed by the court. The court may require a petitioner who 7
moves to withdraw his petition or to substitute some other person as 8
petitioner, to stipulate that he shall be bound by the result of any issue 9
of fact which has been tried and determined, and such stipulation shall 10
bind the parties, their privies and the land itself. 11

Decree of con-
firmation and
registration.
Effect.

1898, 562, § 38.
R. L. 128, § 37.
1910, 560, § 4.
1923, 374, § 3.
175 Mass. 71.
194 Mass. 40.
198 Mass. 172.
213 Mass. 128.
228 Mass. 385.
245 Mass. 242.
262 Mass. 555.
179 U. S. 405.

SECTION 45. If the court, after hearing, finds that the petitioner has 1
title proper for registration, a decree of confirmation and registration 2
shall be entered, which shall bind the land and quiet the title thereto, 3
subject only to the exceptions stated in the following section. It shall 4
be conclusive upon and against all persons, including the commonwealth, 5
whether mentioned by name in the petition, notice or citation, or in- 6
cluded in the general description "to all whom it may concern". Such 7
decree shall not be opened by reason of the absence, infancy or other 8
disability of any person affected thereby, nor by any proceeding at law 9
or in equity for reversing judgments or decrees; subject, however, to 10
the right of any person deprived of land, or of any estate or interest 11
therein, by a decree of registration obtained by fraud to file a petition 12
for review within one year after the entry of the decree, provided no 13
innocent purchaser for value has acquired an interest. If there is any 14
such purchaser, the decree of registration shall not be opened but shall 15
remain in full force and effect forever, subject only to the right of appeal 16
as provided by law from time to time. But any person aggrieved by 17
such decree in any case may pursue his remedy in tort against the peti- 18
tioner or against any other person for fraud in procuring the decree. 19

Tenure of
holder of
certificate
of title.

1898, 562, § 39.
1899, 131, § 7.
R. L. 128, § 38.

1915, 290.

SECTION 46. Every petitioner receiving a certificate of title in pur- 1
suance of a decree of registration, and every subsequent purchaser of 2
registered land taking a certificate of title for value and in good faith, 3
shall hold the same free from all encumbrances except those noted on 4
the certificate, and any of the following encumbrances which may be 5
existing: 6

First, Liens, claims or rights arising or existing under the laws or con- 7
stitution of the United States or the statutes of this commonwealth which 8
are not by law required to appear of record in the registry of deeds in 9
order to be valid against subsequent purchasers or encumbrances of 10
record. 11

Second, Taxes, within two years after they have been committed to 12
the collector. 13

14 Third, Any highway, town way, or any private way laid out under
 15 section twenty-one of chapter eighty-two, if the certificate of title does
 16 not state that the boundary of such way has been determined.

17 Fourth, Any lease for a term not exceeding seven years.

18 Fifth, Any liability to assessment for betterments or other statutory
 19 liability, except for taxes payable to the commonwealth, which attaches
 20 to land in the commonwealth as a lien; but if there are easements or
 21 other rights appurtenant to a parcel of registered land which for any
 22 reason have failed to be registered, such easements or rights shall remain
 23 so appurtenant notwithstanding such failure, and shall be held to pass
 24 with the land until cut off or extinguished by the registration of the
 25 servient estate, or in any other manner.

1911, 9.
 1924, 31.

1 SECTION 47. Every decree of registration shall bear date of the year,
 2 month, day, hour and minute of its entry and shall be signed by the
 3 recorder. It shall state whether the owner of the land registered is
 4 married or unmarried, and if married, the name of the husband or wife.
 5 If such owner is under disability it shall state the nature thereof, and if
 6 a minor, shall state his age. It shall contain a description of the land as
 7 finally determined by the court, shall set forth the estate of the owner
 8 and also, in such manner as to show their relative priority, all particu-
 9 lar estates, mortgages, easements, liens, attachments and other encum-
 10 brances, including rights of husband or wife, if any, to which the land
 11 or the owner's estate is subject, and may contain any other matter
 12 properly to be determined in pursuance of this chapter. The decree shall
 13 be stated in a form convenient for transcription upon the certificates of
 14 title hereinafter mentioned.

Contents of
 decree.
 1898, 562, § 40.
 R. L. 128, § 39.
 198 Mass. 172.
 221 Mass. 372.
 224 Mass. 421.
 225 Mass. 217.
 228 Mass. 242.
 261 Mass. 47.

1 SECTION 48. Immediately upon the entry of the decree of registra-
 2 tion, the recorder shall send a certified copy thereof, under the seal of the
 3 court, to the register of deeds for the district or districts where the land
 4 lies, and the register, as assistant recorder, shall transcribe the decree in
 5 a book to be called the registration book, in which a leaf or leaves in
 6 consecutive order shall be devoted exclusively to each title, and note
 7 therein the day, hour and minute when said decree is transcribed. The
 8 entry made by the assistant recorder in this book in each case shall be
 9 the original certificate of title, shall be signed by him and sealed with the
 10 seal of the court. All certificates of title shall be numbered consecutively,
 11 beginning with number one. The assistant recorder shall in each case
 12 make an exact duplicate of the original certificate, including the seal, but
 13 putting on it the words "Owner's duplicate certificate", and deliver it to
 14 the owner or to his duly authorized attorney. In case of a variance
 15 between the owner's duplicate certificate and the original certificate, the
 16 original shall prevail. The certified copy of the decree of registration
 17 shall be filed and numbered by the assistant recorder, with a reference
 18 noted on it to the place of record of the original certificate of title. If,
 19 however, a petition includes land lying in more than one district, the court
 20 shall cause the part lying in each district to be described separately by
 21 metes and bounds in the decree or decrees of registration, the recorder
 22 shall send to the assistant recorder for each registry district a copy of the
 23 decree containing a description of the land within that district, and the
 24 assistant recorder shall register the same and issue an owner's duplicate
 25 therefor; and thereafter, for all matters pertaining to registration, the
 26 portion in each district shall be treated as a separate parcel of land. Said

Transcription
 of decree in
 registry.
 Owner's dupli-
 cate certificate.
 1898, 562, § 41.
 R. L. 128, § 40.
 1928, 272, § 1.

owner's duplicate certificate, for all the purposes of this chapter, may be produced by photographic process from the original certificate of title either in whole or in part, and the photographic copy of an assistant recorder's signature on a duplicate certificate so produced shall have the same validity as his written signature.

Original and transfer certificates. 1898, 562, § 42. R. L. 128, § 41.

SECTION 49. The certificate first registered in pursuance of a decree of registration in regard to any parcel of land shall, in the registration book, be entitled "Original certificate of title, entered pursuant to decree of the land court, dated at" (stating time and place of entry of decree and the number of the case). The certificate shall take effect from the date of the transcription of the decree. Subsequent certificates relating to the same land shall be in like form, but shall be entitled "Transfer from No. " (the number of the last previous certificate relating to the same land), and also the words "Originally registered" (date, volume and page of registration).

Duplicate certificate of estates in common. 1898, 562, § 43. R. L. 128, § 42.

SECTION 50. If two or more persons are registered owners as tenants in common, or otherwise, one owner's duplicate certificate may be issued for the whole land or a separate duplicate may be issued to each for his undivided share.

Surrender of certificate, issue of substitute. 1898, 562, § 44. R. L. 128, § 43.

SECTION 51. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it, with the approval of the court, and take out several certificates for portions thereof, or if he holds separate duplicate certificates for several distinct parcels, he may surrender them and, with like approval, take out a single duplicate certificate for the whole land, or several certificates for different portions thereof. An owner who subdivides a tract of registered land into lots shall file with the recorder a plan thereof, when applying for a new certificate or certificates, and the court, before issuing the same, shall cause the plan to be verified, and require that all boundaries, streets and passageways shall be distinctly and accurately delineated thereon.

Certificate an agreement running with land. 1898, 562, § 45. R. L. 128, § 44.

SECTION 52. The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land and binding upon the petitioner and his successors in title that the land shall be and forever remain registered land and subject to this chapter and all acts in amendment thereof.

Prescription, etc., not to affect registered land. 1898, 562, § 46. R. L. 128, § 45. 1921, 117.

SECTION 53. No title to registered land, or easement or other right therein, in derogation of the title of the registered owner, shall be acquired by prescription or adverse possession. Nor shall a right of way by necessity be implied under a conveyance of registered land.

261 Mass. 47.

Original certificate, etc., as evidence. Effect. 1898, 562, § 47. R. L. 128, § 46. 248 Mass. 569. 262 Mass. 555.

SECTION 54. The original certificate in the registration book, any copy thereof duly certified under the signature of the recorder or an assistant recorder and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all courts of the commonwealth, and shall be conclusive as to all matters contained therein, except as otherwise provided in this chapter.

1 SECTION 55. Every certificate of title shall set forth the names of
 2 all the persons whose estates make up the estate in fee simple in the
 3 whole land, and duplicate certificates may be issued to each person, but
 4 the recorder or assistant recorder shall note in the registration book and
 5 on each duplicate, to whom such duplicate was issued.

Contents of
 certificate.
 1898, 562, § 48.
 R. L. 128, § 17.

1 SECTION 56. The recorder, under the direction of the court, shall
 2 make and keep indexes of all petitions and of all decrees of registration,
 3 and shall also index and classify all papers and instruments filed in his
 4 office relating to petitions and to registered titles. The recorder shall
 5 also, under the direction of the court, cause forms of indexes and regis-
 6 tration and entry books to be prepared for the use of the assistant re-
 7 corders. The court shall prepare and adopt convenient forms of certifi-
 8 cates of title and shall also adopt general forms of memoranda to be used
 9 by the assistant recorders in registering the common forms of conveyance
 10 and other instruments to express briefly their effect.

Indexes, rec-
 ord books, etc.
 1898, 562, § 49.
 R. L. 128, § 48.

1 SECTION 56A. Petitions for the confirmation of title without regis-
 2 tration and all proceedings thereunder shall be governed by the provisions
 3 of this chapter applicable to petitions and proceedings for the confirmation
 4 and registration of title except as otherwise provided in this chapter.
 5 Upon the recording in the registry of deeds for the district where the
 6 land, or any portion thereof, lies, of a copy of the decree issued pursuant
 7 to such petition for confirmation of title without registration, the owner
 8 of such land, as determined by such decree, shall hold the title thereto free
 9 from all encumbrances except those set forth or referred to in said decree
 10 and those specified in section forty-six. Nothing contained in this chapter
 11 shall be so construed as to prevent the registration of title to land or ease-
 12 ments or rights under the provisions thereof on proceedings commenced
 13 either prior or subsequent to a decree confirming title without registra-
 14 tion. Section ninety-nine shall not apply to proceedings for confirmation
 15 of title without registration.

Petitions for
 confirmation
 of title with-
 out registra-
 tion, etc.,
 governed by
 certain pro-
 visions of law.
 1931, 457, § 3.

VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION.

1 SECTION 57. An owner of registered land may convey, mortgage,
 2 lease, charge or otherwise deal with it as fully as if it had not been regis-
 3 tered. He may use forms of deeds, mortgages, leases or other voluntary
 4 instruments, like those now in use, sufficient in law for the purpose in-
 5 tended. But no deed, mortgage or other voluntary instrument, except
 6 a will and a lease for a term not exceeding seven years, purporting to
 7 convey or affect registered land, shall take effect as a conveyance or bind
 8 the land, but shall operate only as a contract between the parties, and as
 9 evidence of authority to the recorder or assistant recorder to make regis-
 10 tration. The act of registration only shall be the operative act to convey
 11 or affect the land, and in all cases the registration shall be made in the
 12 office of the assistant recorder for the district or districts where the land
 13 lies.

Owner of reg-
 istered land
 may convey,
 etc. Effect of
 registration.
 1898, 562, § 50.
 R. L. 128, § 49.
 256 Mass. 471.
 262 Mass. 555.
 272 Mass. 372.

1 SECTION 58. Every conveyance, lien, attachment, order, decree,
 2 instrument or entry affecting registered land, which would under other
 3 provisions of law, if recorded, filed or entered in the registry of deeds,
 4 affect the land to which it relates, shall, if registered, filed or entered in
 5 the office of the assistant recorder of the district where the land to which

Registration
 of encum-
 brances.
 Effect.
 1898, 562, § 51.
 R. L. 128, § 50.
 262 Mass. 555.

such instrument relates lies, be notice to all persons from the time of such registering, filing or entering.

Estate less than fee simple, how registered. 1898, 562, § 52. R. L. 128, § 51.

SECTION 59. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple from the owner or some one of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with an assistant recorder the instrument which creates or transfers or claims such interest and by a brief memorandum thereof made by an assistant recorder upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner.

Reference of doubtful questions. 1898, 562, § 53. R. L. 128, § 52. 273 Mass. 477.

SECTION 60. If the assistant recorder is in doubt upon any question, or if any party in interest does not agree as to the proper memorandum to be made in pursuance of any deed, mortgage or other voluntary instrument presented for registration, the question shall be referred to the court for decision, either on the certificate of the assistant recorder stating the question in doubt, or upon the suggestion in writing of any party in interest; and the court, after notice to all parties and a hearing, shall enter an order prescribing the form of memorandum to the assistant recorder, who shall make registration in accordance therewith.

Grantee's residence, etc., to be stated. 1898, 562, § 54. R. L. 128, § 53.

SECTION 61. Every deed or other voluntary instrument presented for registration shall contain or have endorsed upon it the full name, residence and post office address of the grantee or other person acquiring or claiming an interest under such instrument, and every deed shall also state whether the grantee is married or unmarried, and if married, the name in full of the husband or wife. Any change in the residence or post office address of such person shall be endorsed by an assistant recorder on the original instrument, upon receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land may be served upon any person in interest by mailing them to the address so given, and shall be binding, whether he resides within or without the commonwealth.

Presentation of owner's duplicate on entry of new certificate, etc. Notice of loss of certificate. 1898, 562, § 55. R. L. 128, § 54. 262 Mass. 555.

SECTION 62. No new certificate of title shall be entered, and no memorandum made upon any certificate of title by the recorder or any assistant recorder, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this chapter or upon the order of the court, for cause shown, and whenever such order is made, a memorandum thereof shall be entered on the new certificate of title and on the owner's duplicate. The production of the owner's duplicate certificate, whenever a voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the recorder or an assistant recorder to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith. In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the

6
7
1
2
3
4
5
6
7
8
9
10
1
2
3
4
5
6
7
8
9
10
11
12
13
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

17 parties to such fraud, without prejudice however to the rights of any
 18 innocent holder for value of a certificate of title. After the transcrip-
 19 tion of the decree of registration on the original petition, any subsequent
 20 registration procured by the presentation of a forged duplicate certificate,
 21 or of a forged deed or other instrument, shall be null and void. In case
 22 of the loss or theft of an owner's duplicate certificate, notice shall be sent
 23 by the owner or by a person in his behalf to the assistant recorder for the
 24 district where the land lies, as soon as the loss or theft is discovered.

1 SECTION 63. Each assistant recorder shall keep an entry book in
 2 which he shall enter, in the order of their reception, all deeds and other
 3 voluntary instruments, and all copies of writs or other processes filed
 4 with him relating to registered land. He shall note in such book the year,
 5 month, day, hour and minute of reception of all instruments, in the order
 6 in which they are received. They shall be regarded as registered from
 7 the time so noted, and the memorandum of each instrument, when made
 8 on the certificate of title to which it refers, shall bear the same date.

Entry book,
 Duplicates
 and certified
 copies.
 1898, 562, § 56.
 R. L. 128, § 55.

9 Every deed or other instrument, voluntary or involuntary, so filed
 10 with the recorder or assistant recorder, shall be numbered and indexed,
 11 and endorsed with a reference to the proper certificate of title. All
 12 records and papers relative to registered land in the office of the recorder
 13 or of an assistant recorder shall be open to the public in the same manner
 14 as probate records, subject to such reasonable regulations as the recorder,
 15 under the direction of the court, may make.

16 Duplicates of all deeds and voluntary instruments filed and registered
 17 may be presented with the originals, shall be attested and sealed by the
 18 recorder or an assistant recorder, endorsed with the file number and other
 19 memoranda on the originals and may be taken away by the person pre-
 20 senting them.

21 Certified copies of all instruments filed and registered may also be ob-
 22 tained at any time upon payment of the assistant recorder's fees.

CONVEYANCES IN FEE.

1 SECTION 64. An owner desiring to convey his registered land or any
 2 portion thereof in fee shall execute a deed of conveyance, which the grantor
 3 or grantee may present to the assistant recorder in the district where
 4 the land lies. The grantor's duplicate certificate shall be produced and
 5 presented at the same time. The assistant recorder shall thereupon, in
 6 accordance with the rules and instructions of the court, make out in the
 7 registration book a new certificate of title to the grantee, and shall prepare
 8 and deliver to him an owner's duplicate certificate. The assistant re-
 9 corder shall note upon the original and duplicate certificates the date of
 10 transfer, the volume and page of the registration book in which the new
 11 certificate is registered and a reference by number to the last preceding
 12 certificate. The grantor's duplicate certificate shall be surrendered and
 13 the word "cancelled" stamped upon it. The original certificate shall also
 14 be stamped "cancelled". The deed of conveyance shall be filed and en-
 15 dorsed with the number and place of registration of the certificate of
 16 title of the land conveyed.

Conveyance
 in fee of regis-
 tered lands
 1898, 562, § 57.
 1899, 131, § 8.
 R. L. 128, § 56.

1 SECTION 65. If a deed in fee is for a part only of the land described
 2 in a certificate of title, the assistant recorder shall also, in accordance
 3 with the rules and instructions of the court, enter a new certificate and

Proceedings if
 deed conveys
 only portion
 of regis-
 tered fee.

1898, 562, § 58. issue an owner's duplicate to the grantor for the part of the land not 4
 1900, 354, § 6. included in the deed. In every case of transfer, the new certificate or 5
 R. L. 128, § 57. certificates shall include all the land described in the original and surren- 6
 dered certificates; but no new certificate to a grantee of a part only of 7
 the land shall be invalid by reason of the failure of the assistant recorder 8
 to enter a new certificate to the grantor for the remaining unconveyed 9
 portion. If the land described in a certificate of title is divided into lots, 10
 designated by numbers or letters, with measurements of all the bounds, 11
 and a plan of said land has been filed with the recorder and verified pur- 12
 suant to section fifty-one, and a certified copy thereof is recorded in the 13
 registration book with the original certificate when the registered owner 14
 makes a deed of transfer in fee of one or more of such lots, the assistant 15
 recorder may, instead of cancelling such certificate and entering a new 16
 certificate to the grantor for the part of the land not included in the deed 17
 of transfer, enter on the original certificate and on the owner's duplicate 18
 certificate a memorandum of such deed of transfer, with a reference to 19
 the lot or lots thereby conveyed, as designated on said plan, and stating 20
 that the certificate is cancelled as to such lot or lots. Every certificate 21
 with such memorandum shall be as effectual for the purpose of showing 22
 the grantor's title to the remainder of the land not conveyed as if the old 23
 certificate had been cancelled and a new certificate of such land entered; 24
 and such process may be repeated so long as there is convenient space 25
 upon the original certificate and the owner's duplicate certificate for 26
 making such memorandum of sale of lots. 27

Statement of encumbrances. SECTION 66. If, at the time of any transfer, encumbrances or claims 1
 1898, 562, § 59. adverse to the title of the registered owner appear upon the registration 2
 R. L. 128, § 58. book, they shall be stated in the new certificate or certificates, except so 3
 far as they may be simultaneously released or discharged. 4

MORTGAGES.

Mortgage of registered land. SECTION 67. The owner of registered land may mortgage it by execut- 1
 1898, 562, § 60. ing a mortgage deed. Such deed may be assigned, extended, discharged, 2
 R. L. 128, § 59. released in whole or in part, or otherwise dealt with by the mortgagee by 3
 any form of deed or instrument sufficient in law for the purpose. But 4
 such mortgage deed, and all instruments which assign, extend, discharge 5
 and otherwise deal with the mortgage, shall be registered, and shall take 6
 effect upon the title only from the time of registration. 7

Registration. SECTION 68. Registration of a mortgage shall be made in the follow- 1
 1898, 562, § 61. ing manner: The owner's duplicate certificate shall be presented to the 2
 R. L. 128, § 60. assistant recorder with the mortgage deed, and he shall enter upon the 3
 1928, 272, § 2. original certificate of title and also upon the owner's duplicate certificate 4
 a memorandum of the purport of the mortgage deed, the time of filing 5
 and the file number of the deed, and shall sign the memorandum. He 6
 shall also note upon the mortgage deed the time of filing and a reference 7
 to the volume and page of the registration book in which it is registered. 8

Discharge. SECTION 69. A mortgage on registered land may be discharged by 1
 1898, 562, § 62. the mortgagee in person on the registration book in the same manner 2
 R. L. 128, § 61. as a mortgage on unregistered land may be discharged by an entry on 3
 1928, 272, § 3. the record book in the registry of deeds, and such discharge shall be at- 4
 tested by an assistant recorder. 5

1 SECTION 70. Mortgages of registered land may be foreclosed like
 2 mortgages of unregistered land; but in case of foreclosure by entry and
 3 possession, the certificate of entry required by section two of chapter
 4 two hundred and forty-four shall be filed and registered by an assist-
 5 ant recorder within thirty days after the entry, in lieu of recording.
 6 After possession has been obtained by the mortgagee or his assigns, by
 7 entry or by action, and has continued for the time required by law to com-
 8 plete the foreclosure, he or his assigns may petition the land court for
 9 the entry of a new certificate, and the court, after notice to all parties in
 10 interest, shall have jurisdiction to hear the case, and may order the entry
 11 of a new certificate on such terms as equity and justice may require.

Foreclosure.
 1898, 562, § 63.
 R. L. 128, § 62.
 1905, 296, § 4.

12 In case of foreclosure by action as provided in chapter two hundred
 13 and forty-four, and by exercising the power of sale in the mortgage
 14 under the direction of the court as provided therein, a certified copy of
 15 the final decree confirming the sale may, after the time for appeal there-
 16 from has expired, be filed with the assistant recorder, and the purchaser
 17 shall thereupon be entitled to the entry of a new certificate.

18 In case of foreclosure by exercising the power of sale without a previous
 19 decree of court, the affidavit required by section fifteen of chapter two
 20 hundred and forty-four shall be filed and registered with the assistant
 21 recorder, in lieu of recording. The purchaser at the foreclosure sale or
 22 his assigns may thereupon at any time present the deed under the power
 23 of sale to the assistant recorder for filing and registration, and obtain a
 24 new certificate, after the mortgagee's duplicate, if any, has been delivered
 25 up and cancelled; but this chapter shall not prevent the mortgagor or
 26 other person in interest, prior to the entry of a new certificate of title,
 27 from directly impeaching, by bill in equity or otherwise, any foreclosure
 28 proceedings affecting registered land.

29 After a new certificate of title has been entered, no judgment recov-
 30 ered on the mortgage note for any balance due thereon shall operate
 31 to open the foreclosure or affect the title to registered land.

LEASES.

1 SECTION 71. Leases of registered land for a term of seven years or
 2 more shall be registered in lieu of recording.

1898, 562, § 64.

R. L. 128, § 63.

1928, 272, § 4.

Registration
 of certain
 leases of
 registered land

TRUSTS.

1 SECTION 72. If a deed or other instrument is filed in order to transfer
 2 registered land in trust, or upon any equitable condition or limitation
 3 expressed therein, or to create or declare a trust or other equitable in-
 4 terest in such land without transfer, the particulars of the trust, condi-
 5 tion, limitation or other equitable interest shall not be entered on the cer-
 6 tificate; but a memorandum thereof shall be entered by the words "in
 7 trust", or "upon condition", or other apt words, and by a reference by
 8 number to the instrument authorizing or creating the same. A similar
 9 memorandum shall be made upon the duplicate certificate. The as-
 10 sistant recorder shall note upon the original instrument creating or de-
 11 claring the trust or other equitable interest a reference by number to
 12 the certificate of title to which it relates, and to the volume and page
 13 in the registration book in which it is registered. If the instrument creat-
 14 ing or declaring a trust or other equitable interest is already recorded in

Trusts in
 registered
 land.
 1898, 562, § 65.
 R. L. 128, § 64.

the registry of deeds or of probate, a certified copy may be filed by the assistant recorder and registered.

Trusts with power of sale, etc., how expressed. 1898, 562, § 66. R. L. 128, § 65.

SECTION 73. If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell", or "power to mortgage", and by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the trust instrument, or unless the decree of a court of competent jurisdiction on a bill for instructions or other proceeding has construed the instrument in favor of the power. In such case a certified copy of such decree may be filed with the assistant recorder, and he shall make registration in accordance therewith.

Proceedings on appointment of new trustee. 1898, 562, § 67. R. L. 128, § 66.

SECTION 74. If a new trustee of registered land is appointed by the supreme judicial court, the superior court or the probate court, a new certificate shall be entered to him upon presentation to the assistant recorder of a certified copy of the decree and the surrender of the duplicate certificate.

Implied, etc., trusts, how established. 1898, 562, § 68. R. L. 128, § 67.

SECTION 75. Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration with the assistant recorder a statement thereof containing a description of the land, and a reference to the number of the certificate of title and the volume and page of the registration book in which it is entered. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

Petition by trustee for registration of land. 1898, 562, § 69. R. L. 128, § 68.

SECTION 76. A trustee may petition for registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust.

LEGAL INCIDENTS OF REGISTERED LAND.

Incidents of registered land. 1898, 562, § 70. R. L. 128, § 69.

SECTION 77. Registered land, and ownership therein, shall in all respects be subject to the burdens and incidents attaching by law to unregistered land. This chapter shall not relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, or from liability to attachment on mesne process or levy on execution, or from liability to any lien of any description established by law on land and the buildings thereon, or on the interest of the owner in such land or buildings, nor shall it change the laws of descent, or the rights of partition between co-tenants, or the right to take the same by eminent domain, or relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the laws relative to preferences, or change or affect in any way any other rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in this chapter.

ATTACHMENTS AND OTHER LIENS.

1 SECTION 78. A writing of any description or a copy of any writ
 2 required by law to be filed or recorded in the registry of deeds in order
 3 to create or preserve any lien, right or attachment upon unregistered
 4 land, if intended to affect registered land shall, in lieu of recording, be
 5 filed and registered in the office of the assistant recorder for the registry
 6 district where the land lies, and, in addition to any particulars required
 7 in such papers for recording with records of deeds, shall also, except in
 8 the case of attachment on mesne process, contain a reference to the
 9 number of the certificate of title of the land to be affected, and the
 10 volume and page of the registration book in which the certificate is
 11 registered, and also, if the attachment, right or lien is not claimed on all
 12 the land in any certificate of title, shall contain a description sufficiently
 13 accurate for identification of the land intended to be affected; provided,
 14 that if a notice of a federal tax lien on property and rights thereto of a
 15 delinquent taxpayer or a certificate of discharge of such a lien is filed
 16 with the register of deeds under section twenty-four of chapter thirty-six
 17 and it affects registered land in his district, the duty of properly regis-
 18 tering such notice or certificate and proceedings incident to or in con-
 19 nection with such a lien shall be upon him, acting as such register and
 20 as assistant recorder of the land court.

Attachment,
 etc., of regis-
 tered land.
 1898, 562, § 71.
 R. L. 128, § 70.
 1915, 120, § 2;
 292, § 2.
 1916, 306, § 1.
 1928, 386, § 2.
 233 Mass. 314.

1 SECTION 79. If an attachment or other lien or adverse claim of any
 2 description is registered, and the duplicate certificate is not presented
 3 at the time of registration to the assistant recorder, he shall, within
 4 twenty-four hours thereafter, send notice by mail to the registered
 5 owner, stating that such paper has been registered, and requesting him
 6 to send or produce his duplicate certificate so that a memorandum of
 7 the attachment or other lien or adverse claim may be made thereon.
 8 If the owner neglects or refuses to comply within a reasonable time,
 9 the assistant recorder shall suggest the fact to the court, and it shall,
 10 after notice, enter an order to the owner to produce his certificate at
 11 a time and place named therein, and may enforce the order by suitable
 12 process.

Memorandum
 thereof on
 owner's
 duplicate.
 1898, 562, § 72.
 R. L. 128, § 71.

1 SECTION 80. Attachments on mesne process and liens of every
 2 description upon registered land shall be continued, reduced, dis-
 3 charged and dissolved by any method sufficient in law to continue,
 4 reduce, discharge or dissolve like liens on unregistered land. All certifi-
 5 cates or other instruments permitted or required by law to be recorded
 6 in the registry of deeds to give effect to the continuance, reduction,
 7 discharge or dissolution of attachments or other liens upon unregis-
 8 tered land, or to give notice of such continuance, reduction, discharge
 9 or dissolution, shall, in the case of like liens upon registered land, be
 10 filed with the assistant recorder and registered in the registration book,
 11 in lieu of recording.

Dissolution,
 etc., of attach-
 ments, etc.
 1898, 562, § 73.
 R. L. 128, § 72.

1 SECTION 81. All laws relative to attachments of real estate and
 2 leasehold estates on mesne process shall apply to registered land, except
 3 that the duties required to be performed by the register of deeds shall
 4 be performed by the assistant recorder for the registry district where
 5 the land lies, who, in lieu of recording, shall register the facts required to

Provisions
 applicable to
 attachments
 to apply
 1898, 562, § 74.
 R. L. 128, § 73.

be recorded, and for that purpose shall keep books similar to those 6
 required to be kept for attachments by registers of deeds, and the fees 7
 for registering attachments shall be the same as for recording them. 8

Endorsement
 of plaintiff's
 attorney upon
 writ.
 1898, 562, § 75.
 R. L. 128, § 74.

SECTION 82. If an attachment is made, the name and address of 1
 the plaintiff's attorney shall be endorsed upon the writ, and he shall 2
 be deemed to be the attorney of the plaintiff until written notice that 3
 he has ceased to be such shall have been filed for registration by the 4
 plaintiff. 5

Registration
 of orders of
 court, etc.
 1898, 562, § 76.
 R. L. 128, § 75.

SECTION 83. If an attachment on mesne process is continued, re- 1
 deemed, dissolved or otherwise affected by an order, decision or judgment 2
 of the court where the action or proceeding in which said attachment 3
 was made is pending, or by an order of a court having jurisdiction in 4
 insolvency or bankruptcy, a certificate of the entry of such order, de- 5
 cision or judgment from the clerk or register and under the seal of the 6
 court, shall be entitled to be registered on presentation to the assistant 7
 recorder. A like certificate of the allowance by the court of an amend- 8
 ment which a subsequent attaching creditor or purchaser contends had 9
 the effect of dissolving an attachment may be registered as an amend- 10
 ment allowed, but shall not be conclusive of dissolution, unless the 11
 court where the action or suit is pending adjudicates that the amend- 12
 ment dissolved the attachment, whereupon a certificate of the order, 13
 when it becomes absolute, shall be registered as a dissolution of the 14
 attachment. 15

Enforcement
 of liens on
 registered
 land.
 1898, 562, § 78.
 R. L. 128, § 77.
 1931, 426, § 83.

SECTION 84. Any lien on registered land shall be enforced in the 1
 same manner as a like lien on unregistered land. If registered land 2
 is set off or sold on execution, or taken or sold for taxes or for any as- 3
 sessment, or sold to enforce a lien for labor or materials, or the lien of 4
 a mortgagee or co-tenant arising from a payment of taxes, or the lien for 5
 an assessment under chapter eighty, or for costs and charges for taking 6
 down dangerous structures under section nine of chapter one hundred 7
 and forty-three, or for erecting fences along the line of a railroad corpo- 8
 ration under section ninety-four of chapter one hundred and sixty, or for 9
 improving low land and swamps under section eleven of chapter two hun- 10
 dred and fifty-two, or for flowing land under section fourteen of chapter 11
 two hundred and fifty-three, or for any costs and charges incident to 12
 such liens, any execution, or copy of the execution, any officer's return, 13
 or any deed, demand, certificate or affidavit or other instrument made 14
 in the course of proceedings to enforce such liens and required by law 15
 to be recorded in the registry of deeds in the case of unregistered land, 16
 shall be filed with the assistant recorder for the district where the land 17
 lies and registered in the registration book, and a memorandum made 18
 upon the proper certificate of title in each case as an adverse claim or 19
 encumbrance. 20

Application
 for certificate
 by execution
 creditors, etc.
 1898, 562, § 79.
 R. L. 128, § 78.

SECTION 85. When the time has expired for redemption after regis- 1
 tered land has been set off or sold on execution, or taken or sold for 2
 the enforcement of a lien of any description, the person claiming under 3
 an execution or a deed or other instrument made in the course of pro- 4
 ceedings to levy such execution or enforce any lien may petition for 5
 the entry of a new certificate to him, which may be granted. Every such 6
 new certificate shall contain a memorandum of the nature of the pro- 7

8 ceeding on which it is based. Before the entry of a new certificate, the
 9 registered owner may pursue all legal and equitable remedies to im-
 10 peach or annul proceedings under executions or to enforce liens of any
 11 description.

PENDING SUITS, JUDGMENTS, DECREES AND PARTITIONS.

1 SECTION 86. No writ of entry, petition for partition, or other pro-
 2 ceeding at law or in equity affecting the title to land or the use and
 3 occupation thereof or the buildings thereon, and no judgment or decree,
 4 or any writ of error, bill of review or other proceeding to vacate or
 5 reverse any judgment or decree, shall have any effect upon registered
 6 land as against persons other than the parties thereto, unless a memoran-
 7 dum like that described in section fifteen of chapter one hundred and
 8 eighty-four, containing also a reference to the number of the certificate
 9 of title of the land affected and the volume and page of the registration
 10 book in which it is entered, is filed and registered. This section shall
 11 not apply to attachments, levies of execution, or to the probate of wills
 12 or administration in the probate court. If notice of the pendency of the
 13 proceeding has been duly registered, it shall be sufficient to register the
 14 judgment or decree within sixty days after the rendition thereof.

Registration
of notice of
certain pro-
ceedings, etc.,
required to
bind third
parties.
1898, 562, § 80.
R. L. 128, § 79.

1 SECTION 87. At any time after final judgment or decree in favor of
 2 the defendant, or other disposition in the manner specified in section
 3 sixteen of chapter one hundred and eighty-four, of any case where a
 4 memorandum has been registered as provided in the preceding section,
 5 a certificate of the clerk, stating the manner of disposal thereof, as pro-
 6 vided in said section sixteen, shall be entitled to registration.

Registration
of certificate
of judgment,
etc.
1898, 562, § 81.
R. L. 128, § 80.

1 SECTION 88. If judgment is entered for the plaintiff or demandant
 2 in a real action affecting registered land, except in ejectment, and ac-
 3 tions under chapter two hundred and thirty-nine relative to terms of less
 4 than seven years, such judgment shall be entitled to registration on pres-
 5 entation of a certificate of the entry thereof from the clerk of the court
 6 where the action is pending to the assistant recorder, who shall enter
 7 a memorandum upon the certificate of title of the land to which such
 8 judgment relates. If the judgment does not apply to all the land de-
 9 scribed in the certificate of title, the certificate of the clerk and the
 10 memorandum entered by the assistant recorder shall contain a description
 11 of the land affected by the judgment.

Registration
of judgment
for demandant,
etc.
1898, 562, § 82.
R. L. 128, § 81.

1 SECTION 89. If an execution or writ of seisin has been issued upon
 2 a writ of entry affecting registered land and served by the officer, he shall
 3 cause an attested copy of the execution, with a return of his doings
 4 thereon, to be filed and registered within three months after the service
 5 and before the return of the execution into the clerk's office, and the
 6 demandant, if the judgment was that he was entitled to an estate in fee
 7 simple in the demanded premises, or in any part thereof, and for which
 8 execution issued, shall thereupon be entitled to the entry of a new certi-
 9 cate of title; but in informations under chapter two hundred and forty-
 10 five the commonwealth shall be entitled to have the certificate of the
 11 registered owner cancelled by the land court as soon as judgment is
 12 rendered in its favor.

Registration
of writ of
seisin, etc.,
and return
1898, 562, § 83.
R. L. 128, § 82.

Registration of certificate of judgment in writ of dower, etc.
1898, 562, § 84.
R. L. 128, § 83.

SECTION 90. If, in a writ of dower, judgment is entered confirming the report of the commissioners under section seven of chapter two hundred and thirty-eight, or if, in a writ of waste, judgment is entered that the plaintiff recover the place wasted, a certificate of the entry of such judgment may be registered as an encumbrance.

Registration of decrees.
1898, 562, § 85.
R. L. 128, § 84.

SECTION 91. A decree of a court of competent jurisdiction affecting title or rights in registered land, whether made in the exercise of general equity jurisdiction or in the exercise of jurisdiction conferred by statute, may be registered in the same manner as a judgment at law. But every court making such a decree shall, upon application of the plaintiff or petitioner, order any parties before it to execute for registration any deed or instrument necessary to give effect to its decree, and may require the registered owner to deliver his duplicate certificate to the plaintiff or petitioner to be cancelled or to have a memorandum entered upon it by the assistant recorder. If the person required to execute any deed or other instrument for the purpose of giving effect to the decree is absent from the commonwealth, or is a minor, or insane, or for any reason is not amenable to the process of the court, it may appoint a trustee to execute such instrument, which, when executed, shall be registered and shall have full force and effect to bind the land to be affected thereby.

Proceedings on judgment for partition, etc.
1898, 562, § 86.
R. L. 128, § 85.
1917, 279, § 43.

SECTION 92. In proceedings for partition of registered land, or for the assignment in fee of registered land claimed by husband or wife by statutory right, after the entry of the final decree and the acceptance of the report of the commissioners, a copy of the decree and of the return of the commissioners, certified by the register, shall be filed and registered; and thereupon, if the land is set off to the owners in severalty, any owner shall be entitled to have a certificate entered of the share set off to him in severalty, and to receive an owner's duplicate therefor. If the land lies in two or more registry districts, only so much of the decree or return need be filed and registered in any district as relates to the land in that district. If the land is ordered by the court to be sold, the purchaser or his assigns shall have a certificate of title entered to him or them upon presenting the deed of the commissioners for registration; but any new certificate entered in pursuance of partition proceedings, whether by set-off or sale, shall contain a reference to the final decree of partition, and shall be conclusive as to the title to the same extent and against the same persons as such decree is made conclusive by the laws applicable thereto. A person holding such certificate or a transfer thereof may petition the court at any time to cancel the memorandum relative to such decree, and the court, after notice and a hearing, may grant the petition. Such certificate shall thereafter be conclusive in the same manner and to the same extent as other certificates of title.

Registration of prior registered mortgage or lease with decree for partition.
1898, 562, § 87.
R. L. 128, § 86.

SECTION 93. If a certified copy of a decree for partition and of the return of the commissioners is presented for registration, and if a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the tenant claiming under the mortgagor or lessor shall cause the mortgage or lease and any duplicate certificate of title issued to the mortgagee or lessee to be again presented for registration, and the assistant recorder shall endorse on each a memorandum of such partition and a description of the land set off in severalty on which

9 such mortgage or lease remains in force. Such tenant shall not be en-
 10 titled to receive his own duplicate certificate of title until such mortgage
 11 or lease has been so presented for registration.

BANKRUPTCY AND INSOLVENCY.

1 SECTION 94. Such notices in insolvency and copies of decrees in
 2 bankruptcy as are required in the case of unregistered land to be recorded,
 3 shall, if the debtor owns registered land, be filed with the assistant re-
 4 corder and registered.

Registration
 of notice of
 warrant in
 insolvency or
 copy of decree
 in bankruptcy
 1898, 562, § 88.
 R. L. 128, § 87.

5 An assignee in insolvency or trustee in bankruptcy shall be entitled
 6 to the entry of a new certificate of registered land of the debtor or bank-
 7 rupt upon presenting and filing a certified copy of the assignment in
 8 insolvency or decree of adjudication in bankruptcy with the insolvent's
 9 or bankrupt's duplicate certificate of title; but the new certificate shall
 10 state that it is entered to him as assignee in insolvency or trustee in
 11 bankruptcy.

1 SECTION 95. If proceedings in insolvency or bankruptcy against a
 2 registered owner, of which notice has been registered, are vacated by
 3 decree, or if the court of insolvency or bankruptcy grants a discharge in
 4 composition proceedings and orders a reconveyance of land to the debtor,
 5 or bankrupt, a certified copy of the decree, or of such discharge and order,
 6 may be filed and registered. If a new certificate has been entered in the
 7 name of the assignee in insolvency or trustee in bankruptcy as registered
 8 owner, the debtor or bankrupt shall be entitled to the entry of a new cer-
 9 tificate in his name, and the certificate of the assignee or trustee shall
 10 be surrendered.

Registration of
 discharge, etc.
 1898, 562, § 89
 R. L. 128, § 88

REVERTER.

1 SECTION 96. If land taken for a public use reverts by operation of
 2 law to the owner from whom it was taken or to his heirs or assigns, the
 3 court, upon petition of the person entitled to the benefit of the reversion,
 4 after notice and a hearing, may order the entry of a new certificate of
 5 title to him.

New certificate
 upon reverter
 of land
 1898, 562, § 91.
 R. L. 128, § 90.

TRANSFER BY DESCENT AND DEVISE.

1 SECTION 97. Upon the death of a registered owner, his heirs at law
 2 or devisees, after twenty days from the granting of letters testamentary
 3 or of administration, or in case of an appeal, at any time after the entry
 4 of a final decree, may file a certified copy of the final decree of the pro-
 5 bate court and of the will, if any, with the assistant recorder, and make
 6 application for the entry of a new certificate. The court shall issue
 7 notice to the executor or administrator and to all other persons in in-
 8 terest, and may also give notice by publication in such newspaper or
 9 newspapers as it may consider proper, to all whom it may concern, and,
 10 after a hearing, may direct the entry of a new certificate or certificates
 11 to the persons entitled as heirs or devisees. Any new certificate so
 12 entered before the final settlement of the estate of the deceased owner in
 13 the probate court shall state expressly that it is entered by transfer from
 14 the last certificate by descent or devise, and that the estate is in process
 15 of settlement. After the final settlement of the estate, or after the time
 16 allowed for bringing an action against an executor or administrator by
 17 creditors of the deceased, the heirs at law or devisees may petition the

Transfer by
 descent or
 devise.
 1898, 562, § 92.
 R. L. 128, § 91.
 1919, 17.
 1926, 90, § 1.

court for an order to cancel the memorandum upon their certificate, 18
stating that the estate is in course of settlement, and the court, after 19
such notice, if any, as it may order and a hearing, may grant the petition; 20
but the liability of heirs or devisees of registered land for claims against 21
the estate of the deceased shall not in any way be diminished or changed. 22

Executor, etc.,
right to sell,
etc., unaffected.
1898, 562, § 93.
R. L. 128, § 92.
1915, 23, § 1.

SECTION 98. This chapter shall not affect or impair the jurisdiction 1
of the probate court to license an executor, administrator, guardian or 2
conservator to sell or mortgage registered land for any purpose for which 3
a license may be granted in the case of unregistered land. The pur- 4
chaser or mortgagee taking a deed in pursuance of such license shall be 5
entitled to a new certificate of title, or memorandum of registration. 6

ASSURANCE FUND.

Assurance
fund.
1898, 562, § 94.
R. L. 128, § 93.
1905, 249, § 3.
4 Op. A. G. 18.

SECTION 99. Upon original registration, and also upon the entry of 1
a certificate under section ninety-seven, there shall be paid to the re- 2
corder one tenth of one per cent of the assessed value of the land, on 3
the basis of the last assessment for municipal taxation, or, in case of the 4
registration of an easement or right, one tenth of one per cent of the 5
value thereof as found by the court, as an assurance fund. 6

Custody and
investment
of fund.
1898, 562, § 95.
R. L. 128, § 94.
4 Op. A. G. 18.

SECTION 100. All money received by the recorder under the preceding 1
section shall be paid to the state treasurer, who shall keep it invested, 2
with the advice and approval of the governor and council, and shall make 3
an annual report of the condition and income thereof. 4

Action for
compensation
from fund.
1898, 562, § 96.
R. L. 128, § 95.
224 Mass. 46.

SECTION 101. A person who, without negligence on his part, sustains 1
loss or damage, or is deprived of land or of any estate or interest therein 2
after the original registration of land, by the registration of another 3
person as owner of such land or of any estate or interest therein, through 4
fraud or in consequence of any error, omission, mistake or misdescription 5
in any certificate of title or in any entry or memorandum in the registra- 6
tion book, may recover in contract in the superior court compensation 7
for such loss or damage or for such land or estate or interest therein 8
from the assurance fund; but a person so deprived of land or of any 9
estate or interest therein, having a right of action or other remedy for 10
the recovery of such land, estate or interest, shall exhaust such remedy 11
before resorting to the action of contract herein provided. This section 12
shall not deprive the plaintiff of any action of tort which he may have 13
against any person for such loss or damage or deprivation of land or of any 14
estate or interest therein. But if the plaintiff elects to pursue his remedy 15
in tort, and also brings an action of contract under this chapter, the action 16
of contract shall be continued to await the result of the action of tort. 17

Same subject.
Against whom
to be brought.
1898, 562, § 97.
R. L. 128, § 96.
224 Mass. 46.

SECTION 102. If such action of contract is brought to recover for 1
loss or damage or for deprivation of land or of any estate or interest 2
therein arising wholly through fraud, negligence, omission, mistake or 3
misfeasance of the recorder, assistant recorder or of any of the examiners 4
of title, in the performance of executive or ministerial duties, or of any 5
of the assistants or clerks of the recorder, in the performance of their 6
respective duties, the action shall be brought against the state treasurer 7

8 as sole defendant. If such action is brought to recover for loss or damage
 9 or deprivation of land or of any estate or interest therein arising wholly
 10 through fraud, negligence, omission, mistake or misfeasance of some
 11 person other than the recorder, assistant recorder or the other officers
 12 and assistants above named, or arising jointly through the fraud, negli-
 13 gence, omission, mistake or misfeasance of such other person and the
 14 recorder, assistant recorder or other officers and assistants above named,
 15 such action shall be brought against both the state treasurer and such
 16 other person, as joint defendants.

1 SECTION 103. If there are defendants other than the state treasurer
 2 and judgment is entered for the plaintiff against the state treasurer and
 3 against any of the other defendants, execution shall issue against such
 4 other defendants and be levied upon them. If the execution is returned
 5 unsatisfied in whole or in part, and the officer returning the same certifies
 6 that the amount due cannot be collected from the land or goods of such
 7 other defendants, a justice of the superior court shall direct the clerk
 8 to certify the amount due on the execution to the comptroller, who
 9 shall thereupon audit and certify the amount of the execution in the same
 10 manner as claims against the commonwealth, and the state treasurer
 11 shall pay the amount out of the assurance fund, without any further act
 12 or resolve making an appropriation therefor.

13 If judgment in such action cannot for any reason be entered against
 14 any of the other defendants it may be entered against the state treas-
 15 urer alone, or, if it cannot be entered against all the other defendants,
 16 it may be entered against him and such of the other defendants as are
 17 found liable, and against whom judgment can lawfully be entered.

18 If judgment is entered against the state treasurer alone, the justice
 19 of the superior court before whom the action is tried shall direct the
 20 clerk to transmit to the comptroller a certificate of the entry of judg-
 21 ment and of the amount due, and the state treasurer shall pay the same
 22 upon the certificate of the comptroller, as above provided.

1 SECTION 104. If the assurance fund at any time is not sufficient to
 2 meet the amount called for by such certificate of the comptroller the
 3 state treasurer shall make up the deficiency from any funds in the treas-
 4 ury not otherwise appropriated; and, in such case, any amounts there-
 5 after received by the state treasurer on account of the assurance fund
 6 shall be transferred to the general funds of the treasury, until the amount
 7 paid on account of the deficiency shall have been made up.

1 SECTION 105. In every case where payment has been made by the
 2 state treasurer under section one hundred and three, the commonwealth
 3 shall be subrogated to the rights of the plaintiff against any other parties
 4 or securities, and the state treasurer shall enforce the same, and the
 5 amounts recovered shall be placed to the account of the assurance fund.

1 SECTION 106. The income of the assurance fund shall be added to
 2 the principal and invested; except that whenever said fund amounts to
 3 two hundred thousand dollars the income thereof shall be used to de-
 4 fray, as far as may be, the expenses of the administration of this chapter.

Judgments,
 how satisfied.
 1898, 562, § 98
 R. L. 128, § 97
 1923, 362, § 89

Proceedings if
 assurance fund
 is insufficient.
 1898, 562, § 99
 R. L. 128, § 98
 1931, 391,
 § 205.

Subrogation of
 commonwealth
 to plaintiff's
 rights, when.
 1898, 562,
 § 100
 R. L. 128, § 99.

Assurance
 fund, applica-
 tion of income.
 1898, 562,
 § 101.
 R. L. 128,
 § 100.

When fund not liable. Limit of compensation. 1898, 562, § 102. 1899, 125. R. L. 128, § 101.

SECTION 107. The assurance fund shall not be liable for any loss, damage or deprivation occasioned by a breach of trust, whether express, implied or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any plaintiff recover in contract as compensation under this chapter more than the fair market value of the land at the time when he suffered the loss, damage or deprivation thereof.

Limitation, etc., of actions. 1898, 562, § 103. R. L. 128, § 102.

SECTION 108. Actions of contract for compensation under this chapter by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within six years after the cause of action accrued; but the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with section one hundred and two may bring the action of contract for compensation within one year after the termination of such action. Said action of contract shall survive to the personal representative of the registered owner, unless barred in his lifetime; but the proceeds thereof shall be treated as real estate.

Assessors' valuation to be evidence. 1919, 297. 238 Mass. 490.

SECTION 109. In any action to recover damages for loss or damage or deprivation of land, or of any estate or interest therein, by the registration of another person as owner of such land, or of any estate or interest therein, the assessed valuation for taxation of the land, or of the estate or interest, if assessed separately, for the three years preceding the loss, damage or deprivation may be introduced by any party as evidence of the fair market value of such land, estate or interest; but if the valuation for any one year is so introduced, the valuations for all three years shall be introduced.

POWERS OF ATTORNEY.

Powers of attorney. 1898, 562, § 104. R. L. 128, § 103. 262 Mass. 555.

SECTION 110. Any person may, by attorney, procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged and filed with the recorder or the assistant recorder of the proper registry district and registered. Any instrument revoking such letter shall be acknowledged and registered in like manner.

LOST DUPLICATE CERTIFICATES.

Lost duplicate certificates. 1898, 562, § 105. R. L. 128, § 104. 1926, 90, § 2.

SECTION 111. If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee or other person applying for the entry of a new certificate to him or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered. The court may thereupon, upon the petition of the registered owner or other person in interest, after such notice, if any, as it may order and a hearing, direct the issue of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of a lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as the original duplicate for all the purposes of this chapter.

ADVERSE CLAIMS.

1 SECTION 112. Whoever claims any right or interest in registered land
 2 adverse to the registered owner arising after the date of original regis-
 3 tration may, if no other provision is made in this chapter for registering
 4 the same, make a written statement setting forth fully his alleged right
 5 or interest, and how or under whom it was acquired, and a reference to
 6 the volume and page of the certificate of title of the registered owner, and
 7 a description of the land in which the right or interest is claimed. The
 8 statement shall be signed and sworn to, and shall state the adverse claim-
 9 ant's residence, and designate a place where all notices may be served
 10 upon him. This statement shall be entitled to registration as an adverse
 11 claim, and the court, upon the petition of any party in interest, shall
 12 grant a speedy hearing upon the validity of such adverse claim, and shall
 13 enter such decree thereon as justice and equity may require. If the
 14 claim is adjudged to be invalid, the registration shall be cancelled. If
 15 the court, after notice and a hearing, finds that a claim thus registered
 16 was frivolous or vexatious, it may tax the adverse claimant double costs.

Adverse
claims.
1898, 562,
§ 106.
R. L. 128,
§ 105.
234 Mass. 288.

SURRENDER OF DUPLICATE CERTIFICATES.

1 SECTION 113. If the recorder or any assistant recorder is requested
 2 to enter a new certificate in pursuance of an instrument purporting to
 3 be executed by the registered owner, or by reason of any instrument or
 4 proceedings which divest the title of the registered owner against his
 5 consent, and the outstanding owner's duplicate certificate is not presented
 6 for cancellation when such request is made, the recorder or assistant
 7 recorder shall not enter a new certificate, but the person claiming to be
 8 entitled thereto may apply by petition to the court. The court, after a
 9 hearing, may order the registered owner or any person withholding the
 10 duplicate certificate to surrender it, and direct the entry of a new cer-
 11 tificate upon such surrender. If the person withholding the duplicate
 12 certificate is not amenable to the process of the court, or if for any
 13 reason the outstanding owner's duplicate certificate cannot be delivered
 14 up, the court may by decree annul it and order a new certificate of title
 15 to be entered. Such new certificate and all duplicates thereof shall con-
 16 tain a memorandum of the annulment of the outstanding duplicate.

Surrender of
duplicate
certificates.
1898, 562,
§ 107.
R. L. 128,
§ 106.
1928, 272, § 5.

AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE.

1 SECTION 114. No erasure, alteration or amendment shall be made
 2 upon the registration book after the entry of a certificate of title or of a
 3 memorandum thereon and the attestation of the same by the recorder or
 4 an assistant recorder, except by order of the court. A registered owner
 5 or other person in interest may apply by petition to the court upon the
 6 ground that registered interests of any description, whether vested, con-
 7 tingent, expectant or inchoate, have terminated and ceased; or that new
 8 interests not appearing upon the certificate have arisen or been created;
 9 or that any error or omission was made in entering a certificate or any
 10 memorandum thereon, or on any duplicate certificate; or that the name
 11 of any person on the certificate has been changed; or that the registered
 12 owner has married, or if registered as married, that the marriage has
 13 been terminated; or that a corporation which owned registered land
 14 and has been dissolved has not conveyed the same within three years after

Amendment,
etc., of
certificates.
1898, 562,
§ 108.
R. L. 128,
§ 107.
236 Mass. 176.
256 Mass. 471.
262 Mass. 555.

its dissolution; or upon any other reasonable ground; and the court 15
 may hear and determine the petition after notice to all parties in interest, 16
 and may order the entry of a new certificate, the entry or cancellation of 17
 a memorandum upon a certificate, or grant any other relief upon such 18
 terms, requiring security if necessary, as it may consider proper; but 19
 this section shall not authorize the court to open the original decree of 20
 registration, and nothing shall be done or ordered by the court which 21
 shall impair the title or other interest of a purchaser holding a certificate 22
 for value and in good faith, or his heirs or assigns, without his or their 23
 written consent. 24

PETITIONS, MOTIONS AND NOTICES AFTER REGISTRATION.

Filing, etc., of petitions and motions after registration. 1898, 562, § 108 SECTION 115. Petitions and motions filed under this chapter after original registration shall be filed and entitled in the original case in which the decree of registration was entered. 1 2 3
 R. L. 128, § 107.

Service of notice after registration. 1898, 562, § 109 R. L. 128, § 108. SECTION 116. All notices required by or given under this chapter by the recorder or any assistant recorder, after original registration, shall be mailed to the person to be notified at the residence and post office address stated in the certificate of title, or in any registered instrument under which he claims an interest, in the office of the recorder or assistant recorder, relating to the parcel of land in question. 1 2 3 4 5 6
 All notices and citations directed by special order of the court under this chapter, after original registration, may be served in the manner above stated, and the certificate of the recorder shall be conclusive proof of such service; but the court may in any case order different or further service, by publication or otherwise. 7 8 9 10 11

SECTIONAL PLANS.

Sectional plans and employment of assistants therefor. 1915, 223, § 2. SECTION 117. The court may make sectional plans showing registered lands, and in so doing may employ competent draftsmen and assistants. 1 2 3

PENALTY FOR FRAUDULENT CONVEYANCE.

Penalty for fraudulent conveyance. 1898, 562, § 115. R. L. 128, § 110. SECTION 118. Whoever, with intent to defraud, sells and conveys registered land, knowing that an undischarged attachment or any other encumbrance exists thereon not noted by memorandum on the duplicate certificate of title, without informing the grantee of such attachment or other encumbrance before the consideration is paid, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than one year. 1 2 3 4 5 6 7

CHAPTER 186.

ESTATES FOR YEARS AND AT WILL.

SECT.

1. Estates for long term of years deemed estates in fee simple.
2. Payments when curtesy or dower is assigned out of such estate.
3. Liability of tenant at sufferance for rent.
4. Liability of tenant for rent of part of land demised.
5. Form of action to recover rent. Evidence.
6. Survival of action for rent.
7. Application of certain sections.

SECT.

8. Recovery of apportionment of rent.
9. Recovery of rent paid in advance.
10. Rent deemed necessaries.
11. Termination of lease by notice to quit for non-payment of rent.
12. Termination of tenancy at will by notice to quit.
13. Same subject. Action to recover possession of premises limited.
14. Penalty on lessor for failure to furnish water, heat, etc.

1 SECTION 1. If land is demised for the term of one hundred years or
 2 more, the term shall, so long as fifty years thereof remain unexpired, be
 3 regarded as an estate in fee simple as to every thing concerning the
 4 descent and devise thereof, upon the decease of the owner, the right of
 5 dower or of curtesy therein, the sale thereof by executors, administrators,
 6 guardians, conservators or trustees, the levy of execution thereon, and
 7 the redemption thereof if mortgaged or taken on execution; and who-
 8 ever holds as lessee or assignee under such a lease shall, so long as fifty
 9 years of the term remain unexpired, be regarded as a freeholder for all
 10 purposes.

Estates for long term of years deemed estates in fee simple
 1834, 162, §§ 1, 2
 R. S. 60, §§ 18, 19.
 G. S. 90, §§ 20, 21
 P. S. 121, § 1.
 R. L. 129, § 1
 1915, 33, § 1
 5 Mass. 419
 112 Mass. 247.

178 Mass. 76.

1 SECTION 2. If curtesy or dower is assigned out of such land, the
 2 husband or widow and his or her assigns shall pay to the owner of the
 3 unexpired residue of the term one third of the rent reserved in the lease
 4 under which the wife or husband held the term.

Payments when curtesy or dower is assigned out of such estate.

1834, 162, § 3.
 R. S. 60, § 20

G. S. 90, § 22
 P. S. 121, § 2.

R. L. 129, § 2.

1 SECTION 3. Tenants at sufferance in possession of land or tenements
 2 shall be liable to pay rent therefor for such time as they may occupy or
 3 detain the same.

Liability of tenant at sufferance for rent.

G. S. 90, § 25.
 P. S. 121, § 3.
 R. L. 129, § 3.
 4 Cush. 42
 1 Allen, 217.

10 Allen, 260
 105 Mass. 486
 132 Mass. 346
 134 Mass. 283
 156 Mass. 209.

181 Mass. 218
 189 Mass. 246
 202 Mass. 26
 229 Mass. 576

232 Mass. 479
 239 Mass. 283
 243 Mass. 547
 244 Mass. 299

1 SECTION 4. A person in possession of land out of which rent is due
 2 shall be liable for the amount or proportion of rent due from the land in
 3 his possession although it is only a part of that originally demised.

Liability of tenant for rent of part of land demised.

R. S. 60, § 22
 G. S. 90, § 24.
 P. S. 121, § 4

R. L. 129, § 4
 17 Mass. 439
 22 Pick. 565.

2 Met. 505.
 8 Gray, 204.

1 SECTION 5. Such rent may be recovered in contract, and the deed
 2 of demise or other written instrument, if any, showing the provisions of
 3 the lease, may be used in evidence by either party to prove the amount
 4 of rent due from the defendant.

Form of action to recover rent Evidence
 1825, 89, § 5
 R. S. 60, § 23

G. S. 90, § 26.

P. S. 121, § 5.

R. L. 129, § 5.

115 Mass. 367.

Survival of action for rent. 1825, 89, § 5. R. S. 60, § 24. G. S. 90, § 27. P. S. 121, § 6. R. L. 129, § 6.

SECTION 6. Such action may be brought by or against executors and administrators for any arrears of rent accrued in the lifetime of the deceased parties, respectively, in the same manner as for debts due from or to the same parties in their lifetime on a personal contract.

Application of certain sections. R. S. 60, § 25. G. S. 90, § 28. P. S. 121, § 7.

SECTION 7. The six preceding sections shall not deprive landlords of any other legal remedy for the recovery of rents, whether secured by lease or by law.

R. L. 129, § 7.

Recovery of apportionment of rent. 1869, 368, §§ 1-3. P. S. 121, § 8. R. L. 129, § 8. 3 Cush. 206. 1 Allen, 489. 6 Allen, 215. 128 Mass. 365. 132 Mass. 346. 187 Mass. 575. 194 Mass. 389. 222 Mass. 327.

SECTION 8. If land is held by lease of a person having an estate therein determinable on a life or on a contingency, and such estate determines before the end of a period for which rent is payable, or if an estate created by a written lease or an estate at will is determined before the end of such period by surrender, either express or by operation of law, by notice to quit for non-payment of rent, or by the death of any party, the landlord or his executor or administrator may recover in contract, a proportional part of such rent according to the portion of the last period for which such rent was accruing which had expired at such determination.

Recovery of rent paid in advance. 1869, 368, § 4. P. S. 121, § 9. R. L. 129, § 9.

SECTION 9. If, upon the determination of a tenancy, in any manner mentioned in the preceding section, before the end of a period for which rent is payable, the rent therefor has been paid before such determination, a proportionate part thereof, according to the portion of such period then unexpired, may be recovered back in contract.

Rent deemed necessities. 1859, 127.

SECTION 10. Debts for the rent of a dwelling house occupied by the debtor or his family shall be considered as claims for necessities.

G. S. 90, § 29. 8 Gray, 226. 7 Allen, 264.
P. S. 121, § 10. 1 Allen, 219. 12 Allen, 366.
R. L. 129, § 10.

Termination of lease by notice to quit for non-payment of rent. 1847, 267, § 1. 1848, 142, § 2. 1857, 55. G. S. 90, § 30; 137, § 3. P. S. 121, § 11. R. L. 129, § 11. 8 Cush. 282.

SECTION 11. Upon the neglect or refusal to pay the rent due under a written lease, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease, unless the tenant, at least four days before the return day of the writ, in an action by the landlord to recover possession of the premises, pays or tenders to the landlord or to his attorney all rent then due, with interest and costs of suit.

137 Mass. 13.

219 Mass. 151.

Termination of tenancy at will by notice to quit. 1825, 89, § 4. R. S. 60, § 26. G. S. 90, § 31. P. S. 121, § 12. R. L. 129, § 12. 17 Mass. 282. 1 Pick. 43. 2 Pick. 70. 2 Met. 29. 13 Met. 275. 5 Cush. 133.

SECTION 12. Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment; and in case of neglect or refusal to pay the rent due from a tenant at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the tenancy.

11 Cush. 93, 191. 103 Mass. 154. 136 Mass. 532. 210 Mass. 55.
6 Gray, 224. 107 Mass. 406. 157 Mass. 439. 226 Mass. 430.
11 Gray, 181. 108 Mass. 150, 553. 165 Mass. 351. 238 Mass. 310.
7 Allen, 487. 113 Mass. 531. 172 Mass. 145. 263 Mass. 318.
14 Allen, 43. 126 Mass. 143. 197 Mass. 325. 267 Mass. 143.

1 SECTION 13. Whenever a tenancy at will of premises occupied for
 2 dwelling purposes, other than a room or rooms in a hotel, lodging house
 3 or rooming house is terminated, without fault of the tenant, either by
 4 operation of law or by act of the landlord except as provided in section
 5 twelve, no action to recover possession of the premises shall be brought,
 6 nor shall the tenant be dispossessed, until after the expiration of a period,
 7 equal to the interval between the days on which the rent reserved is pay-
 8 able, from the time when the tenant receives notice in writing of such
 9 termination; but such tenant shall be liable to pay rent for such time
 10 during the said period as he occupies or detains the premises, at the same
 11 rate as theretofore payable by him while a tenant at will.

Same subject.
 Action to
 recover pos-
 session of pre-
 mises limited.
 1927, 339, § 1.

1 SECTION 14. Any lessor of any building or part thereof occupied for
 2 dwelling purposes, other than a room or rooms in a hotel, lodging house or
 3 rooming house, who is required by the terms, expressed or implied, of any
 4 contract or lease, to furnish water, heat, light, power, elevator service
 5 or telephone service to any occupant of such building, or part thereof,
 6 who wilfully or intentionally fails to furnish such water, heat, light,
 7 power, elevator service or telephone service at any time when the same is
 8 necessary to the proper or customary use of such building, or part thereof,
 9 or any lessor who wilfully and intentionally interferes with the quiet
 10 enjoyment of any such leased premises by the occupant, shall be punished
 11 by a fine of not more than one hundred dollars, or by imprisonment for not
 12 more than six months.

Penalty on
 lessor for
 failure to
 furnish water,
 heat, etc.
 1927, 339, § 1

CHAPTER 187.

EASEMENTS.

SECT.

- 1. Easements of light and air not to be acquired by use.
- 2. Easements by prescription only by twenty years uninterrupted adverse use.

SECT.

- 3. Prevention of easement by notice.
- 4. Notice as disturbance of easement.

1 SECTION 1. Whoever erects a house or other building with windows
 2 overlooking the land of another shall not, by the mere continuance of
 3 such windows, acquire an easement of light or air so as to prevent the
 4 erection of a building on such land.

G. S. 90, § 32. P. S. 122, § 1. R. L. 130, § 1. 115 Mass. 204.

Easements of
 light and air
 not to be ac-
 quired by use.
 1852, 144

1 SECTION 2. No person shall acquire by adverse use or enjoyment a
 2 right or privilege of way or other easement from, in, upon or over the land
 3 of another, unless such use or enjoyment is continued uninterruptedly
 4 for twenty years.

R. S. 60, § 27. R. L. 130, § 2. 209 Mass. 542.
 G. S. 90, § 33. 2 Cush. 191. 223 Mass. 544.
 P. S. 122, § 2. 10 Allen, 557. 224 Mass. 256.

Easements by
 prescription
 only by
 twenty years
 uninterrupted
 adverse use

1 SECTION 3. If a person apprehends that a right of way or other ease-
 2 ment in or over his land may be acquired by custom, use or otherwise by
 3 any person or class of persons, he may give public notice of his intention

Prevention of
 easement by
 notice
 1824, 52
 R. S. 60, § 2.

G. S. 90, § 34.
1867, 302.
P. S. 122, § 3.
R. L. 130, § 3.

to prevent the acquisition of such easement, by causing a copy of such 4
notice to be posted in a conspicuous place upon the premises for six suc- 5
cessive days, and such posting shall prevent the acquiring of such ease- 6
ment by use for any length of time thereafter; or he may prevent a par- 7
ticular person or persons from acquiring such easement by causing a copy 8
of such notice to be served upon him or them as provided by law for the 9
service of an original summons in a civil action. Such notice from the 10
agent, guardian or conservator of the owner of land shall have the same 11
effect as a notice from the owner himself. A certificate, by an officer qual- 12
ified to serve civil process, that such copy has been served or posted by 13
him as above provided, if made upon the original notice and recorded 14
with it, within three months after the service or posting, in the registry 15
of deeds for the county or district in which the land lies, shall be con- 16
clusive evidence of such service or posting. 17

Notice as
disturbance of
easement.
R. S. 119, § 14.
G. S. 154, § 14
P. S. 122, § 4
R. L. 130, § 3.

SECTION 4. A notice given under the preceding section shall be a 1
disturbance of the easement to which it relates entitling the person claim- 2
ing such easement to an action for the purpose of trying the right; and if 3
he prevails, he shall be entitled to full costs although he recovers only 4
nominal damages. 5

CHAPTER 188.

HOMESTEADS.

<p>SECT.</p> <p>1. Nature of homestead estate.</p> <p>2. Mode of acquisition.</p> <p>3. Wife or minor child may occupy in certain cases.</p> <p>4. Continuance after death of householder.</p> <p>5. Previous mortgage, etc., unaffected.</p>	<p>SECT.</p> <p>6. Estate subject to prior mortgage.</p> <p>7. Release of rights.</p> <p>7A. Same subject.</p> <p>8. Sale of rights of widow, etc.</p> <p>9. Set-off if holder insolvent.</p> <p>10. Existing rights saved.</p>
---	---

Nature of
homestead
estate.
1851, 340,
§§ 1, 4.
1855, 238,
§§ 1, 3.
1857, 298,
§§ 1, 4.
G. S. 104,
§§ 1, 5.
P. S. 123,
§§ 1, 4.
R. L. 131,
§§ 1, 4.
1915, 28, § 1.
8 Gray, 432.
16 Gray, 146.
5 Allen, 146.
6 Allen, 71,
427.
8 Allen, 575.
10 Allen, 425.
11 Allen, 194.
12 Allen, 39.
13 Allen, 286.
100 Mass. 234.
101 Mass. 418.
130 Mass. 368.
138 Mass. 542.
161 Mass. 276.

SECTION 1. A householder who has a family shall be entitled to ac- 1
quire an estate of homestead to the extent of eight hundred dollars in 2
value in the land and buildings thereon owned or rightly possessed by 3
lease or otherwise and occupied by him as a residence; and such estate 4
shall be exempt from the laws of conveyance, descent and devise and 5
from attachment, levy on execution and sale for the payment of his 6
debts or legacies, except — 7
(1) Sale for taxes. 8
(2) Attachment, levy and sale in the following cases: 9
(a) For a debt contracted previous to the acquisition of said estate 10
of homestead. 11
(b) For a debt contracted for the purchase thereof. 12
(c) Upon an execution issued from the probate court to enforce its 13
decree that a husband pay a certain amount weekly or otherwise to 14
support his wife or minor children. 15
(d) Where buildings on land not owned by the householder are at- 16
tached, levied upon or sold for the ground rent of the lot of land 17
whereon they stand. 18

1 SECTION 2. To acquire such estate of homestead, the fact that it is
 2 designed to be held as such shall be set forth in the deed of conveyance
 3 by which the property is acquired; or, after the title has been acquired,
 4 such design may be declared by a writing duly signed, sealed and ac-
 5 knowledged and recorded in the registry of deeds for the county or
 6 district in which the property is situated. The acquisition of a new
 7 estate of homestead shall defeat and discharge any such previous estate.

Mode of
 acquisition
 1851, 340, § 3.
 1857, 298, § 3.
 G. S. 104, § 2.
 P. S. 123, § 2.
 R. L. 131, § 2.
 6 Allen, 447.
 11 Allen, 37.

1 SECTION 3. In a case in which the probate court has entered a
 2 decree that the wife is living apart from her husband for justifiable
 3 cause, or the custody of his minor children or minor child has been
 4 decreed to some person other than him, and the husband owns or holds
 5 a homestead estate, the probate court may by its decree grant to his
 6 wife or minor children, or to both, the right to use, occupy and enjoy
 7 such homestead estate until the further order of the court. The record-
 8 ing of the order of the probate court granting to the wife or minor chil-
 9 dren, or to both, the right to use, occupy and enjoy said homestead
 10 estate, together with the description thereof, in the registry of deeds
 11 for the county or district where the land lies, shall operate to prevent
 12 the husband from disposing of said estate until such time as the probate
 13 court may revoke said decree.

Wife or minor
 child may
 occupy in cer-
 tain cases.
 1915, 28, § 2.

1 SECTION 4. The estate of homestead existing at the death of a
 2 householder shall continue for the benefit of his widow and minor
 3 children, and shall be held and enjoyed by them, if one of them or a
 4 purchaser under section eight occupies the premises, until the youngest
 5 child is twenty-one and until the marriage or death of the widow; and
 6 if a widow or minor children are entitled to an estate of homestead as
 7 provided herein, it may be set off to them in the same manner as dower.
 8 But all the right, title and interest of the deceased in the premises in
 9 which such estate exists, except the estate of homestead thus continued,
 10 shall be subject to the laws relating to devise, descent, dower and sale
 11 for the payment of debts and legacies.

Continuance
 after death of
 householder
 1851, 340, § 2.
 1855, 238, § 2.
 1857, 298, §§ 2,
 11.
 G. S. 104, §§ 12,
 13.
 P. S. 123,
 §§ 8, 9.
 R. L. 131,
 §§ 8, 9.
 5 Allen, 77,
 146.
 8 Allen, 575.
 9 Allen, 239,
 212.

11 Allen, 194.
 97 Mass. 136, 392.

100 Mass. 234.
 131 Mass. 186, 446.

141 Mass. 187.
 161 Mass. 276.

1 SECTION 5. No estate of homestead shall affect a mortgage, lien
 2 or other encumbrance previously existing.

Previous
 mortgage, etc.,
 unaffected

1851, 340, § 5.
 1855, 238, § 1.

1857, 298, § 5.
 G. S. 104, § 6.

P. S. 123, § 5.
 R. L. 131, § 5.

1 SECTION 6. Property which is subject to a mortgage executed before
 2 an estate of homestead was acquired therein, or executed afterward and
 3 containing a release thereof, shall be subject to an estate of homestead,
 4 except as against the mortgagee and those claiming under him, in the
 5 same manner as if there were no such mortgage. If the owner of the
 6 equity in such property redeems the mortgage, he shall not be allowed
 7 to claim under it against the owner of the estate of homestead, his
 8 widow, heirs or assigns; but if said owner of the estate of homestead, his
 9 widow, heirs or assigns offers to redeem the residue above the home-
 10 stead estate and the mortgage from a sale or set-off on execution and
 11 the judgment creditor has redeemed the mortgage, the amount paid
 12 for such redemption of the mortgage, with interest and expenses, shall
 13 be included in the amount to be paid for the redemption of said residue.

Estate subject
 to prior
 mortgage
 G. S. 104, § 1.
 P. S. 123, § 6.
 R. L. 131, § 6.

Release of rights.
1851, 340,
§§ 1, 6,
1855, 238,
§§ 1, 5,
1857, 298, §§ 1,
3, 6-8, 10, 12,
13.
G. S. 104,
§§ 7, 8
P. S. 123, § 7.
R. L. 131, § 7.
1924, 56, § 4.
2 Gray, 383.
11 Gray, 214,
332.
15 Gray, 139.

SECTION 7. Except as provided in section seven A, no conveyance of property in which an estate of homestead exists, and no release or waiver of such estate, shall convey the part so held and exempted, or defeat the right of the owner or of his wife and children to a homestead therein, unless such conveyance is by a deed in which the wife of the owner joins for the purpose of releasing such right in the manner in which she may release her dower, or unless such right is released as provided in chapter two hundred and nine; but a deed duly executed without such release shall be valid to pass, according to its terms, any title or interest in the property beyond the estate of homestead.

16 Gray, 144, 146.
2 Allen, 202, 390.
4 Allen, 516.
6 Allen, 71, 401, 510.
12 Allen, 30.

14 Allen, 1.
99 Mass. 7.
100 Mass. 234.
101 Mass. 426.
121 Mass. 19.

130 Mass. 368.
137 Mass. 30.
140 Mass. 64.
156 Mass. 114.
161 Mass. 276.

Same subject.
1924, 56, § 3.

SECTION 7A. The provisions of section one A of chapter one hundred and eighty-nine relative to the release of rights of or to dower or curtesy shall, so far as applicable, apply to the release of rights under this chapter.

Sale of rights of widow, etc.
G. S. 104, § 14.
P. S. 123, § 10.
R. L. 131, § 10.
11 Allen, 194.

SECTION 8. The widow and the guardian of the minor children, if he has obtained a license therefor from the probate court as in the sale of land of minors, may join in a sale of an estate of homestead; or if there is no widow entitled to rights therein, the guardian may, upon obtaining such license, make sale of such estate; and the widow may make such sale if there are no minor children. The purchaser shall enjoy and possess the premises for the full time that the widow and children or either of them might have continued to hold and enjoy them if no sale had been made. The probate court may apportion the proceeds of the sale among the parties entitled thereto.

Set-off if holder insolvent.
1857, 298, § 16.
G. S. 104, § 10.
P. S. 123, § 12.
R. L. 131, § 12.
12 Allen, 30.
156 Mass. 114.

SECTION 9. If the property of a debtor is assigned under the laws relative to insolvent debtors, and such debtor claims, and it appears to the court wherein the proceedings in insolvency are pending, that he is entitled to hold a part thereof as a homestead and that the property in which such estate of homestead exists is of greater value than eight hundred dollars, the court shall cause the property to be appraised by three disinterested appraisers, one of whom shall be appointed by the insolvent, one by the assignee and the third by the court; or if either the assignee or insolvent neglects to appoint, the court shall appoint for him. The appraisers shall be sworn faithfully and impartially to appraise the property, and shall appraise and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in section eighteen of chapter two hundred and thirty-six in case of a judgment debtor; and the residue shall vest in and be disposed of by the assignee in the same manner as property which is not exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in insolvency, as are allowed to an appraiser of land seized upon execution.

Existing rights saved.
1855, 238, § 7.
1857, 298,
§§ 1, 18.

SECTION 10. All existing estates of homestead which have been acquired under any law heretofore in force shall continue to be held and enjoyed notwithstanding the repeal of such law.

G. S. 104, § 3.
P. S. 123, § 3.

R. L. 131, § 3.
13 Gray, 21.

6 Allen, 510.
161 Mass. 276.

CHAPTER 189.

DOWER AND CURTESY.

<p>SECT.</p> <p>1. Nature of estate. How claimed.</p> <p>1A. Release by joining in deed.</p> <p>2. No curtesy as against purchase money mortgage.</p> <p>3. Wife not dowerable in wild land.</p> <p>4. Dower in husband's right of redemption.</p> <p>5. Release of dower.</p> <p>6. Signing of instruments by married women under twenty-one.</p> <p>7. Dower barred by jointure before marriage.</p> <p>8. Dower barred by pecuniary provision.</p>	<p>SECT.</p> <p>9. Jointure made without wife's assent or after marriage effective unless waived.</p> <p>10. Assignment of dower or other undivided interest.</p> <p>11. Manner of assignment.</p> <p>12. Where husband is tenant in common.</p> <p>13. Widow may claim her interest after occupying in common with heirs.</p> <p>14. Limitation for claim of interest in realty.</p> <p>15. Re-endowment of woman if evicted.</p>
---	--

1 SECTION 1. A husband shall upon the death of his wife hold for his
 2 life one third of all land owned by her at any time during coverture.
 3 Such estate shall be known as his tenancy by curtesy, and the law rela-
 4 tive to dower shall be applicable to curtesy, and no conveyance by a
 5 married woman of real property shall, except as provided in section
 6 thirty-five of chapter two hundred and nine, extinguish or impair his
 7 tenancy by curtesy in such property unless he joins in the conveyance
 8 or otherwise releases his right. A wife shall, upon the death of her hus-
 9 band, hold her dower at common law in her deceased husband's land.
 10 Such estate shall be known as her tenancy by dower. To be entitled
 11 to such curtesy or dower the surviving husband or wife shall file his or
 12 her election and claim therefor in the registry of probate within six
 13 months after the date of the approval of the bond of the executor or
 14 administrator of the deceased, and shall thereupon hold instead of the
 15 interest in real property given in section one of chapter one hundred and
 16 ninety, curtesy or dower, respectively, otherwise such estate shall be held
 17 to be waived. Such curtesy and dower may be assigned by the probate
 18 court in the same manner as dower is now assigned, and the tenant by
 19 curtesy or dower shall be entitled to the possession and profits of one
 20 undivided third of the real estate of the deceased from her or his death
 21 until the assignment of curtesy or dower, and to all remedies therefor
 22 which the heirs of the deceased have in the residue of the estate. Rights
 23 of curtesy which existed on December thirty-first, nineteen hundred and
 24 one, may be claimed and held in the manner above provided, but in such
 25 case the husband shall take no other interest in the real or personal prop-
 26 erty of his wife; and, except as preserved herein, curtesy as it existed
 27 prior to January first, nineteen hundred and two, is abolished.

Nature of
 estate.
 How claimed
 C. L. 42, § 1
 1692-3, 14, § 1.
 1783, 26.
 §§ 4, 5.
 1805, 90, § 1
 1812, 93, § 1
 R. S. 69, §§ 1,
 17
 1845, 268.
 1854, 406, § 4.
 G. S. 90,
 §§ 1, 16, 19.
 1877, 83
 1880, 211, § 3.
 P. S. 124,
 §§ 1, 3.
 1885, 255, § 2.
 1899, 479,
 §§ 1, 2.
 1900, 450, § 5.
 R. L. 132, § 1
 1902, 482, § 1.
 1915, 134.
 1918, 257,
 § 381.
 1919, 5
 1920, 2.
 1 Pick. 189
 3 Gray, 398
 7 Gray, 533.
 2 Allen, 45
 4 Allen, 187
 113 Mass. 243
 149 Mass. 92
 150 Mass. 84.
 289
 167 Mass. 575
 169 Mass. 204
 171 Mass. 512
 173 Mass. 529
 174 Mass. 582
 181 Mass. 458
 187 Mass. 455
 192 Mass. 5.

201 Mass. 59, 218.
 216 Mass. 174.

222 Mass. 126.
 226 Mass. 297.

243 Mass. 39.

1 SECTION 1A. A deed conveying land which is signed by the spouse of
 2 a grantor, said spouse being competent so to act, shall be held to release
 3 the right of such spouse of or to dower or curtesy in such land, unless such
 4 right is expressly reserved in said deed.

Release by
 joining in
 deed
 1924, 55, § 1.

No curtesy as against purchase money mortgage. P. S. 124, § 2. R. L. 132, § 2.

SECTION 2. If a deed of land is made to a married woman, who, at the time of its execution, mortgages such land to the grantor to secure the payment of the whole or a part of the purchase money, or to a third person to obtain the whole or a part of such purchase money, her seisin shall not give her husband an estate by the curtesy as against such mortgagee.

1
2
3
4
5
6

Wife not dowerable in wild land. R. S. 60, § 12. 1854, 406, § 2. G. S. 90, §§ 12, 15.

SECTION 3. A widow shall not be entitled to dower in wild land of which her husband dies seized, except woodlots or other land used with his farm or dwelling house, nor in such land which is conveyed by him although it is afterward cleared.

1
2
3
4

P. S. 124, § 4. 15 Mass. 164. 7 Pick. 143. 208 Mass. 258.
R. L. 132, § 3. 1 Pick. 21. 17 Pick. 248.

Dower in husband's right of redemption. R. S. 60, § 2. G. S. 90, § 2. P. S. 124, § 5. R. L. 132, § 4. 13 Mass. 162. 15 Mass. 278. 3 Pick. 475. 12 Cush. 288. 4 Gray, 46. 6 Gray, 314. 7 Gray, 148. 100 Mass. 224. 101 Mass. 428. 105 Mass. 119. 255 Mass. 206. 256 Mass. 121.

SECTION 4. If, upon a mortgage made by a husband, his wife has released her right of dower, or if a husband is seized of land subject to a mortgage which is valid and effectual as against his wife, she shall nevertheless be entitled to dower in the land mortgaged as against every person except the mortgagee and those claiming under him. If the heir or other person who claims under the husband redeems the mortgage, the widow shall either repay such part of the money which was paid by the person so redeeming as shall be equal to the proportion which her interest in the land mortgaged bears to the whole value thereof or, at her election, she shall be entitled to dower according to the value of the estate after deducting the money paid for redemption.

1
2
3
4
5
6
7
8
9
10
11

Release of dower. 1697, 21, § 3. 1783, 37, § 5. 1823, 146, § 1. R. S. 60, § 7. 1850, 169. G. S. 90, § 8. P. S. 124, § 6.

SECTION 5. A married woman may bar her right of dower in land conveyed by her husband or by operation of law by joining in the deed conveying the land or by releasing the land by a subsequent deed executed either separately or jointly with her husband. Her dower may also be released in the manner provided in chapter two hundred and nine.

1
2
3
4
5

E. L. 132, § 5. 11 Mass. 298. 3 Met. 40. 11 Gray, 332.
1924, 56, § 2. 8 Pick. 532. 6 Cush. 196. 107 Mass. 325.
7 Mass. 14. 18 Pick. 9. 4 Gray, 600. 137 Mass. 30.

Signing of instruments by married women under twenty-one.

SECTION 6. The signature of a married woman under twenty-one affixed by her to any instrument relating to the conveyance of land of her husband shall have the same effect as if she were over that age.

1
2
3

1902, 478.

Dower barred by jointure before marriage. R. S. 60, § 8. G. S. 90, § 9. P. S. 124, § 7. R. L. 132, § 6. 7 Mass. 153. 2 Cush. 467. 97 Mass. 195.

SECTION 7. A woman may be barred of her dower in all the land of her husband by a jointure settled on her with her assent before her marriage, if such jointure consists of a freehold estate in land for her life at least and is to take effect in possession or profit immediately upon the death of her husband. Her assent to such jointure shall be expressed, if she is of full age, by her becoming a party to the conveyance by which it is settled, or, if a minor, by her joining with her father or guardian in such conveyance.

1
2
3
4
5
6
7
8

Dower barred by pecuniary provision. R. S. 60, § 9. G. S. 90, § 10.

SECTION 8. A pecuniary provision, made for the benefit of an intended wife and in lieu of dower, shall, if assented to as provided in the preceding section, bar her dower in all the land of her husband.

1
2
3

P. S. 124, § 8. 2 Cush. 467. 9 Allen, 234.
R. L. 132, § 7. 5 Allen, 187. 197 Mass. 195.
15 Mass. 106.

1 SECTION 9. Such jointure or pecuniary provision, if made after
 2 marriage, or made before marriage and without the assent of the in-
 3 tended wife, shall bar her dower, unless within six months after the
 4 death of her husband she makes her election to waive such jointure or
 5 provision. If the husband dies while absent from his wife, she shall
 6 have six months after notice of his death within which to make such
 7 election; and she shall in all cases have six months after notice of the
 8 existence of such jointure or provision within which to make such election.

Jointure made
 without wife's
 assent or after
 marriage
 effective
 unless waived.
 R. S. 69, § 10.
 G. S. 90, § 11.
 P. S. 124, § 9.
 R. L. 132, § 8.
 147 Mass. 171.

1 SECTION 10. If a widow is entitled by law, by deed of jointure, or
 2 under the will of her husband, to an undivided interest in his land either
 3 for life or during widowhood, such interest may be assigned to her, in
 4 whatever counties the land lies, by the probate court for the county
 5 in which the estate of her husband is settled. Such assignment may be
 6 made upon her petition or, if she does not petition therefor within one
 7 year after the decease of her husband, upon petition by an heir or devi-
 8 see of her husband, by any person having an estate in the land subject
 9 to such interest, or by the guardian or conservator of any such heir,
 10 devisee or person, or by an executor or administrator if the probate
 11 court finds that the personal property will probably be insufficient to
 12 pay the debts and legacies of the decedent or charges of administration.

Assignment of
 dower or other
 undivided
 interest.
 R. S. 60, § 3.
 1850, 111.
 1858, 33.
 G. S. 90, §§ 3,
 17.
 1876, 89
 P. S. 124, § 10.
 R. L. 132, § 9.
 1904, 306
 9 Mass. 9
 13 Met. 414.
 4 Cush. 257.
 112 Mass. 42
 121 Mass. 267.
 153 Mass. 46.

1 SECTION 11. Upon such petition, the court shall issue a warrant to
 2 three disinterested persons as commissioners, who shall be sworn to per-
 3 form their duty faithfully and impartially and who shall set off the widow's
 4 interest by metes and bounds if it can be so done without damage to the
 5 whole estate. But if the estate out of which a widow's interest is to be
 6 assigned consists of a mill or other tenement which cannot be divided
 7 without damage to the whole, such interest may be assigned out of the
 8 rents or profits thereof, to be had and received by the widow as a tenant
 9 in common with the other owners of the estate.

Manner of
 assignment.
 1700-1, 22, § 4.
 1783, 40, § 3.
 R. S. 60,
 §§ 3, 4
 G. S. 90,
 §§ 3, 5
 P. S. 124, § 11.
 R. L. 132, § 10
 4 Mass. 533
 15 Mass. 164.

1 SECTION 12. If a widow is entitled to an undivided interest in land
 2 which is owned by her husband as tenant in common, the probate court,
 3 upon petition by her or by any person entitled to petition for assign-
 4 ment of her interest in her husband's land, after notice as in case of
 5 other partitions, may empower the commissioners to make partition of
 6 the land so owned in common, and then to assign to the widow her
 7 interest in the portion set off to the estate of her husband.

Where husband
 is tenant in
 common.
 1842, 73.
 G. S. 90, § 4.
 1876, 89
 P. S. 124, § 12.
 R. L. 132, § 11.
 243 Mass. 39.

1 SECTION 13. If a widow is entitled to an interest in land of which
 2 her husband died seized, she may, without having her interest assigned,
 3 continue to occupy such land with the heirs or devisees of the deceased,
 4 or to receive her share of the rents or profits thereof, so long as such
 5 heirs or devisees do not object thereto; and when the heirs or devisees
 6 or any of them desire to hold or occupy their share in severalty, the
 7 widow may claim her interest and shall have it assigned to her.

Widow may
 claim her inter-
 est after oc-
 cupying in
 common
 with heirs.
 1816, 84.
 R. S. 60, § 6.
 G. S. 90, § 7.
 P. S. 124, § 13.
 R. L. 132, § 12.

3 Pick. 475.
 5 Pick. 146.

157 Mass. 499.
 161 Mass. 149.

179 Mass. 543.
 243 Mass. 39.

1 SECTION 14. No surviving husband or widow of a deceased person
 2 shall make claim for an interest in the real estate of such deceased, or
 3 begin any proceeding for the recovery thereof, unless such claim or

Limitation for
 claim of in-
 terest in realty.
 1858, 56
 G. S. 90, § 6

P. S. 124, § 14.	action is made or begun within twenty years after the decease of the	4
1899, 479, § 4.	wife or husband, or after he or she has ceased to occupy or receive the	5
1909, 459, § 6.	profits of his or her share of such real estate, except that if at the time	6
R. L. 132, § 13.	of such decease the surviving husband or widow is absent from the	7
7 Met. 24.	commonwealth, under twenty-one, insane or imprisoned, he or she may	8
157 Mass. 499.	make such claim or begin such proceeding at any time within twenty	9
161 Mass. 140.	years after such disability ceases.	10

Re-endowment of woman if evicted	SECTION 15. If a woman is lawfully evicted of land which has been	1
R. S. 60, § 13.	assigned to her as dower or settled upon her as jointure, or is deprived	2
G. S. 90, § 13.	of the provision made for her by will or otherwise in lieu of dower, she	3
P. S. 124, § 15.	may be endowed anew in like manner as if such assignment, jointure	4
R. L. 132, § 14.	or other provision had not been made.	5
13 Mass. 162.		
1 Met. 66.		

TITLE II.

DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS.

- CHAPTER 190. Descent and Distribution of Real and Personal Property.
- CHAPTER 191. Wills.
- CHAPTER 192. Probate of Wills and Appointment of Executors.
- CHAPTER 193. Appointment of Administrators.
- CHAPTER 194. Public Administrators.
- CHAPTER 195. General Provisions relative to Executors and Administrators.
- CHAPTER 196. Allowances to Widows and Children, and Advancements.
- CHAPTER 197. Payment of Debts, Legacies and Distributive Shares.
- CHAPTER 198. Insolvent Estates of Deceased Persons.
- CHAPTER 199. Settlement of Estates of Deceased Non-Residents.
- CHAPTER 200. Settlement of Estates of Absentees.
- CHAPTER 201. Guardians and Conservators.
- CHAPTER 202. Sales, Mortgages and Leases of Real Estate by Executors, Administrators, Guardians and Conservators.
- CHAPTER 203. Trusts.
- CHAPTER 204. General Provisions relative to Sales, Mortgages, Releases, Compromises, etc., by Executors, etc.
- CHAPTER 205. Bonds of Executors, Administrators, Guardians, Conservators, Trustees and Receivers.
- CHAPTER 206. Accounts and Settlements of Executors, Administrators, Guardians, Conservators, Trustees and Receivers.

CHAPTER 190.

DESCENT AND DISTRIBUTION OF REAL AND PERSONAL PROPERTY.

- | SECT. | SECT. |
|---|---|
| 1. Share of surviving husband or wife. | 6. Mother to be heir of illegitimate child. |
| 2. Distribution of personal property. | 7. When illegitimate child to be deemed legitimate. |
| 3. Descent of real property. | 8. Taking by right of representation. |
| 4. Degrees of kindred. | Posthumous children. |
| 5. Illegitimate child to be heir of his mother. | |

1 SECTION 1. A surviving husband or wife shall, after the payment of
 2 the debts of the deceased and the charges of his last sickness and funeral
 3 and of the settlement of his estate, and subject to chapter one hundred
 4 and ninety-six, be entitled to the following share in his real and per-
 5 sonal property not disposed of by will:

Share of surviving husband or wife.
 C. L. 158, § 3.
 1692-3, 14, § 1.
 1783, 36, § 2.

1789, 2, § 1.
 1805, 90, § 2.
 R S 64, § 1.
 1845, 208, § 7.
 1854, 406, § 3.
 G S 94, § 16.
 1876, 220, § 1.
 P S 135, § 3.
 1882, 141.
 1885, 276.
 1899, 479, § 7.
 1900, 450,
 §§ 3, 4.
 R L 140, § 3.
 1905, 256.
 1917, 303.
 1920, 468.
 1 Met. 204.
 5 Allen, 187.
 9 Allen, 234.
 137 Mass. 156.
 139 Mass. 304.
 146 Mass. 281.
 186 Mass. 577.
 194 Mass. 552.
 200 Mass. 77.
 201 Mass. 59,
 218.
 204 Mass. 471.
 205 Mass. 350,
 468.
 206 Mass. 437.
 210 Mass. 105.
 213 Mass. 418.
 214 Mass. 580.
 215 Mass. 576.
 218 Mass. 27.
 222 Mass. 126.
 226 Mass. 297.
 228 Mass. 18.
 231 Mass. 341.
 239 Mass. 439.
 241 Mass. 17,
 251.
 243 Mass. 39.
 252 Mass. 197.
 254 Mass. 347.
 258 Mass. 167.
 260 Mass. 556.

(1) If the deceased leaves kindred and no issue, and it appears on de- 6
 termination by the probate court, as hereinafter provided, that the whole 7
 estate does not exceed five thousand dollars in value, the surviving hus- 8
 band or wife shall take the whole thereof; otherwise such survivor shall 9
 take five thousand dollars and one half of the remaining personal and 10
 one half of the remaining real property. If the personal property is in- 11
 sufficient to pay said five thousand dollars, the deficiency shall, upon 12
 the petition of any party in interest, be paid from the sale or mortgage, 13
 in the manner provided for the payment of debts or legacies, of any in- 14
 terest of the deceased in real property which he could have conveyed at 15
 the time of his death; and the surviving husband or wife shall be per- 16
 mitted, subject to the approval of the court, to purchase at any such 17
 sale, notwithstanding the fact that he or she is the administrator of the 18
 estate of the deceased person. A further sale or mortgage of any real 19
 estate of the deceased may later be made to provide for any deficiency 20
 still remaining. Whenever it shall appear, upon petition to the probate 21
 court of any party in interest, and after such notice as the court shall 22
 order, and after a hearing thereon, that the whole amount of the estate of 23
 the deceased, as found by the inventory and upon such other evidence as 24
 the court shall deem necessary, does not exceed the sum of five thousand 25
 dollars over and above the amount necessary to pay the debts and charges 26
 of administration, the court shall itself by decree determine the value of 27
 said estate, which decree shall be binding upon all parties. If additional 28
 property is later discovered, the right or title to the estate covered by 29
 such decree shall not be affected thereby, but the court may make such 30
 further orders and decrees as are necessary to effect the distribution 31
 herein provided for. 32

267 Mass. 203.

271 Mass. 441.

183 Mass. 173.

(2) If the deceased leaves issue, the survivor shall take one third of 33
 the personal and one third of the real property. 34

(3) If the deceased leaves no issue and no kindred, the survivor shall 35
 take the whole. 36

Distribution
 of personal
 property
 C L 138, § 3.
 1692-3, 14, § 1.
 1783, 36, § 2.
 1789, 2, § 1.
 1805, 90, § 2.
 R S 61, § 1.
 G S 94, § 16.

SECTION 2. The personal property of a deceased person not lawfully 1
 disposed of by will shall, after the payment of his debts and the charges 2
 of his last sickness and funeral and of the settlement of the estate, and 3
 subject to the preceding section and to chapter one hundred and ninety- 4
 six, be distributed among the persons and in the proportions hereinafter 5
 prescribed for the descent of real property. 6

1876, 220, § 1.
 P S 135, § 3.
 1899, 479, § 7.
 1900, 450, § 3.
 R L 140, § 3.
 1 Met. 204.

137 Mass. 156
 139 Mass. 304.
 146 Mass. 281
 149 Mass. 502.
 186 Mass. 577.

226 Mass. 388
 239 Mass. 439.
 243 Mass. 39.
 248 Mass. 285
 267 Mass. 203.

Descent of
 real property.
 C L 138, § 3.
 1692-3, 14, § 1.
 1719 11, 2, § 1.
 1719 20,
 10, § 4
 1734 5, 16.
 1783, 36, §§ 1, 2.
 1789, 2, § 1
 1805, 90, §§ 1, 2.
 R S 61,
 §§ 1, 12; 61, § 1.
 G S 94, §§ 1,
 11; 94, § 16.
 1876, 220,
 §§ 1, 3
 1880, 219.

SECTION 3. When a person dies seized of land, tenements or heredita- 1
 ments, or of any right thereto, or entitled to any interest therein, in 2
 fee simple or for the life of another, not having lawfully devised the 3
 same, they shall descend, subject to his debts and to the rights of the 4
 husband or wife and minor children of the deceased as provided in this 5
 and in the two preceding chapters and in chapter one hundred and 6
 ninety-six, as follows: 7

(1) In equal shares to his children and to the issue of any deceased 8
 child by right of representation; and if there is no surviving child of 9
 the intestate then to all his other lineal descendants. If all such de- 10

11 seendants are in the same degree of kindred to the intestate, they shall
 12 share the estate equally; otherwise, they shall take according to the
 13 right of representation.

R. L. 133, § 1;	129 Mass. 243.	225 Mass. 66.
140, § 3.	149 Mass. 39.	226 Mass. 396.
14 Mass. 88.	167 Mass. 199.	228 Mass. 537.
20 Pick. 514.	196 Mass. 389.	234 Mass. 540.
3 Met. 187.	197 Mass. 273.	243 Mass. 39.
7 Met. 363.	204 Mass. 570.	256 Mass. 177.
9 Met. 28.	206 Mass. 437.	271 Mass. 411.
6 Cush. 156.	215 Mass. 299.	

P. S. 125, § 1;
 135, § 3
 1899, 479, § 7.
 1900, 450, § 3.

14 (2) If he leaves no issue, in equal shares to his father and mother. 294 Mass. 471.

15 (3) If he leaves no issue and no mother, to his father.

16 (4) If he leaves no issue and no father, to his mother.

17 (5) If he leaves no issue and no father or mother, to his brothers and 103 Mass. 287
 18 sisters and to the issue of any deceased brother or sister by right of 130 Mass. 178
 19 representation; and, if there is no surviving brother or sister of the in- 149 Mass. 39.
 20 testate, to all the issue of his deceased brothers and sisters. If all such 176 Mass. 242
 21 issue are in the same degree of kindred to the intestate, they shall share 196 Mass. 35.
 22 the estate equally, otherwise, according to the right of representation. 197 Mass. 273
 23 239 Mass. 439.
 24 263 Mass. 1.

23 (6) If he leaves no issue, and no father, mother, brother or sister, 6 Cush. 156.
 24 and no issue of any deceased brother or sister, then to his next of kin 141 Mass. 389.
 25 in equal degree; but if there are two or more collateral kindred in equal 130 Mass. 178.
 26 degree claiming through different ancestors, those claiming through 132 Mass. 528
 27 the nearest ancestor shall be preferred to those claiming through an 141 Mass. 135.
 28 ancestor more remote. 149 Mass. 502
 180 Mass. 503.

29 (7) If an intestate leaves no kindred and no widow or husband, his 16 Pick. 177.
 30 estate shall escheat to the commonwealth. 246 Mass. 61.

1 SECTION 4. Degrees of kindred shall be computed according to the Degrees of
 2 rules of the civil law; and the kindred of the half blood shall inherit kindred
 3 equally with those of the whole blood in the same degree. 1783, 36, § 1

1805, 90, § 1.	P. S. 125, § 2	5 Cush. 232.
R. S. 61, § 5	R. L. 133, § 2	116 Mass. 562.
G. S. 91, § 5.	12 Mass. 489	

1 SECTION 5. An illegitimate child shall be heir of his mother and of Illegitimate
 2 any maternal ancestor, and the lawful issue of an illegitimate person child to be heir
 3 shall represent such person and take by descent any estate which such of his mother.
 4 person would have taken if living. 1828, 139.
 1851, 211.

G. S. 91, § 2	11 Met. 294	172 Mass. 472.
P. S. 125, § 3	108 Mass. 49	236 Mass. 201.
R. L. 133, § 3.	113 Mass. 439.	255 Mass. 236.

1 SECTION 6. If an illegitimate child dies intestate and without issue Mother to be
 2 who may lawfully inherit his estate, such estate shall descend to his heir of illegiti-
 3 mother or, if she is not living, to the persons who would have been mate child.
 4 entitled thereto by inheritance through his mother if he had been a 1828, 139.
 5 legitimate child. R. S. 61, § 3.
 G. S. 91, § 3.
 P. S. 125, § 4.

1882, 132	4 Pick. 96	214 Mass. 223.
R. L. 133, § 4	149 Mass. 502.	

1 SECTION 7. An illegitimate child whose parents have intermarried When illegiti-
 2 and whose father has acknowledged him as his child shall be deemed mate child to
 3 legitimate and shall be entitled to take the name of his parents to the be deemed
 4 same extent as if born in lawful wedlock. legitimate.
 1832, 147.
 R. S. 61, § 4.

1853, 253.	R. L. 133, § 5	8 Allen, 551
G. S. 91, § 4	1925, 281, § 3.	183 Mass. 448.
P. S. 125, § 5.	5 Allen, 257.	196 Mass. 389.

Taking by right of representation. Posthumous children. R. S. 61, § 13. G. S. 91, § 12. P. S. 125, § 6. R. L. 133, § 6.

SECTION 8. Inheritance or succession by right of representation is the taking by the descendants of a deceased heir of the same share or right in the estate of another person as their parent would have taken if living. Posthumous children shall be considered as living at the death of their parent.

CHAPTER 191.

WILLS.

SECT.

MAKING AND REVOCATION.

- 1. By whom and how wills may be made.
- 2. Competency of witness. Validity of devise or legacy to witness regulated.
- 3. Subsequent incompetency of witness.
- 4. Wills made in accordance with law at time of execution.
- 5. Wills made out of the commonwealth.
- 6. Nuncupative will.
- 7. Certain wills ineffective. Probate necessary. Effect.
- 8. Revocation.
- 9. Revocation by marriage. Exception.

CUSTODY AND PRODUCTION IN COURT.

- 10. Deposit of wills.
- 11. Custody and delivery of such wills.
- 12. Will not called for, to be opened at first probate court.
- 13. Possessor of will to present it for probate. Penalty.
- 14. Proceedings against persons suspected of concealing wills, etc.

RIGHTS OF SURVIVING HUSBAND OR WIFE.

- 15. Right to waive will. Effect of waiver.
- 16. Appointment of trustees to hold husband's or widow's share.

SECT.

- 17. Husband not to have curtesy or widow dower in addition to provisions of will, unless, etc.

PROVISIONS FOR SPECIAL CASES.

- 18. Devise to give fee. Exception.
- 19. Land, etc., acquired after making of will to pass by it. Exception.
- 20. Child not provided for in will.
- 21. [Repealed.]
- 22. Devisee or legatee dying before testator.
- 23. Devises of real estate subject to mortgage.
- 24. Devise of land to which testator has only right of entry, etc.

CONTRIBUTION AMONG DEVISEES AND LEGATEES.

- 25. Contribution to make up portion of posthumous or omitted child.
- 26. Contribution when property is taken for the payment of debts.
- 27. Special appropriation of his estate made by testator to be followed.
- 28. Posthumous or omitted child liable and entitled to contribution.
- 29. Insolvency of devisee or legatee.
- 30. Contribution if estate is taken from devisee for dower, etc. Exception.

MAKING AND REVOCATION.

By whom and how wills may be made. 29 Car. II, c. 3, § 5. B. L. 11. C. L. 1, § 2. 1692-3, 14, § 1; 15, § 3. 1783, 24, §§ 1, 2. R. S. 62, §§ 1, 5, 6. 1842, 74.

SECTION 1. Every person of full age and sound mind may by his last will in writing, signed by him or by a person in his presence and by his express direction, and attested and subscribed in his presence by three or more competent witnesses, dispose of his property, real and personal, except an estate tail, and except as is provided in this chapter and in chapters one hundred and eighty-eight and one hundred and eighty-nine and in section one of chapter two hundred and nine. A

8 married woman, in the same manner and with the same effect, may ^{1850, 200}
 9 make a will. ^{1855, 304, § 5}

1857, 249, § 4	9 Met. 28.	199 Mass. 450
G. S. 92, §§ 1, 2, 6;	10 Met. 54.	205 Mass. 408, 554
108, §§ 9, 10	2 Cush. 433.	218 Mass. 445, 471,
1864, 199, 276.	12 Cush. 332.	531.
P. S. 127, § 1;	2 Gray, 521.	221 Mass. 485
147, § 6.	7 Gray, 42, 71.	222 Mass. 439
1884, 301.	16 Gray, 91	223 Mass. 559
1885, 255	10 Allen, 153, 155.	225 Mass. 245
1887, 290, § 2	11 Allen, 49	226 Mass. 400.
1899, 479, §§ 8, 9	99 Mass. 79	229 Mass. 585.
1900, 450, § 7.	100 Mass. 234	230 Mass. 11
R. L. 135, § 1	110 Mass. 157.	247 Mass. 138
12 Mass. 488.	135 Mass. 238.	250 Mass. 132
1 Pick. 239.	160 Mass. 140	262 Mass. 490
17 Pick. 134, 373.	169 Mass. 74, 186.	263 Mass. 127
23 Pick. 10.	176 Mass. 216.	269 Mass. 50
1 Met. 349.	187 Mass. 120.	272 Mass. 46.

1 SECTION 2. Any person of sufficient understanding shall be deemed ^{Competency}
 2 to be a competent witness to a will, notwithstanding any common law ^{of witness.}
 3 disqualification for interest or otherwise; but a beneficial devise or ^{Validity of}
 4 legacy to a subscribing witness or to the husband or wife of such witness ^{devise or}
 5 shall be void unless there are three other subscribing witnesses to the will ^{legacy to wit-}
 6 who are not similarly benefited thereunder. ^{ness regulated}
^{1783, 24, §§ 11,}
¹³
^{R. S. 62, § 8.}

1852, 312, § 60.	R. L. 135, §§ 2, 3;	106 Mass. 474.
1857, 105, § 3	175, § 23.	172 Mass. 425.
G. S. 92, § 10;	1918, 257, § 436.	205 Mass. 468.
131, § 15	1919, 5	209 Mass. 184.
1878, 122	1920, 2.	218 Mass. 445.
P. S. 127, §§ 2, 3;	5 Met. 396.	272 Mass. 46
169, § 21	7 Gray, 42.	

1 SECTION 3. If a witness to a will is competent at the time of his at- ^{Subsequent}
 2 tention, his subsequent incompetency shall not prevent the probate and ^{incompetency}
 3 allowance of such will. ^{of witness}

R. S. 62, § 6.	P. S. 127, § 2.	12 Mass. 358.	10 Allen, 153.
G. S. 92, § 6.	R. L. 135, § 2.	9 Pick. 350.	

1 SECTION 4. A will made and executed in conformity with law exist- ^{Wills made in}
 2 ing at the time of its execution shall have the same effect as if made pur- ^{accordance with}
 3 suant to this chapter. ^{law at time of}
^{execution}

1838, 2	P. S. 127, § 4	205 Mass. 472.
G. S. 92, § 7.	R. L. 135, § 4.	

1 SECTION 5. A last will and testament executed in the mode pre- ^{Wills made}
 2 scribed by the law, either of the place where the will is executed or of ^{out of the}
 3 the testator's domicile, shall be deemed to be legally executed, and shall ^{commonwealth}
 4 be of the same force and effect as if executed in the mode prescribed by ^{1843, 92.}
 5 the laws of this commonwealth; provided, that such last will and testa- ^{G. S. 92, § 8}
 6 ment is in writing and subscribed by the testator. ^{P. S. 127, § 5}
^{R. L. 135, § 5}
^{1911, 246.}

1918, 257, § 385.	1920, 2	13 Gray, 330
1919, 5	5 Cush. 245.	13 Allen, 38

1 SECTION 6. A soldier in actual military service or a mariner at sea ^{Nuncupative}
 2 may dispose of his personal property by a nuncupative will. ^{will.}

1692-3, 15, § 11.	G. S. 92, § 9	22 Law Rep. 110.
1783, 24, § 6.	P. S. 127, § 6	199 Mass. 450.
R. S. 62, § 7.	R. L. 135, § 6.	269 Mass. 50.

1 SECTION 7. No will, except as provided in this chapter and in ^{Certain wills}
 2 chapter two hundred and nine, shall pass any property, real or personal, ^{ineffective.}
 3 or charge or in any way affect the same; and no will shall take effect ^{Probate}
^{necessary.}
^{Effect.}

R. S. 62, § 32. until it has been duly proved and allowed in the probate court. Such 4
 G. S. 92, § 38. probate shall be conclusive as to its due execution. 5
 P. S. 127, § 7.

R. L. 135, § 7.	12 Met. 421.	130 Mass. 91.
16 Mass. 433.	11 Cush 519.	140 Mass. 411.
1 Pick. 111.	12 Allen, 1.	269 Mass. 50.
6 Met. 360		

Revocation. SECTION 8. No will shall be revoked except by burning, tearing, 1
 1692-3, 15, cancelling or obliterating it with the intention of revoking it, by the 2
 §§ 4, 11, testator himself or by a person in his presence and by his direction; or 3
 1783, 24, by some other writing signed, attested and subscribed in the same 4
 §§ 2, 6, manner as a will; or by subsequent changes in the condition or cir- 5
 R. S. 62, § 9. cumstances of the testator from which a revocation is implied by law. 6
 G. S. 92, § 11
 P. S. 127, § 8
 R. L. 135, § 8.
 1 Pick. 535.
 5 Pick. 112.

9 Pick. 350	123 Mass. 102.	215 Mass. 164.
15 Pick. 388.	138 Mass. 45, 116.	222 Mass. 283.
4 Gray, 162.	141 Mass. 75.	242 Mass. 13.
114 Mass. 510.	204 Mass. 383.	263 Mass. 47.

Revocation by marriage. SECTION 9. The marriage of a person shall act as a revocation of a 1
 Exception will made by him previous to such marriage, unless it appears from the 2
 1892, 118, will that it was made in contemplation thereof. If the will is made in 3
 R. L. 135, § 9, the exercise of a power of appointment and the real and personal 4
 141 Mass. 475, property subject to the appointment would not, without the appoint- 5
 165 Mass. 177, ment, pass to the persons who would have been entitled to it if it had 6
 179 Mass. 491, been the estate and property of the testator making the appointment 7
 184 Mass. 350, and he had died intestate, so much of the will as makes the appointment 8
 214 Mass. 529, shall not be revoked by the marriage. 9
 233 Mass. 468.
 241 Mass. 251.
 263 Mass. 47.
 265 Mass. 420.

CUSTODY AND PRODUCTION IN COURT.

Deposit of wills. SECTION 10. A will enclosed in a sealed wrapper, with an endorse- 1
 R. S. 62, §§ 10, ment thereon of the name and residence of the testator and of the day 2
 11, when and the person by whom it is deposited, and with or without the 3
 G. S. 92, §§ 12, name of a person to whom the will is to be delivered after the death of 4
 13, the testator, shall, on the payment of one dollar, be received by the 5
 P. S. 127, §§ 9, register of probate in the county where the testator lives, who shall 6
 10, give a certificate of the receipt thereof, and shall keep such will; and 7
 R. L. 135, the same shall not be opened until it is delivered to a person entitled 8
 §§ 10, 11, to receive it or is otherwise disposed of as hereinafter provided. 9

Custody and delivery of such wills. SECTION 11. During the life of the testator such will shall be de- 1
 R. S. 62, § 12, livered only to him or in accordance with his order in writing duly 2
 G. S. 92, § 14, verified by the oath of a subscribing witness; and after his death it 3
 P. S. 127, § 11, shall be delivered to the person named in the endorsement, if such 4
 R. L. 135, § 12, person demands it. 5
 1902, 169

Will not called for, to be opened at first probate court. SECTION 12. If the will is not called for by the person, if any, named 1
 R. S. 62, § 13, in the endorsement, it shall be publicly opened at the first probate 2
 G. S. 92, § 15, court held after notice of the testator's death, and shall be retained in 3
 P. S. 127, § 12, the registry until so opened. If the jurisdiction of the case belongs 4
 R. L. 135, § 13, to another court, it shall be delivered to the executors or other persons 5
 entitled to the custody thereof, to be by them presented for probate in 6
 such other court. 7

Possessor of will to present it for probate. Penalty. SECTION 13. A person having custody of a will, other than a register 1
 1692-3, 14, § 2, of probate, shall, within thirty days after notice of the death of the testa- 2
 tor, deliver such will into the probate court having jurisdiction of the 3

4 probate thereof, or to the executors named in the will, who shall them-
 5 selves deliver it into such court within said time; and if a person neg-
 6 lects without reasonable cause so to deliver a will, after being duly cited
 7 for that purpose by such court, he may be committed to jail by warrant
 8 of the court until he delivers it as above provided, and shall be liable to a
 9 person who is aggrieved for the damage sustained by him by reason of
 10 such neglect.

1783, 24, § 16.
 1817, 190, § 12
 R. S. 62, § 14
 G. S. 92, § 16
 1875, 210.
 P. S. 127, § 13.
 R. L. 135, § 14
 4 Mass. 137.
 4 Pick. 33
 200 Mass. 382

230 Mass. 342.

211 Mass. 183.

1 SECTION 14. If a person claiming to be interested in the estate of a
 2 person deceased makes complaint on oath to a probate court against
 3 any one suspected of retaining, concealing, or conspiring with others to
 4 retain or conceal, a will or testamentary instrument of the deceased, the
 5 court may cite the suspected person to appear before it and be examined
 6 on oath upon the matter of the complaint. Upon such examination
 7 all interrogatories and answers shall be in writing, signed by the person
 8 examined, and shall be filed in the court. If the person cited refuses to
 9 appear and to answer such interrogatories as are lawfully propounded to
 10 him, or to obey any lawful order of the court, he may be committed
 11 to jail by warrant of the court until he submits to its order. The court
 12 may award costs to be paid by either party, and may issue execution
 13 therefor.

Proceedings
 against persons
 suspected of
 concealing
 wills, etc.
 1849, 146.
 G. S. 92, §§ 17,
 18.
 P. S. 127, § 14
 R. L. 135, § 15
 200 Mass. 382

RIGHTS OF SURVIVING HUSBAND OR WIFE.

1 SECTION 15. The surviving husband or wife of a deceased person,
 2 except as provided in section thirty-five or thirty-six of chapter two
 3 hundred and nine, within six months after the probate of the will of such
 4 deceased, may file in the registry of probate a writing signed by him or by
 5 her, waiving any provisions that may have been made in it for him or
 6 for her, or claiming such portion of the estate of the deceased as he or she
 7 would have taken if the deceased had died intestate, and he or she shall
 8 thereupon take the same portion of the property of the deceased, real
 9 and personal, that he or she would have taken if the deceased had died
 10 intestate; except that if he or she would thus take real and personal
 11 property to an amount exceeding ten thousand dollars in value, he or she
 12 shall receive in addition to that amount only the income during his or
 13 her life of the excess of his or her share of such estate above that amount,
 14 the personal property to be held in trust and the real property vested in
 15 him or her for life, from the death of the deceased; and except that if the
 16 deceased leaves no kindred, he or she upon such waiver shall take the
 17 interest he or she would have taken if the deceased had died leaving
 18 kindred but no issue. If the real and personal property of the deceased
 19 which the surviving husband or widow takes under the foregoing pro-
 20 visions exceeds ten thousand dollars in value, the ten thousand dollars
 21 above given absolutely shall be paid out of that part of the personal
 22 property in which the husband or widow is interested; and if such part
 23 is insufficient the deficiency shall, upon the petition of any person in-
 24 terested, be paid from the sale or mortgage in fee, in the manner provided
 25 for the payment of debts or legacies, of that part of the real property in
 26 which he or she is interested. Such sale or mortgage may be made either
 27 before or after such part is set off from the other real property of the de-
 28 ceased for the life of the husband or widow. If, after probate of such will,
 29 legal proceedings have been instituted wherein its validity or effect is
 30 drawn in question, the probate court may, within said six months, on

Right to
 waive will.
 Effect of
 waiver
 1783, 24, § 8
 1833, 40
 R. S. 60, § 11
 1854, 428
 G. S. 92, § 24
 1861, 164, § 1
 1871, 200.
 1873, 58.
 P. S. 127, § 18
 1869, 479, § 10
 1900, 450, § 7
 R. L. 135, § 16
 1918, 257,
 § 384.
 1919, 5.
 1920, 2.
 11 Met. 291.
 1 Cush. 107.
 6 Gray, 307.
 9 Gray, 81
 12 Gray, 227,
 236.
 1 Allen, 490.
 2 Allen, 468.
 6 Allen, 178.
 100 Mass. 234
 101 Mass. 40
 102 Mass. 49.
 568.
 109 Mass. 146
 119 Mass. 509
 133 Mass. 46
 140 Mass. 562
 141 Mass. 511
 175 Mass. 413
 185 Mass. 196
 187 Mass. 455
 198 Mass. 136
 205 Mass. 16,
 468.
 210 Mass. 105
 218 Mass. 27.
 221 Mass. 315
 226 Mass. 217
 236 Mass. 77
 243 Mass. 39
 266 Mass. 474
 525.

petition and after such notice as it orders, extend the time for filing the aforesaid claim and waiver until the expiration of six months from the termination of such proceedings.

Appointment of trustees to hold husband's or widow's share.
1861, 164, § 2.
1870, 262, § 1.
P. S. 127, § 19.
1899, 479, § 11.

SECTION 16. The probate court may upon application of a person interested appoint one or more trustees, who shall be subject to chapter two hundred and three so far as applicable, to hold during the life of a husband or widow any personal property to the income of which he or she may be entitled under the preceding section.

1900, 450, § 8.

R. L. 135, § 17.

Husband not to have curtesy or widow dower in addition to provisions of will, unless, etc.

SECTION 17. A husband shall not be entitled to his curtesy in addition to the provisions of his wife's will, nor a widow to her dower in addition to the provisions of her husband's will, unless such plainly appears by the will to have been the intention of the testator.

1783, 24, § 8.
R. S. 60, § 11.
G. S. 92, § 24.
1861, 164, § 1.
P. S. 127, § 20.

R. L. 135, § 18.
12 Pick. 146.
5 Met. 277
4 Cush. 174
113 Mass. 246.

135 Mass. 326.
140 Mass. 562.
144 Mass. 564.
186 Mass. 14.

PROVISIONS FOR SPECIAL CASES.

Devise to give fee. Exception
R. S. 62, § 4.
G. S. 92, § 5.

SECTION 18. A devise shall convey all the estate which the testator could lawfully devise in the land mentioned, unless it clearly appears by the will that he intended to convey a less estate.

P. S. 127, § 24.
R. L. 135, § 22.
1 Cush. 93
4 Gray, 348
12 Gray, 376.
97 Mass. 413.
98 Mass. 75.

108 Mass. 529.
140 Mass. 92.
147 Mass. 570.
168 Mass. 144.
170 Mass. 403,
540.
183 Mass. 251.

184 Mass. 169.
192 Mass. 486.
202 Mass. 512.
225 Mass. 311,
380.
236 Mass. 182.
240 Mass. 14.

Land, etc., acquired after making of will to pass by it. Exception.
R. S. 62, § 3.

SECTION 19. An estate, right or interest in land acquired by a testator after the making of his will shall pass thereby in like manner as if possessed by him at the time when he made his will, unless a different intention manifestly and clearly appears by the will.

G. S. 92, § 4
P. S. 127, § 25.
R. L. 135, § 23.
6 Mass. 149
5 Pick. 112.
1 Met. 390.

7 Met. 141.
12 Met. 169, 262.
1 Cush. 107, 118.
3 Cush. 366
4 Cush. 369
106 Mass. 578.

128 Mass. 41.
170 Mass. 403.
194 Mass. 596.
260 Mass. 584.
263 Mass. 47.

Child not provided for in will.
1700-1, 4,
§§ 1, 2.
1783, 24,
§§ 7, 8.
R. S. 62,
§§ 21, 22.
G. S. 92,
§§ 25, 26.
P. S. 127,
§§ 21, 22.

SECTION 20. If a testator omits to provide in his will for any of his children, whether born before or after the testator's death, or for the issue of a deceased child, whether born before or after the testator's death, they shall take the same share of his estate which they would have taken if he had died intestate, unless they have been provided for by the testator in his life time or unless it appears that the omission was intentional and not occasioned by accident or mistake.

R. L. 135, § 19, 20
G. L. (ed. of 1920) 191,
§§ 20, 21.
1925, 155, §§ 1, 2.
11 Met. 294
2 Gray, 535.
3 Gray, 367.
4 Allen, 512.
5 Allen, 257.
8 Allen, 551.

11 Allen, 47.
97 Mass. 439.
101 Mass. 125.
106 Mass. 320.
112 Mass. 184.
123 Mass. 8.
126 Mass. 135
132 Mass. 131.
137 Mass. 86, 527.
164 Mass. 38.

170 Mass. 403.
182 Mass. 293.
194 Mass. 40.
222 Mass. 140.
249 Mass. 522.
254 Mass. 63.
255 Mass. 236.
267 Mass. 528.
133 U. S. 216.

SECTION 21. [REPEALED, 1925, 155, § 2.]

1 SECTION 22. If a devise or legacy is made to a child or other relation
 2 of the testator, who dies before the testator, but leaves issue surviving
 3 the testator, such issue shall, unless a different disposition is made or
 4 required by the will, take the same estate which the person whose issue
 5 they are would have taken if he had survived the testator.

Devisee or
 legatee dying
 before testator.
 1783, 24, § 8.
 R. S. 62, § 24.
 G. S. 92, § 28.
 P. S. 127, § 23.

R. L. 135, § 21.	145 Mass. 517.	212 Mass. 432, 451.
18 Pick. 41.	155 Mass. 415.	214 Mass. 529.
5 Met. 396.	162 Mass. 448.	222 Mass. 283.
7 Met. 141.	189 Mass. 266.	229 Mass. 267.
9 Cush. 122.	195 Mass. 520.	248 Mass. 196.
16 Gray, 305.	196 Mass. 562.	266 Mass. 320.
101 Mass. 36.	206 Mass. 289.	272 Mass. 1.
108 Mass. 382.	210 Mass. 115.	273 Mass. 287.

1 SECTION 23. In all wills made subsequent to January first, nineteen
 2 hundred and ten, a specific devise of real estate subject to a mortgage
 3 given by the testator, unless the contrary shall plainly appear by his
 4 will, shall be deemed to be the devise of the interest only which the
 5 testator had at the time of his decease in such real estate over and above
 6 such mortgage, and if the note or obligation of the testator secured by
 7 such mortgage be paid out of his other property after his decease, the
 8 executor of his will or the administrator with the will annexed of his
 9 estate shall, at the request of any person interested and by leave of the
 10 probate court, sell such real estate specifically devised for the purpose
 11 of satisfying the estate of the testator for the amount so paid, together
 12 with the costs and expenses thereof.

Devises of
 real estate
 subject to
 mortgage.
 1909, 198,
 §§ 1, 3.
 272 Mass. 241.

1 SECTION 24. If a testator devises land of which he is not seized, but
 2 in which he has a right of entry, or if, after making a will, he is dis-
 3 seized of land devised thereby, such land shall nevertheless pass to the
 4 devisee in like manner as it would have descended to the testator's
 5 heirs if he had died intestate, and the devisee shall have the same remedy
 6 for the recovery of such land as such heirs might have had.

Devise of land
 to which
 testator has
 only right of
 entry, etc.
 R. S. 62, § 2.
 G. S. 92, § 3.
 P. S. 127, § 26.
 R. L. 135, § 24.

10 Mass. 131.	15 Mass. 115.	15 Pick. 185.	12 Met. 501.
---------------	---------------	---------------	--------------

CONTRIBUTION AMONG DEVISEES AND LEGATEES.

1 SECTION 25. If a child, or the issue of a child, omitted in the will
 2 takes under section twenty a portion of the estate of a testator, such
 3 portion shall be taken from all the devisees and legatees in proportion to
 4 and not exceeding the value of what they respectively receive under
 5 such will, unless in consequence of a specific devise or legacy or of some
 6 other provision of the will a different apportionment is found necessary
 7 to give effect to the testator's intention relative to that part of his estate
 8 which passes by his will.

Contribution
 to make up
 portion of
 posthumous or
 omitted child.
 1783, 24, § 7.
 R. S. 62, § 23.
 G. S. 92, § 27.
 P. S. 127, § 27.
 R. L. 135, § 25.
 1931, 426,
 § 279.
 137 Mass. 527.

1 SECTION 26. If property which is given by will is taken from a
 2 devisee or legatee for the payment of the debts of the testator, all the
 3 other devisees and legatees shall, subject to the following section, con-
 4 tribute their respective proportions of the loss to the person from whom
 5 such property is taken, so that the loss may fall on all the devisees and
 6 legatees in proportion to and not exceeding the value of the property
 7 received by each.

Contribution
 when property
 is taken for the
 payment of
 debts.
 1758-9, 37, § 3.
 1783, 24, § 18.
 R. S. 62, § 25.
 G. S. 92, § 29.
 P. S. 127, § 28.

R. L. 135, § 26.	1 Cush. 107.	213 Mass. 117.
6 Mass. 149.	192 Mass. 79, 596.	

1 SECTION 27. If the testator, by making a specific devise or bequest,
 2 has virtually exempted a devisee or legatee from liability to contribute
 3 with the others for the payment of the debts, or if by any other pro-

Special appro-
 priation of his
 estate made by
 testator to be
 followed.

R. S. 62, §§ 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

4 Allen, 179. 122 Mass. 282. 127 Mass. 64.
 13 Allen, 252. 124 Mass. 228. 213 Mass. 117.
 106 Mass. 100.

Posthumous or omitted child liable and entitled to contribution. R. S. 62, § 28. G. S. 92, § 32. P. S. 127, § 30. R. L. 135, § 28. 1931, 426, § 280. SECTION 28. If a child, or the issue of a child, omitted in the will takes under section twenty a portion of the estate of a testator, such portion of the estate shall, for the purposes of the two preceding sections and section thirty, be considered as if it had been devised or bequeathed to such child or other descendant; and he shall contribute with the devisees and legatees, and be entitled to claim contribution from them, as before provided.

Insolvency of devisee or legatee. R. S. 62, § 29. G. S. 92, § 33. P. S. 127, § 31. R. L. 135, § 29. SECTION 29. If a person who is liable to contribute according to the three preceding sections is insolvent or unable to pay his just proportion of the contribution required, the other persons so liable to contribute shall be severally liable for the loss occasioned by such insolvency, each one in proportion to and not exceeding the value of the property received by him from the estate of the deceased; and if a person who is so liable dies without having paid his proportion, his executors and administrators shall be liable therefor in like manner as if it had been his own debt and to the extent to which he would have been liable if living.

Contribution if estate is taken from devisee for dower, etc. Exception. 1839, 96, § 1. G. S. 92, § 36. P. S. 127, § 32. R. L. 135, § 30. 1 Cush. 107. 137 Mass. 527. SECTION 30. If the estate of a devisee under a will is taken for the courtesy of the husband or dower of the widow of the testator, all the other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is so taken, so that the loss may fall upon all the devisees and legatees in proportion to and not exceeding the value of property received by them under the will; but no devisee or legatee shall contribute if exempted therefrom by the will.

CHAPTER 192.

PROBATE OF WILLS AND APPOINTMENT OF EXECUTORS.

<p>SECT. 1. Affidavits to be annexed to certain petitions in the probate court. 2. Proof of will, etc. 3. Certain decrees conclusive after one year. Effect of subsequent decrees. 4. Letters to issue. 5. If one executor does not accept, letters may be granted to the others.</p>	<p>SECT. 6. If one executor is a minor, the others may act during his minority. 7. Judge or register of probate as executor, etc., of estate of relative. 8. Executor of executor not to complete administration. 9. Allowance of foreign wills. 10. Same subject. 11. Settlement of estate in such cases.</p>
--	--

Affidavits to be annexed to certain petitions in the probate court. 1891, 414, § 1. R. L. 136, § 1. SECTION 1. A petition for the probate of a will, letters of administration or letters testamentary shall have annexed an affidavit of the petitioner or of one of the petitioners that the statements therein made are true to the best of his knowledge and belief.

1 SECTION 2. If it appears to the probate court, by the consent in
 2 writing of the heirs, or by other satisfactory evidence, that no person
 3 interested in the estate of a deceased person intends to object to the
 4 probate of an instrument purporting to be the will of such deceased,
 5 the court may grant probate thereof upon the testimony of one only of the
 6 subscribing witnesses; and the affidavit of such witness, taken before
 7 the register of probate, may be received as evidence. If the probate
 8 of such instrument is assented to in writing by the widow or husband of
 9 the deceased, if any, and by all the heirs at law and next of kin, it may
 10 be allowed without testimony.

Proof of will,
 etc.
 1817, 190, § 33.
 R. S. 62, § 15.
 G. S. 92, § 19.
 P. S. 129, § 1.
 1901, 242.
 R. L. 136, § 2.
 1912, 493.
 3 Mass. 236.
 238 Mass. 313.
 247 Mass. 92.

1 SECTION 3. A decree allowing a will, or compromise of a will, or ad-
 2 judicating the intestacy of the estate of a deceased person, in any court
 3 in the commonwealth having jurisdiction thereof, shall, after one year
 4 from the rendition thereof, or, if proceedings for its reversal are had,
 5 after one year from its establishment, be final and conclusive in favor of
 6 purchasers for value, in good faith, without notice of any adverse claim,
 7 of any property, real or personal, from devisees, legatees, heirs, execu-
 8 tors, administrators, guardians or conservators; and in favor of execu-
 9 tors, administrators, trustees, guardians and conservators, who have
 10 settled their accounts in due form and have in good faith disposed of the
 11 assets of the estate in accordance with law; and also in favor of persons
 12 who have in good faith made payments to executors, administrators,
 13 trustees, guardians or conservators. If a subsequent decree reverses or
 14 qualifies the decree so originally rendered, heirs, devisees, legatees and
 15 distributees shall be liable to a subsequent executor, administrator or
 16 other person found entitled thereto, for any proceeds or assets of the
 17 estate received by them under the former decree, and in such case pro-
 18 ceeds of real property shall be treated as real property. This section
 19 shall not make an adjudication of the fact of death conclusive.

Certain decrees
 conclusive
 after one year.
 Effect of subse-
 quent decrees
 1889, 435.
 R. L. 136, § 3.
 1917, 22.
 1918, 257,
 § 386.
 1919, 5.
 1920, 2.
 3 Allen, 87
 144 Mass. 415.
 223 Mass. 540.
 225 Mass. 12
 261 Mass. 209

1 SECTION 4. If a will has been duly proved and allowed, the probate
 2 court shall issue letters testamentary thereon to the executor named
 3 therein, if he is legally competent and a suitable person and accepts the
 4 trust and within thirty days gives bond to discharge the same; other-
 5 wise said court may grant letters of administration on the estate as pro-
 6 vided in the following chapter.

Letters to
 issue.
 R. S. 63, § 1.
 G. S. 93, § 1.
 P. S. 129, § 2.
 R. L. 136, § 4.
 1907, 130.
 1918, 257,
 § 387.

1919, 5.	6 Mass. 149.	152 Mass. 24.	251 Mass. 169.
1920, 2.	111 Mass. 331.	249 Mass. 440.	263 Mass. 444.

1 SECTION 5. If a person named as executor in a will has deceased or
 2 refuses to accept the trust, or, after being duly cited for the purpose,
 3 neglects to accept the same or neglects for twenty days after the pro-
 4 bate of the will to give bond according to law, the court shall grant
 5 letters testamentary to the other executors, if there are any competent
 6 and willing to accept the trust.

If one executor
 does not accept,
 letters may be
 granted to the
 others.
 1783, 24, § 16.
 R. S. 63, § 5.
 1855, 111.
 G. S. 93, § 6.

P. S. 129, § 3.	111 Mass. 331.	183 Mass. 575.
R. L. 136, § 5.	172 Mass. 496.	

1 SECTION 6. If a person named as executor in a will is at the time of
 2 the probate thereof a minor, the other executor or executors, if any,
 3 shall administer the estate until the minor arrives at full age, when,
 4 upon giving bond according to law, he may be admitted as a co-executor
 5 of such will.

If one executor
 is a minor, the
 others may act
 during his mi-
 nority.
 1783, 24, § 17.
 R. S. 63, § 6.

G. S. 93, § 7.	P. S. 129, § 4.	R. L. 136, § 6.
----------------	-----------------	-----------------

Judge or register of probate as executor, etc., of estate of relative.
1898, 69, §§ 1, 2.
R. L. 136, §§ 7, 8.

SECTION 7. If a judge or register of probate desires to be appointed executor of the will or administrator, or administrator with the will annexed, of the estate of his wife, child, father or mother, who at the time of their decease were inhabitants of or resident in his county, such will may be proved and allowed and appointment made and all subsequent proceedings relative to the estate may be had in the probate court of any adjoining county, and the register thereof shall forthwith transmit to the register of the county where the deceased resided, or of which said deceased was an inhabitant, a true and attested copy of all papers relating thereto filed and entered on the docket, which shall be recorded by the register to whom they are transmitted.

Executor of executor not to complete administration.

SECTION 8. The executor of the will of an executor shall not, as such, administer on the estate of the first testator.

1783, 24, § 19.	P. S. 129, § 10.	156 Mass. 313
R. S. 63, § 10.	R. L. 136, § 9.	157 Mass. 160
G. S. 93, § 9.	131 Mass. 408.	237 Mass. 47.

Allowance of foreign wills.
1785, 12, §§ 1, 2.
R. S. 62, §§ 17, 18.
G. S. 92, § 21.
1878, 201.
1879, 185, § 1.
P. S. 127, § 15.
R. L. 136, § 10.
204 Mass. 394.
263 Mass. 549.
210 U. S. 82.

SECTION 9. A person interested in a will which has been proved and allowed in any other of the United States or in a foreign country according to the laws of such state or country, or in a will which, by the laws of the state or country in which it was made, is valid without probate, may produce to the probate court in any county where there is any property, real or personal, on which such will may operate, a copy of such will and of the probate thereof, duly authenticated, or, if such will is valid without probate as aforesaid, a copy of the will or of the official record thereof duly authenticated by the proper officer having custody of such will or record in such state or country; and the court shall thereupon assign a time and place for a hearing and cause notice thereof to be given to all persons interested by publication in a newspaper three weeks successively, the first publication to be thirty days at least before the time assigned for the hearing.

Same subject.
1785, 12, § 2.
R. S. 62, § 19.
G. S. 92, § 22.
1879, 185, § 1.
P. S. 127, § 16.
R. L. 136, § 11.
12 Met. 421.
11 Cush. 519.
10 Gray, 162.
13 Gray, 330.

SECTION 10. If at such hearing the court finds from the copies before it and any additional proof as to the authenticity and execution of the will that the instrument ought to be allowed in this commonwealth as the last will of the deceased, it shall order the copy to be filed and recorded, and the will shall then have the same effect as if it had been originally proved and allowed in the probate court in the usual manner.

111 Mass. 331.	204 Mass. 394.	263 Mass. 549.	210 U. S. 82.
----------------	----------------	----------------	---------------

Settlement of estate in such cases.
1785, 12, § 1.
R. S. 62, § 20.
G. S. 92, § 23.
P. S. 127, § 17.
R. L. 136, § 12.
10 Cush. 17.
111 Mass. 331.
204 Mass. 394.

SECTION 11. After allowing a will under the two preceding sections, the probate court shall grant letters testamentary on such will or letters of administration with the will annexed, and shall proceed in the settlement of the estate which may be found in this commonwealth in the manner provided in chapter one hundred and ninety-nine relative to such estates.

263 Mass. 549.	210 U. S. 82.
----------------	---------------

CHAPTER 193.

APPOINTMENT OF ADMINISTRATORS.

- SECT.
 ORDINARY ADMINISTRATION.
 1. Administration, to whom granted.
 2. When granted to next of kin without notice.
 3. Right of commissioner of corporations and taxation to apply for administration.
 4. Administration not to be granted after twenty years.
 5. Exception.
 6. Letters of administration to be revoked on probate of a will.
 ADMINISTRATION WITH THE WILL ANNEXED.
 7. Administration with the will annexed.
 8. Administration with the will annexed may be granted when executor is a minor.

- SECT.
 ADMINISTRATION DE BONIS NON.
 9. Administration de bonis non.
 SPECIAL ADMINISTRATION.
 10. Special administrators.
 11. Powers and duties.
 12. Same subject.
 13. Advancements to widow or children. Appeal.
 14. Payment of certain debts and expenses.
 15. Effect of special administration on claims of creditors.
 16. Powers of special administrator to cease on appointment of executor, etc. Delivery of assets, etc.

ORDINARY ADMINISTRATION.

1 SECTION 1. Administration of the estate of a person deceased in-
 2 testate shall be granted to one or more of the persons hereinafter men-
 3 tioned and in the order named, if competent and suitable for the dis-
 4 charge of the trust and willing to undertake it, unless the court deems
 5 it proper to appoint some other person:
 6 First, The widow or surviving husband of the deceased.
 7 Second, The next of kin or their guardians or conservators as the court
 8 shall determine.
 9 Third, If none of the above are competent or if they all renounce the
 10 administration or without sufficient cause neglect for thirty days after
 11 the death of the intestate to take administration of his estate, one or
 12 more of the principal creditors, after public notice upon the petition.
 13 Fourth, If there is no widow, husband or next of kin within the com-
 14 monwealth, a public administrator.

Administration, to whom granted.
 C. L. 158, § 2.
 1692-3, 14, § 1.
 1783, 36, § 8.
 1817, 190, § 14.
 1833, 100.
 R. S. 64, § 4.
 1839, 142, § 1.
 1840, 40, § 1.
 1853, 419.
 G. S. 94, § 1.
 P. S. 130, § 1.
 1890, 265, § 2.
 R. L. 137, § 1.
 1914, 356, 702.
 1928, 216, § 1.
 18 Pick 24.
 19 Pick 336.
 1 Cush 525.
 4 Cush 408.
 195 Mass. 133.

- | | | |
|----------------|----------------|----------------|
| 222 Mass. 102. | 235 Mass. 33. | 267 Mass. 388. |
| 223 Mass. 540. | 256 Mass. 177. | 268 Mass. 181. |
| 225 Mass. 487. | 263 Mass. 549. | 271 Mass. 94. |

1 SECTION 2. Administration of the estate of an intestate may be
 2 granted to one or more of the next of kin or any suitable person, if the
 3 husband or widow and all the next of kin resident in the commonwealth,
 4 who are of full age and legal capacity, consent in writing thereto. Notice
 5 of the petition may be dispensed with as if all parties entitled thereto
 6 had signified their assent or waived notice.

When granted to next of kin without notice.
 1885, 260.
 1890, 265, § 1.
 R. L. 137, § 2.
 256 Mass. 177.

1 SECTION 3. If a person dies leaving an estate which may be liable to
 2 an income tax under chapter sixty-two or a legacy or succession tax
 3 under chapter sixty-five, and a will disposing of such estate is not offered
 4 for probate, or an application for administration made, within four months

Right of commissioner of corporations and taxation to apply for administration.

1891, 425, § 15. after his decease, the probate court, upon application by the commis- 5
 R. L. 15, § 18. sioner of corporations and taxation, may appoint an administrator. 6
 1907, 563, § 22. 1909, 490, IV, § 22. 1915, 64.
 1911, 551. 1919, 349, § 6; 350, § 53

Administration not to be granted after twenty years. 1783, 36, § 10. SECTION 4. Administration shall not be originally granted after the expiration of twenty years from the death of the testator or intestate, except in cases expressly authorized by law. 1 2 3
 1817, 190, § 17. P. S. 130, § 3. 146 Mass. 155.
 R. S. 64, § 13. R. L. 137, § 3. 208 Mass. 501.
 G. S. 94, § 3. 6 Cush. 493.

Exception. 1848, 309. SECTION 5. If administration has not been taken on the estate of a 1
 G. S. 94, § 4. testator or intestate within twenty years after his decease, and any 2
 P. S. 130, § 4. property or claim or right thereto remains undistributed or thereafter 3
 1885, 242. accrues to such estate and remains to be administered, original adminis- 4
 1889, 192. tration may for cause be granted, but it shall affect no other property. 5
 R. L. 137, § 4. 1919, 102. Before granting such administration the court shall require the petitioner 6
 130 Mass. 83. to furnish evidence of the death of the intestate and such other evidence 7
 208 Mass. 501. as the court may require. In the absence of satisfactory evidence of 8
 death and of interest on the part of the petitioners, the probate court 9
 shall refer the matter to the attorney general, or to any district attorney, 10
 who shall investigate and report thereon for the advice and assistance of 11
 the court. 12

Letters of administration to be revoked on probate of a will. 1817, 190, § 14. SECTION 6. If, after the granting of letters of administration as 1
 R. S. 64, § 16. upon an intestate estate, a will of the person deceased is duly proved 2
 G. S. 94, § 5. and allowed, such letters shall be revoked; and the executor or an admin- 3
 istrator with the will annexed may demand, collect and sue for all the 4
 personal property of the deceased which remains unadministered. 5
 P. S. 130, § 5. R. L. 137, § 5.

ADMINISTRATION WITH THE WILL ANNEXED.

Administration with the will annexed. 1692-3, 14, § 2. SECTION 7. If no executor is named in a will, or if all the executors 1
 1783, 24, § 16. therein named are dead or incompetent or refuse to accept the trust, or 2
 R. S. 63, § 5. if, after being duly cited therefor, the executor neglects to accept the 3
 1855, 111. trust, or if he neglects for thirty days after the probate of the will to give 4
 G. S. 93, § 6. bond according to law, the court shall commit administration of the estate, 5
 P. S. 150, § 6. with the will annexed, to any person interested in the will of said de- 6
 R. L. 137, § 6. ceased, to any creditor of the deceased or to any suitable person; but 7
 1911, 588. 1919, 208, § 1. deceased, to any creditor of the deceased or to any suitable person; but 7
 1921, 64. after the expiration of said thirty days, and before letters of adminis- 8
 111 Mass. 331. tration with the will annexed have been granted, the court may grant 9
 172 Mass. 496. letters testamentary to any person named as executor who gives the 10
 191 Mass. 96. bond required by law. If a person named as executor in a will petitions 11
 255 Mass. 611. for the probate of the same and dies, declines or becomes unable to act 12
 before final decree is entered on said petition, any person interested in 13
 the will of said deceased, or any creditor of the deceased, or any suitable 14
 person, may, on petition, be allowed to enter and to prosecute the 15
 original petition for probate, to apply for letters of administration with 16
 the will annexed, and to act and proceed in any proposed compromise 17
 under sections fifteen and sixteen of chapter two hundred and four. If 18
 it appears that there are no known heirs or legatees or devisees under 19
 the will of the deceased, a public administrator of the county shall be 20
 appointed to the trust. 21

1 SECTION 8. If a person named as executor is at the time of the pro-
 2 bate of the will under the age of twenty-one, administration with the
 3 will annexed may be granted during his minority, unless there is another
 4 executor who accepts the trust.

Administration
with the will
annexed may
be granted
when executor
is a minor.

1783, 24, § 17.
R. S. 63, § 6.

G. S. 93, § 7.
P. S. 130, § 7.

R. L. 137, § 7.

ADMINISTRATION DE BONIS NON.

1 SECTION 9. If a sole or surviving executor or administrator dies, re-
 2 signs or is removed before having fully administered an estate, and there
 3 is personal property of the deceased not administered to the amount of
 4 twenty dollars, or debts to that amount remaining due from the estate,
 5 or anything remaining to be performed in execution of the will, or if
 6 there is an order of distribution in accordance with section twenty-eight
 7 of chapter two hundred and six, the probate court shall grant letters
 8 of administration, with the will annexed, or otherwise as the case may
 9 require, to one or more suitable persons to administer the goods and
 10 estate of the deceased not already administered. If it appears that there
 11 are no known heirs of the deceased, a public administrator of the county
 12 shall be appointed to the trust.

Administration
de bonis non.
1723-4, 3.
1782, 25,
§§ 1-3.
1783, 24, § 19;
36, § 10.
1817, 190, § 17.
R. S. 63,
§§ 7, 10; 64,
§§ 14, 15.
1843, 97.
G. S. 101,
§§ 1, 2, 5.
P. S. 130, § 9.
1890, 408, § 2.
R. L. 137, § 8.
1919, 208, § 1.
2 Mass. 168.
2 Pick. 360.

3 Met. 187.
7 Met. 20.
128 Mass. 587

132 Mass. 326.
143 Mass. 326.
185 Mass. 22.

214 Mass. 132.
237 Mass. 47.
270 Mass. 461.

SPECIAL ADMINISTRATION.

1 SECTION 10. If the judge of probate deems it necessary or expedient,
 2 he may, at any time and place, with or without notice, appoint a special
 3 administrator who, in case of an appeal from the decree appointing him,
 4 shall nevertheless proceed in the execution of his duties until it is oth-
 5 erwise ordered by the supreme judicial court, and may in like manner dis-
 6 charge him. Such appointment and discharge shall be entered forthwith
 7 on the records of the court and notice thereof given to the executor or
 8 administrator, if any.

Special
administrators.
1834, 174, § 1.
R. S. 64, § 6.
G. S. 94, § 6.
1876, 200,
§§ 1, 1.
P. S. 130, § 10.
R. L. 137, § 9.
220 Mass. 32.

1 SECTION 11. A special administrator shall collect all the personal
 2 property of the deceased and preserve the same for the executor or ad-
 3 ministrator when appointed, and for that purpose may commence, main-
 4 tain and defend suits. If he is appointed by reason of delay in granting
 5 letters testamentary, the court may authorize him to take charge of the
 6 real property of the deceased or of any part thereof, and collect rents,
 7 make necessary repairs and do all other things which it may consider
 8 needful for the preservation of such real property and as a charge thereon.
 9 His compensation shall be such as the court allows.

Powers and
duties.
1834, 174, § 2.
R. S. 64, § 8.
1858, 122.
G. S. 94, § 8.
P. S. 130, § 12.
R. L. 137, § 10.
1918, 257,
§ 388.
1919, 5.
1920, 2.
220 Mass. 32.
233 Mass. 62.

251 Mass. 27.

252 Mass. 197.

259 Mass. 219.

264 Mass. 499.

1 SECTION 12. The probate court may, upon such notice as it considers
 2 reasonable, authorize or require a special administrator to sell or do such
 3 other acts relative to any property or estate in his charge as it may deem
 4 necessary; but this section shall not give to the special administrator
 5 other or greater powers than an administrator, except that he may be
 6 authorized to continue the business of the deceased for the benefit of his
 7 estate.

Same subject.
1834, 174, § 2.
R. S. 64, § 8.
1858, 122.
G. S. 94, § 8.
P. S. 130, § 12.
1898, 414.
1899, 301.
R. L. 137, § 11.
233 Mass. 62.

252 Mass. 197

259 Mass. 219

261 Mass. 209.

Advancements
to widow or
children.
Appeal.
1859, 143,
§§ 1-5.
G. S. 94,
§§ 9, 10.
P. S. 130,
§§ 13, 14.
1899, 311.
R. L. 137, § 12.
109 Mass. 146.
160 Mass. 232.
226 Mass. 459.

SECTION 13. Upon petition of the widow or of any child of the deceased, the probate court may, after notice, make a reasonable allowance out of the real or personal property in the hands of a special administrator appointed on account of the pendency of a petition relative to the probate of a will or the appointment of an administrator or of an administrator with the will annexed, as an advancement for the support of such widow or children, not exceeding such portion of the estate as they would finally be entitled to. An appeal from a decree relative to such allowance shall not prevent the payment of the allowance, if the petitioner gives bond to the special administrator, with sureties approved by the court and conditioned to repay it if the decree is reversed.

Payment of
certain debts
and expenses.
1859, 143, § 6.
G. S. 94, § 11.
P. S. 130, § 15.
1884, 291.
1897, 199.
R. L. 137, § 13.
1908, 153.
226 Mass. 340.

SECTION 14. A special administrator may by leave of the probate court pay from the personal property in his hands the expenses of the last sickness and funeral of the deceased, the expenses incurred by the executor named in the will of the deceased, or by any other person presenting the same for probate, in proving the will in the probate court or in sustaining the proof thereof in the supreme judicial court and also, after notice, such debts due from the deceased as the probate court may approve.

Effect of
special ad-
ministration
on claims of
creditors.
1834, 174, § 4.
R. S. 64, § 10.
G. S. 94, § 13.
P. S. 130, § 17.
R. L. 137, § 15.
220 Mass. 32.

SECTION 15. A special administrator shall not be liable to an action by a creditor of the deceased; and the time of limitation for all actions against the estate shall begin to run only after the granting of letters testamentary or of administration in the usual form in like manner and subject to the same conditions as if special administration had not been granted; but if an appeal is taken from the decree of the probate court appointing an executor or administrator the time shall run in like manner and subject to the same conditions if the decree is affirmed, from the time of the affirmation if the bond has been filed, and, if not, from the date of the filing of the bond; if the decree is reversed, from the time when an appointment is finally made or affirmed and the bond is filed.

Powers of
special ad-
ministrator to
cease on ap-
pointment of
executor, etc.
Delivery of
assets, etc.
1834, 174, § 3.
R. S. 64, § 9.
G. S. 94, § 12.
P. S. 130, § 16.
R. L. 137, § 14.

SECTION 16. Upon the granting of letters testamentary or of administration, the powers of the special administrator shall cease. Upon the termination of his powers, the special administrator shall forthwith deliver to the executor or administrator or to such person as is otherwise lawfully authorized to receive it all the estate of the deceased in his hands; and the executor or administrator may be admitted to prosecute a suit commenced by the special administrator in like manner as an administrator de bonis non may prosecute a suit commenced by a former executor or administrator.

CHAPTER 194.

PUBLIC ADMINISTRATORS.

- SECT.
1. Appointment.
 2. Bond.
 3. [Repealed.]
 4. Duties.
 5. Public administrators not to act when heir, etc., claims the right or if estate consists solely of certain savings deposits.
 6. Compensation in certain cases.
 7. Powers to cease when will is proved or heir claims administration.
 8. Proceedings on death, etc., of public administrator.
 9. Provisions as to land.
 10. Public administrators, etc., to deposit balances with the treasurer.

- SECT.
11. Annual accounts.
 12. Surrender of letters and property on appointment of successor.
 13. Completion of administration after expiration of term.
 14. Heirs, etc., may take administration after deposit in state treasury.
 15. Treasurer to pay over to executor, etc.
 16. District attorneys to prosecute in case of neglect. Registers to report breaches of duty.
 17. Disposition of estates of less than one hundred dollars.
 18. Accounts of estates of less than one hundred dollars.

1 SECTION 1. There shall be in each county one or more public ad-
 2 ministrators, not exceeding six in Middlesex and in Suffolk or five in
 3 any other county, appointed by the governor with the advice and con-
 4 sent of the council, who shall hold office for five years from the time of
 5 their appointment.

Appointment.
 1839, 142, § 1.
 G. S. 95, § 1.
 P. S. 131, § 1.
 R. L. 138, § 1.
 1908, 510, § 1.
 1913, 246.

1917, 12.

1929, 85.

1 SECTION 2. A public administrator shall give bond for the faithful
 2 administration of each estate on which letters of administration may be
 3 granted to him as such public administrator, with sufficient sureties,
 4 in such form as the probate court may order, payable to the judge of
 5 said court and his successors, with condition substantially as follows: —

Bond
 1839, 142.
 §§ 1, 2.
 1849, 123.
 §§ 2, 3.
 G. S. 95, §§ 6-9
 P. S. 131,
 §§ 6-9
 R. L. 138.
 §§ 6-9
 1931, 305, § 1.

6 First, To make and return to the probate court, within three months
 7 from the time of granting to him, as public administrator, letters of
 8 administration on the estate of the deceased, a true inventory of all the
 9 real and personal property of the deceased which at the time of making
 10 thereof shall have come to his possession or knowledge;

11 Second, To administer according to law all personal property of the
 12 deceased which may come into his possession or into the possession of
 13 any person for him, and also the proceeds of any of the real property of
 14 the deceased which may be sold or mortgaged by him;

15 Third, To render on oath a true account of his administration at least
 16 once a year until his trust is fulfilled, unless he is excused therefrom in
 17 any year by the court, and also to render such account at such other
 18 times as the court orders;

19 Fourth, To pay the balance of such estate remaining in his hands
 20 upon the settlement of his accounts to such persons as the court may
 21 direct; and, when such estate has been fully administered, to deposit
 22 with the state treasurer the whole amount remaining in his hands to
 23 which said treasurer may be entitled under the provisions of chapter
 24 one hundred and ninety-four of the General Laws;

25 Fifth, Upon the appointment and qualification of an executor or ad-
 26 ministrator as his successor, to surrender into the probate court said

letters of administration, with an account on oath of his doings therein; 27
 and, upon a just settlement of such account, to pay over and deliver to 28
 such successor all money remaining in his hands, and all property, 29
 effects and credits of the deceased not then administered. 30

SECTION 3. [REPEALED, 1931, 305, § 2.] 1

Duties.
 1833, 100.
 R. S. 64, § 4.
 1839, 142,
 § § 1, 3.
 1840, 40.
 1849, 123,
 § § 2, 3.
 G. S. 95,
 § § 2, 10.
 P. S. 131,
 § § 2, 10.
 R. L. 138,
 § § 2, 10.
 1907, 284, § 1.
 1918, 257, § 389.
 1919, 5.
 1920, 2.

SECTION 4. A public administrator shall, except as hereinafter 1
 provided, take out letters of administration and faithfully administer 2
 upon the estates of persons who die intestate within his county or else- 3
 where, leaving property in his county to be administered, if there is no 4
 known husband, widow or heir of such deceased living in the common- 5
 wealth at the time of filing the petition. The state treasurer shall be 6
 made a party to a petition for administration by a public administrator, 7
 and shall be given due notice of all subsequent proceedings. He shall, ex- 8
 cept as otherwise provided in this chapter, administer estates and render 9
 accounts in the same manner as other administrators. 10

128 Mass. 578. 191 Mass. 276. 223 U. S. 317.
 182 Mass. 205. 268 Mass. 181.

Public administrators not to act when heir, etc., claims the right or if estate consists solely of certain savings deposits.
 1853, 419.
 G. S. 95, § 3.
 P. S. 131, § 3.
 R. L. 138, § 3.
 1929, 264, § 1.
 268 Mass. 181.

SECTION 5. Administration shall not be granted to a public adminis- 1
 trator when the husband, widow or an heir of the deceased, in writing, 2
 claims the right of administration or requests the appointment of some 3
 other suitable person to the trust, if such husband, widow, heir or other 4
 person accepts the trust and gives the bond required, nor when the sole 5
 known assets of the estate of the deceased consist of an amount of money 6
 standing to his credit in a savings bank or in the savings department of a 7
 trust company, in case such account has not been increased by a deposit, 8
 nor decreased by a withdrawal of any part of his deposits or of any part 9
 of the interest thereon, during a period of twenty years or more next 10
 preceding the petition for such administration. 11

Compensation in certain cases.
 1909, 114, § 1.

SECTION 6. If after citation has been issued by the probate court 1
 to a public administrator upon the estate of a deceased person, adminis- 2
 tration shall not be granted to him for the reason set forth in the pre- 3
 ceding section, or because of the finding of a will of the deceased, the 4
 judge, if satisfied that the person taking out said citation has acted in 5
 good faith and for the best interests of the estate, may allow him just 6
 and reasonable compensation for his services, and reimbursement for ex- 7
 penses actually incurred, out of the assets of said estate. 8

Powers to cease when will is proved or heir claims administration.
 1817, 190, § 14.
 R. S. 64, § 16.
 1839, 142, § 2.
 G. S. 95, § § 1, 5.
 P. S. 131, § 4.
 R. L. 138, § 4.
 118 Mass. 594.

SECTION 7. If, after the granting of letters of administration to a 1
 public administrator and before the final settlement of the estate, the 2
 husband, widow or an heir of the deceased, in writing, claims the right 3
 of administration or requests the appointment of some other suitable 4
 person to the trust, or if a will of the deceased is thereafter proved and 5
 allowed, the probate court shall grant letters of administration or letters 6
 testamentary; and when the person to whom such letters are so granted 7
 gives the bond required by law the powers of the public administrator 8
 over the estate shall cease. 9

Proceedings on death, etc., of public administrator.
 1849, 123, § 1.

SECTION 8. Upon the death, resignation or removal of a public 1
 administrator, the probate court shall issue a warrant to some other 2
 public administrator in the same county, upon his application there- 3

4 for, requiring him to examine the accounts of such public adminis-
 5 trator relative to the estates on which he has taken out letters of ad-
 6 ministration, and to return to the probate court a statement of all of
 7 such estates as are not fully administered and of the balance of each
 8 estate remaining in the hands of such public administrator at the time
 9 of his death, resignation or removal. And thereupon the court shall
 10 issue to the public administrator making the return, upon his giving the
 11 requisite bond, letters of administration upon such of said estates as are
 12 not already administered, although the personal property remaining may
 13 not amount to twenty dollars.

G. S. 95, § 16.
 P. S. 131, § 16.
 R. L. 138, § 16.

1 SECTION 9. Public administrators may be authorized to take charge
 2 of the real property of the deceased or of any part thereof situated any-
 3 where within the commonwealth, to lease the same, to collect the rents,
 4 and to make such repairs, and do all other things which may be con-
 5 sidered necessary for the preservation of such real property and as a
 6 charge thereon. They may also be licensed by the probate court to
 7 sell the real property for the same purposes and in the same manner
 8 as other administrators. All laws relative to sales of land by adminis-
 9 trators and the disposition of the proceeds shall govern such sales so far
 10 as applicable, except as otherwise provided in this chapter; provided,
 11 that the time limit imposed on sales by other administrators shall not
 12 apply to sales by public administrators, but shall be in the discretion
 13 of the court. The net proceeds of any sale after deducting the expenses
 14 thereof and other administration expenses, and such amount as may be
 15 required for the payment of debts in consequence of a deficiency in the
 16 personal property, shall, after one year from the time of the filing of the
 17 administrator's bond, or in case he has filed a general bond, after one
 18 year from the date of his appointment, except as provided in the follow-
 19 ing section, be distributed to the persons who would have been entitled
 20 to said real property in the proportions to which they would have been
 21 entitled had it not been sold.

Provisions as
 to land
 1839, 142,
 §§ 1, 3, 4
 1849, 123,
 §§ 2, 3,
 G. S. 95,
 §§ 10, 11
 1880, 152.
 P. S. 131,
 §§ 10, 11
 R. L. 138,
 §§ 10, 11,
 1903, 260,
 1905, 124, § 1.

1 SECTION 10. When an estate has been fully administered by a
 2 public administrator, or by the executor or administrator with the will
 3 annexed of a person who died leaving no known heirs, he shall deposit any
 4 balance in his hands with the state treasurer, who shall hold it for the
 5 benefit of those who may have lawful claims thereon. The probate court
 6 may, within six years thereafter, upon the application of such executor
 7 or administrator, if it appears that there are reasonable grounds to be-
 8 lieve that certain persons have lawful claims upon the said balance, enter
 9 a decree directing that it be repaid to him; and the treasurer shall there-
 10 upon pay over to him all money deposited in the treasury to the credit
 11 of the estate to be administered by him as a part of the estate of the
 12 deceased.

Public
 administrators,
 etc., to deposit
 balances with
 the treasurer.
 1839, 142,
 §§ 1, 4
 G. S. 95, § 12.
 P. S. 131, § 12.
 R. L. 138, § 12.
 1917, 90, § 1.
 1919, 208, § 2
 7 Allen, 509.

1 SECTION 11. The probate court in each county shall require every
 2 public administrator in such county to render an account of his pro-
 3 ceedings under any letters of administration at least once a year until
 4 the trust is fulfilled. When, on final settlement of an estate, it appears
 5 that money remains in the hands of such administrator which by law
 6 should have been deposited with the state treasurer, the court shall
 7 certify that fact and a statement of the amount so withheld to said
 8 treasurer, who, unless such deposit is made within one month after

Annual
 accounts,
 1839, 142,
 §§ 4, 5,
 G. S. 95, § 13.
 P. S. 131, § 13
 R. L. 138, § 13

the receipt of such notice, shall cause the bond of the administrator to be prosecuted for the recovery of such money. 9 10

Surrender of letters and property on appointment of successor. 1817, 190, § 14. R. S. 64, § 16. 1839, 142, § 2. G. S. 95, § 5. P. S. 131, § 5. R. L. 138, § 5.

SECTION 12. A public administrator shall, upon the appointment and qualification of an executor or administrator as his successor, surrender into the probate court his letters of administration in such case with an account on oath of his doings therein, and, upon a just settlement of such account, shall pay over and deliver to his successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered. 1 2 3 4 5 6 7

Completion of administration after expiration of term. 1908, 510, § 2; 621, § 1. 1913, 246, § 1.

SECTION 13. Public administrators shall complete, as soon as they lawfully may, the administration of estates in their hands of which the administration is not complete at the date of the expiration of their terms. 1 2 3 4

1917, 12, § 1.

Heirs, etc., may take administration after deposit in state treasury. 1839, 142, § 6. G. S. 95, § 14. P. S. 131, § 14. R. L. 138, § 14. 1917, 90, § 2. 1919, 208, § 3.

SECTION 14. If, within six years after a public administrator, or an executor or an administrator with the will annexed of a person who has died leaving no known heirs, has deposited with the state treasurer the balance of an estate, any person petitions the probate court which granted letters of administration or letters testamentary on such estate, and shows that he is legally entitled by the will of the deceased or otherwise to the administration thereof, the court shall grant administration thereof, or, upon probate of such will, shall grant letters testamentary or of administration with the will annexed to such petitioner or at his request to some other suitable person; but before granting such letters the court shall order personal notice of the petition to be served, at least fourteen days before the hearing, upon a public administrator of the county, who shall appear in behalf of the commonwealth. In all such cases the public administrator shall receive a reasonable allowance for his services and expenses, to be determined by the probate court and paid by the state treasurer out of the money deposited to the credit of such estate, but not otherwise. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17

Treasurer to pay over to executor, etc. 1839, 142, § 6. G. S. 95, § 15. P. S. 131, § 15. R. L. 138, § 15. 1917, 90, § 3. 1919, 17.

SECTION 15. After the expiration of twenty days from the appointment of an executor or administrator under the preceding section, if no appeal is claimed by any person interested, the state treasurer, after paying such sums, if any, for services and expenses as may be allowed under the preceding section, shall pay over to such executor or administrator all money deposited to the credit of such estate, to be administered in like manner as the estates of other deceased persons. 1 2 3 4 5 6 7

District attorneys to prosecute in case of neglect. Registers to report breaches of duty. 1846, 211. G. S. 95, § 17. 1874, 105. P. S. 131, § 17. R. L. 138, § 17. 1931, 305, § 3.

SECTION 16. If a public administrator neglects to return an inventory, settle an account or perform any other duty incumbent on him in relation to an estate, and there appears to be no heir entitled thereto, the district attorney for the district where the administrator received his letters shall, in behalf of the commonwealth, prosecute all suits and do all acts necessary to insure a prompt and faithful administration of the estate and the payment of the proceeds thereof into the state treasury; and if no heir has, within two years after the granting of letters of administration, appeared and made claim in the probate court for his interest in such estate, it shall be presumed that there is no such heir and the burden of proving his existence shall be upon the public administrator. 1 2 3 4 5 6 7 8 9 10 11

12 Each register of probate shall forthwith notify the proper district
 13 attorney and the attorney general of any breach of duty on the part of
 14 a public administrator in relation to any estate under his charge, of which
 15 such register has knowledge or which the records in his registry disclose.

1 SECTION 17. If the total value of an estate which has come into the
 2 control of a public administrator is less than one hundred dollars, unless
 3 the same is the balance of an estate received from a prior public admin-
 4 istrator, he shall forthwith reduce all such property into money, not
 5 taking administration thereon, and deposit it, after deducting his reason-
 6 able expenses and charges, with the state treasurer, who shall hold it
 7 for the benefit of any persons who may have legal claims thereon. Such
 8 claims may be presented to the comptroller within one year from such
 9 payment to the treasurer, and the comptroller shall examine such claims
 10 and allow such as may be proved to his satisfaction, and upon the
 11 expiration of the year shall forthwith certify the same to the governor
 12 and council for payment of the whole of the claims or such proportion
 13 thereof as the funds will allow.

Disposition of
 estates of less
 than one hun-
 dred dollars.
 1874, 254, § 1.
 P. S. 131, § 18.
 1883, 264
 R. L. 138, § 18.
 1919, 208, § 4.
 1931, 394,
 § 206.
 1 Op. A. G. 536.
 3 Op. A. G. 132.

1 SECTION 18. A public administrator, upon making such deposit,
 2 shall file with the state treasurer an itemized account, on oath, of all his
 3 dealings, receipts, payments and charges on account of the property
 4 from which the money so deposited proceeds, including the name of the
 5 intestate, if known to him, and the state treasurer shall thereupon deliver
 6 to him a receipt for such money. Such deposit shall exempt the public
 7 administrator from all responsibility for or on account of the money so
 8 deposited.

Accounts of
 estates of less
 than one hun-
 dred dollars.
 1874, 254, § 2.
 P. S. 131, § 19.
 R. L. 138, § 19.

CHAPTER 195.

GENERAL PROVISIONS RELATIVE TO EXECUTORS AND ADMINISTRATORS.

- SECT.
1. Notice of appointment.
 2. Perpetuation of evidence of notice.
 3. Notice may be given after proper time, when.
 4. Liability for omission to give notice not affected.
 5. Inventories.
 6. Appraisers.
 7. Authority to conduct the business of the deceased.

- SECT.
8. Agent of non-resident executor or administrator.
 9. New appointment of agent.
 10. Failure to appoint agent, effect.
 11. Removal of executor or administrator.
 12. Acts of executor or administrator before removal to be valid.
 13. Resignation of executor or administrator.
 14. Executors in their own wrong.
 15. Liability of such executors.

1 SECTION 1. An executor or administrator shall, within three months
 2 after giving bond for the performance of his trust, cause notice of his
 3 appointment to be posted in two or more public places in the town where
 4 the deceased last dwelt; or he may be required by the probate court to
 5 give notice by publication in a newspaper, or in such other manner as
 6 the court orders.

Notice of
 appointment.
 1788, 66, § 1.
 R. S. 66, §§ 1,
 23.
 G. S. 97, §§ 1,
 13.
 P. S. 132, § 1.
 R. L. 139, § 1.

97 Mass. 401.
 180 Mass. 27.
 185 Mass. 455.

211 Mass. 282.
 219 Mass. 40.
 250 Mass. 546.

267 Mass. 301.
 270 Mass. 497.

6 and, by such writing, shall have agreed that the service of any legal process
 7 against him as such executor or administrator, or that the service of
 8 any such process against him in his individual capacity in any action
 9 founded upon or arising out of any of his acts or omissions as such ex-
 10 ecutor or administrator, shall, if made on said agent, have like effect as
 11 if made on him personally within the commonwealth, and such service
 12 shall have such effect. Said writing and also the notice of appointment
 13 of such executor or administrator shall state the name and address of
 14 the agent. An executor or administrator who, after his appointment,
 15 removes from, and resides without, the commonwealth shall so appoint
 16 a like agent.

1901, 37.
 R. L. 139, § 8.
 193 Mass. 38.
 209 Mass. 456.
 219 Mass. 40.
 235 Mass. 171.

1 SECTION 9. If an agent appointed under the preceding section dies
 2 or removes from the commonwealth before the final settlement of the
 3 accounts of his principal, another appointment shall be made and filed
 4 as above provided, and the powers of an agent appointed under this
 5 or the preceding section shall not be revoked prior to the final settle-
 6 ment of the estate unless another appointment shall be made as before
 7 provided.

New appoint-
 ment of agent.
 1879, 180,
 §§ 3, 4.
 P. S. 132, §§ 10,
 11.
 R. L. 139, § 9.

1 SECTION 10. Failure by an executor or administrator to comply with
 2 any provision of the two preceding sections shall be cause for removal.
 1879, 180, § 5. P. S. 132, § 12. R. L. 139, § 10.

Failure to
 appoint agent,
 effect.

1 SECTION 11. If an executor or administrator becomes insane or
 2 otherwise incapable of performing the trust, or is unsuitable therefor, or
 3 if an executor or administrator who resides out of the commonwealth,
 4 having been duly cited by the probate court, neglects to render his
 5 accounts and to settle the estate, the probate court may remove him;
 6 and thereupon the other executor or administrator, if any, may pro-
 7 ceed in performing the trust as if the one removed were dead or, if there
 8 is no other executor or administrator, the court may appoint an ad-
 9 ministrator as provided in section nine of chapter one hundred and
 10 ninety-three.

Removal of
 executor or
 administrator
 1783, 24, § 19
 1808, 98, § 1.
 R. S. 63, § 7;
 64, § 15.
 G. S. 101, § 2
 P. S. 132, § 11
 R. L. 139, § 11
 12 Mass. 198.
 11 Met. 104
 1 Allen, 354
 10 Allen, 124.
 137 Mass. 547.
 148 Mass. 594.

188 Mass. 201.

1 SECTION 12. If an executor or administrator is removed or if letters
 2 of administration are revoked, all previous sales, whether of real or
 3 personal property, made lawfully by the executor or administrator
 4 and with good faith on the part of the purchaser, and all other lawful
 5 acts done by such executor or administrator, shall remain valid and
 6 effectual.

Acts of
 executor or
 administrator
 before removal
 to be valid.
 R. S. 70, § 20.
 G. S. 101, § 3
 P. S. 132, § 15.
 R. L. 139, § 12

1 SECTION 13. An executor or administrator may resign his trust when
 2 it appears to the probate court proper to allow him so to do.
 1843, 97. P. S. 132, § 16. 12 Mass. 358.
 G. S. 101, § 5. R. L. 139, § 13.

Resignation of
 executor or
 administrator.

1 SECTION 14. Whoever injuriously intermeddles with any personal
 2 property of a deceased person, without being thereto authorized by law,
 3 shall be liable as an executor in his own wrong to the persons aggrieved.
 G. S. 94, § 14. R. L. 139, § 14. 114 Mass. 420.
 P. S. 132, § 17. 108 Mass. 379. 245 Mass. 47.

Executors in
 their own
 wrong
 1692-3, 14, § 3
 1783, 24, § 16.
 R. S. 64, § 11.

Liability of such executors. R. S. 64, § 12. G. S. 94, § 15. P. S. 132, § 18. R. L. 139, § 15. 97 Mass. 178. 105 Mass. 379. 215 Mass. 47.

SECTION 15. An executor in his own wrong shall be liable to the rightful executor or administrator for the full value of the personal property of the deceased taken by him and for all damages caused to the estate by his acts; and he shall not be allowed to retain or deduct any part of such estate, except for funeral expenses or debts of the deceased or other charges actually paid by him and which the rightful executor or administrator might have been compelled to pay.

CHAPTER 196.

ALLOWANCES TO WIDOWS AND CHILDREN, AND ADVANCEMENTS.

<p>SECT. ALLOWANCES TO WIDOWS AND CHILDREN. 1. Apparel of widow and children. Quarantine. 2. Allowance of necessaries. ADVANCEMENTS. 3. Advancements treated as estate of intestate, when.</p>	<p>SECT. 4. Same subject. 5. Proof of advancement. 6. Value of advancement, how ascertained. 7. Death of person receiving advancement before intestate. 8. Determination of questions of advancements.</p>
---	--

ALLOWANCES TO WIDOWS AND CHILDREN.

Apparel of widow and children. Quarantine. 1783, 36, § 3. 1802, 93. 1805, 90, § 2.

SECTION 1. Articles of apparel and ornaments of the widow and minor children of a deceased person shall belong to them respectively. The widow may remain in the house of her husband for not more than six months next succeeding his death without being chargeable for rent.

1816, 95, § 1.	G. S. 90, § 18; 96, § 4.	1900, 450, § 1.
R. S. 60, § 16; 65, § 4.	P. S. 124, § 3; 135, § 1.	R. L. 140, § 1.
1838, 145, § 1.	1899, 479, §§ 2, 5.	119 Mass. 596.

Allowance of necessaries. 1710-11, 2, § 2. 1783, 36, § 3. 1802, 93. 1805, 90, § 2. 1816, 95. 1833, 49. R. S. 60, § 16. 65, §§ 4-6. 1838, 145, § 2. 1842, 15. G. S. 96, § 5. P. S. 135, § 2. 1899, 479, § 6. 1900, 450, § 2. R. L. 140, § 2. 1914, 699. 1915, 61. 3 Pick. 375. 10 Pick. 374, 429. 10 Met. 170. 6 Cush. 20. 1 Gray, 518.

SECTION 2. Such parts of the personal property of a deceased person as the probate court, having regard to all the circumstances of the case, may allow as necessaries to his widow for herself and for his family under her care or, if there is no widow, to his minor children, not exceeding one hundred dollars to any child, and also such provisions and other articles as are necessary for the reasonable sustenance of his family, and the use of his house and of the furniture therein for six months next succeeding his death, shall not be taken as assets for the payment of debts, legacies or charges of administration. After exhausting the personal property, real property may be sold to provide the amount of allowance decreed, in the same manner as it is sold for the payment of debts, if a decree authorizing such sale is made, upon the petition of any party in interest, within one year after the approval of the bond of the executor or administrator.

3 Gray, 521.	117 Mass. 27.	155 Mass. 141, 153.	215 Mass. 576.
5 Gray, 24.	123 Mass. 443.	168 Mass. 228.	226 Mass. 459.
2 Allen, 310.	127 Mass. 111.	181 Mass. 37.	242 Mass. 363.
13 Allen, 120, 207.	130 Mass. 376.	192 Mass. 555.	273 Mass. 316.
110 Mass. 461.	139 Mass. 144.		

ADVANCEMENTS.

Advancements treated as estate of intestate, when. 1692-3, 14, § 1.

SECTION 3. Property, real or personal, which is given by an intestate in his lifetime as an advancement to a child or other lineal descendant shall be considered as part of the intestate's estate in the division and

4 distribution of such estate among his issue, and shall be taken by such
 5 child or other descendant toward his share of such estate; but he shall
 6 not be required to restore any part thereof, although it exceeds his share.
 7 The widow shall be entitled only to her share in the residue after deduct-
 8 ing the value of the advancement.

R. L. 140, § 4.

1 Pick. 157.

1805, 90, § 3.
 R. S. 61, §§ 6, 7;
 64, § 2.
 G. S. 91, § 6;
 94, § 17.
 P. S. 128,
 §§ 1, 6.

1 SECTION 4. If such advancement is made in real property, the value
 2 thereof shall be considered as part of the real property to be divided;
 3 if it is in personal property, it shall be considered as part of the personal
 4 property; and if in either case it exceeds the share of real or personal
 5 property, respectively, which would have come to the heir so advanced,
 6 he shall not restore any part of it, but shall receive so much less out of
 7 the other part of the estate as will make his whole share equal to the
 8 shares of the other heirs who are in the same degree with him.

Same subject.
 R. S. 61, § 8
 G. S. 91, § 7.
 P. S. 128, § 2
 R. L. 140, § 5.
 16 Mass. 200.

1 SECTION 5. Gifts and grants shall be held to have been made as
 2 advancements, if they are expressed in the gift or grant to be so made,
 3 or if charged in writing as such by the intestate, or acknowledged in
 4 writing as such by the party receiving them.

Proof of ad-
 vancement
 1783, 36, § 7.
 1805, 90, § 3.
 R. S. 61, § 9

G. S. 91, § 8	10 Mass. 437.	14 Pick. 318.	13 Allen, 334.
P. S. 128, § 3.	2 Pick. 337.	22 Pick. 508.	103 Mass. 164.
R. L. 140, § 6.	4 Pick. 21.	1 Gray, 587.	120 Mass. 552.
1 Mass. 527.	5 Pick. 527.	10 Gray, 104.	

1 SECTION 6. If the value of an advancement is expressed in the con-
 2 veyance, in the charge thereof made by the intestate or in the acknowl-
 3 edgment by the person receiving it, such value shall be adopted in the
 4 division and distribution of the estate; otherwise it shall be determined
 5 according to the value when the property was given.

Value of ad-
 vancement,
 how ascer-
 tained
 1805, 90, § 3
 R. S. 61, § 10.
 G. S. 91, § 9

P. S. 128, § 4. R. L. 140, § 7. 17 Mass. 356.

1 SECTION 7. If a child or other lineal descendant who has received
 2 an advancement dies before the intestate, leaving issue, the advance-
 3 ment shall be considered as part of the intestate's estate in the division
 4 and distribution of such estate, and the value thereof shall be taken by
 5 the representative of the heir to whom the advancement was made
 6 toward his share of the estate, as if the advancement had been made
 7 directly to him.

Death of
 person receiv-
 ing advance-
 ment before
 intestate
 R. S. 61, § 11.
 G. S. 91, § 10.
 P. S. 128, § 5.
 R. L. 140, § 8.

1 SECTION 8. The probate court in which the estate of a deceased
 2 person is settled may hear and determine all questions of advancements
 3 arising relative to such estate, or such questions may be heard and de-
 4 termined upon a petition for partition; but if such question arises upon
 5 a petition for partition, the court may suspend proceedings until the
 6 question has been decided in the probate court in which the estate of
 7 the deceased is settled.

Determination
 of questions
 of advance-
 ments.
 R. S. 103,
 §§ 62, 63.
 G. S. 136, § 66.
 P. S. 128, § 7.
 R. L. 140, § 9
 1917, 279, § 41.
 16 Mass. 167,
 200.

102 Mass. 355.

CHAPTER 197.

PAYMENT OF DEBTS, LEGACIES AND DISTRIBUTIVE SHARES.

SECT.

PAYMENT OF DEBTS.

1. Executor, etc., not liable to action for six months after giving bond.
2. When debts may be paid.
3. When payment is a defence against further claims.
4. Extent of liability if residue is insufficient to meet new claims.
5. When payment to preferred creditors bars actions by others.
6. Settlement of debts of deceased persons due to executors, etc.
7. Same subject.
8. Liability of estate of deceased jointly liable.

LIMITATION OF ACTIONS BY CREDITORS.

9. Time within which creditors shall bring actions.
10. Supreme judicial court may relieve after claim barred.
11. Extension of time for creditors' actions by receipt of new assets.
12. Extension of time if action fails from defect in form, etc.
13. Claims accruing after one year.
14. Same subject.
15. Same subject.
16. Same subject.
17. Limitations of actions against administrators de bonis non.
18. Liability upon receipt of new assets.

SECT.

PAYMENT OF LEGACIES AND DISTRIBUTIVE SHARES.

19. Actions to recover legacies.
20. Rate of interest.
21. Indemnity for payment of legacy, etc., if required within one year.
22. Partial distribution at any time.
23. Legacy to class.
24. How payment of distributive shares, etc., may be enforced.
25. Set-off of debts due from legatees, etc.
26. Annuities, etc., payable from death of testator.
27. Apportionment of annuities, etc.

LIABILITY OF HEIRS, ETC., AFTER SETTLEMENT OF ESTATE.

28. Liability of heirs, etc., after settlement of estate.
29. Enforcement of liability.
30. Upon death of heir, etc., his executor, etc., to be liable.
31. Suit in equity if more than one heir, etc., is so liable.
32. Suit not to be dismissed for want of proper defendants.
33. When one heir, etc., is unable to pay, the others to be liable for whole amount.
34. If one heir, etc., fails to pay his just proportion, he shall be liable to the others.

PAYMENT OF DEBTS.

Executor, etc., not liable to action for six months after giving bond
1788, 66, § 2.
R. S. 66, § 10.
G. S. 97, § 16.
P. S. 136, § 1.
R. L. 141, § 1.
1914, 699, § 1.

SECTION 1. An executor or administrator shall not be held to answer to an action by a creditor of the deceased commenced within six months after his giving bond for the performance of his trust, unless such action is brought for the recovery of a demand which would not be affected by the insolvency of the estate or, after the estate has been represented insolvent, for the purpose of ascertaining a contested claim.

116 Mass. 435.
134 Mass. 155.
190 Mass. 522.

192 Mass. 511,
555.
221 Mass. 587.

226 Mass. 224.
235 Mass. 171.
256 Mass. 512.

When debts may be paid
1823, 144, § 2.
R. S. 66, § 11.
G. S. 97, § 17.
P. S. 136, § 2.
R. L. 141, § 2.
1904, 165.
1914, 699, § 2.
243 Mass. 374.
250 Mass. 546.
263 Mass. 121.

SECTION 2. If an executor or administrator who has given due notice of his appointment does not within six months thereafter have notice of demands against the estate of the deceased sufficient to warrant him to represent such estate to be insolvent, he may, after the expiration of said six months, pay the debts due from the estate and shall not be personally liable to any creditor in consequence of such payments made before notice of such creditor's demand; and if such executor or administrator is in doubt as to the validity of any debt

9 which, if valid, he would have a right to pay under this section, he
 10 may, with the approval of the probate court, after notice to all persons
 11 interested, pay such debt or so much thereof as the court may authorize.

1 SECTION 3. If an executor or administrator pays under the pre-
 2 ceding section, before notice of the demand of any other creditor, the
 3 whole of the estate and effects of the deceased, he shall not be required
 4 in consequence of such notice to represent the estate insolvent, but
 5 in an action against him he shall be discharged upon proving such
 6 payments.

When payment
 is a defence
 against further
 claims.
 1823, 144, § 2
 R. S. 66, § 12
 G. S. 97, § 18
 P. S. 136, § 3
 R. L. 141, § 3

9 Met. 180.

227 Mass. 303.

1 SECTION 4. If an executor or administrator pays, under section two,
 2 so much of the estate and effects of the deceased that the remainder is
 3 insufficient to satisfy a demand of which he afterward has notice, he
 4 shall be liable on such last mentioned demand for only so much as may
 5 then remain. If two or more such demands are exhibited, which together
 6 exceed the amount of assets remaining in his hands, he may represent
 7 the estate insolvent, and shall, pursuant to a decree of the probate
 8 court, divide and pay over what remains in his hands among the creditors
 9 who prove their debts under the commission of insolvency; but the
 10 creditors of the deceased who have been previously paid shall not be
 11 liable to repay any part of the amount received by them.

Extent of ha-
 bility if residue
 is insufficient
 to meet new
 claims.
 1823, 144, § 3.
 R. S. 66, § 13
 G. S. 97, § 19
 P. S. 136, § 4
 R. L. 141, § 4
 11 Met. 238.
 4 Gray, 514
 7 Gray, 167
 9 Allen, 149
 130 Mass. 385

1 SECTION 5. If it appears, upon the settlement of the account of an
 2 executor or administrator in the probate court, that the whole estate
 3 and effects which have come to his hands have been exhausted in paying
 4 the charges of administration and debts or claims entitled by law to a
 5 preference over the common creditors of the deceased, such settlement
 6 shall be a bar to an action brought against him by a creditor who is not
 7 entitled to such preference, although the estate has not been represented
 8 insolvent.

When payment
 to preferred
 creditors bars
 actions by
 others.
 1823, 144, § 1
 R. S. 66, § 14
 G. S. 97, § 20
 P. S. 136, § 5
 R. L. 141, § 5
 142 Mass. 227
 160 Mass. 499
 173 Mass. 112.

195 Mass. 155.

221 Mass. 587.

226 Mass. 388.

227 Mass. 303.

1 SECTION 6. If a debt claimed by an executor or administrator as
 2 due to him from the deceased is disputed by any person interested in
 3 the estate, the claimant shall file in the probate court a statement of his
 4 claim in writing, setting forth distinctly and fully the nature and grounds
 5 thereof; and the same may then be submitted under an order of the
 6 court to one or more arbitrators, if the claimant and the party objecting
 7 agree upon the arbitrators to be appointed. The court shall have the
 8 powers of courts of common law to discharge the rule by which the
 9 claim is referred, to reject and disallow the award or to recommit it to
 10 the arbitrators. The award of such arbitrators, if accepted by the pro-
 11 bate court, shall be final and conclusive. The said arbitrators shall be
 12 awarded reasonable compensation by the probate court, which shall be
 13 paid by the county where they are appointed.

Settlement of
 debts of de-
 ceased persons
 due to execu-
 tors, etc.
 1789, 11, § 1
 R. S. 66, § 18
 G. S. 97, § 26
 P. S. 136, § 6
 R. L. 141, § 6
 1908, 313.
 1 Mass. 200.
 9 Met. 329.
 10 Allen, 353
 132 Mass. 536
 149 Mass. 520.
 157 Mass. 536
 195 Mass. 559
 252 Mass. 162

1 SECTION 7. If the parties do not agree upon the arbitrators, or if
 2 the award is not confirmed by the probate court, the court shall decide
 3 upon the claim.

Same subject.
 R. S. 66, § 19.
 G. S. 97, § 27.
 P. S. 136, § 7.

R. L. 141, § 7

1919, 274, § 10.

9 Met. 329

195 Mass. 559.

Liability of estate of deceased jointly liable.
 1799, 57.
 R. S. 66, § 27.
 G. S. 97, § 28.

SECTION 8. If one of two or more persons who are indebted upon a joint contract, or upon a judgment founded on such contract, dies, his estate shall be liable therefor as if the contract had been joint and several or as if the judgment had been against him alone.

- | | | |
|-----------------|----------------|----------------|
| P. S. 136, § 8. | 7 Allen, 112. | 214 Mass. 374. |
| R. L. 141, § 8. | 119 Mass. 361. | 249 Mass. 397. |
| 2 Mass. 572. | 120 Mass. 137. | 261 Mass. 109. |
| 4 Met. 537. | 124 Mass. 219. | 264 Mass. 543. |
| 11 Cush. 152. | 367. | |

LIMITATION OF ACTIONS BY CREDITORS.

Time within which creditors shall bring actions.
 1788, 66, § 3.
 1791, 28, 2.
 R. S. 66, § 3.
 1852, 294, § 1.
 1855, 283.
 G. S. 97, § 5.
 P. S. 136, § 9.
 R. L. 141, 9.
 1914, 699, § 3.
 1931, 417, § 1.
 15 Mass. 6.
 16 Mass. 429.
 20 Pick. 2.
 6 Cush. 235.
 12 Cush. 324.
 4 Allen, 359.
 8 Allen, 532.
 11 Allen, 101.
 12 Allen, 330.
 13 Allen, 221.
 104 Mass. 277.
 112 Mass. 27.
 115 Mass. 508.
 116 Mass. 447.
 117 Mass. 222.
 121 Mass. 222.
 123 Mass. 489.
 134 Mass. 115, 275.
 140 Mass. 66.
 142 Mass. 248.
 149 Mass. 62.
 157 Mass. 358.
 161 Mass. 418.
 172 Mass. 356.
 173 Mass. 233.

SECTION 9. Except as provided in this chapter, an executor or administrator, after having given due notice of his appointment, shall not be held to answer to an action by a creditor of the deceased which is not commenced within one year from the time of his giving bond for the performance of his trust, or to such an action which is commenced but not entered within said year unless before the expiration thereof the writ in such action has been served by delivery in hand upon such executor or administrator or service thereof accepted by him or a notice stating the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought has been filed in the proper registry of probate. An executor, administrator or administrator de bonis non shall not be held to answer to an action by a creditor of the deceased which is commenced but not entered within any other or additional period of limitation for bringing such action provided by or under this chapter unless before the expiration of such period the writ in such action has been served by delivery in hand upon him or service thereof accepted by him or a notice as aforesaid has been filed in the proper registry of probate. The probate court may allow creditors further time for bringing actions, not exceeding two years from the time of the giving of his official bond by such executor or administrator, provided that application for such further time be made before the expiration of one year from the time of the approval of the bond.

- | | | |
|---------------------|--------------------|---------------------|
| 175 Mass. 483. | 215 Mass. 547. | 250 Mass. 546. |
| 180 Mass. 27. | 219 Mass. 40, 199. | 251 Mass. 372. |
| 181 Mass. 109, 531. | 235 Mass. 171. | 252 Mass. 188. |
| 185 Mass. 455. | 241 Mass. 96. | 254 Mass. 65. |
| 207 Mass. 291. | 242 Mass. 251. | 263 Mass. 141. |
| 211 Mass. 282. | 247 Mass. 347. | 267 Mass. 301, 350. |
| 214 Mass. 131. | 249 Mass. 216. | 270 Mass. 497. |

Supreme judicial court may relieve after claim barred.
 1861, 174, § 2.
 P. S. 136, § 10.
 R. L. 141, § 10.
 8 Allen, 121.
 9 Allen, 245, 365.
 10 Allen, 353.
 12 Allen, 333.
 98 Mass. 284.
 103 Mass. 285.

SECTION 10. If the supreme judicial court, upon a bill in equity filed by a creditor whose claim has not been prosecuted within the time limited by the preceding section, deems that justice and equity require it and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person; but such judgment shall not affect any payment or distribution made before the filing of such bill.

- | | | |
|----------------|----------------|---------------------|
| 123 Mass. 489. | 185 Mass. 22. | 238 Mass. 100. |
| 127 Mass. 268. | 192 Mass. 241. | 247 Mass. 347. |
| 149 Mass. 253. | 207 Mass. 207. | 248 Mass. 323. |
| 160 Mass. 580. | 212 Mass. 416. | 249 Mass. 216, 229. |
| 169 Mass. 97. | 223 Mass. 359. | 250 Mass. 546. |
| 179 Mass. 336. | 225 Mass. 535. | 263 Mass. 321. |

Extension of time for creditors' actions by receipt of new assets.
 R. S. 66, § 4.
 1852, 294, § 1.

SECTION 11. If new assets come to the hands of an executor or administrator after the expiration of one year from the time of his giving bond, he shall account for and apply the same in like manner as if they had been received within said one year, and shall be liable, on account

5 of such new assets, to an action at law or to a proceeding in the probate
 6 court by or for the benefit of a creditor, in like manner as if such assets
 7 had been received within the one year, if such action or proceeding is
 8 commenced within six months after the creditor has notice of the receipt
 9 of such assets, and within one year after they are actually received.

G. S. 97, § 6.
 P. S. 136, § 11.
 R. L. 141, § 11.
 1914, 699, § 4.
 15 Mass. 140.
 3 Pick. 365.
 1 Allen, 122.
 6 Allen, 372.

8 Allen, 76.	137 Mass. 547.	207 Mass. 207.
9 Allen, 365.	157 Mass. 358.	212 Mass. 248.
99 Mass. 616.	163 Mass. 491.	229 Mass. 448.
105 Mass. 229.	167 Mass. 536.	230 Mass. 514.
117 Mass. 222.	180 Mass. 223.	

1 SECTION 12. If an action commenced against an executor or ad-
 2 ministrator before the expiration of one year from the time of his giving
 3 bond fails of a sufficient service or return by an unavoidable accident,
 4 if the writ in such action is abated or defeated in consequence of a de-
 5 fect in the form thereof or of a mistake in the form of the proceeding,
 6 if, after a verdict for the plaintiff, the judgment is arrested, or, if a
 7 judgment for the plaintiff is reversed on a writ of error, the plaintiff
 8 may commence a new action for the same cause within one year after
 9 the abatement or other determination of the original action, or after
 10 the reversal of the judgment therein.

Extension of
 time if action
 fails from de-
 fect in form,
 etc.
 1855, 157, § 1.
 G. S. 97, § 7.
 P. S. 136, § 12.
 R. L. 141, § 12.
 1914, 699, § 5.
 174 Mass. 171.
 268 Mass. 329.

1 SECTION 13. A creditor of the deceased, whose right of action does
 2 not accrue within one year after the giving of the administration bond,
 3 or within such further time as may be allowed by any extension granted
 4 under section nine, or in the case of an administrator de bonis non,
 5 within the period allowed by section seventeen, may present his claim
 6 to the probate court at any time before the estate is fully administered;
 7 and if, upon examination thereof, the court finds that such claim is or
 8 may become justly due from the estate, it shall order the executor or
 9 administrator to retain in his hands sufficient assets to satisfy the same.
 10 But if a person interested in the estate offers to give bond to the alleged
 11 creditor with sufficient surety or sureties for the payment of his claim
 12 if it is proved to be due, the court may order such bond to be taken,
 13 instead of requiring assets to be retained as aforesaid. If because of
 14 partial distribution already made, or because of inability to sell the real
 15 estate of the deceased, the executor or administrator is unable to retain
 16 sufficient assets to satisfy the claim in full as finally established, the
 17 creditor may enforce his claim for the balance under section twenty-
 18 nine, within one year from the final settlement of said estate or from
 19 the time when the amount of said balance is finally determined.

Claims accruing
 after one year.
 1788, 66, § 4.
 R. S. 66, § 5.
 G. S. 97, § 8.
 1879, 71, 243.
 P. S. 136, § 13.
 R. L. 141, § 13.
 1914, 699, § 6.
 1918, 257,
 § 392.
 1919, 5, 333,
 § 25.
 1920, 2.
 104 Mass. 577.
 127 Mass. 268.
 128 Mass. 272,
 277, 528.
 131 Mass. 351.
 146 Mass. 366.
 151 Mass. 601.
 154 Mass. 266.
 158 Mass. 418.
 171 Mass. 386.
 176 Mass. 141.
 185 Mass. 22.
 194 Mass. 345.
 198 Mass. 76.
 202 Mass. 270.
 215 Mass. 315.
 219 Mass. 40.
 249 Mass. 229.
 255 Mass. 262.
 266 Mass. 346.

1 SECTION 14. The decision of the probate court upon the claim of
 2 such creditor shall not be conclusive against the executor or adminis-
 3 trator or other person interested to oppose the allowance thereof, and
 4 he shall not be compelled to pay the same unless it is proved to be due
 5 in an action commenced by the claimant within one year after his claim
 6 becomes payable, or, if an appeal is taken from the decision of the pro-
 7 bate court, in an action commenced within one year after the final
 8 determination of the proceedings thereon.

Same subject.
 R. S. 66, § 6.
 G. S. 97, § 9.
 1871, 23.
 P. S. 136, § 14.
 R. L. 141, § 14.
 172 Mass. 356.
 185 Mass. 22.
 202 Mass. 270.

1 SECTION 15. The action referred to in the preceding section shall be
 2 brought against the executor or administrator, if he has been required
 3 to retain assets therefor; otherwise, upon the bond given under section
 4 thirteen.

Same subject.
 R. S. 66, § 7.
 G. S. 97, § 10.
 P. S. 136, § 15.
 R. L. 141, § 15.

Same subject.
R. S. 66, § 8.
G. S. 97, § 11.
P. S. 136, § 16.
R. L. 141, § 16.
251 Mass. 451.

SECTION 16. If the action is brought on such bond, the plaintiff shall set forth his original cause of action against the deceased in like manner as would be required in a declaration for the same demand against the executor or administrator, and may allege the non-payment of the claim as a breach of the condition of the bond; and the defendant may answer any matter of defence which would be available against the claim if prosecuted in the usual manner against the executor or administrator.

1
2
3
4
5
6
7
8

Limitations of actions against administrators de bonis non.
R. S. 66, §§ 20-23.
1852, 294, § 2.
G. S. 97, §§ 12, 13.
P. S. 136, § 17.
R. L. 141, § 17.
1914, 699, § 7.
1915, 33.
145 Mass. 489.
231 Mass. 422.
235 Mass. 171.

SECTION 17. An administrator de bonis non shall be liable to an action by a creditor of the deceased for the same period as provided by section nine for actions against an original executor or administrator, less the period during which the statutory limitation provided by said section nine has run against previous executors or administrators of the same estate, but in any event for not less than six months from the date of his appointment. The court may allow further time for bringing actions as provided in said section nine, provided application therefor is made before the expiration of the period herein provided. This section shall not apply to claims already barred by said section nine at the date of the appointment of the administrator de bonis non.

1
2
3
4
5
6
7
8
9
10
11

Liability upon receipt of new assets.
R. S. 66, § 24.
G. S. 97, § 14.
P. S. 136, § 18.
R. L. 141, § 18.
229 Mass. 448.
230 Mass. 514.

SECTION 18. If new assets come to the hands of such administrator after the time before limited for the commencement of actions against him, he shall account for such new assets, and shall be liable on account thereof to an action at law and to proceedings in the probate court by or in behalf of a creditor, in like manner as is provided in this chapter relative to an original executor or administrator.

1
2
3
4
5
6

PAYMENT OF LEGACIES AND DISTRIBUTIVE SHARES.

Actions to recover legacies.
1693, 8, § 2.
1703-4, 12, § 5.
1783, 24, § 17.
1788, 66, § 5.
R. S. 66, § 16.
G. S. 97, § 22.
P. S. 136, § 19.
R. L. 141, § 19.
1915, 151, § 1.

SECTION 19. A legatee may recover his legacy and enforce all rights in respect to the same by proceedings in equity in the probate court in which the will was proved. Nothing in this chapter shall be construed to limit the time within which such proceedings may be brought. No action at law shall be brought against the estate of the testator for such recovery.

1
2
3
4
5
6

- | | | |
|-------------------|----------------|---------------------|
| 4 Mass. 208, 634. | 6 Allen, 500. | 140 Mass. 502. |
| 2 Pick. 619. | 7 Allen, 64. | 156 Mass. 313. |
| 3 Pick. 213. | 105 Mass. 431. | 163 Mass. 381. |
| 7 Pick. 296. | 106 Mass. 586. | 211 Mass. 178. |
| 11 Pick. 503. | 112 Mass. 110. | 221 Mass. 587. |
| 13 Pick. 393. | 114 Mass. 404. | 224 Mass. 226. |
| 15 Pick. 528. | 121 Mass. 249. | 228 Mass. 285, 318. |
| 5 Gray, 67. | 134 Mass. 11. | 269 Mass. 296. |
| 1 Allen, 490. | 136 Mass. 138. | |

Rate of interest.
1915, 151, § 2.
228 Mass. 159.
285.
229 Mass. 267.
263 Mass. 534.

SECTION 20. The rate of interest upon pecuniary legacies, unless otherwise provided in the will, shall be such as the supreme judicial court may by general rules establish, and in the absence of any such rules the rate shall be four per cent per annum.

1
2
3
4

Indemnity for payment of legacy, etc., if required within one year.
1817, 190, § 22.
R. S. 66, § 15.
G. S. 97, § 21.
P. S. 136, § 20.
R. L. 141, § 20.
1914, 699, § 8.
151 Mass. 595.
256 Mass. 512.

SECTION 21. If an executor or administrator, within one year after giving bond for the performance of his trust, is required by a legatee or next of kin to make payment, in whole or in part, of a legacy or distributive share, the probate court may require that such legatee or next of kin shall first give bond to the executor or administrator, with surety or sureties approved by the court, and conditioned to repay the amount so to be paid or so much thereof as may be necessary to

1
2
3
4
5
6
7

8 satisfy any demands which may be thereafter recovered against the
 9 estate of the deceased, and to indemnify the executor or administrator
 10 against all loss and damage on account of such payment.

1 SECTION 22. If the court finds that partial distribution of the per-
 2 sonal property of an estate in process of settlement therein can, without
 3 detriment to such estate, be made to the persons entitled thereto, the
 4 court may, subject to the rights of creditors and after notice, order such
 5 partial distribution to be made.

Partial distri-
 bution at any
 time.
 1875, 224, § 2.
 P. S. 136, § 21.
 R. L. 141, § 21.
 151 Mass. 595.

152 Mass. 74.

153 Mass. 228.

221 Mass. 587.

1 SECTION 23. If under a will a legacy is to be distributed in whole
 2 or in part among the heirs or next of kin of any person, or among persons
 3 of a certain class, the probate court, upon the application of any person
 4 interested, after notice, may order distribution among such persons as
 5 according to the will seem to be entitled to the legacy.

Legacy to
 class.
 1895, 134.
 R. L. 141, § 22.
 193 Mass. 88.
 221 Mass. 587.

1 SECTION 24. When the amount due a person who is next of kin or
 2 a distributee of an intestate estate on account of his share of the per-
 3 sonal property has been ascertained by a decree of the probate court
 4 for distribution or partial distribution, or whenever any real or personal
 5 estate comprised in a trust or in the estate of a deceased person is
 6 ordered by the probate court to be sold and distributed under section
 7 nineteen of chapter two hundred and two, section twenty-five of chapter
 8 two hundred and three or section twenty-one of chapter two hundred and
 9 six, or any legacy or any surplus proceeds of sale are ordered by said
 10 court to be distributed or disposed of pursuant to the preceding section
 11 or section nine of chapter two hundred and four, or whenever said court
 12 in pursuance of any authority conferred on it orders the distribution
 13 or disposal of any fund or moneys, payment of the same, by the execu-
 14 tor, administrator, trustee or other person so ordered to pay or distrib-
 15 ute, to the person entitled may, if the executor, administrator, trustee
 16 or other person neglects upon demand to pay such amount, be en-
 17 forced summarily by the probate court upon motion of the person en-
 18 titled, in the same manner as a like payment under a decree in equity
 19 may be enforced, and execution may also be issued therefor against the
 20 executor, administrator, trustee or other person personally as upon a
 21 judgment at law.

How payment
 of distributive
 shares, etc.,
 may be en-
 forced.
 1915, 151.
 §§ 4, 5.

1 SECTION 25. A debt due the estate of a deceased person from a
 2 legatee or distributee of such estate shall be set off against and deducted
 3 from the legacy to such legatee or from the distributive share of such
 4 distributee; and the probate court shall hear and determine the validity
 5 and amount of any such debt, and may make all necessary or proper
 6 decrees and orders to effect such set-off or deduction; but this section
 7 shall not prejudice any remedy of an executor or administrator for the
 8 recovery of such debt or affect the liability of the legatee or distributee
 9 for the excess of his indebtedness over the amount of his share in or
 10 claim upon the estate to which he is indebted.

Set-off of
 debts due from
 legatees, etc.
 1879, 225, §§ 1,
 2, 4.
 P. S. 136, §§ 22,
 23.
 R. L. 141, § 23.
 114 Mass. 24.
 136 Mass. 138.
 169 Mass. 430.
 179 Mass. 331.
 196 Mass. 562.

1 SECTION 26. If an annuity, or the use, rent, income or interest of
 2 property, real or personal, is given by will or by an instrument in the
 3 nature thereof to or in trust for the benefit of a person for life or until

Annuities, etc.,
 payable from
 death of
 testator.
 1848, 310, § 1.

G. S. 97, § 23. the happening of a contingency, such person shall be entitled to receive 4
 P. S. 136, § 24. and enjoy the same from and after the decease of the testator, unless 5
 R. L. 141, § 24. it is otherwise provided in such will or instrument. 6
 11 Pick. 371.
 2 Cush. 377.

9 Cush. 151.	128 Mass. 575.	184 Mass. 103.
5 Gray, 341.	131 Mass. 29.	188 Mass. 190.
102 Mass. 49.	137 Mass. 21.	208 Mass. 269.
103 Mass. 297, 345.	138 Mass. 303.	209 Mass. 432.
121 Mass. 178.	163 Mass. 509.	

Apportionment of annuities, etc. SECTION 27. A person entitled to an annuity, rent, interest or income, or his representative, shall have the same apportioned if his right or estate therein terminates between the days upon which it is payable, unless otherwise provided in the will or instrument by which it was created; but no action shall be brought therefor until the expiration of the period for which the apportionment is made. 1
2
3
4
5
6

98 Mass. 462.	139 Mass. 449.	235 Mass. 298.
103 Mass. 297.	171 Mass. 42.	246 Mass. 224.
113 Mass. 430.	183 Mass. 165.	247 Mass. 430.
121 Mass. 178.		

LIABILITY OF HEIRS, ETC., AFTER SETTLEMENT OF ESTATE.

Liability of heirs, etc., after settlement of estate. SECTION 28. After the settlement of an estate by an executor or administrator, and after the expiration of the time limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, devisees and legatees of the deceased shall be liable in the manner provided in the following sections for all debts for which actions could not have been brought against the executor or administrator, and for which provision is not made in the preceding sections. 1
2
3
4
5
6
7
8

118 Mass. 369.	144 Mass. 135.	202 Mass. 270.
124 Mass. 560.	146 Mass. 366.	209 Mass. 388.
127 Mass. 268.	158 Mass. 418.	215 Mass. 315.
128 Mass. 271.	171 Mass. 386.	249 Mass. 229.
272, 277, 528, 555.	176 Mass. 141.	267 Mass. 301.
136 Mass. 174.	198 Mass. 76.	

Enforcement of liability. SECTION 29. A creditor whose right of action accrues after the expiration of said time of limitation, and whose claim could not legally be presented to the probate court, or whose claim, if presented, has not been allowed, may, by action commenced within one year next after the time when such right of action accrues, recover such claim against the heirs and next of kin of the deceased or against the devisees and legatees under his will, each of whom shall be liable to the creditor to an amount not exceeding the value of the real or personal property which he has received from the estate of the deceased. But if by the will of the deceased any part of his estate or any one or more of the devisees or legatees is made exclusively liable for the debt in exoneration of the residue of the estate or of other devisees or legatees, such provisions of the will shall be complied with, and the persons and estate so exempted shall be liable for only so much of the debt as cannot be recovered from those who are first chargeable therewith. 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Upon death of heir, etc., his executor, etc., to be liable. SECTION 30. If an heir, next of kin, devisee or legatee dies without having paid his just proportion of such debt, his executor or administrator shall be liable therefor, as for a debt of his decedent, to the extent to which said decedent would have been liable if living. 1
2
3
4

P. S. 136, § 28.	R. L. 141, § 28.	1 Met. 387.	202 Mass. 270.
------------------	------------------	-------------	----------------

1 SECTION 31. If, under the two preceding sections, more than one
 2 person is liable for the debt, the creditor may recover such debt by a
 3 suit in equity in the supreme judicial or superior court against such
 4 persons so liable as are within reach of process. The court shall deter-
 5 mine, by the verdict of a jury if either party requires it, what amount
 6 is due to the plaintiff, and shall decide how much each of the defendants
 7 is liable to pay toward the debt.

Suit in equity
 if more than
 one heir, etc.,
 is so liable.
 R. S. 70, § 16.
 G. S. 101, § 34.
 P. S. 136, § 29.
 R. L. 141, § 29.
 22 Pick. 503
 1 Met. 387.

12 Met. 405.
 15 Gray, 596.

16 Gray, 127.
 136 Mass. 504.

249 Mass. 229.

1 SECTION 32. Such suit shall not be dismissed or barred for not
 2 making all the persons who might have been so included defendants;
 3 but in any stage of the cause the court may, upon terms, award proper
 4 process to bring in other parties, and may allow amendments in order to
 5 charge them as defendants.

Suit not to be
 dismissed for
 want of proper
 defendants.
 R. S. 70, § 18.
 G. S. 101, § 36.
 P. S. 136, § 30.

R. L. 141, § 30.

249 Mass. 229.

1 SECTION 33. If an heir, devisee or other person who is liable for the
 2 debt is insolvent, unable to pay his proportion thereof or beyond reach
 3 of process, the others shall be liable to the creditor for the whole amount
 4 of his debt, but not in excess of the amounts received by them respectively
 5 from the estate of the deceased.

When one heir,
 etc., is unable
 to pay, the
 others to be
 liable for whole
 amount.
 1783, 24, § 18.

1788, 66.
 R. S. 70, § 17.

G. S. 101, § 35.
 P. S. 136, § 31.

R. L. 141, § 31.

1 SECTION 34. If, in consequence of insolvency or bankruptcy, absence
 2 or other cause, a person liable for such debt fails to pay his just propor-
 3 tion thereof to the creditor, he shall be liable to indemnify all who, by
 4 reason of such failure on his part, pay more than their just proportion
 5 of the same. Such indemnity may be recovered by all of them jointly,
 6 or in separate actions by one or more of them for his or their parts
 7 respectively.

If one heir,
 etc., fails to pay
 his just propor-
 tion, he
 shall be liable
 to the others.
 R. S. 70, § 19.
 G. S. 101, § 37.
 P. S. 136, § 32.
 R. L. 141, § 32.

10 Mass. 450.

CHAPTER 198.

INSOLVENT ESTATES OF DECEASED PERSONS.

<p>SECT.</p> <p style="text-align: center;">ORDER OF PAYMENT OF DEBTS.</p> <p>1. Order of payment of debts.</p> <p style="text-align: center;">PROOF OF CLAIMS.</p> <p>2. Commissioners.</p> <p>3. Duties.</p> <p>4. Court to examine claims, when.</p> <p>5. Notice to creditors.</p> <p>6. Appointment of new commissioner.</p> <p>7. Claimants to answer under oath.</p> <p>7A. Disallowance of claims unless voidable preferences surrendered.</p> <p>8. Examination by court.</p> <p>9. Limit of time for proof of claims.</p> <p>10. Late claims barred. New assets.</p> <p style="text-align: center;">PREFERENCES.</p> <p>10A. Preference, what constitutes.</p> <p>10B. Voidable by executors, etc.</p> <p>10C. Creditor may set off certain new credits against voidable preference.</p> <p style="text-align: center;">APPEALS.</p> <p>11. Appeals.</p> <p>12. Time for claiming appeal.</p> <p>13. Proceedings on appeal.</p> <p>14. Waiver of appeal and submission to arbitration.</p> <p>15. Costs on appeal.</p> <p>16. Late entry of appeal.</p> <p>17. Effect of allowance of appeal.</p>	<p>SECT.</p> <p style="text-align: center;">PAYMENT OF DIVIDENDS TO CREDITORS.</p> <p>18. Distribution of assets among creditors whose claims are proved.</p> <p>19. Same subject.</p> <p>20. Same subject.</p> <p>21. Provisions for case of deceased partner.</p> <p>22. Enforcement of claim for dividend.</p> <p>23. Proceedings if assets are sufficient to pay all claims allowed. Other claims.</p> <p>24. Proceedings on such other claims.</p> <p>25. Disposition of unclaimed dividends.</p> <p>26. Same subject.</p> <p>27. Removal of executor, etc., neglecting to account.</p> <p style="text-align: center;">CONTINGENT CLAIMS.</p> <p>28. Contingent claims.</p> <p>29. Same subject.</p> <p>30. Same subject.</p> <p style="text-align: center;">ACTIONS BY CREDITORS PENDING INSOLVENCY PROCEEDINGS.</p> <p>31. Actions against an executor, etc., after representation of insolvency.</p> <p>32. Time for bringing such action.</p> <p>33. Proceedings when judgment has been rendered against an insolvent estate.</p>
--	---

ORDER OF PAYMENT OF DEBTS.

Order of payment of debts
 C. L. 250, § 4.
 1692-3, 16, § 1.
 1696, 8, § 1.
 1784, 2.
 R. S. 68, § 1.
 G. S. 99, § 1.
 1881, 159.
 P. S. 137, § 1.
 1881, 293.
 R. L. 142, § 1.
 1909, 297.
 U. S. Rev. Sts. § 3466.
 16 Mass. 308.
 6 Pick 481.
 16 Pick 255.
 4 Met 325.
 4 Allen, 141.
 127 Mass. 242.
 137 Mass. 412.
 139 Mass. 304.
 143 Mass. 326.
 214 Mass. 549.
 217 Mass. 552.
 226 Mass. 388.
 246 Mass. 522.

SECTION 1. If the estate of a person deceased is insufficient to pay all his debts, it shall, after discharging the necessary expenses of his funeral and last sickness and the charges of administration, be applied to the payment of his debts, which shall include equitable liabilities, in the following order:

First, Debts entitled to a preference under the laws of the United States.

Second, Public rates, taxes and excise duties.

Third, Wages or compensation, to an amount not exceeding one hundred dollars, due to a clerk, servant or operative for labor performed within one year last preceding the death of such deceased person or for such labor so performed for the recovery of payment for which a judgment has been rendered.

Fourth, Debts, to an amount not exceeding one hundred dollars, for necessities furnished to such person or his family within the six months last preceding his death, or for such necessities so furnished for the recovery of payment for which a judgment has been rendered.

Fifth, Debts due to all other persons.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

19 If there is not enough to pay all the debts of any class, the creditors
 20 of that class shall be paid ratably upon their respective debts; and no
 21 payment shall be made to creditors of any class until all those of the
 22 preceding class or classes, of whose claims the executor or administrator
 23 has notice, have been fully paid.

PROOF OF CLAIMS.

1 SECTION 2. If the probate court finds from the representation of an
 2 executor or administrator that the estate of the deceased will probably
 3 be insufficient for the payment of his debts, it may appoint two or more
 4 commissioners to receive and examine all claims of creditors against
 5 such estate, and to return a list of all claims presented to them, with
 6 the amount allowed on each. All debts of the estate of said deceased
 7 not at the time of such finding barred by any statute of limitations
 8 may be allowed either by said commissioners or by said court.

Commissioners.
 C. L. 250, § 4
 1692-3, 16, § 1
 1696, S. § 1
 1784, 2
 R. S. 68, § 2
 G. S. 99, § 2
 P. S. 137, § 2
 R. L. 142, § 2.
 1907, 257
 2 Mass. 498
 120 Mass. 516.

127 Mass. 242.	149 Mass. 520.	216 Mass. 521.
132 Mass. 536	183 Mass. 510	221 Mass. 587.
139 Mass. 360.	195 Mass. 155.	228 Mass. 468.
140 Mass. 596.	204 Mass. 270.	241 Mass. 103.
143 Mass. 326	214 Mass. 549.	

1 SECTION 3. The commissioners shall be sworn. They shall appoint
 2 convenient times and places for their meetings to receive and examine
 3 claims, and shall by mail or otherwise give to all known creditors at
 4 least seven days' written notice of the time and place of each meeting,
 5 and such other notice as the court shall order. The executor or ad-
 6 ministrator shall, fourteen days at least before the first meeting, give
 7 to the commissioners the names and residences of all known creditors.
 8 At the expiration of the time allowed for the proof of claims, the com-
 9 missioners shall make their return to the court. They shall mail post-
 10 paid within seven days thereafter, or within such further time as the
 11 court orders, a written notice to all known creditors and to the ad-
 12 ministrator of the estate or the executor of the will of the deceased, and
 13 to the heirs, legatees or devisees of the deceased, of the filing of said
 14 return, and shall, within thirty days after said notice, file in the registry
 15 of probate an affidavit of having given the same, with a copy thereof.

Duties
 C. L. 250, § 4
 1692-3, 16, § 4
 1696, S. § 1
 1752-3, 12, § 3
 1784, 2
 R. S. 68,
 §§ 2-4.
 1854, 92.
 G. S. 99,
 §§ 2-4.
 P. S. 137, § 3
 R. L. 142, § 3.
 1911, 177.
 1916, 18
 4 Met. 317
 116 Mass. 447.
 139 Mass. 360.

1 SECTION 4. If the court does not appoint commissioners under
 2 section two, it shall receive and examine the claims of creditors, allow
 3 such as should legally be allowed and cause a list of all claims pre-
 4 sented for proof, with the amount allowed or disallowed on each claim,
 5 to be made and certified by the register of said court.

Court to
 examine claims,
 when.
 1873, 252.
 §§ 1, 4
 P. S. 137, § 4.
 R. L. 142, § 4

141 Mass. 509.	241 Mass. 103.	254 Mass. 65.
----------------	----------------	---------------

1 SECTION 5. The court shall in such cases order the executor or ad-
 2 ministrator to give to creditors notice of the times when and places
 3 where their claims will be examined, in the same manner as is required
 4 of commissioners.

Notice to
 creditors.
 1873, 252, § 2.
 P. S. 137, § 5.
 R. L. 142, § 5.

1 SECTION 6. If a commissioner appointed under section two dies or
 2 resigns before his duties are fully performed, or, if for unreasonable
 3 neglect to make the return required by law or for any other cause, is
 4 removed, the probate court may fill the vacancy.

Appointment
 of new com-
 missioner.
 1863, 217, § 2.
 1868, 327, § 1.

P. S. 137, § 6.	R. L. 142, § 6.	162 Mass. 450.
-----------------	-----------------	----------------

Claimants to answer under oath.
1789, 50.
R. S. 68, §§ 15, 16.
G. S. 99, §§ 15, 16.
P. S. 137, §§ 7, 8.

SECTION 7. The commissioners or the court may require a claimant to make true answers under oath to all questions relative to his claim; and if he refuses to take such oath or to answer fully all questions, his claim may be disallowed. Any one of the commissioners may administer the oath to claimants and witnesses.

R. L. 142, § 7.

Disallowance of claims unless voidable preferences surrendered.

SECTION 7A. The claims of creditors who have received preferences voidable under section ten B shall not be allowed unless such creditors shall first surrender such preferences.

1922, 175, § 1.

Examination by court.
1899, 81.
R. L. 142, § 8.

SECTION 8. The probate court may, except while an appeal is pending, upon the application of the executor or administrator, examine under oath any person whose claim has been allowed as aforesaid unless such allowance has been made by the supreme judicial or superior court on appeal, may summon any person to give evidence relative thereto, and, upon notice, alter or expunge a claim which it finds is founded in whole or in part in fraud, illegality or mistake.

Limit of time for proof of claims
C. L. 250, § 4.
1692-3, 16, § 1.
1696, 8, § 1.
1784, 2.
R. S. 68, § 4.
G. S. 99, § 4.
1863, 217, § 1.
1868, 327, § 1.
1873, 252, § 4.
P. S. 137, § 9.
R. L. 142, § 9.
1915, 13.
6 Pick. 458.
16 Pick. 255.
104 Mass. 277.

SECTION 9. Six months after the appointment of the commissioners or after the order of the court under section five shall be allowed for creditors to present and prove their claims; and if a new commissioner is appointed under section six, the time shall be extended until the expiration of six months from his appointment. The court may allow further time upon petition of the commissioners or any party in interest, and during such extended time presentation of claims which might have been previously presented shall not be barred by any law limiting the time within which actions by a creditor of the deceased may be brought against an executor or administrator.

116 Mass. 447.

212 Mass. 416.

Late claims barred New assets.
C. L. 250, § 4.
1692-3, 16, § 1.
1696, 8, § 1.
1784, 2.
R. S. 68, § 20.
G. S. 99, § 21.

SECTION 10. A creditor who does not present his claim for allowance in the manner herein provided shall be barred from recovering the same; but if new assets of the deceased come to the executor or administrator after the decree of distribution, the claim may be proved, allowed and paid as provided in this chapter for contingent claims.

P. S. 137, § 10.
R. L. 142, § 10.

15 Mass. 140.
1 Cush. 461.

104 Mass. 277.
207 Mass. 207.

PREFERENCES.

Preference, what constitutes.
1922, 175, § 2.

SECTION 10A. A person shall be deemed to have given a preference if, being insolvent, he has, within four months before his decease, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

Voidable by executors, etc.
1922, 175, § 2.

SECTION 10B. If a person shall have procured or suffered a judgment to be entered against him in favor of any person or has made a transfer

3 of any of his property, and if, at the time of the transfer, or of the entry
 4 of the judgment, or of the recording or registering of the transfer if by
 5 law recording or registering thereof is required, and being within four
 6 months before his decease, the person be insolvent and the judgment or
 7 transfer then operate as a preference, and the person receiving it or to be
 8 benefited thereby, or his agent acting therein, shall then have reasonable
 9 cause to believe that the enforcement of such judgment or transfer would
 10 effect a preference, it shall be voidable by the executor or administrator
 11 of the debtor, and he may recover the property or its value from such
 12 person.

1 SECTION 10C. If a creditor has been preferred, and afterwards in
 2 good faith gives the debtor further credit without security of any kind
 3 for property which becomes a part of the debtor's estate, the amount of
 4 such new credit remaining unpaid at the time of his decease may be set
 5 off against the amount which would otherwise be recoverable from him.

Creditor may
 set off certain
 new credits
 against voidable
 preference.
 1922, 175, § 2

APPEALS.

1 SECTION 11. Where commissioners are appointed, a person whose
 2 claim is disallowed in whole or in part, or an executor, administrator,
 3 heir, legatee, devisee or creditor who is dissatisfied with the allowance of a
 4 claim, may appeal from their decision to the superior court for the county
 5 where the probate or administration was granted, and the claim shall
 6 thereupon be tried and determined in like manner as if an action at law
 7 had been brought therefor by the supposed creditor against the executor
 8 or administrator. If the court examines the claim, appeals shall be
 9 under chapter two hundred and fifteen.

Appeals
 1696, 8, § 1.
 1784, 2
 R. S. 68, § 5
 G. S. 99, § 9
 1865, 258
 1873, 252, § 4
 P. S. 137, § 11
 1884, 293
 R. L. 142, § 11.
 156, § 5.
 1905, 263.
 8 Met. 132
 116 Mass. 125

127 Mass. 242

198 Mass. 136.

1 SECTION 12. Such appeal shall be claimed and notice thereof given
 2 at the registry of probate within twenty days after the return of the
 3 commissioners. If the appeal is by an executor or administrator, he
 4 shall give notice thereof to the creditor within said twenty days. The
 5 appeal shall be entered at the return day next succeeding the expiration
 6 of said twenty days.

Time for
 claiming
 appeal
 1784, 2
 R. S. 68, § 9.
 G. S. 99, § 9
 1873, 252, § 3
 P. S. 137, § 12
 1885, 384, § 5

R. L. 142, § 12.

1919, 17.

110 Mass. 229.

197 Mass. 128.

1 SECTION 13. Upon the entry of the appeal, the supposed creditor
 2 shall file a written statement of his claim, setting forth briefly and dis-
 3 tinctly all the material facts necessary in a declaration for the same
 4 cause of action; and like proceedings shall thereupon be had in the
 5 pleadings, trial and determination of the cause as in an action at law;
 6 but no execution shall be awarded against the executor or administrator
 7 for a debt found due to the claimant. The final judgment shall be
 8 conclusive, and the list of debts allowed shall be altered by the probate
 9 court, if necessary, to conform thereto.

Proceedings
 on appeal.
 1784, 2
 R. S. 68, §§ 10,
 15.
 G. S. 99, §§ 10,
 15
 1873, 252, § 4
 P. S. 137, § 13
 R. L. 142, § 13
 162 Mass. 450
 197 Mass. 128
 224 Mass. 337

1 SECTION 14. After claiming such appeal, the parties may waive it
 2 and submit the claim to arbitrators agreed on by the parties and ap-
 3 pointed by the probate court, and thereupon the appeal shall not be
 4 entered. The award of such arbitrators, if accepted by the court, shall
 5 be as conclusive as a judgment at law.

Waiver of
 appeal and
 submission to
 arbitration.
 1784, 2.
 R. S. 68, § 11.
 G. S. 99, § 11.

P. S. 137, § 14

R. L. 142, § 14.

12 Cush. 220.

Costs on
appeal.
R. S. 68, § 12.
G. S. 99, § 12.
P. S. 137, § 15.

SECTION 15. The prevailing party shall be entitled to costs, which, if recovered against the executor or administrator, may be allowed in his account. 1
2
3

R. L. 142, § 15.

Late entry
of appeal.
1816, 62.
R. S. 68, § 13.
G. S. 99, § 13.
P. S. 137, § 16.
R. L. 142, § 16.
156, § 5.
1905, 263, § 1.
1916, 19.
7 Met. 211.
121 Mass. 565.

SECTION 16. If a person whose claim has been disallowed in whole or in part by the commissioners, or if the administrator of the estate or the executor of the will of the deceased, or if an heir, legatee, devisee or creditor who is dissatisfied with the allowance of a claim by them, omits, for cause other than his own neglect, to claim or prosecute his appeal as before provided, the superior court in any county may, upon his petition filed within two years after the return of the commissioners and within four years after the date of the administration bond, allow him upon terms to enter and prosecute his appeal. 1
2
3
4
5
6
7
8
9

Effect of
allowance of
appeal.
1816, 62.
R. S. 68, § 14.
G. S. 99, § 14.
P. S. 137, § 17.
R. L. 142, § 17.

SECTION 17. The allowance of such appeal and the judgment thereon shall not affect any distribution ordered before written notice of the petition or of the intention to present the same has been given at the registry of probate or to the executor or administrator; but any debt thus proved and allowed shall be paid only out of such assets as remain in or come to the hands of the executor or administrator after payment of the amounts payable on such prior decree of distribution. 1
2
3
4
5
6
7

PAYMENT OF DIVIDENDS TO CREDITORS.

Distribution of
assets among
creditors whose
claims are
proved.
1784, 2.
R. S. 68, § 17.
G. S. 99, § 17.
P. S. 137, § 18.
R. L. 142, § 18.
7 Cush. 350.

SECTION 18. After the expiration of the time allowed by section twelve, the probate court shall make a decree for the distribution of the estate among the creditors in accordance with this chapter. If, before making the decree, the court has notice of an appeal then claimed or pending, the decree may be suspended until the determination of the appeal, or a distribution may be ordered among the creditors whose debts are allowed, leaving an amount sufficient to pay to the claimant whose demand is disputed a proportion equal to that of the other creditors. 1
2
3
4
5
6
7
8
9

Same subject.
1868, 327, § 2.
P. S. 137, § 19.
R. L. 142, § 19.

SECTION 19. The court may before the expiration of the time allowed for claiming appeals order dividends to be paid to creditors whose claims have been allowed, if there is left an amount sufficient to pay upon claims that may probably be proved afterward a proportion equal to what is so paid to such creditors. Such amount shall remain unappropriated until the final dividend is declared, or until a distribution is ordered. 1
2
3
4
5
6
7

Same subject.
R. S. 68, § 18.
G. S. 99, § 19.
P. S. 137, § 20.
R. L. 142, § 20.

SECTION 20. If all the assets are not distributed upon the first decree, or if new assets come to the executor or administrator, the court shall make further decrees for distribution. 1
2
3

Provisions for
case of de-
ceased partner.
G. S. 99, § 18.
P. S. 137, § 21.
R. L. 142, § 21.
10 Met. 305.
5 Allen, 150.
127 Mass. 111.
216 Mass. 521.

SECTION 21. If the deceased was a member of a partnership, and partnership and individual claims are proved against his estate, separate lists thereof shall be made, and in decreeing dividends the court shall order the joint and the separate estate to be distributed in the same manner and among the same classes of creditors as in the case of insolvent debtors under chapter two hundred and sixteen. 1
2
3
4
5
6

1 SECTION 22. When the amount due a creditor has been ascertained
 2 by a decree for distribution under this chapter, payment of the same
 3 may be enforced in the same manner as is provided by section twenty-
 4 four of chapter one hundred and ninety-seven.

Enforcement
 of claim for
 dividend.
 1915, 151, § 4

1 SECTION 23. If, after the completion of the list of allowed claims,
 2 the assets prove sufficient to pay all such claims, the executor or ad-
 3 ministrator shall pay them in full; and if any other debt is afterward
 4 recovered against him, he shall be liable therefor only to the extent of
 5 the assets then remaining. If there are two or more such creditors, the
 6 assets, if insufficient to pay their demands in full, shall be divided among
 7 them pro rata.

Proceedings if
 assets are suffi-
 cient to pay all
 claims allowed.
 Other claims.
 1833, 189
 R. S. 68, §§ 21,
 22
 G. S. 99, §§ 22,
 23.

P. S. 137, §§ 22, 23.
 R. L. 142, § 22

120 Mass. 516.
 139 Mass. 360.

178 Mass. 125.

1 SECTION 24. The executor or administrator, in an action brought
 2 against him on such demand, may prove the amount of assets in his
 3 hands, and thereupon judgment shall be rendered in the usual form;
 4 but execution shall not issue for more than the amount of such assets;
 5 and if there are two or more judgments, the court shall apportion the
 6 amount among them.

Proceedings
 on such other
 claims.
 1833, 189
 R. S. 68, § 23
 G. S. 99, § 24
 P. S. 137, § 24
 R. L. 142, § 23.

1 SECTION 25. After twenty years from the decree of distribution of
 2 an insolvent estate, the probate court, upon application by a creditor
 3 whose claim was allowed, and after notice of such application pub-
 4 lished in one or more newspapers of the county for not less than two
 5 years on such days as the court shall direct, may order any unclaimed
 6 dividends, with the interest received thereon, after deducting all ex-
 7 penses and charges of administration since the decree of distribution,
 8 to be distributed anew among the creditors who have received their
 9 dividends. If there is a surplus after satisfying the claims of such
 10 creditors with interest, it shall be distributed to the persons legally
 11 entitled thereto.

Disposition of
 unclaimed
 dividends.
 1844, 115, § 1.
 G. S. 99, § 27.
 P. S. 137, § 25.
 R. L. 142, § 24.

1 SECTION 26. If a creditor who has failed to receive his dividend as
 2 aforesaid has died, the probate court for the county where adminis-
 3 tration on his estate might have been granted shall, at any time before
 4 a decree to distribute the unclaimed dividends is passed, grant ad-
 5 ministration upon his estate, although more than twenty years may
 6 have elapsed since his death, and the administrator may receive and
 7 administer such dividend.

Same subject.
 1844, 115, § 2
 G. S. 99, § 28.
 P. S. 137, § 26.
 R. L. 142, § 25.

1 SECTION 27. If an executor or administrator neglects to render
 2 and settle his accounts in the probate court within six months after the
 3 final determination of the claims of creditors of an insolvent estate, or
 4 within such further time as the court may allow, and thereby delays a
 5 decree of distribution, such neglect shall be unfaithful administration
 6 and he may be removed.

Removal of
 executor, etc.,
 neglecting to
 account.
 1794, 5
 R. S. 68, § 25
 G. S. 99, § 26
 P. S. 137, § 27

R. L. 142, § 26.

3 Met. 109

129 Mass. 226.

CONTINGENT CLAIMS.

1 SECTION 28. If, at the expiration of the time allowed for the proof
 2 of claims, a person is liable as a surety for the deceased, or has a con-
 3 tingent claim against his estate which could not have been proved as a

Contingent
 claims.
 1821, 72.
 R. S. 68, § 5.
 G. S. 99, § 5.

P. S. 137, § 28.
R. L. 142, § 27.
7 Met. 132.
16 Gray, 512.
7 Allen, 430.

debt within said time, the court upon proof thereof shall, in ordering a dividend, leave an amount sufficient to pay to such contingent creditor a proportion equal to what is then to be paid to the other creditors.

123 Mass. 489.

Same subject.
1821, 72.
R. S. 68, § 6.
G. S. 99, § 6.
P. S. 137, § 29.
R. L. 142, § 28.

SECTION 29. If such contingent debt becomes absolute within four years after the time of the giving of the executor's or administrator's bond, it may be proved before the probate court, before the commissioners already appointed, or before others to be appointed therefor.

Same subject.
1821, 72.
R. S. 68, § 7.
G. S. 99, § 7.
P. S. 137, § 30.
R. L. 142, § 29.

SECTION 30. Upon the allowance of such claim the creditor shall be entitled to a dividend thereon equal to what has been paid to the other creditors, so far as the same can be paid without disturbing the former dividend; and if the claim is not finally established, or if the dividend upon it does not exhaust the assets, the residue shall be divided among all creditors whose claims have been allowed. Any surplus after satisfying the claims of such creditors, with interest, shall be distributed to the persons legally entitled thereto.

ACTIONS BY CREDITORS PENDING INSOLVENCY PROCEEDINGS.

Actions against an executor, etc., after representation of insolvency
1896, S. § 1.
1784, 2.
R. S. 68, § 19.
G. S. 99, § 20.
P. S. 137, § 31.
R. L. 142, § 30.
1 Mass. 502.
4 Mass. 620.
1 Met. 333.
116 Mass. 447.
120 Mass. 516.
142 Mass. 227.
149 Mass. 185.
184 Mass. 534.
190 Mass. 522.
212 Mass. 416.
214 Mass. 519.

SECTION 31. Except as provided in the following section, no action shall be maintained against an executor or administrator after an estate has been represented insolvent, unless for a claim entitled to a preference which would not be affected by the insolvency of the estate or unless the assets prove more than sufficient to pay all the debts allowed. If the estate is represented insolvent while an action is pending for a claim which is not entitled to such preference, the action may be discontinued without costs; or, if it is disputed, it may be tried and determined and judgment rendered thereon in the same manner and with the same effect as is provided in the case of an appeal from the allowance or disallowance of the claim of a creditor; or it may be continued without costs until it appears whether the estate is insolvent, and, if it is not insolvent, the plaintiff may prosecute the action as if no such representation had been made.

Time for bringing such action
1833, 180.
R. S. 68, § 24.
G. S. 99, § 25.
P. S. 137, § 32.
R. L. 142, § 31.
116 Mass. 447.

SECTION 32. If it is not ascertained at the end of nine months after the granting of letters testamentary or of administration whether an estate represented as insolvent is or is not so in fact, any creditor whose claim has not been presented for proof may commence an action therefor against the executor or administrator, and such action may be continued without costs for the defendant until it appears whether the estate is insolvent; and if it is not insolvent, the plaintiff may prosecute the action as if no such representation had been made.

Proceedings when judgment has been rendered against an insolvent estate.
1880, 233.
P. S. 137, § 33.
R. L. 142, § 32.
136 Mass. 294.
221 Mass. 587.

SECTION 33. If judgment has been rendered against an estate which has been represented insolvent, and a certified copy from the probate court, showing such representation, has been filed in the clerk's office of the court in which the judgment was rendered, no execution shall be issued on such judgment; but such judgment may be presented for allowance in the same manner as other claims of creditors, and otherwise the proceedings relative to such judgment shall be the same as those relative to judgments rendered on appeal under section thirteen.

CHAPTER 199.

SETTLEMENT OF ESTATES OF DECEASED NON-RESIDENTS.

<p>SECT. 1. Administration of estates of deceased non-residents. 2. Settlement of estates of deceased non-residents.</p>	<p>SECT. 3. Settlement of such estates when insolvent. 4. Same subject. 5. Same subject.</p>
--	--

1 SECTION 1. If administration is taken in this commonwealth on the
2 estate of a person who was an inhabitant of any other state or country,
3 his estate found here shall, after payment of his debts, be disposed of
4 according to his last will, if any; otherwise his real property shall descend
5 according to the laws of this commonwealth, and his personal property
6 shall be distributed and disposed of according to the laws of the state
7 or country of which he was an inhabitant.

Administration of estates of deceased non-residents
R. S. 70, § 21.
1843, 92
G. S. 101, § 38
P. S. 138, § 1
R. L. 143, § 1.
9 Mass. 337.

11 Mass. 256.	147 Mass. 204.	214 Mass. 580.
6 Pick. 481.	165 Mass. 240.	215 Mass. 112.
3 Met. 109.	204 Mass. 394.	263 Mass. 549.

1 SECTION 2. After the payment of all debts for which such estate is
2 liable in this commonwealth, the residue of the personal property may
3 be distributed and disposed of, as provided in the preceding section, by
4 the probate court; or, in the discretion of the court, it may be trans-
5 mitted to the executor or administrator, if any, in the state or country
6 of which the deceased was an inhabitant, to be there disposed of accord-
7 ing to the laws thereof. But nothing herein shall be construed to prevent
8 the distribution or transmission of part of the personal property of an
9 estate in process of settlement when it can be done without detriment
10 to the estate or prejudice to the creditors.

Settlement of estates of deceased non-residents.
R. S. 70, § 22
G. S. 101, § 39.
P. S. 138, § 2
R. L. 143, § 2.
1904, 360
103 Mass. 245.
132 Mass. 452.
151 Mass. 601.
152 Mass. 74
198 Mass. 159.
204 Mass. 394
214 Mass. 580

225 Mass. 355.

1 SECTION 3. If such person dies insolvent, his estate found in this
2 commonwealth shall, as far as practicable, be so disposed of that all
3 his creditors here and elsewhere may receive equal proportions of their
4 respective debts.

Settlement of such estates when insolvent.
R. S. 70, § 23
G. S. 101, § 40.

P. S. 138, § 3.	R. L. 143, § 3.	3 Pick. 128.	S Pick. 475.
-----------------	-----------------	--------------	--------------

1 SECTION 4. The estate shall not be transmitted to the foreign ex-
2 ecutor or administrator until all the creditors who are citizens of this
3 commonwealth have received the proportion which would be due to
4 them if the whole estate of the deceased, wherever found, which is
5 applicable to the payment of common creditors were divided without
6 preference among all the creditors in proportion to their respective
7 debts; and no creditor not a citizen of this commonwealth shall be paid
8 out of the assets found here until all those who are such citizens have
9 received the proportion provided in the preceding section.

Same subject.
R. S. 70, §§ 24,
25.
G. S. 101, § 41.
P. S. 138, § 4.
R. L. 143, § 4.

1 SECTION 5. If there is a residue after such payment to the citizens
2 of this commonwealth, it may be paid to any other creditors who have
3 duly proved their debts here, in proportion to the amount due to each

Same subject.
R. S. 70, § 26
G. S. 101, § 42.
P. S. 138, § 5.
R. L. 143, § 5.

of them, but no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors as before provided. The remainder may be transmitted to the foreign executor or administrator; or if there is none, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all creditors, both citizens and others, who have proved their debts in this commonwealth.

CHAPTER 200.

SETTLEMENT OF ESTATES OF ABSENTEES.

SECT.

1. Petition for appointment of receiver.
2. Warrant.
3. Notice may be issued on return of warrant.
4. Same subject.
5. Appointment of receiver. Bond.
6. Transfer of property, etc.
7. Possession of additional property. Debts.
8. Intangible property. Public administrators not to be receivers of certain estates.

SECT.

9. Management and sale of property.
10. Allowance to widow and children, etc.
11. Arbitration and compromise of claims.
12. Compensation of receiver; accounts; barring of suits.
13. Distribution of property.
14. Limitation if receiver is not appointed within thirteen years.

Petition for appointment of receiver.
1894, 203.
1897, 447, § 1.
R. L. 144, § 1.
1902, 544, § 14.
1903, 241, § 1.
1906, 224, § 1
1926, 3.
186 Mass. 426.
201 Mass. 23.
210 Mass. 1.
211 Mass. 198.
223 Mass. 540.

SECTION 1. If a person entitled to or having an interest in property within the jurisdiction of the commonwealth has disappeared or absconded from the place within or without the commonwealth where he was last known to be, and has no agent in the commonwealth, and it is not known where he is, or if such person, having a wife or minor child, dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the commonwealth, any one who would under the law of the commonwealth be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, any suitable person, or such wife, or some one in her or such minor's behalf, may file a petition under oath in the probate court for the county where any such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residence of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of the property, real and personal, so far as known, and its location within the commonwealth, and praying that such property may be taken possession of and a receiver thereof appointed under this chapter. The state treasurer shall be made a party to every such petition and shall be given due notice of all subsequent proceedings under this chapter.

Warrant
1897, 447, § 1
R. L. 144, § 2.

SECTION 2. The court may thereupon issue a warrant directed to the sheriff or his deputy, which may run throughout the commonwealth,

3 commanding him to take possession of the property named in said
 4 schedule and hold it subject to the order of the court and make return
 5 of said warrant as soon as may be with his doings thereon with a schedule
 6 of the property so taken. The officer shall post a copy of the warrant
 7 upon each parcel of land named in the schedule and cause so much of
 8 the warrant as relates to land to be recorded in the registry of deeds
 9 for the county and district where the land is located. He shall receive
 10 such fees for serving the warrant as the court allows, but not more than
 11 those established by law for similar service upon a writ of attachment.
 12 If the petition is dismissed, said fees and the cost of publishing and
 13 serving the notice hereinafter provided shall be paid by the petitioner;
 14 if a receiver is appointed, they shall be paid by the receiver and allowed
 15 in his account.

1 SECTION 3. Upon the return of such warrant, the court may issue a
 2 notice reciting the substance of the petition, warrant and officer's return,
 3 which shall be addressed to such absentee and to all persons who claim
 4 an interest in said property, and to all whom it may concern, citing
 5 them to appear at a time and place named and show cause why a re-
 6 ceiver of the property named in the officer's schedule should not be
 7 appointed and said property held and disposed of under this chapter.

Notice may be
 issued on re-
 turn of warrant.
 1897, 447, § 1.
 R. L. 144, § 3.
 1902, 544, § 15.
 1903, 241, § 3.

1 SECTION 4. The return day of said notice shall be not less than
 2 thirty nor more than sixty days after its date. The court shall order
 3 said notice to be published once in each of three successive weeks in
 4 one or more newspapers within the commonwealth, and to be posted in
 5 two or more conspicuous places in the town within the commonwealth
 6 where the absentee last resided or was known to have been either
 7 temporarily or permanently and upon each parcel of land named in the
 8 officer's schedule, and a copy to be mailed to the last known address
 9 of such absentee. The court may order other and further notice to be
 10 given within or without the commonwealth.

Same subject.
 1897, 447, § 1.
 R. L. 144, § 4.
 1902, 544, § 16.
 1903, 241, § 3.
 1904, 206, § 1.
 1918, 257, § 393.
 1919, 5.
 1920, 2.
 201 Mass. 23.

1 SECTION 5. The absentee or any person who claims an interest in
 2 any of the property may appear and show cause why the prayer of the
 3 petition should not be granted. The court may after hearing dismiss
 4 the petition and order the property in possession of the officer to be
 5 returned to the person entitled thereto, or it may appoint a receiver
 6 of the property which is in the possession of the officer and named in his
 7 schedule. If a receiver is appointed the court shall find and record the
 8 date of the disappearance or absconding of the absentee; and such re-
 9 ceiver shall give bond to the judge of probate and his successors in office
 10 in such sum and with such condition as the court orders, with a company
 11 named in section one hundred and five of chapter one hundred and
 12 seventy-five and approved by the court as surety thereon.

Appointment
 of receiver.
 Bond.
 1897, 447,
 §§ 1, 2.
 R. L. 144, § 5.
 1902, 544, § 17.
 1903, 241, § 3.

1 SECTION 6. After the approval of such bond the court may order
 2 the sheriff or his deputy to transfer and deliver to such receiver the
 3 possession of the property under the aforesaid warrant, and the receiver
 4 shall file in the registry of probate a schedule of the property received
 5 by him.

Transfer of
 property, etc.
 R. L. 144, § 6.

1 SECTION 7. Such receiver upon petition filed by him may be author-
 2 ized and directed to take possession of any additional property within

Possession of
 additional
 property.

Debts. the commonwealth which belongs to such absentee and to demand and 3
 R. L. 144, § 7. collect all debts due such absentee from any person within the common- 4
 1902, 544, § 18. wealth, and hold the same as if it had been transferred and delivered to 5
 1903, 241, § 3. him by the officer. 6

Intangible SECTION 8. If such absentee has left no corporeal property within 1
 property. the commonwealth, but there are debts and obligations due or owing 2
 Public ad- to him from persons within the commonwealth, a petition may be filed 3
 ministrators as provided in section one, stating the nature and amount of such debts 4
 not to be and obligations, so far as known, and praying that a receiver thereof 5
 receivers of may be appointed. The court may thereupon issue a notice as above 6
 certain estates. provided, without issuing a warrant, and may, upon the return of said 7
 1906, 224, § 1. notice and after a hearing, dismiss the petition or appoint a receiver 8
 1929, 264, § 2. and authorize and direct him to demand and collect the debts and obli- 9
 gations specified in said petition; provided, that no public administrator 10
 shall be appointed as such receiver when the sole known assets of the 11
 estate of the absentee consist of an amount of money standing to his 12
 credit in a savings bank or in the savings department of a trust com- 13
 pany, in case such account has not been increased by a deposit, nor 14
 decreased by a withdrawal of any part of his deposits or of any part of 15
 the interest thereon, during a period of twenty years or more next pre- 16
 ceding the petition for appointment of a receiver. The receiver shall 17
 give bond as provided in section five, and shall hold the proceeds of 18
 such debts and obligations and all property received by him, and dis- 19
 tribute the same as hereinafter provided. He may be further author- 20
 ized and directed as provided in the preceding section. 21

Management SECTION 9. The court may make orders for the care, custody, leasing 1
 and sale of and investing of all property and its proceeds in the possession of the 2
 property. receiver. If any of said property consists of live animals or is perishable 3
 1897, 447, § 3. or cannot be kept without great or disproportionate expense, the court 4
 R. L. 144, § 8. may, after the return of the warrant, order such property to be sold at 5
 1902, 544, § 19. public or private sale. After the appointment of a receiver, upon his 6
 1903, 241, § 3. petition and after notice, the court may order all or part of said property, 7
 including the rights of the absentee in land, to be sold at public or pri- 8
 vate sale to supply money for payments authorized by this chapter or 9
 for reinvestment approved by the court. 10

Allowance to SECTION 10. The court may order said property or its proceeds 1
 widow and acquired by mortgage, lease or sale to be applied in payment of charges 2
 children, etc. incurred or that may be incurred in the support and maintenance of 3
 1897, 447, § 3. the absentee's wife and minor children, and to the discharge of such 4
 R. L. 144, § 9. debts and claims for alimony as may be proved against said absentee. 5
 1906, 175.
 192 Mass. 387.
 196 Mass. 509.
 262 Mass. 551.

Arbitration SECTION 11. The court may authorize the receiver to adjust by 1
 and compromise arbitration or compromise any demand in favor of or against the estate 2
 of claims. of such absentee. 3
 1909, 115.
 262 Mass. 551.

Compensation SECTION 12. The receiver shall be allowed such compensation and 1
 of receiver; disbursements as the court orders, to be paid out of said property or pro- 2
 accounts; bar- ceeds. If within fourteen years after the date of the disappearance and 3
 ring of suits. absconding as found and recorded by the court, such absentee appears, 4
 1897, 447, § 6. or an administrator, executor, assignee in insolvency or trustee in bank- 5
 R. L. 144, § 10.
 197 Mass. 279.
 223 Mass. 540.
 222 U. S. 1.

6 ruptey of said absentee is appointed, such receiver shall account for,
 7 deliver and pay over to him the remainder of said property. If said
 8 absentee does not appear and claim said property within said fourteen
 9 years, all his right, title and interest in said property, real or personal,
 10 or the proceeds thereof shall cease, and no action shall be brought by
 11 him on account thereof.

1 SECTION 13. If at the expiration of said fourteen years said property
 2 has not been accounted for, delivered or paid over under the preceding
 3 section, the court shall order the distribution of the remainder to the
 4 persons to whom, and in the shares and proportions in which, it would
 5 have been distributed if said absentee had died intestate within the
 6 commonwealth on the day fourteen years after the date of the dis-
 7 appearance or absconding as found and recorded by the court.

Distribution
of property.
1897, 447,
§§ 4, 5.
R. L. 144, § 11.
1903, 241, § 2.
197 Mass. 279.
223 Mass. 540.
222 U. S. 1.

1 SECTION 14. If such receiver is not appointed within thirteen years
 2 after the date found by the court under section five, the time limited
 3 for accounting for, or fixed for distributing, said property or its proceeds,
 4 or for barring actions relative thereto, shall be one year after the date
 5 of the appointment of the receiver instead of the fourteen years pro-
 6 vided in the two preceding sections.

Limitation if
receiver is not
appointed
within thirteen
years.
R. L. 144, § 12.
1902, 544, § 20.
1904, 206, § 2.

CHAPTER 201.

GUARDIANS AND CONSERVATORS.

- SECT.
- JURISDICTION.
1. Jurisdiction of probate court.
- GUARDIANS OF MINORS.
2. Nomination, notice and appointment.
3. Testamentary guardian.
4. Powers.
5. Custody and education of minors.
Effect of marriage.
- GUARDIANS OF INSANE PERSONS AND SPENDTHRIFTS.
6. Appointment of guardian of insane person.
7. Notice.
8. Appointment of guardian of spendthrift.
9. Notice.
10. Effect on contracts, etc., of recording petition.
11. Certain property of spendthrift may be transferred to wife, etc.
12. Powers and bond of guardian of insane person or spendthrift.
13. Termination of guardianship.

- SECT.
- TEMPORARY GUARDIANS.
14. Appointment, removal and discharge.
15. Powers and duties.
- CONSERVATORS.
16. Appointment.
17. Notice.
18. Discharge.
19. Bond.
20. Powers.
21. Temporary conservator.
22. Allowance for defence.
- GUARDIANS AND CONSERVATORS OF MARRIED WOMEN.
23. Appointment.
24. Guardian not to have custody, etc., of ward, except, etc.
25. Guardian, etc., not to apply property to her support without leave of probate court.
26. Guardian for insane married woman having right of dower, etc.
- GUARDIANS AND CONSERVATORS OF NON-RESIDENTS.
27. Appointment.
28. Powers and duties.

<p>SECT.</p> <p>29. Bond.</p> <p>30. Proceedings for non-resident guardian of non-resident ward to receive ward's estate here.</p> <p>31. Guardian, etc., appointed here may transfer property to foreign guardian, etc.</p> <p>32. Transfer of estate of ward who has no guardian, etc., in the commonwealth.</p> <p style="text-align: center;">REMOVALS, RESIGNATIONS, ETC.</p> <p>33. Removal, etc., of guardian, etc., and appointment of successor.</p> <p style="text-align: center;">GUARDIAN AD LITEM AND NEXT FRIEND.</p> <p>34. Appointment. Effect.</p> <p>35. Expenses.</p> <p>36. Provisions of this chapter not to prevent appointment of guardian ad litem or next friend.</p> <p style="text-align: center;">GENERAL POWERS AND DUTIES OF GUARDIANS AND CONSERVATORS.</p> <p>37. To pay debts, etc., and represent ward in suits.</p>	<p>SECT.</p> <p>38. Support of ward and family.</p> <p>39. Partition.</p> <p>40. Support of minor child by parents.</p> <p>41. Application of minor's property to his support during father's life.</p> <p>42. Support of children of insane person under guardianship.</p> <p>43. Support of wife of insane person under guardianship.</p> <p>43A. Support of dependent parents of insane persons under guardianship.</p> <p>44. Purchase of release of dower, etc., in ward's real property.</p> <p>45. Election, waiver, or exercise of power by guardian, etc.</p> <p>46. Appraisal of estate.</p> <p>47. Sale of personal property of ward.</p> <p>48. Recovery of property of ward which has been embezzled, etc.</p> <p>48A. Provision for burial expenses of wards.</p> <p style="text-align: center;">AGENTS OF NON-RESIDENT GUARDIANS AND CONSERVATORS.</p> <p>49. Agent for non-resident guardian or conservator.</p>
--	--

JURISDICTION.

Jurisdiction of probate court.
 C. L. 1, § 2.
 1692-3, 46, § 2.
 1776-7, 20.
 1783, 38, § 1.
 1817, 190, § 1.
 R. S. 79, § 1.
 G. S. 109, § 1.
 P. S. 139, § 1.
 1898, 527, § 1.

SECTION 1. The probate court may, if it appears necessary or convenient, appoint guardians of minors, insane persons and spendthrifts and conservators of the property of persons by reason of advanced age or mental weakness unable to properly care for their property, who are inhabitants of or residents in the county or who reside out of the commonwealth and have estate within the county.

1901, 125, § 1	1907, 169, § 3.	219 Mass. 178.
R. L. 145, §§ 1, 40.	5 Pick. 370.	221 Mass. 178, 315.
1903, 96	128 Mass. 587.	240 Mass. 350.
1905, 127.		

GUARDIANS OF MINORS.

Nomination, notice and appointment.
 1752-3, 12,
 §§ 6, 7.
 1783, 38, § 1.
 R. S. 79, §§ 2, 3.
 1837, 171, § 2.
 G. S. 108, § 16;
 109, §§ 2, 3.
 P. S. 139,
 §§ 2, 3, 13.
 1899, 178, § 2.
 R. L. 145,
 §§ 2, 3, 12.
 1918, 257,
 § 394.
 1919, 5.
 1920, 2.
 1930, 384, § 1.
 154 Mass. 378.

SECTION 2. If a minor is under fourteen the probate court may nominate and appoint his guardian. If he is above that age he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly. Such nomination may be made before a justice of the peace, notary public or city or town clerk within the commonwealth who shall certify the fact to the probate court. If the person nominated is not approved by the court, or if the minor resides out of the commonwealth, or if the minor after being cited neglects to nominate a suitable person, the court may nominate and appoint his guardian in the same manner as if he were under fourteen. If the minor is a married woman no guardian shall be appointed without such notice to her husband as the court may order. In the matter of said appointment and all subsequent proceedings relating thereto, the United States veterans' bureau or its successor shall be deemed to be a party in interest and shall receive such notice as the court may order, if the ward or proposed ward is entitled to any benefit, estate or income paid or payable by or through said bureau or its successor.

1 SECTION 3. A father or mother may by will appoint, subject to the
 2 approval of the probate court, a guardian for a minor child whether
 3 born at the time of making the will or afterward, to continue during
 4 minority or for a less time. A testamentary guardian appointed by
 5 will of a parent shall have the same powers and perform the same duties
 6 relative to the property of the ward, and, if the other parent is not
 7 living, relative to the person of the ward, as a guardian appointed under
 8 section two. If application is made to the probate court for the appoint-
 9 ment of a testamentary guardian after the appointment of a guardian,
 10 whether testamentary or otherwise, has been made by such court, notice
 11 of such application shall be given to such guardian previously appointed,
 12 and thereafter the court may remove said guardian so first appointed
 13 and appoint in his place the person applying for an appointment as
 14 testamentary guardian or any suitable person, or it may appoint the
 15 person making such application to serve as guardian with the guardian
 16 already appointed by said court.

Testamentary guardian
 R. S. 79, § 6.
 G. S. 109, § 5.
 1877, 128.
 P. S. 139, § 5.
 1898, 138.
 R. L. 145, § 5.
 1922, 461.
 S. Met 127.
 9 Allen, 518.

1 SECTION 4. The guardian of a minor unless sooner discharged accord-
 2 ing to law shall continue in office until the minor reaches twenty-one,
 3 and shall have the care and management of all his estate.

P. S. 139, § 1. R. L. 145, § 4. 1902, 471. 1904, 163.

Powers
 C. L. 211, § 4.
 R. S. 79, § 4.
 G. S. 109, § 4.

1 SECTION 5. The guardian of a minor shall have the custody of his
 2 person and the care of his education, except that the parents of the
 3 minor, jointly, or the surviving parent shall have such custody and said
 4 care unless the court otherwise orders. The probate court may, upon
 5 the written consent of the parents or surviving parent, order that the
 6 guardian shall have such custody; and may so order if, upon a hearing
 7 and after such notice to the parents or surviving parent as it may order,
 8 it finds such parents, jointly, or the surviving parent, unfit to have such
 9 custody; or if it finds one of them unfit therefor and the other files
 10 in court his or her written consent to such order. The marriage of a
 11 female under guardianship as a minor shall deprive her guardian of all
 12 right to her custody and education, but not of the care and possession
 13 of her property. If a corporation is appointed guardian of a minor,
 14 the court may, subject to the right of his parents, or of the husband of
 15 a female minor, as provided in this section, award the custody to some
 16 suitable person. This section shall not apply to the minor children of
 17 parents divorced within or without the commonwealth or between whom
 18 divorce proceedings are pending in a court of the commonwealth.

Custody and education of minors. Effect of marriage.
 C. L. 211, § 4.
 R. S. 79, §§ 4, 23.
 G. S. 109, §§ 4, 26.
 1871, 116.
 1873, 367.
 1880, 66.
 P. S. 139, §§ 4, 41.
 R. L. 145, §§ 4, 37.
 1902, 474.
 1904, 163.
 1931, 283, § 1.
 15 Gray, 445.
 216 Mass. 71.
 219 Mass. 178.
 221 Mass. 108.
 227 Mass. 77.

GUARDIANS OF INSANE PERSONS AND SPENDTHRIFTS.

1 SECTION 6. Two or more relatives or friends of an insane person, or
 2 the mayor and aldermen of a city or the selectmen of a town in which
 3 he is an inhabitant or resident, or the department of mental diseases,
 4 may file a petition in the probate court asking to have a guardian ap-
 5 pointed for him; and if after notice as provided in the following section
 6 and a hearing the court finds that he is incapable of taking care of himself,
 7 it shall appoint a guardian of his person and estate. A copy of such ap-
 8 pointment shall be sent by mail by the register to the said department.
 9 The court may require additional medical testimony as to the mental
 10 condition of the person alleged to be insane and may require him to submit
 11 to examination. It may also appoint one or more physicians, expert in

Appointment of guardian of insane person.
 1693-4, 18.
 1726-7, 12, § 1.
 1731-2, 14, § 1.
 1737-8, 9, § 1.
 1783, 38, § 2.
 R. S. 79, § 9.
 G. S. 109, § 8.
 P. S. 139, § 7.
 R. L. 145, § 6.
 1907, 169, § 1.
 1909, 504.
 §§ 99, 107.
 1916, 285, § 1.
 8 Mass. 129.
 12 Mass. 505.
 14 Mass. 222.
 5 Pick. 490.

7 Met 388.
4 Gray, 63
102 Mass. 14.
232 Mass. 500.

insanity, to examine such person and report their conclusions to the 12
court. Reasonable expense incurred in such examination shall be paid 13
out of the estate of such person or by the county as may be determined by 14
the court. 15

Notice.
R. S. 79, § 9.
G. S. 108, § 16;
109, § 8.
P. S. 139,
§§ 7, 13.
R. L. 145,
§§ 6, 12.
1907, 169, § 1.
1909, 504,
§§ 99, 107.
1911, 206, § 1.
1916, 285, § 1.
1930, 384, § 2.
5 Pick. 490.
24 Pick. 115.
7 Met. 388.
4 Gray, 63.
102 Mass. 14.
154 Mass. 378.
224 Mass. 145.

SECTION 7. Upon such petition the court shall cause not less than 1
seven days' notice of the time and place appointed for the hearing to 2
be given to the alleged insane person, to the department of mental 3
diseases, and, if the alleged insane person is entitled to any benefit, estate 4
or income paid or payable by or through the United States veterans' 5
bureau or its successor, to said bureau or its successor, except that the 6
court may, for cause shown, direct that a shorter notice be given. No 7
appointment shall be made without such notice to the heirs apparent or 8
presumptive of the alleged insane person, including the husband or 9
wife, if any, as the court may order. In the matter of said petition 10
and all subsequent proceedings relating thereto said bureau or its suc- 11
cessor shall be deemed to be a party in interest if the alleged insane person 12
is so entitled. 13

Appointment
of guardian of
spendthrift.
1783, 38, § 7.
R. S. 79,
§§ 11, 12.
1846, 249.
G. S. 109, § 9.
P. S. 139, § 8.
1897, 173.
R. L. 145, § 7.
1907, 169, § 2.
1931, 394,
§ 134.
2 Pick. 382.
12 Pick. 152.
221 Mass. 108.

SECTION 8. A person who, by excessive drinking, gaming, idleness, 1
or debauchery of any kind, so spends, wastes or lessens his estate as to 2
expose himself or his family to want or suffering, or any town to charge 3
or expense for his support or for the support of his family, may be ad- 4
judged a spendthrift. The board of public welfare of the town of which 5
he is an inhabitant or resident, or upon which he is or may become 6
chargeable, or a relative of the alleged spendthrift, may file a petition 7
in the probate court, stating the facts and circumstances of the case 8
and praying that a guardian be appointed. In towns where selectmen 9
act as the board of public welfare they may file such petition. If after 10
notice as provided in the following section, and after hearing, the court 11
finds that he is a spendthrift, it shall appoint a guardian of his person 12
and estate. 13

Notice.
1783, 38, § 7.
R. S. 79, § 12.
G. S. 108, § 16;
109, § 9.
P. S. 139,
§§ 8, 13.
1897, 173.
R. L. 145,
§§ 7, 12.
1907, 169, § 2.

SECTION 9. Upon such petition the court shall cause not less than 1
seven days' notice of the time and place appointed for the hearing to 2
be given to the alleged spendthrift, except that the court may, for cause 3
shown, direct that a shorter notice be given. If the alleged spendthrift 4
is a married woman, no guardian shall be appointed without such notice 5
to her husband as the court may order. 6

12 Pick. 152.

Effect on con-
tracts, etc., of
recording
petition.
1783, 38, § 7.
1818, 60.
1826, 63, § 1.
R. S. 79, § 13.
G. S. 109, § 10.
P. S. 139, § 9.
R. L. 145, § 8.
12 Pick. 152.
13 Pick. 206.
21 Pick. 36.
12 Cush. 324.
97 Mass. 508.
108 Mass. 46.
130 Mass. 458.

SECTION 10. A copy of the petition, with the order of notice thereon, 1
may be recorded in the registry of deeds for the county and district 2
where any land of the alleged spendthrift is located; and if a guardian 3
is appointed upon such petition, all contracts, except for necessities or 4
relative to land, and all gifts, sales or transfers of personal property 5
made by the spendthrift after an order of notice upon the petition has 6
been issued by the probate court, and all contracts relative to and sales 7
and conveyances of land made by the spendthrift after such record in 8
the registry of deeds for the county and district where the land lies, 9
and before the termination of the guardianship, shall be void. 10

1 SECTION 11. Any probate court having jurisdiction of the property
 2 of a person who is under guardianship as a spendthrift may, on petition
 3 of such ward, and after such notice as the court may determine, authorize
 4 the guardian of the ward to pay or convey such portion of the ward's
 5 real or personal estate, either principal or income, as the court may
 6 designate, to the wife or any child, or children, or grandchildren, of the
 7 ward; and such property, when so paid or conveyed, shall become the
 8 property of the donee or grantee.

Certain
 property of
 spendthrift
 may be trans-
 ferred to wife,
 etc.
 1908, 75.

1 SECTION 12. The guardian of an insane person or spendthrift shall
 2 have the care and custody of the person of his ward, except as provided
 3 in section twenty-four, and the management of all his estate, and shall
 4 give the bond prescribed in section one of chapter two hundred and five,
 5 except that the conditions relative to the education of the ward shall be
 6 omitted.

Powers and
 bond of guard-
 ian of insane
 person or
 spendthrift.
 1783, 38,
 §§ 2, 5, 7,
 R. S. 79,
 §§ 10, 16.

G. S. 109, § 12.
 P. S. 139, § 11.
 R. L. 145, § 10.

5 Mass. 427.
 5 Pick. 20.
 106 Mass. 501.

149 Mass. 57.
 155 Mass. 136.
 162 Mass. 582.

1 SECTION 13. The guardian of an insane person or spendthrift may
 2 be discharged by the probate court, upon the application of the ward or
 3 otherwise, when it appears that the guardianship is no longer necessary;
 4 except that in the case of an insane person seven days' notice of the
 5 petition shall be given to the department of mental diseases.

Termination of
 guardianship
 R. S. 79, § 23.
 G. S. 109, § 26.
 P. S. 139, § 12.
 R. L. 145, § 11.
 1909, 504,
 § 101.

1916, 285, § 1.

244 Mass. 183.

TEMPORARY GUARDIANS.

1 SECTION 14. Upon petition of a mayor or the selectmen, the board
 2 of public welfare, the department of mental diseases, or other person in
 3 interest, the court may, if it finds that the welfare of a minor, insane
 4 person or spendthrift requires the immediate appointment of a tem-
 5 porary guardian of his person and estate, appoint a temporary guardian
 6 of such minor, insane person or spendthrift, with or without notice,
 7 and may in like manner remove or discharge him or terminate the trust.
 8 A temporary guardian may proceed and continue in the execution of
 9 his duties, notwithstanding an appeal from the decree appointing him,
 10 until it is otherwise ordered by the supreme judicial court, or until the
 11 appointment of a permanent guardian, or until the trust is otherwise
 12 legally terminated.

Appointment,
 removal and
 discharge.
 1878, 230.
 P. S. 139, § 6.
 1897, 135, § 1.
 1900, 345,
 §§ 1, 3.
 1901, 213; 523.
 R. L. 145, § 20.
 1909, 504,
 §§ 100, 107.
 1911, 206.
 1916, 285, § 1.
 1931, 394,
 § 135.
 179 Mass. 131.
 245 Mass. 274.

1 SECTION 15. Such temporary guardian shall, until otherwise ordered,
 2 or until his removal or the appointment of a permanent guardian, have
 3 the same powers and duties relative to the person and estate of the ward
 4 as permanent guardians, and may be decreed the custody of the person
 5 of a minor, if the court finds the parent or parents unfit therefor or if
 6 it finds one of them unfit therefor and the other consents to such cus-
 7 tody by the temporary guardian or if a temporary guardian is serving or
 8 appointed to serve in place of a temporary guardian removed. If such
 9 temporary guardian of a minor is appointed pending proceedings for
 10 an order for custody under section five or for the removal of a guardian
 11 of a minor, he shall have the sole custody and control of the ward during
 12 the pendency of such proceedings. Upon the termination of his powers,
 13 a temporary guardian shall deliver to the guardian or such person as

Powers and
 duties
 1878, 230.
 P. S. 139, § 6.
 1897, 135, § 2.
 1900, 345,
 §§ 2, 5
 R. L. 145, § 21.

is otherwise lawfully authorized to receive it the estate of the ward in his hands. A guardian may be admitted to prosecute an action commenced by a temporary guardian.

CONSERVATORS.

Appointment. SECTION 16. If a person by reason of advanced age or mental weakness is unable to properly care for his property, the probate court may, upon his petition or upon the petition of one or more of his friends, if after notice as provided in the following section and after hearing it appears that such person is incapable of properly caring for his property, appoint a conservator to have charge and management of his property, subject to the direction of the court.

1898, 527, § 1.
1901, 125, § 1.
R. L. 145, § 40.
1903, 96.
1905, 127, § 1.
1907, 169, § 3.
204 Mass. 358.
211 Mass. 246.
216 Mass. 394.
221 Mass. 315.
225 Mass. 22.
228 Mass. 225.

250 Mass. 177.

Notice. SECTION 17. Upon the filing of such petition the court shall appoint a time and place for a hearing, and shall cause not less than seven days' notice thereof to be given to the person for whom a conservator is to be appointed, except that the court may for cause shown direct that a shorter notice be given. No appointment shall be made without such notice to the heirs apparent or presumptive of such person, including the husband or wife, if any, and, if such person is entitled to any benefit, estate or income paid or payable by or through the United States veterans' bureau or its successor, to said bureau or its successor, as the court may order. If the person for whose property the conservator is to be appointed is himself the petitioner or assents in writing to the petition, no notice shall be required, except to said bureau or its successor if such person is so entitled.

1898, 527, § 1.
1901, 125, § 1.
R. L. 145, § 40.
1903, 96.
1905, 127, § 1.
1907, 169, § 3.
1911, 206.
1930, 384, § 3.
216 Mass. 394.
250 Mass. 177.

Discharge. SECTION 18. A conservator may be discharged by the probate court upon the application of the ward, or otherwise, when it appears that the conservatorship is no longer necessary. But a conservator of the property of a married person shall not be discharged without such notice as the court may order to the husband or wife of such person.

1901, 125, § 2.
R. L. 145, § 40.
1903, 96.
1905, 127, § 1.
1907, 169, § 3.
216 Mass. 394.

Bond. SECTION 19. A conservator shall give bond like that required of guardians of insane persons omitting the conditions relative to the custody of the ward.

1898, 527, § 2.
R. L. 145, § 41.
1910, 95.
225 Mass. 22.

228 Mass. 225.

3 Op. A. G. 252.

Powers. SECTION 20. A conservator shall have the same powers and duties, except as to the custody of the person, as a guardian of an insane person; and all laws relative to the jurisdiction of the probate court over the estate of a person under guardianship as an insane person, including the management, sale or mortgage of his property and the payment of his debts, shall be applicable to the estate of a person under conservatorship.

1898, 527, § 2.
R. L. 145, § 41.
1910, 95.
1915, 23.
228 Mass. 225.
239 Mass. 295.
244 Mass. 401.
258 Mass. 417.

Temporary conservator. SECTION 21. Upon the petition of a person of advanced age or mental weakness or of a friend, the probate court may, if it finds that the welfare of the person of advanced age or mental weakness requires the immediate appointment of a temporary conservator of his property, appoint such temporary conservator, with or without notice, and may in like manner remove or discharge him or terminate the trust. Such temporary conservator shall, until otherwise ordered, or until his removal or the appointment of a permanent conservator or guardian, have the same

1918, 257, § 396.
1919, 5.
1920, 2.

9 powers and duties as a permanent conservator. He shall be subject to
10 all laws relative to permanent conservators so far as applicable.

1 SECTION 22. If a conservator or a guardian for an insane person or
2 spendthrift is appointed, the court shall make an allowance, to be paid
3 by the conservator or guardian, for all reasonable expenses incurred by
4 the ward in opposing the petition.
P. S. 139, § 10. R. L. 145, § 9. 1915, 23.

Allowance for
defence.
1826, 63, § 2.
R. S. 79, § 14.
G. S. 109, § 11.

GUARDIANS AND CONSERVATORS OF MARRIED WOMEN.

1 SECTION 23. If a married woman owns property, real or personal,
2 a guardian or conservator may be appointed for her for the same causes,
3 in the same manner, and with the same powers and duties, as if she were
4 sole, except as otherwise provided in this chapter.

Appointment
G. S. 108, § 16.
P. S. 139, § 13.
R. L. 145, § 12.
1915, 23.

1 SECTION 24. The guardian of a married woman shall not have the
2 care, custody or education of his ward, except in case of the insanity of
3 her husband, or of his abandoning her by absenting himself from the
4 commonwealth and making no sufficient provision for her.

Guardian not to
have custody,
etc., of ward,
except, etc.
G. S. 108, § 17.

P. S. 139, § 14. R. L. 145, § 13.

1 SECTION 25. The guardian or conservator of a married woman shall
2 not, except as provided in section ninety-six of chapter one hundred and
3 twenty-three, apply the property of his ward to the maintenance of her-
4 self and her family while she is married, unless he is thereto authorized
5 by the probate court on account of the inability of her husband suitably
6 to maintain her or them, or for other cause which the court considers
7 sufficient.

Guardian, etc.,
not to apply
property to her
support with-
out leave of
probate court
G. S. 108, § 18.
P. S. 139, § 15.
R. L. 145, § 14.
1915, 23.

1 SECTION 26. If a married woman is by reason of insanity incompe-
2 tent to release her right of dower or of homestead, a guardian may be
3 appointed for her in the same manner as if she were sole, with the powers
4 and duties given to guardians of married women who own property, and
5 the husband or any suitable person may be appointed such guardian.

Guardian for
insane married
woman having
right of dower,
etc.
1856, 169,
§§ 1, 2
1857, 298,
§§ 8, 9.

G. S. 108, § 19. P. S. 139, § 16. 1890, 259. R. L. 145, § 15.

GUARDIANS AND CONSERVATORS OF NON-RESIDENTS.

1 SECTION 27. If a person who is liable to be put under guardianship
2 or conservatorship under this chapter resides out of the commonwealth
3 and has any estate therein, a friend of such person or any one interested
4 in his estate, in expectancy or otherwise, may apply to the probate court
5 for a county where there is such estate, which, after notice to all persons
6 interested and a hearing, may appoint a guardian or conservator for him.

Appointment.
1783, 28, § 1
R. S. 79, § 28.
G. S. 109, § 13.
P. S. 139, § 17.
R. L. 145, § 16.
1915, 23.
4 Allen, 466.

1 SECTION 28. Such guardian or conservator shall have the same
2 powers and duties relative to any estate of the ward found within the
3 commonwealth, and also in the case of a guardian, relative to the person
4 of the ward if he comes to reside therein, as other guardians or conserva-
5 tors appointed under this chapter.

Powers and
duties
R. S. 79, § 29
G. S. 109, § 14
P. S. 139, § 18.
R. L. 145, § 17.
1915, 23.

13 Met. 80. 2 Allen, 206. 4 Allen, 321.

1 SECTION 29. Such guardian or conservator shall give the same bond
2 as is required of other guardians and conservators appointed under this

Bond
R. S. 79, § 30.
G. S. 109, § 15.

1879, 184.
P. S. 139, § 19.
R. L. 145, § 18.
1915, 23

chapter, except that the conditions relative to inventory, disposal of the estate and effects, and the account to be rendered by him shall be confined to such estate and effects as come to his hands in this commonwealth.

Proceedings for non-resident guardian of non-resident ward to receive ward's estate here.
1875, 189.
1880, 154.
P. S. 139, § 20.
1900, 232.
R. L. 145, § 19.
190 Mass. 40.
254 Mass. 325.

SECTION 30. If a resident of another state is entitled to real or personal property of any description in this commonwealth, and is under the guardianship of a person, also resident in such other state, who produces to the probate court of the county where such property or the principal part thereof is situated a full and complete and duly exemplified or authenticated transcript from the records of a court of competent jurisdiction in such other state, showing that he has there been appointed such guardian, and has given a bond and security in double the value of the property of such ward, such transcript may be recorded in such probate court, and such guardian shall be entitled to receive from such court letters of guardianship of the estate of such ward in this commonwealth which shall authorize him to care for and manage the real and personal property of such ward, to collect the rents and profits therefrom and to demand, sue for and recover any such property, and to remove any of the movable property or estate of such ward out of this commonwealth, if such removal will not conflict with the terms and limitations attending the right by which the ward holds the same. Such probate court may also order any resident guardian, executor or administrator who has any of the estate of such ward to deliver the same to any person who has taken out letters of guardianship as aforesaid.

Guardian, etc., appointed here may transfer property to foreign guardian, etc.
1858, 117.
G. S. 109, § 23.
1861, 130.
1862, 139.
1866, 122, § 1.
P. S. 139, § 39.
R. L. 146, § 25.
1907, 219.

SECTION 31. A guardian or conservator appointed within this commonwealth, whose ward removes from or resides out of this commonwealth, may transfer and pay over the whole or any part of the ward's personal property to a guardian, conservator, trustee, committee or other official appointed by competent authority in the state or country where the ward resides, upon such terms and in such manner as the probate court by which he was appointed may, after notice to all parties interested, decree upon petition filed therefor.

1915, 23.

149 Mass. 57.

254 Mass. 325.

Transfer of estate of ward who has no guardian, etc., in the commonwealth.
1866, 122, § 2.
1877, 127.
P. S. 139, § 40.
R. L. 145, § 36.
1915, 23.

SECTION 32. An executor, administrator or trustee who has in his hands personal property belonging to a person under guardianship residing out of this commonwealth and having no guardian or conservator appointed therein may pay over and transfer the whole or any part of such personal property to a guardian, trustee or committee appointed by competent authority in the state or country where such person resides, upon the same terms and in the same manner as provided in the preceding section.

REMOVALS, RESIGNATIONS, ETC.

Removal, etc., of guardian, etc., and appointment of successor.
1789, 46
1817, 190, § 36.
R. S. 79, § 22.
G. S. 109, § 24.
P. S. 139, § 21.
R. L. 145, § 22.
1915, 23.
4 Pick. 283.

SECTION 33. If a guardian or conservator becomes insane or otherwise incapable of performing his trust or is unsuitable therefor, the probate court, after notice to him and to all other persons interested, may remove him. Upon the request of a guardian or conservator, the probate court may allow him to resign his trust. Upon such removal or resignation, and upon the death of a guardian or conservator, another may be appointed in his stead.

8 Pick. 143.
11 Met. 104.
4 Gray, 63.

105 Mass. 501.
128 Mass. 587

155 Mass. 433.
227 Mass. 77.

GUARDIAN AD LITEM AND NEXT FRIEND.

1 SECTION 34. If, under the terms of a written instrument or other-
 2 wise, a minor or person under disability, or a person not ascertained or not
 3 in being, may be or may become interested in any property real or per-
 4 sonal, the court in which any action, petition or proceeding of any kind
 5 relative to or affecting any such estate is pending may, upon the repre-
 6 sentation of any party thereto, or of any person interested, appoint a
 7 suitable person to appear and act therein as guardian ad litem or next
 8 friend of such minor or person under disability or not ascertained or not in
 9 being; and a judgment, order or decree in such proceedings, made after
 10 such appointment, shall be conclusive upon all persons for whom such
 11 guardian ad litem or next friend was appointed.

Appointment.
 Effect.
 1896, 456, § 1.
 R. L. 145, § 23.
 1906, 452, § 2.
 190 Mass. 117.
 216 Mass. 394.
 227 Mass. 392.
 263 Mass. 143.

1 SECTION 35. The reasonable expenses of such guardian ad litem or
 2 next friend, including compensation and counsel fees, shall be determined
 3 by the court and paid as it may order, either out of the estate or by the
 4 plaintiff or petitioner. If such expenses are to be paid by the plaintiff
 5 or petitioner execution therefor may issue in the name of the guardian
 6 ad litem or next friend.

Expenses.
 1896, 456, § 2.
 R. L. 145, § 24.
 227 Mass. 392.

1 SECTION 36. Nothing in this chapter shall affect the power of a
 2 court to appoint a guardian to defend the interests of a minor impleaded
 3 in such court, or interested in a suit or matter there pending, nor the
 4 power of such court to appoint or allow a person, as next friend for a
 5 minor, to commence, prosecute or defend a suit in his behalf.

Provisions of
 this chapter not
 to prevent ap-
 pointment of
 guardian ad
 litem or next
 friend.

R. S. 79, § 8.	1896, 456, § 3.	S. Cush. 506.
G. S. 109, § 7.	R. L. 145, § 39.	111 Mass. 265.
P. S. 139, § 43.	1917, 326.	116 Mass. 377.

GENERAL POWERS AND DUTIES OF GUARDIANS AND CONSERVATORS.

1 SECTION 37. A guardian or conservator shall pay all just debts
 2 which are due from his ward out of the personal property, if sufficient,
 3 and, if not, out of the real property, upon obtaining a license for the
 4 sale thereof as provided in chapter two hundred and two. He shall
 5 settle all accounts of his ward and demand, sue for and receive all debts
 6 due to him or, with the approval of the probate court, may compromise
 7 the same and give a discharge to the debtor. He shall appear for and
 8 represent his ward in all actions, suits and proceedings, unless another
 9 person is appointed therefor as guardian ad litem or next friend.

To pay debts,
 etc., and repre-
 sent ward in
 suits.
 1726-7, 12, § 5.
 1731-2, 14, § 5.
 1737-8, 9, § 3.
 1783, 38, § 4.
 1806, 102.
 R. S. 79, § 17.
 G. S. 109, § 18.
 P. S. 139, § 29.
 R. L. 145, § 25.
 1915, 23.

4 Mass. 147.	8 Allen, 311.	149 Mass. 57.
5 Mass. 299.	10 Allen, 163.	151 Mass. 354.
6 Mass. 58.	97 Mass. 508.	155 Mass. 136.
13 Mass. 237.	99 Mass. 29.	168 Mass. 215, 573.
14 Mass. 207.	100 Mass. 239.	170 Mass. 499.
1 Pick. 314.	101 Mass. 60.	171 Mass. 303.
5 Pick. 431.	106 Mass. 591.	173 Mass. 140.
13 Pick. 206.	111 Mass. 265.	180 Mass. 303.
14 Pick. 280.	120 Mass. 487.	182 Mass. 332.
19 Pick. 346, 596.	128 Mass. 116.	184 Mass. 545.
21 Pick. 36.	132 Mass. 414.	190 Mass. 117.
24 Pick. 115.	133 Mass. 531.	204 Mass. 522.
S. Cush. 587.	136 Mass. 219.	240 Mass. 363.
9 Gray, 84, 255.	146 Mass. 40.	256 Mass. 177.
5 Allen, 464.		

1 SECTION 38. He shall manage the estate of his ward frugally and
 2 without waste, and shall, except as otherwise provided, apply the same,
 3 so far as may be necessary, to the comfortable and suitable maintenance
 4 and support of the ward and his family. If the income and profits are

Support of
 ward and
 family.
 1726-7, 12, § 4.
 1731-2, 14, § 4.
 1737-8, 9, § 3.
 1783, 38, § 4.

1896, 102
 R. S. 79, § 18.
 G. S. 109, § 19.
 P. S. 139, § 30.
 R. L. 145, § 26.
 1915, 23.
 1930, 138, § 1.
 1 Pick. 527.
 18 Pick. 1.

insufficient for that purpose, he may sell the real estate upon obtaining a license therefor, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family. Such license and the application therefor shall state whether the ward is married or single.

20 Pick. 116	109 Mass. 252.	181 Mass. 539.
4 Allen, 426.	120 Mass. 487.	190 Mass. 459.
8 Allen, 427.	157 Mass. 73.	267 Mass. 378.
10 Allen, 59.	160 Mass. 232.	

Partition.
 1727, 5
 1783, 41, § 1.
 R. S. 79, § 19.
 1852, 248.
 G. S. 109, § 20.
 P. S. 139, § 31.
 R. L. 145, § 27.
 1915, 23.
 1918, 257,
 § 395
 1919, 5.
 1920, 2
 1 Pick. 221,
 314.

SECTION 39. A guardian or conservator may make partition of his ward's real property if lying in common and undivided, either upon petition for partition or otherwise, as fully and in like manner as the ward could do if he were under no disability, may assign and set out dower in his ward's estate to any widow entitled thereto, and may appoint an appraiser of real property on an execution either against or in favor of his ward; except that when the guardian or conservator has an interest adverse to that of his ward no partition shall be made without the appointment of a guardian ad litem.

Support of
 minor child by
 parents.
 1891, 358.
 R. L. 145, § 28.
 1931, 364.

SECTION 40. The probate court may, upon the petition of a guardian entitled to the custody of his minor ward, during the lifetime of either or both of his parents, and after notice to all parties interested, order and require said parents or either of them to contribute to the support and maintenance of such minor in such amounts and at such times as it determines are just and reasonable, and may issue process of attachment and execution on the property of the parents or either of them, and sections thirteen and fourteen of chapter two hundred and eight shall apply thereto so far as appropriate. Such parent or parents may be required to give a bond conditioned to comply with such order and payable to the judge of said court and his successors in such sum and with such sureties as the court orders. The court may from time to time, upon application of either party, revise or alter such order or make such new order or decree as the circumstances of the parents or the benefit of the minor may require.

Application of
 minor's prop-
 erty to his
 support during
 father's life.
 R. S. 78, § 2.
 1844, 88.
 G. S. 109, § 21.
 P. S. 139, § 32.
 R. L. 145, § 29.
 2 Mass. 415.
 4 Mass. 97.
 8 Cush. 587.
 8 Allen, 125.
 144 Mass. 25.

SECTION 41. If a minor, who has a father living, has property sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the probate court may order that such expenses of the maintenance and education of such child as it determines are reasonable may be defrayed out of his own estate; and, if necessary, his real property upon obtaining license therefor may be sold for that purpose by the guardian.

164 Mass. 422.	181 Mass. 539.
----------------	----------------

Support of
 children of
 insane person
 under guard-
 ianship.
 1880, 166.
 P. S. 139, § 33.
 R. L. 145, § 30.

SECTION 42. The probate court may, upon the application of the guardian of an insane person or of a child or the guardian of a child of an insane person, after notice to all other persons interested, authorize and require the guardian of such insane person to apply to the maintenance and education of any child or children of said ward such portion as the court orders of the estate of the ward, which is not required for his maintenance and support.

1 SECTION 43. The probate court for the county where a guardian
 2 of an insane person has been appointed may make an allowance out of
 3 the estate of such insane person for the support of his wife, to be paid
 4 to her by the guardian during the continuance of the guardianship in
 5 such manner as the court orders.

1862, 116. P. S. 139, § 31. R. L. 145, § 31. 160 Mass. 232.

Support of wife
 of insane person
 under guard-
 ian-ship.
 1855, 458.
 1856, 99.
 G. S. 108, § 26.

1 SECTION 43A. The probate court, upon the application of the
 2 guardian or dependent parent of an insane person, and after such notice
 3 to all other persons interested as it directs, may authorize such guardian
 4 to apply towards the support of such dependent parent such portion of
 5 the estate of such insane person not required for his own maintenance
 6 and support as it may order.

Support of
 dependent
 parents of
 insane persons
 under guard-
 ian-ship
 1931, 420.

1 SECTION 44. The probate court may, after notice to all persons
 2 interested, authorize a guardian or conservator to obtain by purchase
 3 the release and conveyance of a right of dower or eurtesy, homestead,
 4 life estate, estate for years or other interest, vested or contingent, held
 5 or owned by any person in or to any real property of his ward, and to
 6 make any contract relative to such right or interest which may be
 7 necessary to effect such purchase.

Purchase of
 release of
 dower, etc.,
 in ward's real
 property
 1869, 249, § 1.
 P. S. 139, § 35.
 R. L. 145, § 32.
 1915, 23.

1 SECTION 45. If property, rights or benefits given by will or by law
 2 depend upon the election, waiver or other act of a person incompetent
 3 by reason of insanity or minority to perform the same, his guardian may
 4 make such election or waiver or perform such act; provided, that no
 5 waiver of the provisions of a will under this section shall be valid until
 6 approved by the probate court after notice to such persons, if any, as
 7 the court shall deem proper and a hearing thereon, and provided also
 8 that if a power is vested in an insane person for his own benefit, or his
 9 consent is required for the exercise of any power where the power of con-
 10 sent is in the nature of a beneficial interest in himself, his guardian may,
 11 by order of the probate court, made after notice to such persons, if any,
 12 as the court shall deem proper, exercise the power or give the consent
 13 in such manner as shall be authorized or directed by the order.

Election,
 waiver, or
 exercise of
 power by
 guardian, etc.
 1871, 97.
 P. S. 139, § 36.
 R. L. 145, § 33.
 1918, 68, § 4.
 1924, 8.
 102 Mass. 568.
 153 Mass. 137.
 221 Mass. 315.

1 SECTION 46. Upon taking an inventory, the estate and effects com-
 2 prised therein shall be appraised in the manner required by section six of
 3 chapter one hundred and ninety-five.

R. S. 79, § 20. G. S. 109, § 17. P. S. 139, § 37. R. L. 145, § 34.

Appraisal of
 estate
 1817, 190, § 34

1 SECTION 47. The probate court may, upon the application of a
 2 guardian or conservator or of any person interested in the estate of a
 3 ward, after notice to all other persons interested, authorize or require
 4 the guardian or conservator to sell and transfer any personal property
 5 held by him as guardian or conservator and to invest the proceeds thereof
 6 and all other money in his hands in such manner as may be for the best
 7 interest of all concerned. Said court, after such notice, if any, as it may
 8 require, may make such further order and give such directions as the
 9 case may require for the management, investment and disposition of
 10 the estate in the hands of the guardian or conservator.

190 Mass. 27, 459. 256 Mass. 351.

Sale of personal
 property of
 ward.
 1817, 190, § 35.
 1820, 54, § 3.
 R. S. 79, § 21.
 G. S. 109, § 22.
 P. S. 139, § 38.
 R. L. 145, § 35.
 1915, 23.
 2 Prek, 243.
 20 Prek, 116.
 4 Allen, 426.
 8 Allen, 15, 427.
 120 Mass. 102.
 168 Mass. 573.

Recovery of
property of
ward which has
been embez-
zled, etc.
1726-7, § 12,
§§ 2, 3.
1731-2, 14,
§§ 2, 3.
1737-8, 9, § 2.
1783, 38, § 3.
R. S. 79, § 27.
1857, 71, § 2.
G. S. 109, § 30.
P. S. 139, § 42.
R. L. 145, § 38.

SECTION 48. Upon complaint to the probate court by a guardian, conservator, ward, creditor or other person interested in the estate of a ward or by a person having claims thereto in expectancy as heir or otherwise, against any one suspected of having fraudulently received, concealed, embezzled or conveyed away any of the property, real or personal, of the ward, the court may cite and examine such suspected person, although he is the guardian or conservator, in the manner and subject to the penalties provided in section forty-four of chapter two hundred and fifteen.

1
2
3
4
5
6
7
8
9

1915, 23.

11 Gray, 210.

Provision for
burial expenses
of wards.
1930, 237.

SECTION 48A. Upon application therefor by a conservator or by a guardian of an insane person or a spendthrift, whose ward is a resident of the commonwealth, the probate court, after such notice as it deems necessary, and a hearing, may authorize him to deposit, for the purpose hereinafter stated, in a savings bank, or in the savings department of a trust company, within the commonwealth, not exceeding one hundred and fifty dollars, to be expended solely for, or towards the expense of, the burial of his ward. Such deposit shall be made in the name of the judge of probate for the time being, and shall be subject to the order of the judge and of his successors in office. The person making such deposit shall file in the probate court a memorandum thereof and the deposit book, and the amount so deposited shall, for the purpose of the accounting by such guardian or conservator, be allowed as a payment. Upon the death of such ward, the probate court may, upon application and after like notice and hearing, authorize the payment of such sum, together with any accrued interest thereon, to the executor of the will of such ward or to the administrator of his estate, to be expended by him only for the purpose hereinbefore stated; provided, that any balance remaining after the payment of such expense shall become general assets of the estate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AGENTS OF NON-RESIDENT GUARDIANS AND CONSERVATORS.

Agent for non-
resident guard-
ian or con-
servator.

SECTION 49. Sections eight, nine and ten of chapter one hundred and ninety-five shall apply to non-resident guardians and conservators.

1
2

1889, 462.

1893, 118.

R. L. 145, § 42.

CHAPTER 202.

SALES, MORTGAGES AND LEASES OF REAL ESTATE BY EXECUTORS, ADMINISTRATORS, GUARDIANS AND CONSERVATORS.

SECT.

SALES.

1. Sale of real estate to pay debts, etc.
2. Real estate subject to sale.
3. Sale free of dower or curtesy.
4. Undevised real estate first liable to be sold.
5. Sale of real estate of ward.
6. Venue.
7. Form of petition.
8. Whole may be sold if partial sale would injure residue.
9. Marshalling assets under a will.
10. Notice on petition of executor or administrator.
11. Notice on petition by guardian or conservator.
12. License to guardian of spendthrift or insane person, notice required.
13. No license if bond given to pay debts.
14. Public or private sale of real estate.
15. Notice of sale by auction.
16. Perpetuation of evidence of giving of notice.
17. Adjournment of sale.
18. Recovery of possession of land fraudulently conveyed.
19. Sale of real property by administrator, etc., for distribution.
20. Time within which real estate is liable to be sold for payment of debts.

SALES BY GUARDIANS AND CONSERVATORS FOR MAINTENANCE OR INVESTMENT.

21. Sale by guardian or conservator for maintenance or investment.

SECT.

22. Form of petition and license.
23. Disposal of proceeds of sale if made for maintenance.
24. Disposal of proceeds of sale if made for investment.
25. Property of minor may be sold by person other than the guardian.
26. Disposal of proceeds of sale in such case.

SALES BY GUARDIAN OF NON-RESIDENT WARD.

27. Transfer of property of non-resident ward, etc.

MORTGAGES.

28. Mortgage by executor or administrator.
29. Mortgage by guardian or conservator.
30. Form of petition and decree.

LEASES.

31. Lease of real estate of ward.

POWERS OF FOREIGN EXECUTOR, ETC.

32. Foreign executor, etc., may be licensed to sell real estate.
33. Foreign guardian or conservator may be licensed to sell real estate of ward.
34. Bond in certain cases.
35. Subsequent proceedings.

SALES.

SECTION 1. If the personal property of a deceased person is insufficient to pay his debts, legacies and charges of administration, his executor or administrator shall, for the purpose of paying such debts, legacies or charges of administration, sell his real estate in the manner hereinafter provided, and the proceeds thereof shall be assets in the hands of the executor or administrator in like manner as if they had originally been part of the personal property of the deceased.

Sale of real estate to pay debts, etc.
 1696, 10, § 2.
 1783, 32, § 1.
 1818, 112, § 3.
 R. S. 65, §§ 8, 9; 71, §§ 1, 20.
 G. S. 90, §§ 7, 8; 102, §§ 1, 19.
 P. S. 134, § 1.

R. L. 146, § 1.	18 Pick. 285.	125 Mass. 363.
1918, 257, § 397.	4 Cush. 467.	140 Mass. 351.
1919, 5.	3 Gray, 205.	182 Mass. 534.
1920, 2.	4 Allen, 359.	186 Mass. 577.
14 Mass. 83.	100 Mass. 224.	212 Mass. 248.
5 Pick. 140.	105 Mass. 33.	256 Mass. 512.

SECTION 2. The real estate so liable to be sold shall include all land of the deceased, all rights of entry and of action and all other rights and

Real estate subject to sale.
 1865, 90, § 5.
 R. S. 71, § 11.

G. S. 102, § 11.
1881, 112, § 1.
P. S. 134, § 2.
R. L. 146, § 2.
167 Mass. 205.
182 Mass. 534.
187 Mass. 531.
189 Mass. 390.
190 Mass. 513.
212 Mass. 248.
214 Mass. 549.

interests in land, which would descend to his heirs or would have been 3
liable to attachment or execution by a creditor of the deceased in his 4
lifetime; but the title passed by any such sale shall, except as provided 5
in the following section, be subject to the dower of the wife or curtesy 6
of the husband of the deceased. No claim by entry or by action to land 7
fraudulently conveyed by the deceased shall be made unless within five 8
years after the decease of the grantor. 9

Sale free of
dower or
curtesy.
1917, 309.

SECTION 3. Upon a petition by an executor or administrator to sell 1
real estate of a deceased person, if it shall appear that a surviving hus- 2
band is or may be entitled to an estate of curtesy, or a surviving wife 3
to an estate of dower in the premises to be sold, the probate court may, 4
if the petitioner so requests, and after notice, license him to sell the 5
same free and clear of any such interest or claim on the part of the sur- 6
viving husband or wife. One third of the proceeds of the sale shall there- 7
upon be set apart for the period during which such curtesy or dower 8
may be claimed; and if a claim is duly made therefor, the court shall 9
appoint a trustee to administer the same in accordance with section 10
thirty-five of chapter two hundred and forty-one, unless the parties in 11
interest shall otherwise agree upon a division of the proceeds without 12
the appointment of a trustee, and the probate court may approve any 13
such agreement on the part of the executor or administrator. 14

Undevised
real estate
first liable to
be sold
R. S. 62, § 30.

SECTION 4. Real estate not devised shall be first chargeable with the 1
payment of debts, legacies or charges of administration in exoneration 2
of real estate devised, unless a different intention appears by the will. 3

G. S. 92, § 34.
P. S. 134, § 3.

R. L. 146, § 3.
6 Mass. 149.

8 Pick. 478.
7 Cush. 161.

Sale of real
estate of ward.
1783, 38, § 4
1806, 102.
1818, 112, § 1.
1830, 140, § 1.
R. S. 71, § 26.
G. S. 102, § 24
P. S. 140, § 1.
1899, 147.
R. L. 146, § 4.
1915, 23.
16 Mass. 326.
7 Met. 388.

SECTION 5. If the personal property in the hands of a guardian or 1
conservator is insufficient to pay the debts of the ward, with the charges 2
of managing his estate, the guardian or conservator may be licensed to 3
sell the ward's real estate for that purpose or for the purpose of raising 4
money with which to pay, in whole or in part, any encumbrance existing 5
thereon when the title thereto came to his ward, in like manner and 6
upon like terms, except as hereinafter provided, as are provided for a 7
sale of real estate by an executor or administrator. 8

Venue.
1696, 10, § 2.
1769-70, 20.
1783, 32, § 1.
1806, 102.
1817, 190, § 10.
1818, 112,
§ § 1, 3.

SECTION 6. A license to an executor or administrator to sell the real 1
estate of a deceased person or to a guardian or conservator to sell the 2
real estate of his ward may be granted by the probate court appointing 3
him. 4

1830, 45; 140, § 1.
R. S. 71, § § 2, 30;
72, § 6.

G. S. 102, § § 2, 37.
P. S. 134, § 4;
140, § 13.

R. L. 146, § 5.
1915, 23.

Form of
petition.
1783, 32, § 1.
R. S. 71, § 3.
G. S. 102, § 3.
P. S. 134, § 5;
140, § 4.
R. L. 146, § 6.
1915, 23.
15 Pick. 23.
7 Met. 454.
8 Met. 51.
5 Cush. 524.
14 Gray, 500.
105 Mass. 33.
182 Mass. 534.

SECTION 7. To obtain such license, the executor, administrator, 1
guardian or conservator shall file a petition stating the value of the per- 2
sonal property in his hands, the amount of the charges of administration 3
or management, the amount of debts due from the deceased or ward, as 4
nearly as can be ascertained, and, if a person dies testate, the amount 5
of any legacies given in his will. If it is necessary to sell a part only of 6
the real estate, the value, description and condition of the part which 7
it is proposed to sell may also be set forth, and the court may direct what 8
specific part shall be sold. 9

1 SECTION 8. If it is represented in such petition and appears to the
 2 court to be necessary to sell a part of the real estate, and that by such
 3 partial sale the residue of the property or of a specific part or piece
 4 thereof would be greatly injured, the court may license a sale of the
 5 whole or any part thereof.

Whole may be sold if partial sale would injure residue.
 1783, 32, § 2
 1818, 112, § 1.
 1829, 110, § 1.

1830, 140, § 1.	R. L. 146, § 7.	157 Mass. 565
R. S. 71, §§ 4, 27	6 Gray, 535	182 Mass. 534.
G. S. 102, §§ 4, 25.	11 Gray, 500.	190 Mass. 513.
1880, 152, § 2.	102 Mass. 262.	192 Mass. 79.
P. S. 134, § 6, 140, § 2.		

1 SECTION 9. If a will contains a provision for the payment of debts,
 2 or which may require or induce the court to marshal the assets in a
 3 manner different from that which the law would otherwise provide,
 4 the executor shall set forth in the petition a copy of the will, and the
 5 court shall marshal the assets accordingly, so far as can be done consist-
 6 ently with the rights of the creditors.

Marshalling assets under a will
 R. S. 71, § 7
 G. S. 102, § 7
 P. S. 134, § 8
 R. L. 146, § 8
 6 Mass. 149
 18 Pick 285.

192 Mass. 79.

1 SECTION 10. No license to sell real estate shall be granted to an
 2 executor or administrator until notice of the petition and of the time
 3 and place appointed for hearing the same has been given by serving such
 4 notice personally on all persons interested in the estate at least fourteen
 5 days before the time appointed for the hearing, or by publication once
 6 in each of three successive weeks in such newspaper as the court orders.

Notice on petition of executor or administrator.
 1783, 32, § 1
 1817, 190, § 10.
 1830, 45.
 R. S. 71, § 8
 G. S. 102, § 8.
 P. S. 134, § 9.

1886, 137, § 2.	8 Met. 51, 355.	147 Mass. 489
R. L. 146, § 10.	9 Cush. 223.	190 Mass. 513.
1 Mass. 256.	13 Gray, 513.	

1 SECTION 11. No license to sell real estate shall be granted to a guard-
 2 ian or conservator until such notice as the court orders has been given
 3 to the next of kin of the ward, to all his heirs apparent or presumptive,
 4 and to all persons interested in the estate.

Notice on petition by guardian or conservator.
 1783, 32, § 1.

1814, 71.	R. S. 71, §§ 8, 29;	P. S. 140, §§ 15, 16.
1817, 190, § 10.	72, § 8	R. L. 146, § 11.
1830, 45.	G. S. 102, §§ 39, 40.	1915, 23.

1 SECTION 12. No license to sell real estate shall be granted to the
 2 guardian of a spendthrift who resides in the commonwealth, or of an
 3 insane person, unless seven days' notice of the petition therefor has been
 4 given to the board of public welfare of the town where the spendthrift
 5 resides, or, in the case of an insane person, to the department of mental
 6 diseases. Such notice may be served upon any member of said board or
 7 department.

License to guardian of spendthrift or insane person, notice required.
 1806, 102.
 1818, 112, § 1.
 1826, 64
 1830, 140, § 1
 R. S. 71, § 28;
 72, § 9

G. S. 102, § 38.	R. L. 146, § 13	1916, 285, § 1
1874, 202.	1909, 504, §§ 102,	1931, 394, § 136
P. S. 140, § 14.	107.	

1 SECTION 13. No license shall be granted to an executor or admin-
 2 istrator, if any person interested in the estate gives bond to him in
 3 a sum and with sureties approved by the court, conditioned to pay, so
 4 far as the personal property of the deceased shall be insufficient there-
 5 for, all legacies mentioned in the petition, all debts therein mentioned
 6 which shall eventually be found due from the estate and charges of
 7 administration.

No license if bond given to pay debts
 1817, 190, § 10.
 R. S. 71, § 9
 G. S. 102, § 9
 P. S. 134, § 10
 R. L. 146, § 12.
 5 Allen, 118
 100 Mass. 224

150 Mass. 381.

190 Mass. 513.

1 SECTION 14. Upon a petition of an executor or administrator for a
 2 license to sell real estate of the deceased or of a guardian or conservator
 3 to sell real estate of his ward, the court may, if the petitioner so requests,

Public or private sale of real estate.
 1783, 32, §§ 1,
 2, 38, § 4.

1806, 102.
 1817, 182, § 1.
 1818, 112, 1.
 1830, 140, 1.
 R. S. 71, §§ 10,
 17, 26.
 G. S. 102,
 §§ 10, 17, 24.
 1872, 278.
 P. S. 134, § 11;
 140, § 1, 18.
 1885, 258.
 1886, 137, § 1.
 1899, 147.
 R. L. 146, § 9.
 1915, 23.
 4 Cush. 54.
 2 Gray, 154.
 13 Gray, 326.

authorize him to sell such property at public auction and to convey to the purchaser all the estate, right, title and interest which the deceased had therein at his death and which was then chargeable with the payment of his debts or which the ward has at the time of the sale. If the petitioner requests that such property may be sold by private sale and the court, upon a hearing, finds that an advantageous offer for the purchase thereof has been made to the petitioner, and that the interests of all parties will be promoted by an acceptance thereof, it may authorize a conveyance by private sale in accordance with such offer or upon other terms; but the petitioner so authorized may nevertheless sell such property by public auction in accordance with this chapter.

4 Allen, 184. 147 Mass. 489. 190 Mass. 459, 513. 221 Mass. 587.

Notice of sale
 by auction.
 1719-20, 10,
 § 2.
 1783, 32, § 1.
 1814, 71.
 1829, 108, § 2.
 R. S. 71, §§ 15,
 35; 72, §§ 12,
 15.
 G. S. 102,
 §§ 15, 41.
 1877, 158, § 1.

SECTION 15. An executor, administrator, guardian or conservator shall give notice of the time and place of a sale by auction by causing notices thereof to be posted, thirty days at least before the sale, in a public place in the town where the land lies, and in two adjoining towns, if there are so many in the county, or, if the court granting the license so orders, by publishing the notice once in each of three successive weeks in a newspaper.

P. S. 134, § 12; 140, § 17. 1915, 23. 8 Met. 355.
 R. L. 146, § 14. 1 Mass. 256. 4 Allen, 426.

Perpetuation
 of evidence of
 giving of
 notice.
 1788, 66,
 §§ 6, 7.
 1812, 24.
 R. S. 71, §§ 16,
 35; 72, §§ 12,
 15.
 1853, 393.
 G. S. 102,
 §§ 16, 41.

SECTION 16. An affidavit of the executor, administrator, guardian or conservator, or of a person in his behalf, filed and recorded with a copy of the notice in the registry of probate, or such affidavit made by any person and filed and recorded with such copy by permission of the court upon satisfactory evidence that the notice was given as ordered, shall be admitted as evidence of the time, place and manner in which the notice was given.

1876, 71; 76. 1888, 148, § 2; 380. 1915, 23.
 P. S. 134, § 13; 140, § 17. R. L. 146, § 15. 8 Met. 355.

Adjournment
 of sale.
 1817, 190, § 13.
 R. S. 71, §§ 17,
 18, 35; 72, § 15.
 G. S. 102,
 §§ 17, 18, 41.
 P. S. 134, § 14;
 140, § 17.
 R. L. 146, § 16.
 1915, 23.
 15 Mass. 175.

SECTION 17. If at the time appointed for such sale the executor, administrator, guardian or conservator considers it for the interest of all persons concerned that the sale should be postponed, he may adjourn it for not more than fourteen days, and notice of such adjournment shall be given by a public declaration at the time and place first appointed for the sale. If the adjournment is for more than one day, further notice of the sale shall be given by posting or publishing, as time and circumstances may admit.

Recovery of
 possession of
 land fraudu-
 lently con-
 veyed.
 R. S. 71,
 §§ 12, 13.
 G. S. 102,
 §§ 12, 13.
 P. S. 134, § 15.
 R. L. 146, § 17.
 5 Cush. 324.
 14 Gray, 500.
 102 Mass. 262.
 105 Mass. 33.
 132 Mass. 462.

SECTION 18. If an executor or administrator is licensed to sell land which has been fraudulently conveyed by the deceased or is fraudulently held by another person for him, or land to which the deceased had a right of entry or of action or of which he had a right to a conveyance, he may, within one year after such license, sell the land without first obtaining possession thereof by entry or action, or he may without a formal entry bring an action to obtain possession by virtue of such license, demanding the land as executor or administrator, and may sell the same within one year after possession is obtained.

147 Mass. 489. 186 Mass. 59. 243 Mass. 451.
 152 Mass. 257. 189 Mass. 390. 268 Mass. 73.
 182 Mass. 534. 204 Mass. 270.

Sale of real
 property by
 administrator.

SECTION 19. The probate court may, upon petition of an administrator, administrator with the will annexed, or executor filed within one

3 year after the date of the giving of the executor's or administrator's
 4 bond, or, if an administrator de bonis non shall be appointed within one
 5 year after the date of the original appointment of the executor or ad-
 6 ministrator, then within six months after the date of the giving of a
 7 bond by such administrator de bonis non, with the consent of all parties
 8 interested or after notice, license him to sell the whole or any part of the
 9 real estate or any undivided interest therein belonging to the estate of
 10 the deceased, in such manner and upon such notice as the court orders;
 11 and the net proceeds of such sale, after deducting the expenses thereof
 12 and such amount as may be required for the payment of debts, legacies
 13 and charges of administration, in consequence of a deficiency in the per-
 14 sonal property, shall be paid over to the person or persons who would
 15 have been entitled to such real estate and in the proportions to which
 16 they would have been entitled had it not been sold. Before any such
 17 license shall be issued, the petitioner shall file in the probate court an
 18 affidavit containing the names of all persons known to him as having or
 19 claiming any interest in said real estate derived from any deed of con-
 20 veyance or mortgage by, through or under any of the heirs or devisees,
 21 and if it appears that there are any such persons, they shall be made
 22 parties to the proceedings, and notified in such manner as the court
 23 orders.

etc., for dis-
 tribution
 1890, 266
 R. L. 146, § 18.
 1904, 217.
 1906, 73
 1907, 236.
 1917, 296.
 1923, 321.
 221 Mass. 262.
 231 Mass. 3.

1 SECTION 20. Whenever an executor or administrator has given due
 2 notice of his appointment, and an affidavit thereof has been filed in ac-
 3 cordance with sections two and three of chapter one hundred and ninety-
 4 five, no interest in the real estate of the deceased conveyed absolutely
 5 or in mortgage for value and in good faith by an instrument duly re-
 6 corded shall be liable to be taken on execution, or sold under any judicial
 7 proceeding for payment of his debts, costs of court or claims against
 8 his estate, except claims for taxes, municipal assessments or succession
 9 taxes, legacies or other charges created by will of the deceased, or the
 10 expenses or charges of administration, after the expiration of one year
 11 from the time of such executor or administrator giving bond for the
 12 performance of his trust, or from the passing of the order of the probate
 13 court mentioned in said section three, unless in pursuance of a license to
 14 sell granted in consequence of an order for the retention of assets passed
 15 under the provisions of section thirteen of chapter one hundred and
 16 ninety-seven, upon a petition filed within said year or before said con-
 17 veyance or mortgage is recorded, or unless in pursuance of a license to
 18 sell granted upon a petition filed in the registry of probate within said
 19 year, or unless for the satisfaction in whole or in part of a claim of which
 20 notice has been filed in the registry of probate within said year, stating
 21 substantially the name and address of the claimant, the nature and
 22 amount of the claim and the court, if any, in which proceedings are pend-
 23 ing to determine or enforce the same. Said notice shall be filed with the
 24 other proceedings in the case and entered upon the docket under the
 25 name of the estate of the deceased.

Time within
 which real
 estate is liable
 to be sold for
 payment of
 debts.
 1907, 549, § 1.
 1915, 61.
 1919, 333, § 26.
 1920, 2
 212 Mass. 248.
 214 Mass. 549
 217 Mass. 552.

SALES BY GUARDIANS AND CONSERVATORS FOR MAINTENANCE OR IN-
 VESTMENT.

1 SECTION 21. If the income of the estate of a ward is insufficient to
 2 maintain him and his family or if it appears that it would be for his
 3 benefit that his real estate or any part thereof or any standing or grow-

Sale by
 guardian or
 conservator for
 maintenance
 or investment.

1693-4, 18.
§§ 3, 4
1783, 32, § 5;
38, § 4
1806, 102
1818, 112, § 1.
1826, 64
1828, 121
1830, 15;
140, § 1.
R. S. 72,
§§ 1, 2
G. S. 102, § 26.

ing wood thereon should be sold and the proceeds placed on interest or 4
invested in a productive security, his guardian or conservator may sell 5
such real estate or wood upon obtaining a license therefor and proceed- 6
ing as hereinafter provided. If standing or growing wood is so sold, the 7
guardian or conservator may grant to the purchaser the privilege of 8
entering upon the land and cutting and carrying away such wood within 9
such time as the guardian or conservator may allow. 10

1867, 231
P. S. 140, § 3

R. L. 146, § 19.
1915, 23.

7 Met. 388.
184 Mass. 545.

Form of
petition and
license.
R. S. 72, § 7.
G. S. 102, § 27.
P. S. 140, § 4
R. L. 146, § 20.
1915, 23.

SECTION 22. To obtain such license, the guardian or conservator 1
shall file a petition setting forth the condition of the estate and the facts 2
and circumstances on which the petition is founded. If after an ex- 3
amination, on the oath of the petitioner or otherwise, the court finds 4
that it would be for the benefit of the ward that the sale should be made, 5
it may grant a license therefor, specifying therein whether the sale is to 6
be made for the maintenance of the ward and his family, or in order that 7
the proceeds may be placed on interest or invested as aforesaid. 8

Disposal of
proceeds of
sale if made
for main-
tenance.
R. S. 72, § 3.
G. S. 102, § 29.
P. S. 140, § 5
R. L. 146, § 21.
1915, 23.

SECTION 23. If the sale is made for the maintenance of the ward 1
and his family, the guardian or conservator shall apply the proceeds, so 2
far as necessary, to that purpose, and shall place the residue on interest 3
or invest it according to his best judgment until the capital is wanted 4
for such maintenance; in such case, the capital may be used for that pur- 5
pose as if it had been personal property. 6

Disposal of
proceeds of
sale if made
for investment.
R. S. 72, § 4.
G. S. 102, § 30.
P. S. 140, § 6.

SECTION 24. If the property is sold in order to place on interest or 1
invest the proceeds, the guardian or conservator shall make the invest- 2
ment according to his best judgment, or in pursuance of any order of the 3
court relative thereto. 4

R. L. 146, § 22.

1915, 23.

8 Allen, 125.

Property of
minor may be
sold by person
other than the
guardian.
1838, 190, § 1.
G. S. 102, § 31.
P. S. 140, § 7.
R. L. 146, § 23.

SECTION 25. A sale of the property of a minor for the purpose of 1
investment may be made upon the petition of the guardian or any friend 2
of the minor, and the court may authorize the guardian or another person 3
to sell and convey the property. The provisions of this chapter relative 4
to licenses and sales upon the petitions of guardians shall, except as 5
provided in the following section, apply to licenses and sales under this 6
section. 7

Disposal of
proceeds of
sale in such
case.
1838, 190, § 2.
1850, 45
G. S. 102, § 32.
P. S. 140, § 8.
R. L. 146, § 24.

SECTION 26. If the sale is made by a person other than the guardian, 1
the proceeds shall forthwith be paid to the guardian upon his giving 2
to the judge of probate a bond with sufficient sureties conditioned to 3
account for such proceeds. If there is no guardian, the proceeds shall be 4
placed on interest or invested by the person authorized to sell the prop- 5
erty, in like manner as is required of a guardian. 6

SALES BY GUARDIAN OF NON-RESIDENT WARD.

Transfer of
property of
non-resident
ward, etc.
1858, 117.
G. S. 109, § 23.
1861, 130.
1862, 139
1866, 122, § 1.

SECTION 27. A guardian or conservator appointed within the com- 1
monwealth, whose ward removes from or resides out of the commonwealth, 2
may sell the real estate of his ward and transfer and pay over the whole 3
or any part of the proceeds of such sale to a guardian, conservator, 4
trustee, committee or other official appointed by competent authority 5

6 in the state or country where the ward resides, upon such terms and in
 7 such manner as the probate court may, after notice to all parties inter-
 8 ested, decree upon petition filed therefor.

1915, 23.

149 Mass. 57.

P. S. 139, § 39.
 R. L. 146, § 25
 1907, 219, § 1.

MORTGAGES.

1 SECTION 28. The probate court may, upon petition and after notice
 2 to all persons interested, if upon a hearing it appears to be for the benefit
 3 of the estate, authorize an executor, administrator with the will annexed
 4 or administrator to mortgage any of the real estate for the purpose of
 5 paying debts, legacies or charges of administration or for the purpose
 6 of paying an existing lien or mortgage on the estate of the deceased;
 7 or it may authorize such executor or administrator to make an agreement
 8 for the extension or renewal of such existing mortgage.

Mortgage by
 executor or
 administrator.
 1864, 212,
 §§ 1, 2
 1875, 151.
 1876, 79, § 1.
 P. S. 134, § 19.
 1895, 140
 R. L. 146, § 26.

1 SECTION 29. The probate court may, upon petition of a guardian or
 2 conservator, if, after notice and a hearing, it appears to be necessary or
 3 expedient, authorize him to mortgage any real estate of his ward.

1871, 282, § 1.
 1873, 280, § 1.

P. S. 140, § 11.
 R. L. 146, § 27.

1915, 23.
 153 Mass. 137.

Mortgage by
 guardian or
 conservator
 1864, 212, § 3.

1 SECTION 30. A petition under either of the two preceding sections
 2 shall set forth a description of the estate to be mortgaged, the amount
 3 of money necessary to be raised and the purposes for which it is required;
 4 and the decree of the court upon such petition shall fix the amount for
 5 which the mortgage may be given and the rate of interest which may
 6 be paid thereon, and may order the whole or any part of the money
 7 secured by the mortgage to be paid from time to time out of the income
 8 of the property mortgaged.

Form of
 petition and
 decree
 1864, 212,
 §§ 1, 2
 1871, 282, § 2.
 1876, 79, § 2.
 P. S. 134, § 20.
 140, § 12.
 R. L. 146, § 28.
 166 Mass. 78.

LEASES.

1 SECTION 31. The probate court may, upon the petition of a guardian
 2 or conservator setting forth a description of the real estate of his ward
 3 which he desires to lease, the reason why it is necessary or expedient
 4 to give a written lease thereof, and the length of the term, if, after notice
 5 and a hearing, it appears to be necessary or expedient, authorize such
 6 guardian or conservator to give a written lease of said real estate, and
 7 the decree of the court shall fix the term and the amount for which it
 8 may be leased.

Lease of
 real estate
 of ward
 1894, 128
 R. L. 146, § 29.
 1915, 23.

POWERS OF FOREIGN EXECUTOR, ETC.

1 SECTION 32. An executor or administrator appointed in another state
 2 or country upon the estate of a person who was not at the time of his
 3 death a resident of this commonwealth and upon whose estate adminis-
 4 tration has not been granted in this commonwealth, duly qualified and
 5 acting, may file an authenticated copy of the record of his appointment
 6 and of his bond in the probate court for any county where there is
 7 real estate of the deceased; and such executor or administrator, after
 8 such notice to the state treasurer, creditors and all other persons interested
 9 as the court may order, may be licensed to sell said real estate or an
 10 undivided interest therein in such manner and upon such notice as the
 11 court orders. But such license shall not be granted unless the court
 12 finds that six months have expired since the death of the deceased, that
 13 the executor or administrator has given a sufficient bond and will be

Foreign exec-
 utor, etc., may
 be licensed to
 sell real estate.
 1817, 182, § 2.
 R. S. 71, § 21.
 G. S. 102, § 20.
 P. S. 134, § 16.
 1901, 315.
 R. L. 146, § 30.
 1918, 257,
 § 398
 1919, 5.
 1920, 2.

liable to account for the proceeds of the sale in the state or country 14
 where he was appointed, and that no creditor or other person interested 15
 will be prejudiced thereby. The net proceeds of such sale, after deduct- 16
 ing the expenses thereof and after the payment and satisfaction of all 17
 claims against said estate in this commonwealth, may be taken by said 18
 foreign executor or administrator out of the commonwealth to be ac- 19
 counted for in the court in which he received his appointment. 20

Foreign guardian or conservator may be licensed to sell real estate of ward. 1817, 182, § 1. R. S. 71, § 31; 72, § 14. G. S. 102, § 33. P. S. 140, § 9. R. L. 146, § 31. 1915, 23.

SECTION 33. If a person who resides out of the commonwealth is 1
 under guardianship or conservatorship in the state or country where 2
 he resides and has no guardian or conservator appointed in this com- 3
 monwealth, the foreign guardian or conservator may file an authenticated 4
 copy of his appointment in the probate court for any county where 5
 there is real estate of the ward; after which upon petition he may be 6
 licensed to sell, mortgage or lease the real estate of the ward in any 7
 county, for the purposes, in the manner and upon the terms provided 8
 in this chapter for a guardian or conservator appointed in this com- 9
 monwealth, except as provided in the following section. 10

Bond in certain cases. 1817, 182, § 2. R. S. 71, §§ 32, 33; 72, § 17. G. S. 102, §§ 34-36. P. S. 140, § 10. R. L. 146, § 32. 1915, 23.

SECTION 34. If the court finds that such foreign guardian or conser- 1
 vator has given bond with sufficient surety or sureties, in the state or 2
 country where he was appointed, to account for the proceeds of such 3
 sale, mortgage or lease, and if an authenticated copy of such bond is 4
 filed in said court, no further bond shall be required; otherwise, before 5
 such license is granted, he shall give bond payable to the judge of said 6
 court and his successors with sufficient surety or sureties and with 7
 condition to account for and dispose of said proceeds according to law. 8

Subsequent proceedings. 1817, 182. R. S. 71, § 24. G. S. 102, § 23. 1871, 122, § 2. P. S. 134, § 18. 1901, 315, § 1. R. L. 146, § 33. 1915, 23.

SECTION 35. A foreign executor, administrator, guardian or conser- 1
 vator who has been licensed to sell real estate shall, except as otherwise 2
 provided, give notice of the time and place of sale, and otherwise proceed 3
 as is provided for an executor, administrator, guardian or conservator, 4
 appointed in this commonwealth; and the evidence of such notice may 5
 be perpetuated in the same manner. 6

CHAPTER 203.

TRUSTS.

SECT.

CREATION OF TRUSTS.

1. Creation of trust concerning land.
2. Record to be notice of trust.
3. Purchasers, etc., without notice.

APPOINTMENT AND REMOVAL OF TRUSTEES.

4. Appointment of testamentary trustee.
5. Appointment to fill vacancy.
6. Trust estate to vest in new trustee on his giving bond, etc.
7. Bonds of trustees appointed by supreme judicial or superior court.
8. Inventory dispensed with in certain cases.

SECT.

9. Appraisal.
10. Letters required of foreign trustee in certain cases, etc.
11. Same subject. Notice to trustee.
12. Removal of trustee.
13. Resignation of trustee.
14. Executor, etc., of former trustee.

AGENT OF NON-RESIDENT TRUSTEE.

15. Agent of non-resident trustee.

SALE OF TRUST ESTATE.

16. Order for sale, etc., of trust estate, how obtained.

- SECT.
 17. Proceedings in case of persons not ascertained, etc. Effect.
 18. Property held in trust by minors, etc., may be sold and conveyed in certain cases.
 19. Trustee may sell personal property unless otherwise provided.
 20. Sufficiency of receipt of trustee.
 21. Corporations, etc., not bound to see to execution of trusts to which shares are subject.
 22. Brokers' commission, etc., to be charged to principal.

MORTGAGE OF TRUST ESTATE.

23. Trustees may be authorized to mortgage, etc.
 24. Form of petition and decree.

DISTRIBUTION OF TRUST ESTATE.

25. Distribution of trust estate.

SETTLEMENT OF CERTAIN TRUST ESTATES HAVING ABSENTEE BENEFICIARIES.

26. Definition of absentee.
 27. Petition for transfer of trust estate of absentee in certain cases.
 28. Notice.

- SECT.
 29. Return day and service.
 30. Certain persons may appear and answer, etc.
 31. Guardians ad litem may be appointed, etc.
 32. Court to find facts, order transfer or authorize sale of trust estate, etc.
 33. New trustees to give bond for the payment of fund. Endorsement for costs in suit on bond.
 34. Liability and powers of new trustee.
 35. No suit, etc., to be brought against new trustee after six years.
 36. Trust estates may be distributed to known beneficiaries in certain cases, etc.
 37. Where petition shall be brought.
 38. Court may decree that income shall be paid to certain persons.
 39. Certain sections to apply to trusts now existing or hereafter established.

TRUSTS FOR THE BENEFIT OF CREDITORS.

40. Validity of certain acts of trustees for creditors, subsequent insolvency, etc.
 41. Same subject. Requirements for validity.
 42. Termination of trusts for benefit of creditors created by persons deceased.

CREATION OF TRUSTS.

1 SECTION 1. No trust concerning land, except such as may arise or
 2 result by implication of law, shall be created or declared unless by a
 3 written instrument signed by the party creating or declaring the trust
 4 or by his attorney.

Creation of trust concerning land.
 29 Car. 11, c. 3, § 7.

1692-3, 15, § 5.	10 Allen, 15.	137 Mass. 184.	232 Mass. 535.
1783, 37, § 3.	11 Allen, 15, 542.	158 Mass. 146.	233 Mass. 428.
R. S. 59, § 30.	14 Allen, 523.	160 Mass. 195, 538.	240 Mass. 380.
G. S. 100, § 19.	97 Mass. 87.	163 Mass. 291.	244 Mass. 251, 453.
P. S. 141, § 1.	103 Mass. 484.	167 Mass. 270.	248 Mass. 177, 354.
R. L. 147, § 1.	109 Mass. 581.	169 Mass. 598.	251 Mass. 218.
18 Mass. 221.	110 Mass. 392.	205 Mass. 547.	252 Mass. 354.
12 Pick. 233.	112 Mass. 171.	210 Mass. 430.	254 Mass. 429.
4 Met. 537.	113 Mass. 372.	225 Mass. 480.	259 Mass. 546.
2 Cush. 226.	118 Mass. 108.	228 Mass. 533.	260 Mass. 494.
5 Cush. 431.	129 Mass. 23.	230 Mass. 313.	267 Mass. 533.
10 Cush. 458.	135 Mass. 299.	231 Mass. 324.	

1 SECTION 2. If a trust concerning land is created or declared by such
 2 instrument, the recording of the instrument in the registry of deeds for
 3 the county or district where the land lies shall be equivalent to actual
 4 notice to every person claiming under a conveyance, attachment or
 5 execution thereafter made or levied.

Record to be notice of trust.
 R. S. 59, § 32.
 G. S. 100, § 21.
 P. S. 141, § 2.
 R. L. 147, § 2.
 168 Mass. 118.

197 Mass. 270.

1 SECTION 3. No trust concerning land, whether implied by law or
 2 created or declared by the parties, shall defeat the title of a purchaser
 3 for a valuable consideration without notice of the trust, or prevent a
 4 creditor who has no notice of the trust from attaching the land or from
 5 taking it on execution as if no such trust existed.

Purchasers, etc., without notice.
 R. S. 59, § 31.
 G. S. 100, § 20.
 P. S. 141, § 3.
 R. L. 147, § 3.

111 Mass. 270.	173 Mass. 378.	197 Mass. 270.
130 Mass. 152.	196 Mass. 509.	200 Mass. 498.

APPOINTMENT AND REMOVAL OF TRUSTEES.

Appointment of testamentary trustee. 1845, 158. 1855, 307, § 1. G. S. 100, § 7. P. S. 141, § 4. R. L. 147, § 4.

SECTION 4. If a testator has omitted in his will to appoint a trustee in this commonwealth and such appointment is necessary to carry into effect the provisions of the will, the probate court may, after notice to all persons interested, appoint a trustee who shall have the same powers, rights and duties and the same title to the estate as if originally appointed by the testator.

Appointment to fill vacancy. 1817, 190, §§ 40, 41. R. S. 69, §§ 7, 8. 1843, 19. 1852, 212. G. S. 100, § 9. 1877, 31. P. S. 141, § 5. R. L. 147, § 5.

SECTION 5. If a trustee under a written instrument declines, resigns, dies or is removed before the objects of the trust are accomplished and no adequate provision for filling the vacancy is made therein the supreme judicial court, the superior court or the probate court shall, after notice to all persons interested, appoint a new trustee to act solely or jointly with the others as the case may be.

- 12 Pick. 445 115 Mass. 424. 129 Mass. 339, 513. 227 Mass. 498.
4 Met. 330. 117 Mass. 219. 148 Mass. 431. 234 Mass. 374.
12 Cush. 41. 120 Mass. 412. 149 Mass. 92. 247 Mass. 288.
1 Gray, 220. 121 Mass. 568. 186 Mass. 25. 251 Mass. 552.
12 Allen, 293. 128 Mass. 272. 188 Mass. 510. 260 Mass. 19, 515.
102 Mass. 11.

Trust estate to vest in new trustee on his giving bond, etc. 1817, 190, § 40. R. S. 69, § 8. 1843, 19. 1852, 212. G. S. 100, §§ 9, 10. 1878, 254, § 1. P. S. 141, § 6. R. L. 147, § 6. 2 Met. 243. 6 Gray, 428.

SECTION 6. A trustee appointed under the preceding section, or appointed in the place of a former trustee in conformity with a written instrument creating a trust, shall, upon giving such bond as may be required, have the same powers, rights and duties and the same title to the estate, whether as sole or joint trustee, as if originally appointed; and the court may order any conveyances to be made by the former trustee or his representatives or by the other remaining trustees which it may find proper or convenient to vest the trust estate in the new trustee either solely or jointly with the others.

- 5 Allen, 540. 129 Mass. 339. 171 Mass. 586. 224 Mass. 184.
102 Mass. 11. 132 Mass. 405. 179 Mass. 223. 247 Mass. 288.
115 Mass. 424. 134 Mass. 426. 186 Mass. 25. 260 Mass. 19, 515.
117 Mass. 219. 159 Mass. 484. 211 Mass. 327.

Bonds of trustees appointed by supreme judicial or superior court. 1917, 32.

SECTION 7. The bond required of a trustee appointed by the supreme judicial or superior court under section five shall be payable to the commonwealth, and shall otherwise be in such form as the court shall require. Such bond may be enforced in the name of the commonwealth by the attorney general, or by any person interested therein and duly authorized to take such action by the court where the bond is filed after notice to the attorney general. Any sums recovered shall be paid over or administered as the court directs.

Inventory dispensed with in certain cases. 1817, 190, § 41. R. S. 69, § 9. G. S. 100, § 11. P. S. 141, § 14.

SECTION 8. If a trustee is appointed by the probate court as the successor of a prior trustee, the court may dispense with the making and return of an inventory if it appears to be unnecessary, and in such case the condition of the bond shall be altered accordingly.

R. L. 147, § 7.

Appraisal. R. S. 69, § 10. G. S. 100, § 13. P. S. 141, § 15. R. L. 147, § 8.

SECTION 9. If an inventory is required to be returned by a trustee, the estate and effects shall be appraised in the manner provided by section six of chapter one hundred and ninety-five.

1 SECTION 10. If a trustee who derives his appointment or authority
 2 from a court having no jurisdiction in the commonwealth holds land in
 3 the commonwealth in trust for persons resident therein, he shall, upon
 4 petition to the probate court for the county where the land lies, and
 5 after notice, be required to take out letters of trust from said court; and
 6 upon his neglect or refusal so to do, the court shall declare such trust
 7 vacant, and shall appoint a new trustee, in whom the trust estate shall
 8 vest in like manner as if he had been originally appointed or authorized
 9 by said court.

Letters re-
 quired of
 foreign trustee
 in certain
 cases, etc.
 1871, 327, § 1.
 P. S. 141, § 7.
 R. L. 147, § 9.

1 SECTION 11. The notice to the trustee required by the preceding
 2 section may be given by serving him with a copy of the petition, and
 3 of the citation thereon, fourteen days at least before the return day of
 4 such citation, or in such other manner as the court may order.

Same subject
 Notice to
 trustee.
 1871, 327, § 2.
 P. S. 141, § 8.
 R. L. 147, § 10.

1 SECTION 12. The supreme judicial court, the superior court or the
 2 probate court may, upon petition of a party beneficially interested in
 3 a trust under a written instrument, and after notice to the trustee and
 4 all persons interested, remove the trustee if it finds that such removal
 5 is for the interests of the beneficiaries of the trust or if he has become
 6 insane or otherwise incapable or is unsuitable therefor.

Removal of
 trustee.
 1817, 190, § 41.
 R. S. 69, § 7.
 1843, 19.
 1852, 212.
 G. S. 100, § 8.
 P. S. 141, § 9.
 R. L. 147, § 11.

1 Gray, 220.
 101 Mass. 223.
 110 Mass. 225.

114 Mass. 356.
 118 Mass. 215.
 121 Mass. 568.

145 Mass. 490.
 150 Mass. 185.
 224 Mass. 474.

1 SECTION 13. A trustee may resign his trust, and the guardian or
 2 committee of an insane trustee, appointed by a court having jurisdic-
 3 tion, may on behalf of the insane person resign his trust, if the court
 4 authorized to appoint a trustee finds it proper to allow such resignation,
 5 and in the case of an insane trustee the court may accept such resigna-
 6 tion without notice to him.

Resignation
 of trustee.
 1817, 190, § 39.
 R. S. 69, § 5.
 G. S. 100, § 5.
 1874, 352, § 1.
 P. S. 141, § 10.
 R. L. 147, § 12.
 1916, 301.

1 SECTION 14. A person succeeding to a trust as executor or adminis-
 2 trator of a former trustee shall not be required to accept such trust.

Executor, etc.,
 of former
 trustee.

1817, 190, § 39.
 R. S. 69, § 6.

G. S. 100, § 6.
 P. S. 141, § 11.

R. L. 147, § 13.

AGENT OF NON-RESIDENT TRUSTEE.

1 SECTION 15. Sections eight, nine and ten of chapter one hundred
 2 and ninety-five shall apply to non-resident trustees, except that said
 3 writing shall be filed in the clerk's office of the court appointing him if
 4 appointed by a court other than the probate court.

Agent of
 non-resident
 trustee.
 1889, 462.
 1893, 118.

R. L. 147, § 14.

235 Mass. 171.

SALE OF TRUST ESTATE.

1 SECTION 16. If the sale and conveyance, transfer or exchange of any
 2 real or personal property held in trust appears to be necessary or expe-
 3 dient, the supreme judicial court, the superior court or the probate court
 4 may, upon petition of a trustee or other person interested, after notice,
 5 order such sale and conveyance, transfer or exchange to be made, and
 6 the investment, reinvestment and application of the proceeds of such
 7 sale in such manner as will best effect the objects of the trust. In the
 8 case of personal property the probate court may make such order with
 9 or without notice and without the appointment of a guardian ad litem

Order for sale,
 etc., of trust
 estate, how
 obtained.
 1820, 54, § 3.
 R. S. 69, § 11.
 1846, 242.
 G. S. 100,
 §§ 14, 16.
 1864, 168, § 1.
 1869, 331.
 P. S. 141, § 20.
 R. L. 147, § 15.
 1907, 262.
 1917, 155; 279,
 § 42.

14 Allen, 24.
103 Mass. 59.
109 Mass. 1.
119 Mass. 1.
150 Mass. 377.
182 Mass. 106.
196 Mass. 217.
199 Mass. 344.
224 Mass. 474.
247 Mass. 288.

or next friend as provided in the following section. The fact that the trustee has the necessary authority under the terms of the instrument creating the trust or by law to make such sale and conveyance, transfer or exchange without order of the court shall not bar proceedings under this section, but nothing herein contained shall be deemed to require a license where such authority exists.

258 Mass. 348.

273 Mass. 56.

Proceedings in case of persons not ascertained, etc. Effect. 1863, 25.
1864, 168, § 2.
P. S. 141, § 21.
R. L. 147, § 16.
146 Mass. 100.

SECTION 17. If the court, upon proceedings under the preceding section, finds that said estate may be held in trust for, or that a remainder or contingent interest therein may be limited over to, persons not ascertained or not in being, notice shall be given in such manner as the court may order to all persons who are or may become interested in such estate, and to all persons whose issue, not then in being, may become so interested; and the court shall of its own motion in every such case appoint a suitable person to appear and act therein as the next friend of all persons not ascertained or not in being, who are or may become interested in such estate, and the provisions of sections thirty-four and thirty-five of chapter two hundred and one consistent herewith shall apply to such appointment. A conveyance or transfer made after such notice and proceeding shall be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

Property held in trust by minors, etc., may be sold and conveyed in certain cases. 1845, 64.
G. S. 100, § 15.
1869, 331.
P. S. 141, § 22.
R. L. 147, § 17.
116 Mass. 377.
119 Mass. 52.
137 Mass. 252.
163 Mass. 503.

SECTION 18. If a person who is seized or possessed of real or personal property or of an interest therein upon a trust, express or implied, is a minor, insane, out of the commonwealth or not amenable to the process of any court therein having equity powers, and if in the opinion of the supreme judicial court, the superior court or the probate court a sale should be made of such property or of an interest therein, or a conveyance or transfer should be made thereof in order to carry into effect the objects of the trust, the court may order such sale, conveyance or transfer made and may appoint a suitable person in the place of such trustee to sell, convey or transfer the same in such manner as it may require. If a person so seized or possessed of an estate or entitled thereto upon a trust is within the jurisdiction of the court, he or his guardian may be ordered to make such conveyances as the court orders.

Trustee may sell personal property unless otherwise provided. 1918, 68, § 1.

SECTION 19. When personal property is subject to a trust contained in a written instrument, the trustee or trustees may, unless there is some provision therein to the contrary or unless it would be inconsistent with the purposes of the trust, change the investment of such property from time to time and for that purpose make sales and transfers thereof.

Sufficiency of receipt of trustee. 1918, 68, § 2.

SECTION 20. The receipt of a trustee, or of any one or more of several trustees, for any money, securities or other personal property or effects payable, transferable or deliverable to him or them under any trust or power shall be a sufficient discharge therefor to the person paying, transferring or delivering it, and no such person shall be bound to see to the application thereof.

Corporations, etc., not bound to see to

SECTION 21. A company or corporation, public or private, or quasi corporation, or unincorporated association, or the managers of any

3 trust, or any transfer agent, registrar or other agent of such company,
 4 corporation, quasi corporation, unincorporated association or managers,
 5 shall not be bound to see to the execution of any trust, express, implied
 6 or constructive, to which any of its shares, bonds or securities are sub-
 7 ject, or to ascertain or inquire whether the trust authorizes a transfer
 8 thereof by the holder, but this section shall not be a protection against
 9 liability for participating with actual knowledge in a breach of trust,
 10 and the fact that the trust is of record shall not constitute such actual
 11 knowledge.

execution of trusts to which shares are subject. 1918, 68, § 3. 1926, 226.

1 SECTION 22. Unless otherwise expressly provided by the trust instru-
 2 ment, trustees' and brokers' commissions and other expenses properly
 3 incurred and paid by trustees for or in connection with the sale, exchange
 4 or purchase of property shall be charged to principal. Commissions
 5 and expenses paid by trustees for negotiating or effecting leases for
 6 terms longer than five years shall be charged to principal in the first
 7 instance, and a part thereof proportionate to the number of years of the
 8 term shall be repaid from income to principal in each year while the
 9 lease and the trust co-exist.

Brokers' commission, etc., to be charged to principal. 1907, 371. 227 Mass. 392.

MORTGAGE OF TRUST ESTATE.

1 SECTION 23. The court having jurisdiction of a trust created by a
 2 written instrument may, upon petition and after notice to all persons
 3 interested, if upon hearing it appears to be for the benefit of the trust
 4 estate, authorize trustees to mortgage any real estate held by them in
 5 trust for the purpose of paying assessments upon the trust estate for
 6 betterments or for the expense of repairs and improvements on such
 7 estate made necessary by such betterments or by the lawful taking of
 8 such estate or of a part thereof by public authority; for the purpose of
 9 paying the expense of erecting, altering, completing, repairing or im-
 10 proving a building on such estate; or for the purpose of paying the expense
 11 of other improvements of a permanent nature made or to be made on
 12 such estate; or for the purpose of paying an existing lien or mortgage
 13 on such estate or on a part thereof; or it may authorize such trustees
 14 to make an agreement for the extension or renewal of such existing
 15 mortgage.

Trustees may be authorized to mortgage, etc. 1869, 451, § 1. 1872, 370, § 1. 1876, 199, § 1. P. S. 141, § 23. 1889, 66. R. L. 147, § 18. 166 Mass. 78. 203 Mass. 328. 218 Mass. 135.

1 SECTION 24. Such petition shall set forth a description of the estate
 2 to be mortgaged, the amount of money necessary to be raised and the
 3 purposes for which such money is required, and, if made to a probate
 4 court, shall be made in the county where trustees were appointed, if
 5 the trust was created by will, or, if it was not so created, in the county
 6 where the estate, or a part thereof, which is the subject of the petition
 7 is situated. The decree of the court upon such petition shall fix the
 8 amount for which the mortgage may be given and the rate of interest
 9 which may be paid thereon, and may order the interest and the whole
 10 or any part of the money secured by the mortgage to be paid from time
 11 to time from the income of the property mortgaged.

Form of petition and decree. 1872, 370, §§ 1, 2. 1876, 199, § 2. P. S. 141, § 24. R. L. 147, § 19.

DISTRIBUTION OF TRUST ESTATE.

1 SECTION 25. If under a written instrument a trust estate is to be
 2 distributed in whole or in part, the probate court, upon petition of a
 3 person interested, after such notice as it may direct, may order the

Distribution of trust estate. 1898, 65, § 1. R. L. 147, § 20. 175 Mass. 239.

227 Mass. 242. trustee to convert said estate, both real and personal, or either, into 4
 238 Mass. 599. cash and distribute it among such persons as under such instrument 5
 271 Mass. 467. are entitled thereto. 6

SETTLEMENT OF CERTAIN TRUST ESTATES HAVING ABSENTEE BENEFICIARIES.

Definition of SECTION 26. In sections twenty-seven to thirty-nine, inclusive, the 1
 absentee. word "absentee" shall mean a beneficiary who has disappeared, ab- 2
 1905, 326, § 1. scended or is absent from the commonwealth, or has disappeared or 3
 211 Mass. 198. absconded from the place without the commonwealth, where he was last 4
 known to be, and has no known agent in the commonwealth, and it is 5
 not known by the petitioner where he is, and the date of such disap- 6
 pearance or absconding and of the time when it was last known by the 7
 petitioner where he was and when he was last heard from or heard of 8
 shall have been more than fourteen years before the filing of the petitions 9
 provided for in said sections. 10

Petition for SECTION 27. If a trustee appointed under a will by a probate court 1
 transfer of trust estate of the commonwealth holds trust estate the final disposition of which 2
 of absentee in of absentee in depends upon the death of an absentee, such trustee, or any person who 3
 certain cases. would be interested in the trust estate or any portion thereof, if such 4
 1905, 326, § 1. absentee were dead, may file a petition under oath in the probate court 5
 211 Mass. 198. for the county where such trustee was appointed, stating to the best of 6
 his knowledge and belief the name, age, last known occupation, last 7
 known residence and address of such absentee, and the last place where 8
 he was known to be, the date and circumstances of his disappearance or 9
 absconding, and the names and residences of his wife, children and 10
 issue at the time of his disappearance or since, and of those who would 11
 have been his heirs at law and next of kin if he had died at the time of 12
 filing the petition, and the names and residence of the family of such 13
 absentee, and of other persons of whom inquiry may be made, and con- 14
 taining a schedule or statement of such trust estate, real and personal, 15
 so far as known, and the names and residences, so far as known, of the 16
 persons who would be entitled to the trust estate if said absentee had 17
 died intestate within the commonwealth on the day fourteen years after 18
 the date of his disappearance. Such petition shall contain as parties 19
 the name of such trustee and of such absentee and the names and resi- 20
 dences, so far as known to the petitioner, of the persons who would be 21
 entitled to the trust estate if such absentee had died intestate within the 22
 commonwealth on said day, and of the persons who under his will or 23
 otherwise would be entitled to the trust estate if he had then died, and 24
 the description of the class of persons, if their names or existence are 25
 unknown, who might be entitled as aforesaid, and all persons whom it 26
 may concern, excepting however any of such persons or parties who are 27
 petitioners, and shall pray that the trust estate, both principal and any 28
 accumulations from unpaid income or otherwise, shall be transferred to 29
 the persons as trustees who would be entitled to such trust estate if such 30
 absentee had died within the commonwealth on the day fourteen years 31
 after the date of his disappearance, and in the proportions to which 32
 each would be entitled. 33

Notice. SECTION 28. If the petition is brought by such trustee, the court 1
 1905, 326, § 2. shall issue a notice as hereinafter provided. If brought by a person other 2

3 than the trustee, a subpœna shall be served upon the trustee as in equity,
 4 and upon proof of the existence of such trust estate as aforesaid by
 5 answer of such trustee or otherwise, which answer shall be filed within
 6 one month after the return day of such subpœna and shall set forth a
 7 schedule or statement of such trust estate, the court shall issue a notice
 8 as hereinafter provided. The notice issued by the court shall recite
 9 the substance of the petition, and shall be addressed to such absentee
 10 and to all persons who claim an interest in said trust estate, and to all
 11 whom it may concern, and to all the persons and classes of persons
 12 named as respondents in the petition, citing them to appear at a time
 13 and place named and show cause why said estate should not be held
 14 and disposed of under sections twenty-six to thirty-nine, inclusive.

1 SECTION 29. The return day of said notice shall be not less than six
 2 months after the date of such order. The court shall order a copy of
 3 said notice to be served on all of said parties who may reside within the
 4 commonwealth, within sixty days after the date of such notice. Said
 5 notice shall be published in one or more newspapers within the common-
 6 wealth, and also, if within the United States, in one or more newspapers,
 7 if any such there be, in the town, or in the county, in case there is no
 8 newspaper published in such town, where the absentee last resided or
 9 was known to have last been. Such publication shall be at least once in
 10 each of three successive weeks, within thirty days after the date of the
 11 order in such newspaper or newspapers published within the common-
 12 wealth, and within sixty days after the date of the order in such news-
 13 paper or newspapers published without the commonwealth, and a copy
 14 of the notice shall be mailed within thirty days after the date of the
 15 order to the last known address of such absentee. The court may order
 16 further notice to be given within or without the commonwealth. Proof
 17 of such service shall be made by affidavit, or in such other manner as the
 18 court may order.

Return day
 and service,
 1905, 326, § 3.
 211 Mass. 198.

1 SECTION 30. The respondents and the absentee and any person
 2 claiming an interest in the estate may appear and show cause why the
 3 prayer of the petition should not be granted, and may appear and answer
 4 on or before the return day or within such further time as the court may
 5 allow. By the description in the notice, "To all whom it may concern",
 6 all the world are made parties defendant and shall be concluded by the
 7 order or decree.

Certain persons
 may appear
 and answer,
 etc.
 1905, 326, § 4.
 255 Mass. 214.

1 SECTION 31. The court may appoint a suitable person to appear and
 2 act in said proceedings as guardian ad litem for minors and for all persons
 3 and classes or descriptions of persons under disability or not ascertained
 4 or unknown or not in being or out of the commonwealth, and who under
 5 the provisions of the will in regard to said trust estate or otherwise may
 6 be or may become interested in said trust estate, and the court shall
 7 appoint a suitable person to appear and act therein as guardian ad litem
 8 of said absentee. An order or decree in such proceedings, made after
 9 such appointment, shall be conclusive upon all persons for whom such
 10 guardian ad litem was appointed.

Guardians ad
 litem may be
 appointed, etc.
 1905, 326, § 5.

1 SECTION 32. The court shall find the date of the disappearance or
 2 absconding of the absentee, and any other material facts. If the court

Court to find
 facts, order
 transfer or

authorize sale
of trust estate,
etc.
1905, 326, § 6.
255 Mass. 214.

finds that such disappearance has been continuous for more than fourteen 3
years next preceding the filing of the petition, that upon the evidence 4
presented the absentee has not been heard from or known of within such 5
fourteen years, and that the facts found warrant a presumption of death, 6
the court shall order the trust estate transferred to the persons as trustees 7
to whom, and at the time or times and in the shares and proportions in 8
which, it would, under the provisions of the trust of said property as 9
set forth in the will, be distributed if said absentee had died within the 10
commonwealth on the day fourteen years after the date of the disap- 11
pearance or absconding, as found and recorded by the court. And by 12
such order all the right, title and interest of said absentee in said trust 13
estate and of all other persons, except those to whom as trustees said 14
trust estate is to be turned over and paid in pursuance of said order, 15
shall, as against the said trustee appointed under the will by the probate 16
court, be barred, and no action, suit or petition in any form shall be 17
begun by, or for the benefit of, such absentee or such other persons against 18
the said trustee for or on account of said trust estate or its proceeds; 19
and the court may authorize the trustee to sell at public or private sale 20
the said trust estate or any part thereof and to convert it into money 21
in order to make transfer thereof as aforesaid. 22

New trustees
to give bond
for the pay-
ment of fund.
Endorsement
for costs in
suit on bond.
1905, 326, § 7.

SECTION 33. Upon the transfer in pursuance of such decree to each 1
of such new trustees of his portion of the trust estate or fund, he shall 2
give bond to be filed in the court in said case, in such sum and with or 3
without sureties as the court may order, to the judge of said court and 4
his successors in office and with condition substantially that he will pay 5
and deliver to such absentee, if living, or to any persons claiming under 6
him, as his heirs at law or as named in his will as recipients of such trust 7
estate under the exercise of any power of appointment by the said 8
absentee or persons otherwise claiming the fund, the fund which such 9
trustee has received, with the accumulations thereof, if any, less reason- 10
able disbursements and compensation, if in the suit on said bond such 11
absentee or other person shall be found to be lawfully entitled to said 12
trust estate or fund. Such bond may be put in suit by such absentee 13
or other persons for his or their own benefit. In every action on such 14
bond the writ shall be endorsed by the persons for whose benefit or at 15
whose request the action is brought or by their attorney, and the en- 16
dorsers shall be liable for the costs of the suit, and execution therefor 17
shall be issued against them and not against the judge of said court. 18

Liability and
powers of new
trustee.
1905, 326, § 8.

SECTION 34. Such new trustee shall be liable only for gross negli- 1
gence. He may in his discretion invest and reinvest the trust fund or 2
estate delivered to him and sell real and personal estate at public auction 3
or private sale and execute instruments necessary to transfer the title 4
thereto. If such new trustee dies before the expiration of the six years 5
named in the following section, his estate shall be liable on the bond 6
required of such trustee. 7

No suit, etc.,
to be brought
against new
trustee after
six years.
1905, 326, § 9.

SECTION 35. After the expiration of six years from the filing of said 1
bond by said new trustee no action, suit or petition in any form shall 2
be brought against him on said bond or otherwise by said absentee or 3
person claiming under him or otherwise claiming the estate in the hands 4
of such new trustee. 5

1 SECTION 36. If during the continuance or upon the termination of
 2 a trust under a will or written instrument one of the beneficiaries be-
 3 comes an absentee as defined in section twenty-six, the trustee may pay
 4 the income or distribute the trust estate to the known beneficiaries in
 5 the proportions to which they would be entitled if such absentee were
 6 present in the commonwealth, and as to the remaining part to which
 7 such absentee would be entitled if present, such trustee or any person
 8 who would be interested in the share of such absentee if he were dead
 9 may take like proceedings with reference to such share as are provided
 10 for in the ten preceding sections.

Trust estates
 may be dis-
 tributed to
 known ben-
 efiaries in
 certain cases,
 etc.
 1905, 326, § 11.

1 SECTION 37. In cases brought under the preceding section the pe-
 2 tition, if brought on account of a trust under a will, shall be brought
 3 in the probate court for the county where the trustee was appointed,
 4 and, if brought on account of a trust under a written instrument other
 5 than a will, shall be brought in the probate court of any county where
 6 any of the parties interested in the trust reside or where any of the land
 7 held in trust is situated. If any probate court has assumed jurisdiction
 8 of the trust, the petition shall be brought in that court.

Where petition
 shall be
 brought
 1905, 326, § 12.

1 SECTION 38. The court may at any time during the continuance of
 2 the trust on like petition and other proceedings as provided in sections
 3 twenty-six to thirty-seven, inclusive, decree that any income then accrued
 4 or thereafter accruing for the benefit of such absentee shall be paid to the
 5 persons as trustees to whom, and at the time or times and in the shares
 6 and proportions in which, it would be distributed if said absentee had
 7 died on the day fourteen years after the date of the disappearance or
 8 absconding, as found and recorded by the court.

Court may
 decree that
 income shall
 be paid to
 certain persons
 1905, 326, § 13

1 SECTION 39. Sections twenty-six to thirty-eight, inclusive, shall apply
 2 to existing trusts heretofore established as well as to trusts hereafter
 3 established.

Certain sections
 to apply to
 trusts now
 existing or
 hereafter
 established.

1905, 326, § 10

TRUSTS FOR THE BENEFIT OF CREDITORS.

1 SECTION 40. If a debtor residing in the commonwealth has made
 2 an assignment to a trustee for the benefit of his creditors, the acts of
 3 the trustee thereunder in protecting and caring for the property and
 4 converting it into money, if done in good faith and with reasonable
 5 judgment and discretion, shall, subject to the following section, be valid
 6 notwithstanding subsequent proceedings in insolvency by or against
 7 the debtor, and the assignee in insolvency shall, if such assignment is
 8 avoided by him, recover the net amount of money received for, or the
 9 price of, the property sold and converted by such trustee instead of the
 10 property itself.

Validity of
 certain acts
 of trustees
 for creditors,
 subsequent
 insolvency, etc
 1887, 340, § 1
 R. L. 147, § 21.
 187 Mass. 296
 221 Mass. 384.

1 SECTION 41. The preceding section shall not apply to the acts of such
 2 trustee unless the assignment conveys all the property and estate of the
 3 debtor wherever situated, either within or without the commonwealth,
 4 not exempt from attachment by the laws thereof, and provides for its
 5 distribution in substantial conformity with chapter two hundred and
 6 sixteen; nor unless a majority in number and value of the creditors,
 7 whose claims are neither secured nor preferred by said chapter, have

Same subject
 Requirements
 for validity.
 1887, 340,
 §§ 1, 2.
 1897, 326.
 R. L. 147, § 22
 187 Mass. 296
 201 Mass. 190
 220 Mass. 122
 221 Mass. 384

assented in writing to the assignment; nor unless the trustee, before proceeding to act and immediately on the acceptance of his trust, gives written notice by mail or otherwise to all known creditors of the debtor of such assignment and his acceptance thereof, and deposits with the clerk of the town where the principal business of the debtor is carried a copy of such assignment, which shall be filed and indexed by said clerk upon receiving a fee of one dollar therefor.

Termination
of trusts for
benefit of
creditors
created by
persons
deceased.
1850, 241,
§§ 1, 3.
G. S. 100,
§§ 17, 18.
P. S. 141,
§§ 25, 26.
R. L. 147, § 23.

SECTION 42. If, upon petition or otherwise, the probate court for the county where letters testamentary or of administration have been granted on the estate of a deceased person finds that such person in his lifetime made a conveyance of real estate in the commonwealth in trust for the benefit of his creditors, and the trustee certifies that all the debts secured by such conveyance and due to persons other than himself have been paid or otherwise adjusted to the satisfaction of the creditors so far as known and that he desires to settle his trust account and to terminate the trust, the court shall appoint a time and place for hearing all persons interested in such trust, of which notice shall be given by publication in a newspaper published in the county, or otherwise, as the court orders. Upon such hearing the court may terminate the trust so far as the creditors and persons claiming under them are concerned, may discharge such real estate from the trust, may settle the trust account, and make any further order as to the disposition, distribution or partition of the remaining trust estate, consistent with the provisions of the original instrument creating the trust. This section shall not apply to any case where the instrument creating the trust does not bear date more than six years previous to the time appointed for the hearing; nor shall it affect the operation of the insolvent laws of the commonwealth.

CHAPTER 204.

GENERAL PROVISIONS RELATIVE TO SALES, MORTGAGES, RELEASES, COMPROMISES, ETC., BY EXECUTORS, ETC.

SECT.

GENERAL PROVISIONS.

1. Executor, etc., to convey real estate which testator, etc., had agreed to convey or require reconveyance if estate, etc., entitled.
2. Sale of real estate dependent upon consent of a deceased person.
3. Foreign executor, etc., may be licensed to receive and dispose of personal property.
4. How executor, etc., may release vested or contingent interests.
5. Sale or release of lots in cemeteries.
6. Form of mortgage given under license of court.
7. Venue of petitions for sales by foreign executor, etc.

SECT.

8. License to sell to remain in force for one year.
9. Surplus of proceeds of sales to be treated as real estate.
10. Costs in case of objection to the granting of a license.
11. Examination of persons licensed to sell land.
12. Sale of church, etc., property.

COMPROMISES, ETC.

13. Compromises by executors, etc., under authority of probate court.
14. Executors, etc., may be authorized to compromise controversies, etc.
15. Compromise of wills.
16. Protection of contingent interests.

<p>SECT. 17. Effect of compromise. 18. Minor, etc., to be represented by guardian, etc.</p> <p>IRREGULAR AND INVALID SALES, ETC., BY EXECUTORS, ETC.</p> <p>19. Irregular, etc., sale not to be avoided in certain cases. 20. Where contestant claims under title paramount.</p>	<p>SECT. 21. When adjudication as to debts final. 22. Action or entry for recovery of land sold by executor, etc. 23. Confirmation, etc., of void acts of executor, etc. 24. Ratification of doubtful acts of executor, etc. 25. Liability of irregularly appointed executor, etc., to account. 26. Failure of proof of notice of appointment or sale, how remedied.</p>
--	--

GENERAL PROVISIONS.

SECTION 1. If a person who has entered into a written agreement for the conveyance of real estate or holds real estate which by operation of law is subject to be conveyed to others, dies or is put under guardianship or conservatorship or disappears or absconds with the result that a receiver of his property is appointed under chapter two hundred, without having made such conveyance, the probate court shall have jurisdiction in equity concurrent with the supreme judicial and superior courts to enforce specific performance of such agreement or obligation to convey; and, upon a petition therefor by any person interested in the conveyance, shall, after notice, if upon hearing it appears that the deceased, were he living, or the ward, were he not under guardianship or conservatorship, or the absentee, had he not disappeared or absconded as aforesaid, would be required to make the conveyance, order the executor or administrator, or the guardian, conservator or receiver to make the same, which conveyance shall have like force and effect as if made by the person who agreed or was liable to convey. Such concurrent jurisdiction shall also extend to the specific enforcement of conveyance by persons alleged to be improperly holding or retaining property belonging to the estate of a deceased person, or to a person under guardianship or conservatorship, or to a person of whose property a receiver has been appointed under said chapter two hundred, and to the cancellation of deeds, releases or other conveyances or acquittances executed by a person since deceased or by a person since placed under guardianship or conservatorship or of whose property a receiver has been appointed as aforesaid, on petition of the executor, administrator, guardian, conservator or receiver, as the case may be.

Executor, etc., to convey real estate which testator, etc., had agreed to convey or require reconveyance of estate, etc., entitled.
C. L. 296, § 3
1783, 32, § 4
R. S. 74, §§ 8-13.
1855, 374.
1859, 36.
G. S. 117, §§ 5, 6.
P. S. 142, § 1.
1883, 223
R. L. 148, § 1.
1915, 23.
1929, 342, § 2
8 Grav. 542
108 Mass. 552
119 Mass. 482
173 Mass. 450
179 Mass. 451.
184 Mass. 534
226 Mass. 224
267 Mass. 316.

SECTION 2. If, under a will, the sale of real estate by a trustee, executor or administrator with the will annexed is dependent upon the consent of a person who has deceased, the probate court having jurisdiction of the settlement of the estate may, in its discretion, and if all parties interested assent, authorize the sale and conveyance of such real estate in like manner as if no such consent had been required.

Sale of real estate dependent upon consent of a deceased person.
1871, 329.
P. S. 142, § 2.
R. L. 148, § 2

SECTION 3. An executor, administrator, guardian, conservator or trustee duly appointed in another state or in a foreign country and duly qualified and acting, who may be entitled to any personal property, situated in the commonwealth, may file an authenticated copy of his appointment in the probate court for any county where there is real estate of his trust, or, if there is no such real estate, in any county where there is personal property of his trust, and may upon petition to said

Foreign executor, etc., may be licensed to receive and dispose of personal property.
1880, 220.
P. S. 142, § 3
1900, 371, § 3.
R. L. 15, § 14.
148, § 3

1907, 563.
§§ 17, 26
1909, 490.
IV, § 17.
1915, 23.
1919, 350, § 53.

court, after such notice to creditors and all persons interested as the court may order, be licensed to receive or to sell by public or private sale, upon such terms and to such person or persons as he shall think fit, or otherwise to dispose of, and to transfer and convey, shares in a corporation or other personal property, if the court finds that there is no executor, administrator, guardian, conservator or trustee appointed in the commonwealth who is authorized so to receive and dispose of such shares or estate, and that such foreign executor, administrator, guardian, conservator or trustee will be liable, upon and after such receipt or sale, to account for such shares or estate, or for the proceeds thereof, in the state or country where appointed; and that no person resident in this commonwealth and interested as a creditor or otherwise objects to the granting of such license or appears prejudiced thereby; but no such license shall be granted to a foreign executor or administrator until the expiration of six months after the death of his testator or intestate. The commissioner of corporations and taxation shall be made a party to any petition by a foreign executor, administrator or trustee under this section, and shall be given fourteen days' notice of the same.

How executor, etc., may release vested or contingent interests.
1855, 307, § 2.
G. S. 101, § 11.
1863, 230.
P. S. 142, § 4.
R. L. 148, § 4.
1915, 23.
190 Mass. 459.

SECTION 4. An executor, administrator, guardian, conservator or trustee may, after the notice required upon a petition by him for a license to sell real estate, be authorized by the probate court to release and discharge, upon such terms and conditions as may appear to be proper, a vested, contingent or possible right or interest, if such release or discharge appears to be for the benefit of the person or estate which he represents.

Sale or release of lots in cemeteries.
1869, 35.
P. S. 142, § 5.
R. L. 148, § 5.
1915, 23.

SECTION 5. An executor, administrator, guardian, conservator or trustee may be authorized by the probate court, after notice to all persons interested, to sell and convey or release upon such terms and in such manner as the court may order, lots in cemeteries belonging to the person or estate by him represented.

Form of mortgage given under license of court.
1864, 212, § 4.
1869, 219, § 2;
451, § 2.

SECTION 6. A mortgage given by an executor, administrator, guardian, conservator or trustee under license of court may contain a power of sale, and every such mortgage shall state that it is made under license of court and the date of such license.

1871, 282, § 3.
1872, 370, § 3.
1873, 280, § 2.
1876, 79, §§ 3, 4; 199, § 3.
P. S. 142, § 6.
R. L. 148, § 6.
1915, 23.
11 Gray, 492.
273 Mass. 119.

Venue of petitions for sales by foreign executor, etc.
1817, 182, § 1.
R. S. 71, § 25;
72, § 16

SECTION 7. All proceedings in probate courts relative to sales by a foreign executor, administrator, guardian, conservator or trustee shall be in the county where an authenticated copy of his appointment is first filed.

G. S. 102, § 42. P. S. 142, § 7. R. L. 148, § 7. 1915, 23.

License to sell to remain in force for one year.
1817, 190, § 12.
R. S. 71, § 19;
72, § 13.

SECTION 8. No license to sell by an executor, administrator, guardian, conservator or trustee shall be in force for more than one year after the granting thereof, except as provided in section eighteen of chapter two hundred and two.

G. S. 102, § 43.
P. S. 142, § 8.
R. L. 148, § 8.
1915, 23.
146 Mass. 100.

Surplus of proceeds of sales to be

SECTION 9. In every sale of the real estate of a deceased person or a ward by an executor, administrator, guardian or conservator, the surplus

3 of the proceeds remaining on the final settlement of the accounts shall
 4 be considered as real estate, and shall be disposed of to the same persons
 5 and in the same proportions to whom and in which the real estate if not
 6 sold would have descended or have been disposed of by law.

R. L. 148, § 9. 133 Mass. 411. 233 Mass. 481.
 1915, 23. 154 Mass. 7.

treated as real estate.
 R. S. 71, § 34;
 72, §§ 5, 17
 G. S. 102, § 44.
 P. S. 142, § 9.

1 SECTION 10. If a person appears and objects to the granting of a
 2 license to sell real estate and the court finds that either the petition or
 3 the objection thereto is unreasonable, it may award costs to the prevail-
 4 ing party.

R. S. 71, § 36; 72, § 18. P. S. 142, § 10.
 G. S. 102, § 45 R. L. 148, § 10.

Costs in case of objection to the granting of a license.
 1783, 32, § 6.

1 SECTION 11. A person authorized to sell land under license of court
 2 shall be required, upon petition to the probate court by an heir, creditor,
 3 ward or other person interested in the estate, to answer on oath as to
 4 all matters relative to his exercise and fulfilment of said license as fully
 5 as he is liable to account and be examined relative to personal property.
 6 If, in relation to the exercise of such license or to a sale under it, there is
 7 any neglect or misconduct in the proceedings of such person by which
 8 a person interested in the estate suffers damage, such interested person
 9 may recover compensation therefor on the probate bond or otherwise as
 10 the case may require.

Examination of persons licensed to sell land
 R. S. 71, § 39;
 72, § 21.
 1857, 71, § 1
 G. S. 102, § 49.
 P. S. 142, § 11
 R. L. 148, § 11.

1 SECTION 12. The supreme judicial court, upon petition of a party
 2 interested and after notice, may order the sale or transfer of any real or
 3 personal property held for churches, cemeteries or other like trusts and
 4 the investment or disposition of the proceeds, and may make orders and
 5 decrees necessary to secure the rights of owners of, or of other persons
 6 claiming an interest in, pews or in tombs or lots in cemeteries.

Sale of church, etc., property.
 1897, 462.
 R. L. 148, § 12.

COMPROMISES, ETC.

1 SECTION 13. The probate court may authorize an executor, ad-
 2 ministrator, guardian, conservator, receiver, commissioner or other
 3 fiduciary officer appointed by it, or a trustee, to adjust by arbitration
 4 or compromise any demand in favor of or against the estate by him
 5 represented.

1835, 93. 1855, 37; 432 1915, 23. 137 Mass. 94.
 R. S. 65, § 10; G. S. 101, § 10. 1925, 67, § 1. 178 Mass. 125.
 79, § 17. P. S. 142, § 12 9 Allen, 173. 240 Mass. 363.
 1838, 92. R. L. 148, § 13.

Compromises by executors, etc., under authority of probate court.
 1817, 190, § 21.
 1826, 136.

1 SECTION 14. The supreme judicial court or the probate court may
 2 authorize an executor, administrator, guardian, conservator, receiver,
 3 commissioner or other fiduciary officer appointed by the probate court,
 4 or a trustee, to adjust by arbitration or compromise any controversy or
 5 question as to the administration or distribution of the estate in his
 6 possession, or as to his accounting therefor, or as to any matter relating
 7 to said estate, or as to the construction of a will or trust created by a
 8 written instrument, or as to his power and authority thereunder, or as
 9 to any controversy growing out of said will or instrument that may
 10 arise between him and any other person or the guardian or conservator
 11 of any person interested under said will or instrument or in said estate,
 12 or between claimants or the guardians or conservators of claimants to
 13 said estate, to which arbitration or compromise, in the form of an agree-

Executors, etc., may be authorized to compromise controversies, etc.
 1861, 174, § 1.
 P. S. 142, § 13.
 R. L. 148, § 14.
 1903, 222.
 1907, 447.
 1925, 67, § 2.
 4 Allen, 466.
 170 Mass. 328.
 211 Mass. 334
 215 Mass. 226.
 225 Mass. 12.
 230 Mass. 131.

ment in writing, such executor, administrator, guardian, conservator, 14
 receiver, commissioner or other fiduciary officer or trustee, and all other 15
 persons in being and of full age and not under guardianship, and the 16
 guardian or conservator, if any, of all other persons who claim a vested 17
 interest in said estate, whose interests will, in the opinion of the court, 18
 be affected by the proposed arbitration or compromise, shall be parties. 19
 An award or compromise made in writing in such a case, if found by the 20
 court to be just and reasonable in its effects upon the interests of minors 21
 and persons under guardianship or conservatorship, and upon any 22
 future contingent interests in said estate, shall, when approved by the 23
 court, be valid and binding upon all such interests and upon the original 24
 parties to said agreement, and a decree shall be entered accordingly. If 25
 the court finds that any minor or person without legal capacity or under 26
 guardianship, or any future contingent interests, may be affected, it may 27
 appoint some person or persons to represent such minor or person with- 28
 out legal capacity or under guardianship, or future contingent interests 29
 in such controversy, question, administration or account upon such 30
 conditions as to costs as it may order. 31

Compromise of wills.
 1864, 173, § 1.
 P. S. 142, § 14.
 1889, 266.
 R. L. 148, § 15
 1902, 538.
 1903, 222.
 1918, 257,
 § 399.
 1919, 5.
 1920, 2.
 128 Mass. 203.
 152 Mass. 254
 180 Mass. 303
 181 Mass. 501
 182 Mass. 208
 188 Mass. 190
 199 Mass. 330
 204 Mass. 171
 209 Mass. 459
 211 Mass. 288

SECTION 15. The supreme judicial court or the probate court may au- 1
 thorize the persons named as executors in an instrument purporting to 2
 be the last will of a person deceased, or the petitioners for administra- 3
 tion with such will annexed, to adjust by arbitration or compromise any 4
 controversy between the persons who claim as devisees or legatees under 5
 such will and the persons entitled to the estate of the deceased under the 6
 laws regulating the descent and distribution of intestate estates, to which 7
 arbitration or compromise the persons named as executors, or the pe- 8
 tioners for administration with the will annexed, as the case may be, 9
 those claiming as devisees or legatees whose interests will in the opinion 10
 of the court be affected by the proposed arbitration or compromise, and 11
 those claiming the estate as intestate, shall be parties. 12

215 Mass. 226 228 Mass. 39 233 Mass. 267.
 225 Mass. 12, 380 230 Mass. 131

Protection of contingent interests.
 1864, 173, § 2.
 P. S. 142, § 15
 R. L. 148, § 16
 1903, 222.
 209 Mass. 459.
 225 Mass. 12,
 380.
 228 Mass. 39.

SECTION 16. If the court finds that any future contingent interests 1
 which would arise under said will if admitted to probate would be af- 2
 fected by the arbitration or compromise, it shall appoint some person 3
 to represent such interests in such controversy, and the court shall have 4
 like power as to any bequests made in the will for charitable purposes, if 5
 no trustees have been appointed in such will; in both cases with such 6
 conditions as to costs as the court orders. 7

Effect of compromise.
 1864, 173,
 §§ 3, 4
 P. S. 142, § 16
 R. L. 148, § 17.
 1903, 222.
 128 Mass. 203.
 180 Mass. 303.
 182 Mass. 208.
 209 Mass. 159.
 225 Mass. 380.

SECTION 17. An award or compromise made in writing in any such 1
 case, if found by the court to be just and reasonable in relation to the 2
 parties in being and in its effect upon any future contingent interests 3
 that might arise under such will and upon any bequests to charities 4
 made in the same, shall be valid and binding upon such interests and 5
 upon such bequests, as well as upon the interests of all persons in being, 6
 but it shall not impair the claims of creditors. 7

Minor, etc., to be represented by guardian, etc.
 1865, 186.
 P. S. 142, § 17
 R. L. 148, § 18.

SECTION 18. If a minor or a person under guardianship or conserva- 1
 torship is a necessary party to an arbitration or compromise under sec- 2
 tion fifteen, he shall be represented in the proceedings by his guardian or 3
 conservator, or by a guardian ad litem appointed by the court, who shall 4

- 5 in the name and in behalf of the party he represents, make and receive 1903, 222
- 6 all proper conveyances and payments necessary to carry into effect any 1915, 23
- 7 award or compromise sanctioned by the court. 180 Mass. 303
182 Mass. 208

IRREGULAR AND INVALID SALES, ETC., BY EXECUTORS, ETC.

- 1 SECTION 19. No sale of real estate under license of court, and no Irregular, etc.,
- 2 title thereunder, shall be avoided for the reason that the deed was not sale not to be
- 3 delivered within one year after the license, or on account of any irregu- avoided in
- 4 larity in the proceedings, if it appears — certain cases.
- 5 First, That the license was granted by a court of competent juris- R. S. 71, § 38;
- 6 diction; 72, § 20.
- 7 Second, That the person licensed gave a bond approved by the court 1840, 97.
- 8 or judge granting such license, if a bond was required; G. S. 102, § 47.
- 9 Third, That the notice of the time and place of sale was given accord- 1860, 60.
- 10 ing to the order of the court; and 1864, 137.
- 11 Fourth, That the property was sold by public auction in accordance P. S. 142, § 18.
- 12 with the notice, and is held by one who purchased it in good faith. R. L. 148, § 19.
- 13 Mass. 162.
- 14 Mass. 58,
- 15 325.
- 16 Pick. 567.
- 17 Pick. 265.
- 18 Met. 355.
- 19 Cusb. 184.
- 20 Gray, 141.
- 21 Gray, 31.
- 22 13 Gray, 326.
- 23 3 Allen, 25.
- 24 13 Allen, 109, 417.
- 25 102 Mass. 14.
- 26 105 Mass. 33.
- 27 106 Mass. 347.
- 28 115 Mass. 50, 508.
- 29 133 Mass. 447.
- 30 146 Mass. 100.
- 31 153 Mass. 325.
- 32 161 Mass. 315.

- 1 SECTION 20. If the validity of a sale is drawn in question by a person Where con-
- 2 claiming adversely to the title of the deceased or of the ward, or under testant claims
- 3 a title not derived from or through the deceased or the ward, the sale under title
- 4 shall not be void by reason of any irregularity in the proceedings, if the paramount.
- 5 executor, administrator, guardian, conservator or trustee was licensed to R. S. 71, § 40;
- 6 make the sale by a court of competent jurisdiction and executed and 72, § 22.
- 7 acknowledged in legal form a deed of the property. G. S. 102, § 48.
- 8 P. S. 142, § 19.
- 9 R. L. 148, § 20.
- 10 7 Mass. 488.

- 1 SECTION 21. If a license is granted by a probate court for a sale or When adjudi-
- 2 mortgage of real estate to pay the debts and charges of a deceased person cation as to
- 3 or of a person under guardianship or conservatorship, the adjudication debts final.
- 4 of said court as to the existence of such debts and charges shall be final 1874, 346, § 2.
- 5 so far as the same may affect any title acquired by virtue of such license, P. S. 142, § 20.
- 6 but shall not affect the right of the executor, administrator, guardian or R. L. 148, § 21.
- 7 conservator to contest the validity of such debts and charges. 1915, 23.

- 1 SECTION 22. No action for the recovery of property sold by an execu- Action or
- 2 tor or administrator under chapter two hundred and two shall be main- entry for
- 3 tained by an heir or other person claiming under the deceased unless recovery of
- 4 commenced within five years next after the sale; and no action for land sold by
- 5 property sold by a guardian or conservator under said chapter shall executor, etc.
- 6 be maintained by the ward or by any person claiming under him unless 1817, 190, § 12.
- 7 commenced within five years next after the termination of the guardian- R. S. 71, § 37.
- 8 ship or conservatorship; but persons out of the commonwealth and 72, § 19.
- 9 minors and others under legal disability to sue when their right of action G. S. 102, § 46.
- 10 first accrues may commence such action at any time within five years P. S. 142, § 21.
- 11 after the removal of the disability or after their return to the common- R. L. 148, § 22.
- 12 wealth. No entry, unless by judgment of law, shall be made upon land 1915, 23.
- 13 so sold, with a view to avoid the sale, unless within the times of limi- 9 Cusb. 223.
- 14 tation before prescribed for the commencement of an action. 10 Gray, 31.
- 15 133 Mass. 447.

- 1 SECTION 23. If an act or proceeding of a person acting as executor, Confirmation,
- 2 administrator, guardian, conservator, trustee, receiver, commissioner or etc., of void
- 3 acts of exec-
- 4 tor, etc.

1873, 253, § 3.
P. S. 142, § 22.
R. L. 148, § 23.
1915, 23.
1921, 44, § 1.
142 Mass. 479.
150 Mass. 381.
179 Mass. 451.

in any other fiduciary capacity under an appointment or license of a probate court is void or voidable by reason of an irregularity or of want of jurisdiction or authority in the court which made the appointment or granted the license, any person interested in or affected by such act or proceeding may have the matter heard and determined by the supreme judicial court in equity, which may confirm or set aside, in whole or in part, the act or proceeding.

Ratification of doubtful acts of executor, etc.
1874, 346, § 1.
P. S. 142, § 23.
1888, 420.
R. L. 148, § 24.
1915, 23; 63.
1921, 44, § 2.
195 Mass. 184.

SECTION 24. If the authority or validity of an act or proceeding of the probate court or of a person acting as executor, administrator, guardian, conservator, receiver, commissioner or other fiduciary officer appointed by the probate court, or trustee is drawn in question by reason of an alleged irregularity, defective notice or want of authority, any party interested in or affected by such act or proceeding may apply to the probate court having jurisdiction of the subject matter relative to which the act or proceeding has been had, and the court, after notice to all parties interested, and to the persons who may be the parents of such parties not in being, with power to appoint a guardian or next friend to represent the interests of any person unborn or unascertained, may hear and determine the matter and confirm the act or proceeding, in whole or in part, and may authorize and empower the executor, administrator, guardian, conservator, receiver, commissioner or other fiduciary officer appointed by the probate court, or trustee, or any successor or other person who may be legally appointed to act in the same capacity, to ratify and confirm such act or proceeding and to execute and deliver such deeds, releases, conveyances and other instruments as may be found necessary therefor; but no act or proceeding shall be ratified or confirmed which the court might not have passed or authorized in the first instance upon due proceedings.

Liability of irregularly appointed executor, etc., to account
1873, 253, §§ 1, 2.
P. S. 142, § 24.
R. L. 148, § 25.
1915, 23.
1921, 44, § 3.
126 Mass. 105.
133 Mass. 207.

SECTION 25. An executor, administrator, guardian, conservator, trustee, receiver, commissioner or other fiduciary officer appointed by the probate court whose appointment is invalid by reason of an irregularity or of want of jurisdiction or authority in the court which made it, shall account for all money, property or assets coming to his hands in said capacity as if the appointment had been regular and valid; and any bond given in pursuance of such appointment shall be valid and binding on the principals and sureties; and payments to or by a person so appointed, if in other respects properly made, may with the approval of the probate court be ratified and confirmed by the executor, administrator, guardian, conservator or trustee who is afterward legally appointed.

Failure of proof of notice of appointment or sale, how remedied.
1889, 315.
R. L. 148, § 26.
1915, 23.
1921, 44, § 4.

SECTION 26. If an executor, administrator, guardian, conservator, trustee, receiver, commissioner or other fiduciary officer appointed by the probate court, or a person employed by him to give notice of an appointment or notice of sale of real estate, has failed to file an affidavit of such notice in the probate court and such affidavit cannot be obtained, the court may, upon petition of any person interested in real estate the title to which may be affected thereby, stating the particular failure complained of and averring that the affidavit cannot be obtained, order notice by publication to creditors of, and others interested in, the estate in the settlement of which the failure complained of occurred. If, upon return of such notice and after hearing, the court is satisfied that such notice was in fact given, it may make a decree to that effect.

CHAPTER 205.

BONDS OF EXECUTORS, ADMINISTRATORS, GUARDIANS, CONSERVATORS, TRUSTEES AND RECEIVERS.

SECT.
FORM AND CONDITIONS OF PROBATE BONDS.

- 1. Form of bonds and when required.
- 2. Additional provisions for bonds in French spoliation cases.
- 3. Bond of executor, etc., who is residuary legatee.

EXEMPTION FROM GIVING SURETIES ON BONDS.

- 4. Exemption of executor, etc., from giving sureties.
- 5. Exemption of guardians and trustees.
- 6. Exemption of guardian having custody.
- 6A. Exemption of national banks.
- 7. Bond not required in certain cases.
- 7A. Statutory forms of bond. Enforcement by equity petition in probate court.
- 8. Neglect to give bond a resignation.

GENERAL PROVISIONS.

- 9. Sureties on probate bonds. Corporate sureties. U. S. veterans' bureau cases.
- 10. Bonds to be approved by judge or register.
- 11. Joint or separate bonds by joint executors, etc.
- 12. Executor not giving bond not to intermeddle.
- 13. Additional bond may be required of executor, etc., licensed to sell, etc.
- 14. New bond when sureties, etc., insufficient.

SECT.

- 15. Discharge of sureties, and new bond.
- 16. Removal if new bond not given.
- 17. Sureties on prior bond liable until new bond approved.
- 18. Reduction of penal sum of bond.
- 19. Release of sureties by marriage of executrix, etc.
- 19A. Agreements by fiduciaries with their sureties for joint control of trust estates authorized.

ACTIONS UPON BONDS.

- 20. Action by creditor.
- 21. Same subject.
- 22. Action by next of kin.
- 23. Action by person aggrieved by maladministration of executor, etc.
- 24. Action when the judge is an obligor.
- 25. Action against wife of probate judge.
- 26. Endorsement of writ.
- 27. Obligor may be summoned in certain cases.
- 28. Same subject.
- 29. Actions upon bonds of guardians, conservators, trustees, etc.
- 30. Venue of actions upon bonds.
- 31. Form of execution in action on bond.
- 32. Proceedings if execution is awarded for the use of a particular person.
- 33. Proceedings if awarded without expressing for whose use.
- 34. Provision for new breach after execution awarded.
- 35. Limitation of actions against sureties on bond of guardian or conservator.

FORM AND CONDITIONS OF PROBATE BONDS.

SECTION 1. An executor, administrator, administrator with the will annexed, special administrator, receiver of an absentee, conservator, temporary guardian and, unless otherwise expressly provided, a guardian or trustee under a will or appointed by the probate court, including a trustee under a will holding property for public charitable purposes, before entering upon the duties of his trust, shall give bond with sufficient sureties, in such sum as the probate court may order, payable to the judge of said court and his successors, and with condition substantially as follows:

Form of bonds and when required
P. S. 129, § 5.
130, §§ 2, 8, 11;
139, § 22, 141;
§§ 12, 13.
1897, 135, § 3;
447, § 2
1898, 527, § 2.
1900, 345, § 4
R. L. 145, § 41;
149, § 1.
1908, 295.

1910, 95.	16 Gray, 577.	194 Mass 423.
5 Pick 65.	8 Allen, 532.	221 Mass 587.
8 Pick 526.	184 Mass, 373	228 Mass 225.
7 Cush 207.	191 Mass 211	254 Mass 37.

Conditions of bond of executor or administrator, etc. 1783, 24, § 17. 1816, 94, § 1. 1817, 190, § 14. R. S. 63, §§ 2, 8. G. S. 93, §§ 2, 8.

1. In the case of an executor or administrator with the will annexed: 10
First, To make and return to the probate court within three months 11
a true inventory of all the testator's real and personal property which at 12
the time of making such inventory shall have come to his possession or 13
knowledge; 14

1870, 285 1880, 152, § 1 R. L. 149, § 1.
1878, 154, § 1. P. S. 129, § 5; 130, § 8. 152 Mass. 412.

13 Pick 328. 10 Cush 1. 106 Mass. 15. 140 Mass. 351. 143 Mass. 326. 144 Mass. 587.

Second, To administer according to law and to the will of the testator 15
all personal property of the testator which may come into his possession 16
or into the possession of any person for him, and also the proceeds of any 17
of the real estate of the testator which may be sold or mortgaged by him; 18

152 Mass. 412. 193 Mass. 38. 211 Mass. 178.

Third, To render upon oath a true account of his administration at 19
least once a year until his trust is fulfilled, unless he is excused therefrom 20
in any year by the court, and also to render such account at such other 21
times as the court may order. 22

Bond of administrator. 1692-3, 14, § 1. 1783, 36, § 8. 1816, 94, § 1. 1817, 190, § 14. R. S. 64, § 5. G. S. 94, § 2. 1878, 154, § 1.

2. In the case of an administrator: 23
First, To make and return to the probate court within three months a 24
true inventory of all the intestate's real and personal property which at 25
the time of making such inventory shall have come to his possession or 26
knowledge; 27

1880, 152, § 1. P. S. 130, § 2. R. L. 149, § 1.

5 Pick. 65.

Second, To administer according to law all the personal property of 28
the deceased which may come into his possession or into the possession 29
of any person for him, and also the proceeds of any of the real property 30
of the deceased which may be sold or mortgaged by him; 31

R. L. 149, § 1. 133 Mass. 111. 136 Mass. 54.

Third, To render upon oath a true account of his administration at 32
least once a year until his trust is fulfilled, unless he is excused therefrom 33
in any year by the court, and also to render such account at such other 34
times as the court orders; 35

Fourth, To pay to such persons as the court orders any balance 36
remaining in his hands upon the settlement of his accounts; 37

151 Mass. 595.

198 Mass. 401.

Fifth, To deliver his letters of administration into the court if a will 38
of the deceased is thereafter duly proved and allowed. 39

Bond of special administrator. 1834, 174, § 5. R. S. 64, § 7. G. S. 94, § 7. 1876, 200, § 2. P. S. 130, § 11. R. L. 149, § 1.

3. In the case of a special administrator: 40
That he will make and return to the probate court within such time 41
as it orders a true inventory of all the personal property of the deceased 42
which at the time of making such inventory shall have come to his 43
possession or knowledge, and that he will, whenever required by the 44
probate court, truly account on oath for all the property of the deceased 45
which may be received by him as such special administrator, and will 46
deliver the same to any person who may be appointed executor or ad- 47
ministrator of the deceased, or may be otherwise lawfully authorized to 48
receive the same. 49

Bond of receiver of absentee. 1897, 447, § 2. R. L. 149, § 1.

4. In the case of a receiver of an absentee under chapter two hundred: 50
With condition substantially as provided for the bond of an executor 51
or administrator, and with the further condition to obey all orders and 52
decrees made by the probate court. 53

Bond of temporary guardian or conservator. 1897, 135, § 3. 1900, 345, § 4. R. L. 149, § 1. 1915, 23.

5. In the case of a temporary guardian or conservator appointed under 54
section fourteen or twenty-one of chapter two hundred and one: 55
That he will make and return to the probate court within such time as 56
it shall order a true inventory of all the personal property of the ward 57
which at the time of making such inventory shall have come to his pos- 58

59 session or knowledge, and that he will, whenever required by the probate
 60 court, truly account on oath for all the property of the ward which may
 61 be received by him as such temporary guardian or conservator, and will
 62 deliver it to any person who may be appointed guardian or conservator
 63 or may be otherwise lawfully authorized to receive it.

64 6. In the case of a guardian or conservator:

1 Pick. 198, 206, 527.	7 Pick. 91 8 Pick. 528.	3 Cush. 465. 154 Mass. 266.	Bond of guardian or conservator.
---------------------------	----------------------------	--------------------------------	--

65 First, To make and return to the probate court at such time as it
 66 orders a true inventory of all the real and personal property of the ward
 67 which at the time of making such inventory shall have come to his pos-
 68 session or knowledge;

1783, 38, § 5 1817, 190, § 34 R. S. 79, §§ 5, 7. 1855, 280	G. S. 109, §§ 6, 16. 1878, 154, § 2 1880, 152, § 1 P. S. 139, § 22.	1898, 527, § 2 R. L. 145, § 41; 149, § 1 1910, 95 1915, 23.	1726-7, 12, §§ 6, 7 1731-2, 14, §§ 6, 7 1737-8, 9, §§ 3, 4.
---	--	--	--

69 Second, To manage and dispose of all such property according to law
 70 and for the best interests of the ward, and faithfully to perform his trust
 71 in relation to such property and to the custody, education and main-
 72 tenance of the ward;

73 Third, To render upon oath at least once a year until his trust is ful-
 74 filled, unless he is excused therefrom in any year by the court, a true
 75 account of the property in his hands, including the proceeds of all real
 76 property sold or mortgaged by him and of the management and disposi-
 77 tion thereof, and also to render such account at such other times as said
 78 court may order;

130 Mass. 141. 144 Mass. 195.	182 Mass. 332. 187 Mass. 578	206 Mass. 488. 232 Mass. 83.	240 Mass. 363.	4 Mass. 106. 18 Pick. 1 21 Pick. 36. 4 Cush. 510. 11 Cush. 18. 9 Gray, 84 9 Allen, 102 109 Mass. 252. 144 Mass. 195.
----------------------------------	---------------------------------	---------------------------------	----------------	--

79 Fourth, At the expiration of his trust to settle his account in the
 80 probate court or with the ward or his legal representatives, and to pay
 81 over and deliver all the property remaining in his hands, or due from
 82 him on such settlement, to the person or persons lawfully entitled
 83 thereto.

84 7. In the case of a trustee under a will or appointed by the probate
 85 court:

22 Pick. 215.	10 Allen, 169.	153 Mass. 249.	181 Mass. 373.	Bond of trustee.
---------------	----------------	----------------	----------------	---------------------

86 First, To make and return to the probate court at such time as it
 87 orders a true inventory of all the real and personal property belonging
 88 to him as trustee which at the time of the making of such inventory shall
 89 have come to his possession or knowledge;

G. S. 100, §§ 1, 11. 1869, 357 1878, 154, § 2.	P. S. 141, §§ 12, 13. R. L. 149, § 1.	1908, 295 186 Mass. 189.	1810, 86, § 1. 1817, 190, §§ 37, 41. R. S. 69, §§ 1, 9.
--	--	-----------------------------	---

90 Second, To manage and dispose of all such property, and faithfully to
 91 perform his trust relative thereto according to law and to the will of the
 92 testator or the terms of the trust as the case may be;

93 Third, To render upon oath at least once a year until his trust is
 94 fulfilled, unless he is excused therefrom in any year by the court, a true
 95 account of the property in his hands and of the management and dis-
 96 position thereof, and also to render such account at such other times as
 97 said court orders;

98 Fourth, At the expiration of his trust to settle his account in the pro-
 99 bate court, and to pay over and deliver all the property remaining in his
 100 hands, or due from him on such settlement, to the person or persons
 101 entitled thereto.

Additional provisions for bonds in French spoliation cases. 1902, 371. §§ 2-4

SECTION 2. A bond given by an administrator engaged in the administration of French spoliation awards shall contain a condition substantially as follows: "To administer according to law and the orders of the probate court all French spoliation awards which shall come to his possession as such administrator." Such bond, when satisfactory to the judge or register, shall be approved in the following form: "Approved as adequate security for the legal disbursement of a French spoliation award of _____ dollars", stating the amount appearing then to be receivable by the administrator from the United States treasury on account of such award or awards. Nothing herein contained shall be construed to impair the validity of any bond given prior to May second, nineteen hundred and two, or to affect the rules of administration and distribution of French spoliation awards theretofore established in the commonwealth.

Bond of executor, etc., who is residuary legatee. 1783, 24, § 17. R. S. 63, §§ 3, 4. 1857, 88. G. S. 93, §§ 3, 4. 1870, 285. P. S. 129, §§ 6, 7; 130, § 8. R. L. 149, § 2. 3 Mass. 523. 16 Mass. 172. 5 Pick. 337. 5 Met. 247. 6 Cush. 235. 2 Gray, 404. 5 Gray, 67. 107 Mass. 474. 116 Mass. 435. 131 Mass. 408. 133 Mass. 447. 134 Mass. 115.

SECTION 3. If the executor of a will or an administrator with the will annexed is residuary legatee thereunder, and it appears that the bond required of him by section one is unnecessary for the protection of any person interested in the estate, the court may permit him, instead of giving such bond, to give bond in a sum and with sureties to the satisfaction of the court, and conditioned to pay all debts and legacies of the testator and such amounts as may be allowed by the court to the widow or minor children for necessaries. In such case he shall not be required to return an inventory to the court. The giving of such bond shall not discharge the lien on the real estate of the testator for the payment of debts, except on such part as may be sold by such executor or administrator to a purchaser in good faith and for a valuable consideration; and all property not so sold may be taken on execution by a creditor not otherwise satisfied, in like manner as if a bond had been given in the other form.

140 Mass. 66, 502
144 Mass. 238

191 Mass. 187.
202 Mass. 104.

EXEMPTION FROM GIVING SURETIES ON BONDS.

Exemption of executor, etc., from giving sureties. 1858, 72. G. S. 93, § 5. P. S. 129, § 8. 1885, 274. §§ 1, 2. R. L. 149, §§ 3, 8. 8 Allen, 532. 12 Allen, 330. 218 Mass. 27. 273 Mass. 372.

SECTION 4. An executor shall be exempt from giving a surety on his bond if the testator has ordered or requested such exemption or that no bond be required, and an executor, administrator or an administrator with the will annexed shall be so exempt if all the persons interested in the estate of full age and legal capacity, other than creditors, certify to the probate court their consent thereto; but not until all creditors of the estate, and the guardian of any minor interested therein, have been notified and have had opportunity to show cause against the same. The probate court may, however, upon or after the granting of letters testamentary or letters of administration require bond, with sufficient sureties, and failure to furnish the same within such time as the court orders shall constitute a declination of or a resignation from the trust.

Exemption of guardians and trustees. 1817, 190, § 37. R. S. 69, § 2; 79, § 7. G. S. 100, § 2; 109, § 6. 1869, 357. 1873, 122, § 1. 1874, 352, § 2.

SECTION 5. A testamentary guardian and a trustee under a will shall be exempt from giving sureties on his bond, if the testator has ordered or requested such exemption, or that no bond be required, or in case of a trustee, if all the persons beneficially interested in the trust, of full age and legal capacity, other than creditors, request such exemption; but not until the guardian of any minor interested therein

7 and such other persons as the court orders have been notified and had
 8 opportunity to show cause against the same. The probate court may,
 9 however, at any time require such guardian or trustee, or a trustee ap-
 10 pointed by the probate court, to give a bond with sureties. The court
 11 may, with or without notice, exempt a trustee under a will holling
 12 property for public charitable purposes from giving surety on his bond.

1880, 34
 P. S. 139,
 §§ 23, 24; 141,
 §§ 16, 17,
 1891, 339.
 R. L. 149, § 4.
 1908, 295.
 22 Pick. 215.
 117 Mass. 513.
 149 Mass. 92.

1 SECTION 6. If the custody of a minor is given to a guardian, under
 2 section five of chapter two hundred and one, for the reason that one or
 3 both of his parents are unfit to have such custody, such guardian may in
 4 the discretion of the court give a bond without surety; but the court in
 5 such case may, at any time if it finds that the protection of the ward's
 6 interests renders it necessary, require such guardian to give bond with
 7 sureties.

Exemption
 of guardian
 having custody.
 1881, 237.
 P. S. 139, § 25.
 R. L. 149, § 5.

1 SECTION 6A. No surety shall be required upon bonds filed by national
 2 banks, located in this commonwealth and duly permitted to act in a
 3 fiduciary capacity; as executor, administrator, administrator with the
 4 will annexed, receiver, assignee, guardian, conservator or trustee under
 5 a will or instrument creating a trust for the care and management of
 6 property, except that the court appointing such a bank as such a fiduciary,
 7 other than as trustee, may upon application of an interested person re-
 8 quire the bank so appointed to give such security, in addition to the lien
 9 or security provided by the laws of the United States, as the court may
 10 consider proper, and upon failure of such bank to give the security re-
 11 quired may revoke such appointment and remove such bank.

Exemption of
 national banks.
 1923, 259.

1 SECTION 7. A guardian or trustee not required to give bond by the
 2 laws in force at the time of his appointment shall not be required to give
 3 bond under the preceding sections of this chapter, except by special
 4 order of the court under section five.

Bond not re-
 quired in cer-
 tain cases.
 1810, 86, § 1.
 1817, 190, § 37.

R. S. 69, § 3.
 G. S. 100, § 3.

1873, 122, § 2.
 1880, 34, § 2.

P. S. 139, § 27; 141, § 19.
 R. L. 149, § 6.

1 SECTION 7A. The various conditions set forth for the bonds of fidu-
 2 ciaries specified in section one shall be known as statutory conditions
 3 for their several purposes and may be incorporated by reference. All
 4 bonds upon such conditions given by persons accepting appointments
 5 as such fiduciaries shall be, and be interpreted as, payable to the judge
 6 or the senior judge of the court making the appointment and his suc-
 7 cessors for the benefit of persons interested but it shall not be necessary
 8 to specify the judge or any other persons as obligees in the bonds. Such
 9 bonds shall be jointly and severally binding upon the parties thereto
 10 and the heirs, executors and administrators of each of them without so
 11 specifying therein. No letter of appointment need be issued to any
 12 fiduciary or recorded, but in lieu thereof an attested copy of the decree
 13 of appointment with a copy of the statutory condition shall be issued to
 14 the appointee. The direction to post or publish notice of appointment,
 15 when necessary, may be inserted in or annexed to said decree. The
 16 following forms of bonds may be used and shall be known as statutory
 17 forms and shall have the same force and effect as the forms of bonds
 18 heretofore in use for their respective purposes. They may be altered as
 19 circumstances require.

Statutory forms
 of bond.
 Enforcement
 by equity
 petition in
 probate court.
 1922, 512.
 259 Mass. 310.

STATUTORY FORM OF BOND WITH SURETIES.

I accept appointment as executor, administrator, etc., of and stand bound in the sum of dollars, with and as sureties to perform the statutory condition and we said sureties stand bound jointly and severally as aforesaid. Dated Seal.

STATUTORY FORM OF BOND WITHOUT SURETIES.

I accept appointment as executor, administrator, etc., of and stand bound to perform the statutory condition. Dated Seal.

No penal sum need be inserted in a bond without sureties. In addition to other remedies, the obligations of the several bonds provided for in this chapter may be enforced directly by any party interested in his own name by petition in equity in the probate court. The use of the statutory forms above set forth may be substituted for the longer forms heretofore in use and the practice of issuing and recording letters of appointment may be dispensed with.

Neglect to give bond a resignation 1810, 86, § 2. 1817, 190, § 38. R. S. 69, § 4. G. S. 100, § 4. 1869, 357. 1873, 122, § 2.

SECTION 8. A person required by the preceding sections, except section four, to give a bond who, for thirty days after his appointment or after the entry of the decree requiring him to give bond, fails to file the bond, duly approved, may be found to have declined or resigned the trust.

1880, 34, § 2. P. S. 139, § 26; 141, § 18. 1898, 458. R. L. 149, § 7. 110 Mass. 298. 128 Mass. 398.

GENERAL PROVISIONS.

Sureties on probate bonds. Corporate sureties. U. S. veterans' bureau cases. 1782, 25, § 4. 1817, 190, § 23. R. S. 70, § 2. G. S. 101, § 12. P. S. 143, § 1. 1901, 463. R. L. 149, § 9. 1930, 384, § 4. 7 Allen, 425.

SECTION 9. Sureties on probate bonds shall be inhabitants of the commonwealth, and satisfactory to the judge or register; except that companies permitted by section one hundred and five of chapter one hundred and seventy-five to act as sureties may be accepted in accordance with the provisions thereof and that, if the property of a person under guardianship or conservatorship is composed in whole or in part of any benefit, estate or income paid or payable by or through the United States veterans' bureau or its successor and exceeds five hundred dollars, the surety on the bond of the guardian or conservator shall be such a company.

Bonds to be approved by judge or register. 1817, 190, § 23. R. S. 83, § 32. G. S. 101, § 12.

SECTION 10. No bond required to be given to a judge of probate or to be filed in a registry of probate shall be sufficient, unless it has been examined and approved by the judge or register, and his approval over his official signature written thereon.

P. S. 143, § 2. 1901, 463. R. L. 149, § 10. 3 Cush. 465. 8 Allen, 532. 12 Allen, 330. 142 Mass. 399. 178 Mass. 263. 267 Mass. 350.

Joint or separate bonds by joint executors, etc. 1834, 174, § 6.

SECTION 11. Two or more persons acting jointly as executors, administrators, trustees or otherwise, who are required to give bonds, may give either separate or joint bonds.

R. S. 70, § 2. G. S. 101, § 14. 1874, 366. P. S. 143, § 3. R. L. 149, § 11. 106 Mass. 15.

1 SECTION 12. If two or more persons are appointed executors, none
 2 shall intermeddle or act as such but those who give bond as before
 3 provided.

Executor not giving bond not to intermeddle.

1783, 24, § 17. G. S. 93, § 2. R. L. 149, § 12.
 R. S. 62, § 2. P. S. 129, § 9. 254 Mass. 57.

1 SECTION 13. If a license or authority to sell or mortgage real estate
 2 is granted to an executor, administrator, guardian, conservator or trust-
 3 tee, no special bond shall be required; but if the court finds the bond
 4 already given by him insufficient, it shall, before granting such license
 5 or authority, require an additional bond containing the same conditions
 6 as are required in the original bond.

Additional bond may be required of executor, etc., licensed to sell, etc.
 1783, 32, § 2
 1834, 174, § 7.
 R. S. 71, § 6;
 72, § 10

1850, 196 P. S. 143, § 4 1910, 95.
 G. S. 101, § 13; 1898, 527, § 2. 16 Gray, 267.
 102, §§ 6, 28 R. L. 145, § 41; 133 Mass. 236.
 1880, 152, § 2 149, § 13.

1 SECTION 14. If the sureties or the penal sum in a probate bond are
 2 insufficient, the supreme judicial court or the probate court may, after
 3 notice to the principal in such bond, require a new bond with such
 4 surety or sureties and in such penal sum as the court orders.

New bond when sureties, etc., insufficient.
 1816, 94, § 3.
 1817, 190, § 42.

R. S. 70, § 27; 79, § 24. P. S. 143, § 5. 139 Mass. 356
 1851, 31, § 1 R. L. 149, § 14. 142 Mass. 399
 G. S. 101, § 15. 109, § 27. 3 Cush. 465. 171 Mass. 386
 1877, 134. 116 Mass. 435. 175 Mass. 199

1 SECTION 15. A surety on a probate bond may, upon the petition of
 2 the surety or of the principal to the supreme judicial court or the pro-
 3 bate court, be discharged from all further responsibility, if the court,
 4 after notice to all persons interested, finds such discharge reasonable
 5 and proper; and the principal shall thereupon give a new bond with
 6 such surety or sureties as the court orders.

Discharge of sureties, and new bond
 1817, 190, § 42.
 R. S. 70, § 28;
 79, § 24
 1843, 56, § 1.
 G. S. 101, § 16;
 109, § 27.

P. S. 143, § 6 1912, 161 130 Mass. 404 139 Mass. 356.
 R. L. 149, § 15. 129 Mass. 226. 132 Mass. 343.

1 SECTION 16. If, in the cases specified in the two preceding sections,
 2 the principal does not give such new bond within such time as the court
 3 orders, he shall be removed from his trust, and another person appointed
 4 in his stead.

Removal if new bond not given
 1817, 190, § 42.
 R. S. 70, § 29.

1843, 56, § 2 G. S. 101, § 17. R. L. 149, § 16.
 1851, 31, § 1 P. S. 143, § 7.

1 SECTION 17. If a new bond is required as above provided, the sureties
 2 on the prior bond shall be liable for all breaches of the condition thereof
 3 committed before the new bond is approved by the judge.

Sureties on prior bond liable until new bond approved.

1817, 190, § 42. R. L. 149, § 17 130 Mass. 404
 R. S. 70, § 30. 3 Cush. 465 132 Mass. 343.
 1843, 56, § 3. 116 Mass. 552 142 Mass. 399.
 G. S. 101, § 18. 129 Mass. 226. 171 Mass. 386.
 P. S. 143, § 8

1 SECTION 18. If a surety company becomes surety on a probate bond,
 2 the court may, upon the petition of any party in interest and after notice,
 3 reduce the penal sum in which the principal and surety shall be liable
 4 for subsequent violations of the conditions thereof.

Reduction of penal sum of bond
 1899, 278
 R. L. 149, § 18.

1 SECTION 19. In case of the marriage of a woman who is an execu-
 2 trix, administratrix, guardian, conservator or trustee, her sureties shall,
 3 upon petition to the probate court in which her bond is filed, be released
 4 from further liability thereon, beyond accounting for and paying over

Release of sureties by marriage of executrix, etc.
 1869, 409, § 2.
 P. S. 143, § 9
 1898, 527, § 2

R. L. 145, § 41; the money and property already in her hands by virtue of such trust; 5
 149, § 19. and if her sureties are so released, she shall be required to furnish a new 6
 1910, 95. bond to the satisfaction of said court, or shall be removed from said 7
 7 Allen, 427. trust. 8

Agreements by SECTION 19A. Any receiver, assignee, guardian, conservator, trustee, 1
 fiduciaries with executor, administrator or other fiduciary, or party from whom a bond 2
 their sureties for joint is required, may agree and arrange with his sureties for the deposit for 3
 control of trust estates safe keeping of any or all moneys, assets and other property for which 4
 authorized. 1893, 117, § 2. he is or may be responsible with a bank, savings bank, safe deposit or 5
 1894, 522, § 61. 1899, 364, § 1. trust company authorized by law to do business as such in the common- 6
 1907, 576, §§ 61, 122. wealth, and in such manner as to prevent the withdrawal or alienation 7
 1909, 256. of such money, assets or other property, or any part thereof, without the 8
 1912, 330. written consent of such sureties, or an order of the court in which such 9
 G. L. (ed. of bond is filed, or of a judge thereof, made on such notice to such sureties 10
 1920) 175, § 105. as the court or judge may direct. 11
 1924, 406, § 19.

ACTIONS UPON BONDS.

Action by SECTION 20. A bond given by an executor or administrator for the 1
 creditor. performance of his trust may be put in suit by a creditor of the deceased 2
 1786, 55, § 2. for his own benefit, when such creditor has recovered judgment for his 3
 R. S. 70, § 3. debt against the executor or administrator and he has neglected upon 4
 G. S. 101, § 19. demand to pay the same or show sufficient goods or estate of the deceased 5
 P. S. 143, § 10. to be taken on execution for that purpose. 6
 R. L. 149, § 20. 15 Mass. 6. 117 Mass. 222. 182 Mass. 332. 188 Mass. 525. 221 Mass. 587.
 16 Mass. 524. 20 Pick. 53. 9 Met. 525. 1 Gray, 305. 142 Mass. 227. 185 Mass. 178. 196 Mass. 1.
 2 Gray, 154. 173 Mass. 112. 187 Mass. 461. 217 Mass. 552.
 117 Mass. 222. 182 Mass. 332. 188 Mass. 525. 221 Mass. 587.
 138 Mass. 336. 183 Mass. 510. 195 Mass. 155. 411.

Same subject. SECTION 21. A creditor of an estate which has been represented in- 1
 1786, 55, § 2. solvent may bring such action if the amount due him has been ascertained 2
 R. S. 70, § 4. by the decree of distribution, and the executor or administrator neglects 3
 G. S. 101, § 20. upon demand to pay it. 4
 P. S. 143, § 11. R. L. 149, § 21. 21 Pick. 58. 221 Mass. 587.

Action by next SECTION 22. Such action may be brought by a person who is next 1
 of kin. of kin to recover his share of the personal property after a decree of 2
 1786, 55, § 2. the probate court ascertaining the amount due him, if the executor or 3
 R. S. 70, § 5. administrator neglects upon demand to pay it. 4
 G. S. 101, § 21. 126 Mass. 450. 144 Mass. 135.
 P. S. 143, § 12. R. L. 149, § 22.

Action by SECTION 23. If the probate court, upon the representation of a per- 1
 person aggrieved by son interested in an estate, finds that the executor or administrator has 2
 maladminis- failed in any manner not specified in the three preceding sections to per- 3
 tration of form the conditions of his bond, it may authorize any creditor, next of 4
 executor, etc. 1786, 55, § 2. kin, legatee or other person aggrieved by such maladministration to 5
 R. S. 70, § 6. bring an action on the bond. 6
 G. S. 101, § 22. P. S. 143, § 13. R. L. 149, § 23.

- | | | | |
|--------------|----------------|----------------|----------------|
| 9 Met. 525. | 9 Allen, 244. | 129 Mass. 75. | 193 Mass. 38. |
| 7 Cush. 467. | 13 Allen, 109. | 136 Mass. 104. | 202 Mass. 541. |
| 1 Gray, 305. | 110 Mass. 195. | 140 Mass. 351. | 221 Mass. 587. |
| 2 Gray, 175. | 549. | 183 Mass. 596. | 267 Mass. 86. |
| 15 Gray, 57. | 116 Mass. 518. | 187 Mass. 578. | |

Action when SECTION 24. If a judge of probate is obligor, either as principal or 1
 the judge is as surety, in a bond given to a former judge of the court, any action 2
 an obligor. 1838, 184. authorized by this chapter may be brought upon such bond in the name 3
 G. S. 101, §§ 23, 24.

4 of the judge mentioned therein or in the name of his executor or adminis-
5 trator, and the register of probate for the county in which such bond was
6 given may authorize an action thereon in like manner and upon the
7 same conditions as may be done in other cases by the court.

P. S. 143, § 14.
R. L. 149, § 24.

1 SECTION 25. The wife of a judge of probate may be a defendant in
2 an action upon a bond given to him or to his predecessor in such office.

Action against
wife of pro-
bate judge.

1896, 208.

R. L. 149, § 25.

1 SECTION 26. In every action on a bond under sections twenty,
2 twenty-one and twenty-two, the writ shall be endorsed by the persons
3 for whose benefit or at whose request the action is brought or by their
4 attorney, and the endorsers shall be liable for the costs of suit, and execu-
5 tion therefor shall be issued against them and not against the judge.
6 If the action is brought for the benefit of creditors or next of kin, there
7 shall be a further endorsement on the writ specifying that it is brought for
8 the benefit of such creditors or next of kin.

Endorsement
of writ
1786, 55, § 2.
R. S. 70, § 7.
G. S. 101, § 25.
P. S. 143, § 15.
R. L. 149, § 26.
5 Pick. 61.
2 Allen, 537.
240 Mass. 563.

1 SECTION 27. If the principal in the bond is a resident of the com-
2 monwealth at the commencement of the action, and is not made a
3 defendant therein or is not served with process, the court may, at the
4 request of any of the sureties, continue or postpone the action so long
5 as may be necessary to summon or bring in the principal as provided
6 in the following section.

Obligor may
be summoned
in certain
cases.
1788, 20, § 2.
R. S. 70, § 8.
G. S. 101, § 26.
P. S. 143, § 16.
R. L. 149, § 27.

1 SECTION 28. The sureties may take out a writ, in such form as the
2 court may prescribe, to arrest the principal or to attach his goods or
3 estate, and to summon him to appear and answer as defendant in the
4 original action. If, after being served with such process fourteen days
5 at least before the time appointed for him to appear and answer to the
6 action, he neglects so to do, and if judgment is for the plaintiff, such
7 judgment shall be rendered against the principal obligor with the other
8 defendants in the same manner as if he had been originally a party to
9 the action. An attachment or bail on such process shall be liable to
10 respond to the judgment in like manner as if made or taken in the original
11 action.

Same subject.
1788, 20, § 2.
R. S. 70, § 9.
G. S. 101, § 27.
P. S. 143, § 17.
R. L. 149, § 28.

1 SECTION 29. Except as otherwise provided, a bond given by a
2 guardian, conservator, trustee, receiver, commissioner or other fiduciary
3 officer may be put in suit by order of the probate court for the benefit
4 of any person interested, and the proceedings in such action shall be
5 conducted in like manner as is provided relative to actions on bonds
6 given by executors or administrators.

Actions upon
bonds of
guardians,
conservators,
trustees, etc.
1786, 55.
1810, 86, § 3.
1817, 190, § 43

R. S. 69, § 13;
79, § 25.
G. S. 100, § 12;
109, § 28.
P. S. 143, § 18.
R. L. 149, § 29.

1908, 295.
1915, 23.
1931, 110, § 1.
19 Pick. 403.
21 Pick. 36.
140 Mass. 351.

182 Mass. 332.
188 Mass. 525.
195 Mass. 133.
215 Mass. 242.
226 Mass. 218.
267 Mass. 86.

1 SECTION 30. An action on a bond payable to a judge of probate
2 shall be brought in the superior court held for the county where the
3 bond was taken.

Venue of
actions upon
bonds.
1786, 55, § 3.

1810, 86, § 3.
1817, 190, § 43.
R. S. 69, § 13;
70, § 10; 79, § 25

G. S. 100, § 12;
101, § 28; 109, § 28
P. S. 143, § 19

1897, 131.
R. L. 149, § 30.
195 Mass. 133.

Form of execution in action on bond 1786, 55. 1816, 94, § 2. R. S. 70, § 10.

SECTION 31. If the court finds that there has been a breach of the condition of the bond of an executor or administrator, it shall, upon a hearing in equity, award execution in the name of the plaintiff as follows:

- G. S. 101, § 18
- P. S. 143, § 20
- R. L. 149, § 31.
- 16 Gray, 267.
- 110 Mass. 195
- 116 Mass. 552
- 155 Mass. 203
- 188 Mass. 525
- 223 Mass. 389.
- 242 Mass. 145

First, If the action is brought for the benefit of a creditor, execution shall be awarded for the use of the creditor for the amount due him upon the judgment which he has recovered, or upon the decree of distribution in his favor.

144 Mass. 135.

Second, If the action is brought for the benefit of a person who is next of kin, execution shall be awarded for the use of such person for the amount due him according to the decree of the probate court.

107 Mass. 474.
116 Mass. 552.
129 Mass. 226.
138 Mass. 259.
204 Mass. 233.
215 Mass. 242.

Third, If the action is brought for a breach of the condition in not accounting for the estate as required by law, execution shall be awarded, without expressing that it is for the use of any person, for the full value of all the estate of the deceased which has come to the hands of the executor or administrator and for which he does not satisfactorily account, and for all damages caused by his neglect or maladministration.

107 Mass. 474.

Fourth, If the action is brought for any other breach of the condition of the bond, execution shall be awarded for such amount and for the use of such person or persons, or without expressing it to be for the use of any particular person, as the court determines.

1 Mass. 69.

Fifth, If there are two or more persons for whose use execution is to be awarded as provided in this section, a separate execution shall be issued for the amount due each.

Sixth, The execution shall include costs of suit, as well as the debt or damages; and if there is more than one execution, costs shall be divided between them as the court orders.

Proceedings if execution is awarded for the use of a particular person. 1786, 55, § 1. R. S. 70, § 10, cl. 7.

SECTION 32. If an execution awarded under the preceding section is expressed to be for the use of a particular person, such person shall be considered as the judgment creditor, and may cause it to be levied in his name and for his benefit, as if the action had been brought and the judgment recovered in his name.

- G. S. 101, § 28, cl. 7.
- P. S. 143, § 21
- R. L. 149, § 32.
- 8 Cush. 289.

Proceedings if awarded without expressing for whose use. R. S. 70, § 11. G. S. 101, § 29. P. S. 143, § 22. R. L. 149, § 33.

SECTION 33. If such execution is awarded without expressing it to be for the use of any particular person, all money received thereon shall be paid to the co-executor or co-administrator, if any, or to the person who is then the rightful executor or administrator, and shall be assets in his hands to be administered according to law.

9 Met. 525.

Provision for new breach after execution awarded. R. S. 70, § 12. G. S. 101, § 30. P. S. 143, § 23. R. L. 149, § 34. 242 Mass. 145.

SECTION 34. If, after execution has once been awarded in an action upon a bond, the executor or administrator commits a new breach of the condition of the bond, or if a creditor, next of kin, legatee or other person interested in the estate has a claim for further damages on account of any neglect or maladministration of the executor or administrator, a writ of scire facias on the original judgment may be sued out in like manner as is provided for the commencement of the original action; and the court shall thereupon award a new execution in like manner as might have been done in the original action.

1 SECTION 35. No action shall be maintained against the sureties on a
 2 bond given by a guardian or conservator unless commenced within four
 3 years from the time of the discharge of the guardian or conservator; but
 4 if at the time of such discharge the person entitled to bring such action
 5 is out of the commonwealth, it may be commenced within four years
 6 after his return.

Limitation of actions against sureties on bond of guardian or conservator 1835, 11; 113 R. S. 79, § 26.

G. S. 109, § 29.	1915, 23	141 Mass. 507.
P. S. 139, § 28.	9 Cush. 68.	199 Mass. 109.
R. L. 149, § 35.	13 Gray, 561.	

CHAPTER 206.

ACCOUNTS AND SETTLEMENTS OF EXECUTORS, ADMINISTRATORS, GUARDIANS, CONSERVATORS, TRUSTEES AND RECEIVERS.

SECT.		SECT.	
1.	When accounts shall be rendered.	17.	Expense of procuring surety chargeable on estate.
2.	Forms of accounts.	18.	Executor, etc., liable for neglect to account.
3.	Examination on oath.	19.	Opening of settled accounts.
4.	Court may require production of securities and moneys.	20.	Allowance of account of joint executors, etc., on oath of one.
5.	Personal property to be accounted for at appraised value, except, etc.	21.	Distribution.
6.	Property for which accountant chargeable.	22.	Final discharge of executor, etc.
7.	Notice required before allowance of account of guardian of insane person or of conservator.	23.	Confirmation of distribution by administrator without order.
8.	Income derived from real estate to be accounted for.	23A.	Citation on probate account on application of interested person.
9.	Mortgage of real estate to be personal assets.	24.	Final determination of account. Guardian ad litem, etc.
10.	In case of redemption, executor, etc., to release.	25.	Unclaimed money to be deposited in savings bank, etc.
11.	Land taken on execution by executor, etc., to be personal assets.	26.	Deposit of legacies, etc., of unknown legatees.
12.	How land held in mortgage or on execution may be sold.	27.	Deposit of certain funds.
13.	How disposed of if not sold.	28.	Final disposition of deposits.
14.	Allowance for burial lot and monument.	29.	If beneficiaries live out of commonwealth, courts may order trust fund paid over to trustee in another state.
15.	Cost of perpetual care.	30.	Same subject.
16.	Compensation and expenses of executor, etc.	31.	Settlements by receivers.

1 SECTION 1. An executor, administrator, guardian or conservator, or
 2 a trustee required by law to give bond to a judge of probate, shall render
 3 an account relative to the estate in his hands at least once a year and at
 4 such other times as shall be required by the court, until his trust is full-
 5 filled; but the court may at his request excuse him from rendering an
 6 account in any year, if satisfied that it is not necessary or expedient that
 7 it should be rendered.

When accounts shall be rendered 1752-3, 12, § 1 R. S. 67, § 7. G. S. 98, § 9. 1877, 102 P. S. 144, § 1. R. L. 150, § 1. 1915, 23. 1 Pick. 198.

3 Pick. 365.	11 Cush. 107.	191 Mass. 211
7 Pick. 1	6 Allen, 194	195 Mass. 133, 559.
3 Met. 74	102 Mass. 350.	215 Mass. 419
6 Met. 553	116 Mass. 518.	220 Mass. 84
4 Cush. 510, 513.	144 Mass. 195.	227 Mass. 392
8 Cush. 365		

Forms of accounts: 1895, 210.
R. L. 150, § 2. 1915, 23
146 Mass. 373
149 Mass. 520
151 Mass. 395.
152 Mass. 328.
166 Mass. 306
195 Mass. 559
202 Mass. 356
220 Mass. 84.

SECTION 2. Accounts rendered to the probate court by an executor, administrator, trustee, guardian or conservator shall be for a period distinctly stated therein, and consist of three schedules, of which the first shall show the amount of personal property according to the inventory, or, instead thereof, the amount of the balance of the next prior account, as the case may be, and all income and other property received and gains from the sale of any property or otherwise; the second shall show payments, charges, losses and distributions; the third shall show the investment of the balance of such account, if any, and changes of investment. A trustee shall state in his accounts the receipts of principal and income separately and also the payments and charges on account of such principal and income separately.

Examination on oath. R. S. 67, § 7.
G. S. 98, § 9.
P. S. 144, § 2.

SECTION 3. An executor, administrator, guardian, conservator, trustee or receiver may be examined on oath before the court upon any matters relative to his accounts.

R. L. 150, § 3. 11 Pick. 113. 4 Cush. 510.
1915, 23. 12 Pick. 166. 149 Mass. 520.
1 Pick. 530. 6 Met. 553.

Court may require production of securities and moneys. 1915, 151, § 3.
242 Mass. 363
259 Mass. 578
260 Mass. 515
268 Mass. 106
272 Mass. 432.

SECTION 4. In settling an account of any executor, administrator, trustee, guardian or other fiduciary, the probate court may require him, or any of them if there are more than one, to produce during the proceedings or afterward, as the court may direct, any securities or moneys comprised in the account or any documents relating to the investments of the estate, and to replace any moneys or property that have been improperly applied or disposed of, or the value thereof, and to pay or transfer the same or any moneys or property with which he or they may be charged into a proper account or otherwise, as the court may order, in such manner that the same shall be in the control of the persons entitled thereto; and the proceedings upon every such account shall be considered for all purposes to be proceedings in equity, and orders and decrees of the court therein shall be enforceable accordingly, and execution may issue for any such moneys against the fiduciary personally as upon a judgment at law in favor of the persons entitled to the control thereof, or any of them, for the benefit of all.

Personal property to be accounted for at appraised value, except, etc. 1817, 190,
§§ 19, 34
R. S. 67, §§ 1, 2, 4; 79, § 20
G. S. 98, §§ 1, 2, 6; 109, § 17
P. S. 144, § 3
R. L. 150, § 4.
1915, 23
2 Mass. 384.
110 Mass. 369
159 Mass. 185

SECTION 5. An executor, administrator, guardian, conservator or trustee shall account for the personal property at its appraised value, but he shall make no profit by the increase nor sustain any loss by the decrease or destruction of any part thereof without his fault. If he sells any of the personal property for more than its appraised value, he shall account for the excess; if he sells for less than its appraised value, he shall be allowed for the loss if the court finds that the sale was expedient and for the interest of all concerned; and he shall not be accountable for a debt inventoried as due to the estate if the court finds that it remains uncollected without his fault.

249 Mass. 79.

259 Mass. 578.

Property for which account-ant chargeable. 1817, 190, § 34
R. S. 67, § 5;
79, § 20.
G. S. 98, § 7;
109, § 17.

SECTION 6. An executor, administrator, guardian, conservator or trustee shall be chargeable in his account with all the personal property of the estate coming to him and which is by law to be administered, although not included in the inventory; also with all proceeds of real

5 estate which is sold or mortgaged, and with all interest, profit and income P. S. 144, § 4.
6 coming to him from the personal property. R. L. 150, § 5.

1915, 23	13 Gray, 387	259 Mass. 578
9 Mass. 337.	191 Mass. 211.	268 Mass. 574

1 SECTION 7. No final account or discharge of a guardian of an insane
2 person shall be allowed unless at least seven days' notice has been given
3 to the department of mental diseases. No account of a guardian of an
4 insane person or of a conservator shall be allowed without such notice
5 as the court may order to the United States veterans' bureau or its suc-
6 cessor if the ward is entitled to any benefit, estate or income paid or
7 payable by or through said bureau or its successor.

1930, 381, § 5.	3 Op. A. G. 252.
-----------------	------------------

1 SECTION 8. If real estate of a deceased person is used, occupied or
2 taken charge of by an executor or administrator, he shall account for
3 the income and management thereof in the same manner as in the case
4 of personal property.

1789, 11, § 2.	1 Pick. 157.	99 Mass. 616.	145 Mass. 520.
R. S. 67, § 6.	9 Met. 540.	100 Mass. 218.	149 Mass. 262.
G. S. 98, § 8.	6 Gray, 338.	106 Mass. 100.	152 Mass. 257.
P. S. 144, § 5.	12 Gray, 236.	116 Mass. 552.	162 Mass. 56.
R. L. 150, § 6.	13 Gray, 326.	125 Mass. 307.	193 Mass. 38.
1913, 248.	1 Allen, 132.	311.	204 Mass. 233.
16 Mass. 289.	5 Allen, 87.	136 Mass. 297.	263 Mass. 300.

1 SECTION 9. If a mortgagee of real estate or an assignee of such
2 mortgagee dies without having foreclosed the mortgage, the mortgaged
3 property and the debt secured thereby shall be personal assets in the
4 hands of his executor or administrator, and shall be administered and
5 accounted for as such; and the executor or administrator shall have the
6 same rights of entry and of action under said mortgage as the mortgagee
7 or his assignee.

16 Mass. 18.	3 Gray, 504.	128 Mass. 284.	219 Mass. 266.
14 Pick. 399.	10 Allen, 430.	161 Mass. 487.	223 Mass. 134.
8 Cush. 225.	108 Mass. 379.	175 Mass. 213.	245 Mass. 75.
11 Cush. 117.			

1 SECTION 10. Upon the redemption of such mortgage the money paid
2 thereon shall be received by the executor or administrator, and he shall
3 thereupon release and discharge the mortgage; and until such redemp-
4 tion the executor or administrator, if possession has been taken either
5 by himself or by the deceased, shall be seized of the mortgaged property
6 in trust for the persons who would be entitled to the money if the prop-
7 erty had been redeemed.

1 SECTION 11. If an executor or administrator recovers judgment for
2 a debt due the deceased, and levies on real estate, he shall be seized of
3 such real estate in trust for the persons who would have been entitled
4 if the judgment had been satisfied in money; and the real estate so
5 taken shall be considered as personal assets in his hands; and if re-
6 deemed, the money shall be received by the executor or administrator,
7 who shall thereupon release the real estate.

R. L. 150, § 9.	4 Mass. 598.	17 Pick. 477.	3 Gray, 302.
-----------------	--------------	---------------	--------------

1 SECTION 12. Real estate held by an executor or administrator in
2 mortgage, or taken on execution by him, may, at any time before the
3 right of redemption is foreclosed, be sold subject to such right, in the
4 same manner as personal property of a person deceased; and after such

1849, 47. right has been foreclosed, it may be sold in the same manner as real 5
 1851, 288. estate of which the deceased died seized. 6
 1852, 41.

G. S. 96, §§ 12, 1 Pick 81. 3 Gray, 302.
 13; 98, § 5. 17 Pick 477. 6 Allen, 77.
 P. S. 133, § 9. 10 Met 403. 190 Mass. 27.
 R. L. 150, § 10. 13 Met. 126.

How disposed SECTION 13. If real estate so held by an executor or administrator in 1
 of if not sold. mortgage or on execution is not redeemed or sold as before provided, 2
 1786, 5, § 3. it shall be assigned and distributed to the same persons and in the 3
 1788, 51, § 3. same proportions as if it had been part of the personal property of 4
 R. S. 65, § 15. same proportions as if it had been part of the personal property of 4
 G. S. 96, § 14. same proportions as if it had been part of the personal property of 5
 P. S. 133, § 10. same proportions as if it had been part of the personal property of 5
 R. L. 150, § 11. same proportions as if it had been part of the personal property of 6
 3 Gray, 504. same proportions as if it had been part of the personal property of 7

Allowance for SECTION 14. A reasonable amount expended for a burial lot and a 1
 burial lot and monument. or for the repair, improvement or embellishment of a burial 2
 1878, 228. lot or monument, may be allowed by the court as part of the funeral 3
 P. S. 144, § 6. expenses of a deceased person; and the court may at any time, upon 4
 1900, 147. petition of an executor or administrator, after notice, determine the 5
 R. L. 150, § 12. amount which may be expended. 6
 1920, 46.
 10 Pick 154.
 139 Mass. 304.
 159 Mass. 185.

167 Mass. 307, 577. 180 Mass. 508. 246 Mass. 522.

Cost of per- SECTION 15. An executor or administrator may pay to a cemetery 1
 petual care. corporation or to a town having a burial place therein a reasonable 2
 1897, 321. amount for the perpetual care of the lot in which the body of the 3
 R. L. 150, § 13. deceased is buried. The probate court shall determine, after notice, to 4
 153 Mass. 462. whom the same shall be paid and the amount thereof, and such amount 5
 167 Mass. 307. shall be allowed the executor or administrator in his account. 6

Compensation SECTION 16. An executor, administrator, guardian, conservator or 1
 and expenses trustee shall be allowed his reasonable expenses incurred in the execution 2
 of executor, etc. R. S. 67, § 8; 3
 79, § 32. of his trust, and shall have such compensation for services as the court 4
 1838, 144. may allow. 4
 G. S. 98, § 10;
 109, § 31.

P. S. 144, § 7. 101 Mass. 592. 152 Mass. 328.
 R. L. 150, § 14. 109 Mass. 252, 258, 161 Mass. 188.
 1915, 23. 541. 163 Mass. 509.
 1 Pick 147. 117 Mass. 41. 185 Mass. 14.
 5 Pick 146. 121 Mass. 220. 192 Mass. 337.
 10 Pick 77. 125 Mass. 307. 204 Mass. 233.
 16 Pick 46. 128 Mass. 140. 224 Mass. 145.
 19 Pick 473. 130 Mass. 262. 226 Mass. 231, 492.
 20 Pick 378. 140 Mass. 117, 351. 234 Mass. 374.
 2 Met 420. 142 Mass. 422. 244 Mass. 472.
 5 Allen, 87. 146 Mass. 373. 254 Mass. 464.
 6 Allen, 494. 149 Mass. 375, 520. 267 Mass. 185.

Expense of SECTION 17. Money paid with the approval of the judge of probate 1
 procuring to a corporation qualified to act in the commonwealth in guaranteeing 2
 surety charge- the fidelity of persons and in acting as surety on bonds, or to any person 3
 able on estate. 1886, 233. for acting as surety on any official bond given to such probate court, 4
 R. L. 150, § 15. may be allowed as a charge against the estate. 5
 228 Mass. 159.

Executor, etc., SECTION 18. If an executor or administrator, after being duly cited 1
 liable for neglect to render an account of his administra- 2
 neglect to tion, his bond may be put in suit as provided in the preceding chapter; 3
 account R. S. 67, § 9. and if he persists in such neglect, judgment shall be rendered against him, 4
 G. S. 98, § 11. and he shall be liable in like manner and to the same extent as an execu- 5
 P. S. 144, § 8. tor in his own wrong. 6
 R. L. 150, § 16.

1 SECTION 19. If an account of an executor, administrator, guardian,
 2 conservator or trustee is settled in the absence of a person adversely
 3 interested and without notice to him, it may be opened upon his appli-
 4 cation at any time within six months after such settlement. Upon
 5 the settlement of an account, all former accounts of the same account-
 6 ant which have not been settled according to section twenty-four or
 7 corresponding provisions of earlier laws may be so far opened as to
 8 correct a mistake or error therein; but a matter in dispute, previously
 9 heard and determined by the court, shall not without leave of the court
 10 be again brought in question by any of the parties to such dispute.

Opening of settled accounts
 R. S. 67, § 10
 G. S. 98, § 12
 1870, 366.
 P. S. 144, § 9.
 R. L. 150, § 17.
 1907, 438.
 1 Pick. 157.
 6 Pick. 422.
 7 Pick. 1.
 9 Pick. 27.
 10 Pick. 77.
 11 Pick. 405.
 18 Pick. 1.
 20 Pick. 510.
 6 Met. 194.

4 Cush. 513	109 Mass. 541	155 Mass. 203	225 Mass. 380.
11 Cush. 107.	128 Mass. 532	162 Mass. 56	227 Mass. 303.
12 Allen, 1	134 Mass. 129	186 Mass. 393.	242 Mass. 317
98 Mass. 462	137 Mass. 91	188 Mass. 186	256 Mass. 45
101 Mass. 592.	144 Mass. 415, 461.	203 Mass. 328.	266 Mass. 448.
103 Mass. 177	148 Mass. 434.	219 Mass. 40.	271 Mass. 521.

1 SECTION 20. The probate court may allow the account of two or
 2 more joint executors, administrators, guardians, conservators or trustees,
 3 upon the oath of one of them.

R. S. 70, § 31;
 79, § 33.

G. S. 101, § 6.
 P. S. 144, § 11.

R. L. 150, § 18.
 1915, 23.

Allowance of account of joint executors, etc., on oath of one.

1 SECTION 21. If the estate of a deceased person is to be distributed
 2 in whole or in part, the probate court, on petition of any person inter-
 3 ested, after such notice as it may require, may order the executor or
 4 administrator to convert the personal property into cash and distribute
 5 it among the persons entitled thereto.

Distribution.
 R. L. 150, § 19.
 194 Mass. 507.
 209 Mass. 585
 211 Mass. 178.
 220 Mass. 84
 242 Mass. 363.

1 SECTION 22. If an executor, administrator, guardian, conservator or
 2 trustee has paid or delivered to the persons entitled thereto the money
 3 or other property in his hands, as required by decree of a probate court,
 4 he may perpetuate the evidence thereof by presenting to said court,
 5 within one year after the decree is made, an account of such payments
 6 or of the delivery of such property; and said account, upon being proved
 7 to the satisfaction of the court, and verified on oath by the accountant,
 8 shall be allowed as his final discharge and ordered to be recorded. Such
 9 discharge shall forever exonerate the accountant and his sureties from all
 10 liability under such decree unless his account is impeached for fraud or
 11 manifest error.

Final discharge of executor, etc.
 R. S. 70, § 32.
 G. S. 101, § 7.
 P. S. 144, § 12.
 R. L. 150, § 20.
 1915, 23.
 191 Mass. 211.
 229 Mass. 231
 232 Mass. 83.

1 SECTION 23. If without an order of court an administrator pays or
 2 delivers to the widow or husband of the deceased or to any other person
 3 any money or other property in his hands, and thereafter renders an ac-
 4 count on oath with a full and detailed statement thereof, and after notice
 5 it appears that the persons to whom such money has been paid or prop-
 6 erty delivered would have been entitled to an order of court for such
 7 payment or delivery and that such account ought to be allowed, the
 8 probate court may make a decree which shall have the same effect to
 9 discharge and exonerate the accountant and his sureties from further lia-
 10 bility as if such payment or delivery had been made under a previous
 11 order of the probate court.

Confirmation of distribution by administrator without order
 1894, 303.
 R. L. 150, § 21.
 166 Mass. 306
 242 Mass. 363.

1 SECTION 23A. When an account has been filed in the probate court
 2 and the accountant fails to take out a citation, give notice as therein
 3 ordered and make return of service to the court, the court may, upon
 4 application of any person interested, order him to do so; or the court

Citation on probate account on application of interested person
 1922, 59.

may, in its discretion, issue such citation to any party in interest who may request it. 5
6

Final determination of account Guardian ad litem, etc. 1877, 199, § 1, 2. 1879, 161, § 1, 2. P. S. 144, § 13. 1889, 466. 1895, 288. R. L. 150, § 22. 227 Mass. 392. 242 Mass. 317.

SECTION 24. If an account has been filed in the probate court and if the court finds that the items of said account should be finally determined and adjudicated, or if the accountant after two years from a former adjudication or from his appointment desires such determination and adjudication, notice of such proposed action on such account shall be given to all parties as it may order. If the interest of a person unborn, unascertained or legally incompetent to act in his own behalf is not represented except by the accountant, the court shall appoint a competent and disinterested person as guardian ad litem or next friend for such person, to represent his interest in the case. The person so appointed shall make oath to perform his duty faithfully and impartially, and shall be entitled to such reasonable compensation as the court allows. 1
2
3
4
5
6
7
8
9
10
11
12
13

Unclaimed money to be deposited in savings bank, etc. R. S. 70, §§ 33, 34. G. S. 101, § 8. P. S. 144, § 16. R. L. 150, § 23. 1915, 23. 145 Mass. 517. 153 Mass. 14. 200 Mass. 594. 223 Mass. 540.

SECTION 25. If money which a decree of a probate court has ordered to be paid over remains for six months unclaimed, the executor, administrator, guardian, conservator or trustee who was ordered to pay the same may deposit it in a savings bank or other like institution, or invest it in bank stock or other stocks, as the probate court orders, to accumulate for the benefit of the person entitled thereto. Such deposit or investment shall be made in the name of the judge of probate for the time being, and shall be subject to the order of the judge and of his successors in office as hereinafter provided. The person making such deposit or investment shall file in the probate court a memorandum thereof, with the original certificates or other evidences of title thereto, which shall be allowed as a sufficient voucher for such payment. When the person entitled to the money deposited satisfies the judge of his right to receive it, the judge shall cause it to be paid over and transferred to him. 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Deposit of legacies, etc., of unknown legatees. 1885, 376. 1889, 185. 1898, 65, § 2. R. L. 150, § 24. 145 Mass. 517. 223 Mass. 540.

SECTION 26. If the residence of a legatee under a will duly proved or of a person entitled to a portion of a trust fund under an order of distribution provided by section twenty-five of chapter two hundred and three is unknown or if he is a minor without legal guardian, the court may, if satisfied of such fact, order the legacy or share of the trust fund due him to be deposited or invested as provided in and subject to the preceding section. 1
2
3
4
5
6
7

Deposit of certain funds. 1899, 90. R. L. 150, § 25. 1906, 127. 1915, 23. 223 Mass. 540.

SECTION 27. If an executor, administrator, guardian, conservator or trustee has money which he considers it advisable to deposit in a savings bank in the name of the judge of probate for the benefit of any person, he may apply to the probate court by which he was appointed for leave so to do, and the court may in its discretion, without notice, direct such money to be so deposited. When the deposit is made the deposit book of the bank shall be filed in said court. When the person entitled to such money satisfies the court of his right to receive it, the court shall by decree direct it to be transferred to him. 1
2
3
4
5
6
7
8
9

Final disposition of deposits. 1890, 408, § 1. R. L. 150, § 26. 185 Mass. 22. 211 Mass. 198.

SECTION 28. The probate court may, on petition of any person interested and after public notice, order all money or the proceeds thereof which have been deposited or invested by its authority and which shall 1
2
3

4 have remained unclaimed for twenty years from the date of such de-
 5 posit or investment to be paid to the residuary legatee, if any, of the
 6 testator to whose estate the money belonged, or, if such residuary legatee
 7 is dead, to his heirs living at the time of such distribution; and if no such
 8 residuary legatee or any of his heirs are then living, or if the deceased
 9 died intestate, said money and the proceeds thereof shall be disposed of
 10 and distributed among the persons entitled thereto and in the manner
 11 provided by chapter one hundred and ninety. The court shall first
 12 require from the persons to whom such money shall be ordered paid a
 13 sufficient bond of indemnity, with two sufficient sureties to be approved
 14 by it, conditioned to repay to the persons for whose benefit such deposit
 15 or investment was originally made, or to the personal representatives
 16 of such persons, all money paid over by the order of the court under
 17 this section.

1 SECTION 29. If all living parties interested as beneficiaries in a trust
 2 created by a will allowed in the commonwealth reside outside thereof,
 3 the probate court having jurisdiction of the trust may, on petition of
 4 parties in interest or of the executor, administrator or trustee, if it
 5 considers it just and expedient, authorize the executor, administrator
 6 or trustee to pay the fund to a trustee appointed by the proper court
 7 in any other state or country, if all living beneficiaries and the executor,
 8 administrator or trustee signify their consent, and the court is satisfied
 9 that the laws of such other state or country secure the due performance
 10 of said trust; and upon such payment, shown to the satisfaction of said
 11 court, the executor, administrator or trustee appointed here may be dis-
 12 charged from further responsibility by decree of said court.

If beneficiaries live out of commonwealth, courts may order trust fund paid over to trustee in another state.
 1879, 176, § 1.
 P. S. 144, § 17.
 R. L. 150, § 27

1 SECTION 30. If there are contingent interests in such trust fund,
 2 whether the persons who may be entitled thereto are in being or not,
 3 or if any of the beneficiaries are minors, the court, before making an
 4 order or decree, shall cause such interests and minors to be properly
 5 represented by guardians ad litem or otherwise at its discretion.

Same subject.
 1879, 176, § 2.
 P. S. 144, § 18.
 R. L. 150, § 28.

1 SECTION 31. The following claims shall, in the settlement of estates
 2 by receivers, be entitled to priority in the order named:
 3 First, Debts due the United States or debts due, or taxes assessed by,
 4 the commonwealth or a county, city or town therein.
 5 Second, Wages to an amount of not more than one hundred dollars
 6 due an operative, clerk or servant for labor, either performed within one
 7 year last preceding the appointment of the receiver or for the payment
 8 for which a suit, which was commenced within one year after the per-
 9 formance of the labor, is pending or was terminated within one year
 10 after said appointment.
 11 Third, Debts to an amount of not more than fifty dollars due physi-
 12 cians for medical attendance on the debtor or his family, rendered within
 13 six months prior to said appointment.

Settlements by receivers.
 1897, 400.
 R. L. 150, § 29.
 171 Mass. 22.
 176 Mass. 283.
 209 Mass. 416.
 215 Mass. 156

TITLE III.

DOMESTIC RELATIONS.

CHAPTER 207. Marriage.

CHAPTER 208. Divorce.

CHAPTER 209. Husband and Wife.

CHAPTER 210. Adoption of Children and Change of Names.

CHAPTER 207.

MARRIAGE.

SECT.	SECT.
CERTAIN MARRIAGES PROHIBITED.	
1. Marriage between certain relatives prohibited.	20. Notice to be in writing under oath.
2. Same subject.	21. Certificate, etc., of divorce to accompany notice of divorced person.
3. Same subject.	22. Oath before judge of probate court in place of certificate.
4. Polygamous marriage void.	23. Notice, where and when receivable.
5. Insane, etc., persons incapable of marrying.	24. Notice not receivable from certain minors.
6. Marriage during existence of former marriage valid, when.	25. Marriage of minors, how authorized.
7. Minors not to be married without consent of parents, etc.	26. Notice not to be given without consent of parties. How cancelled.
8. Marriages void without decree, when.	27. Notice in case of adopted persons.
9. Marriages between minors void after separation, etc.	28. Certificate of intention of marriage.
10. Foreign marriages void, when.	29. Five days' notice not required of immigrants.
11. Certain marriages contrary to laws of other states forbidden.	30. Five days' notice, how dispensed with.
12. Licensing officer to ascertain legal ability to marry of non-residents.	31. Alteration of certificate of intention prohibited.
13. Construction of three preceding sections.	32. Clerk or registrar not to issue certificate without facts relative to divorce.
14. Determination of validity of marriage.	33. Certificate not to be issued to certain minors.
LEGITIMACY AND CARE OF ISSUE OF VOID MARRIAGES.	
15. Issue of certain void marriages illegitimate.	33A. Proof of age may be required.
16. Issue of marriage void by reason of nonage, insanity, etc.	34. Duplicate copies of notice of intention of minors, when.
17. Issue of marriage void by reason of prior marriage.	35. Refusal of certificate, when.
18. Care and maintenance of children of void marriage.	36. Citizens married outside commonwealth to file certificate here.
NOTICE OF INTENTION OF MARRIAGE.	
19. Notice to be filed five days in advance.	37. List of impediments to marriage to be posted in office of clerk or registrar.
SOLEMNIZATION OF MARRIAGE.	
	38. Solemnization of marriage.
	39. Designation of justices of the peace, non-resident clergymen, etc., to solemnize marriage.

- SECT.
- 40. Persons solemnizing marriages to keep records and make returns.
 - 41. Correction of imperfect certificates of marriage.
 - 42. Marriages valid though irregularly solemnized.
 - 43. Marriage by consul, etc.
 - 44. Fees by cities and towns to persons solemnizing marriages.

EVIDENCE OF MARRIAGE.

- 45. Record.
- 46. Certificate, etc., of consul, etc.
- 47. Admissions and general repute, etc.

PENALTIES.

- 48. Penalty for solemnizing marriage without authority.
- 49. Penalty for joining persons in marriage without certificate.

- SECT.
- 50. Penalty for knowingly issuing certificate or performing marriage in evasion of laws of another state.
 - 51. Penalty for violation of certain provisions of this chapter.
 - 52. Penalty for violation of law relative to making out notice of intention, and false statement therein.
 - 53. Penalty for issuing certificate of intention to persons under age.
 - 54. Penalty for illegal alteration of certificate of intention.
 - 55. Penalty for failure of citizens married outside commonwealth to file certificate.
 - 56. Penalty for failure to make records and returns of marriages.
 - 57. Penalty for failure to return certificate of intention of marriage.
 - 58. Penalty for advertising to perform marriage ceremony.

CERTAIN MARRIAGES PROHIBITED.

1 SECTION 1. No man shall marry his mother, grandmother, daughter, Marriage
 2 granddaughter, sister, stepmother, grandfather's wife, son's wife, grand- between certain
 3 son's wife, wife's mother, wife's grandmother, wife's daughter, wife's relatives
 4 granddaughter, brother's daughter, sister's daughter, father's sister or prohibited
 5 mother's sister. C. L. 102, § 5.
 1695-6, 2, § 1.
 1785, 69, § 1

R S 75, § 1 P S 145, § 1 213 Mass 334
 G. S. 106, § 1. R. L. 151, § 1 248 Mass 259.

1 SECTION 2. No woman shall marry her father, grandfather, son, Same subject.
 2 grandson, brother, stepfather, grandmother's husband, daughter's hus- 1785, 69, § 1.
 3 band, granddaughter's husband, husband's father, husband's grand- R. S. 75, § 3.
 4 father, husband's son, husband's grandson, brother's son, sister's son, G. S. 106, § 2.
 5 father's brother or mother's brother. P. S. 145, § 2.
 R. L. 151, § 2.
 10 Met 451.

213 Mass. 334. 248 Mass 259.

1 SECTION 3. The prohibition of the two preceding sections shall con- Same subject.
 2 tinue notwithstanding the dissolution, by death or divorce, of the mar- R. S. 75, § 3.
 3 riage by which the affinity was created, unless the divorce was granted G. S. 106, § 3.
 4 because such marriage was originally unlawful or void. P. S. 145, § 3.
 R. L. 151, § 3.
 213 Mass 334.

1 SECTION 4. A marriage contracted while either party thereto has Polygamous
 2 a former wife or husband living, except as provided in section six and in marriage void.
 3 chapter two hundred and eight, shall be void. 1784, 40, § 2

1785, 69, § 2 P S 145, § 4 170 Mass 150 213 Mass 334
 R S 75, § 4 R L 151, § 4 171 Mass 560 214 Mass 77
 G. S. 106, § 4 113 Mass 458

1 SECTION 5. An insane person, an idiot, or a feeble-minded person Insane, etc.,
 2 under commitment to an institution for the feeble-minded, to the cus- persons in-
 3 tody or supervision of the department of mental diseases, or to an in- capable of
 4 stitution for mental defectives, shall be incapable of contracting marry-
 5 riage. The validity of a marriage shall not be questioned by reason of R. S. 75, § 5.
 6 the insanity, idiocy or of the feeble-mindedness aforesaid of either party 1843, 5.
 1845, 222
 G. S. 106, § 5.
 107, § 2
 P. S. 145,
 § 5, 9

R. L. 151, § 5.
R31, 214.
12 Mass. 363.

in the trial of a collateral issue, but shall be raised only in a process instituted in the lifetime of both parties to test such validity. 7
8

4 Pick. 32. 4 Allen, 458. 213 Mass. 334. 271 Mass. 398.

Marriage during existence of former marriage valid, when.
1895, 427
1896, 499
R. L. 151, § 6.
170 Mass. 150.
171 Mass. 560.
187 Mass. 179.
189 Mass. 373.
196 Mass. 280
202 Mass. 500.
232 Mass. 253.
248 Mass. 15.
264 Mass. 453.

SECTION 6. If a person, during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract with due legal ceremony and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, that the former marriage had been annulled by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to the former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment, and the issue of such subsequent marriage shall be considered as the legitimate issue of both parents. 1
2
3
4
5
6
7
8
9
10
11
12
13

Minors not to be married without consent of parents, etc.
1692-3, 25, § 1.
1695-6, 2, § 4.
1786, 3, § 3.
1834, 177, § 2.
R. S. 75, § 15.

SECTION 7. A magistrate or minister shall not solemnize a marriage if he has reasonable cause to believe that the male is under twenty-one or the female is under eighteen, except with the consent of the parent or guardian having the custody of the minor, if there is any such parent or guardian in the commonwealth competent to act. 1
2
3
4
5

G. S. 106, § 13. P. S. 145, § 6. R. L. 151, § 7. 1 Gray, 119.

[Penalty, § 51.]

Marriages void without decree, when.
1695-6, 2, § 1.
1785, 69, § 2.
R. S. 76, § 1.
G. S. 107, § 1.

SECTION 8. A marriage solemnized within the commonwealth which is prohibited by reason of consanguinity or affinity between the parties, or of either of them having a former wife or husband living, shall be void without a decree of divorce or other legal process. 1
2
3
4

P. S. 145, § 7. R. L. 151, § 8.

Marriages between minors void after separation, etc.
R. S. 76, § 2.
G. S. 107, § 3.
P. S. 145, § 8.

SECTION 9. A marriage solemnized when either party is under fourteen if a male, or twelve if a female, shall be void without a decree of divorce or other legal process if the parties separate during such nonage and do not afterward cohabit. 1
2
3
4

R. L. 151, § 9. 1 Gray, 119.

Foreign marriages void, when.
R. S. 75, § 6.
G. S. 106, § 6.
P. S. 145, § 10.
R. L. 151, § 10.
1913, 360, § 1.
10 Met. 451.
157 Mass. 73
170 Mass. 150
171 Mass. 560.
211 Mass. 512.

SECTION 10. If any person residing and intending to continue to reside in this commonwealth is disabled or prohibited from contracting marriage under the laws of this commonwealth and goes into another jurisdiction and there contracts a marriage prohibited and declared void by the laws of this commonwealth, such marriage shall be null and void for all purposes in this commonwealth with the same effect as though such prohibited marriage had been entered into in this commonwealth. 1
2
3
4
5
6
7

213 Mass. 334 232 Mass. 253. 264 Mass. 166, 453.
219 Mass. 111. 249 Mass. 552. 265 Mass. 242.

Certain marriages contrary to laws of other states forbidden.
1913, 360, § 2.

SECTION 11. No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void. 1
2
3
4
5

1 SECTION 12. Before issuing a license to marry a person who resides
 2 and intends to continue to reside in another state, the officer having
 3 authority to issue the license shall satisfy himself, by requiring affidavits
 4 or otherwise, that such person is not prohibited from intermarrying by
 5 the laws of the jurisdiction where he or she resides.

Licensing officer to ascertain legal ability to marry of non-residents. 1913, 360, § 3.

1 SECTION 13. The three preceding sections shall be so interpreted and
 2 construed as to effectuate their general purpose to make uniform the
 3 law of those states which enact like legislation.

Construction of three preceding sections. 1913, 360, § 5.

1 SECTION 14. If the validity of a marriage is doubted, either party
 2 may file a libel for annulling such marriage, or if it is denied or doubted
 3 by either party, the other party may file a libel for affirming the mar-
 4 riage. Such libel shall be filed in the same manner as a libel for divorce,
 5 and all the provisions of chapter two hundred and eight relative to
 6 libels for divorce shall, so far as appropriate, apply to libels under this
 7 section. Upon proof of the validity or nullity of the marriage, it shall
 8 be affirmed or declared void by a decree of the court, and such decree of
 9 nullity may be made although the marriage was solemnized out of the
 10 commonwealth, if at that time and also when the libel was filed the
 11 libellant had his domicile in the commonwealth, or if he has resided in
 12 this commonwealth for five years last preceding the filing of said libel,
 13 unless the court finds that he has removed into this commonwealth for
 14 the purpose of obtaining said decree.

Determination of validity of marriage. R. S. 76, §§ 3, 4. 1846, 197. 1855, 27. G. S. 107, §§ 4, 5. P. S. 145, § 11. 1886, 36. R. L. 151, § 11. 114 Mass. 563, 566. 144 Mass. 163. 149 Mass. 223. 156 Mass. 578. 161 Mass. 111. 171 Mass. 494. 174 Mass. 216. 175 Mass. 157, 383. 214 Mass. 77.

223 Mass. 62. 224 Mass. 392, 438. 237 Mass. 502. 4 Op. A. G. 176.

LEGITIMACY AND CARE OF ISSUE OF VOID MARRIAGES.

1 SECTION 15. The issue of a marriage declared void by reason of
 2 consanguinity or affinity between the parties shall be illegitimate.

Issue of certain void marriages illegitimate.

R. S. 76, § 21. G. S. 107, § 28. P. S. 145, § 12. R. L. 151, § 12.

1 SECTION 16. The issue of a marriage declared void by reason of
 2 nonage, insanity or idiocy of either party shall be the legitimate issue
 3 of the parent who was capable of contracting the marriage.

Issue of marriage void by reason of nonage, insanity, etc.

R. S. 76, § 22. G. S. 107, § 29. P. S. 145, § 13. R. L. 151, § 13.

1 SECTION 17. If a marriage is declared void by reason of a prior
 2 marriage of either party and the court finds that the second marriage
 3 was contracted with the full belief of the party who was capable of
 4 contracting the second marriage that the former husband or wife was
 5 dead, or that the former marriage was void, or that a divorce had been
 6 decreed leaving the party to the former marriage free to marry again,
 7 such finding shall be stated in the decree, and the issue of the second
 8 marriage, if born or begotten before the second marriage was declared
 9 void, shall be the legitimate issue of the parent capable of contracting
 10 the marriage.

Issue of marriage void by reason of prior marriage. R. S. 76, § 23. G. S. 107, § 30. P. S. 145, § 14. R. L. 151, § 14. 1902, 310. 114 Mass. 563. 156 Mass. 578. 223 Mass. 451. 228 Mass. 602.

1 SECTION 18. Upon or after a decree of nullity, the court shall have
 2 like power to make orders relative to the care, custody and maintenance
 3 of the minor children of the parties as upon a decree of divorce.

Care and maintenance of children of void marriage.

1820, 56, § 1. G. S. 107, § 33. R. L. 151, § 15. R. S. 76, § 26. P. S. 145, § 15.

NOTICE OF INTENTION OF MARRIAGE.

Notice to be
filed five days
in advance.
C. L. 101, § 2.
1695-6, 2, § 4.
1727-8, 11.
1786, 3, § 3.
1834, 177, § 2.
R. S. 75, § 7.
1850, 121, § 1.
G. S. 106, § 7.
1867, 58, § 1.
P. S. 145, § 16.
R. L. 151, § 16.
1911, 736, § 1.
1930, 141.

SECTION 19. Persons intending to be joined in marriage in the commonwealth shall, not less than five days before their marriage, cause notice of their intention to be filed in the office of the clerk or registrar of the town where each of them dwells, or, if they do not dwell within the commonwealth, in the office of the clerk or registrar of the town where they propose to have the marriage solemnized. In computing the five day period specified in this section and in determining the fifth day referred to in section twenty-eight, Sundays and holidays shall be counted.

3 Op. A. G. 467.

Notice to be
in writing
under oath.
1853, 335, § 2.
G. S. 106, § 10.
P. S. 145, § 19.
1894, 409, § 1.
R. L. 151,
§§ 17, 27.
1912, 120, § 1.
1913, 752, § 2.
1914, 121, § 1.
1931, 237.
[Penalty for
false oath,
etc., § 52.]

SECTION 20. The clerk or registrar shall require written notice of intention of marriage, on blanks furnished by him, containing such information as is required by law and also a statement of absence of any legal impediment to the marriage, to be given him under oath, by both of the parties to such intended marriage if both dwell in his town, or, if the parties dwell in different towns within the state, or if one dwells outside the state, by the party dwelling in his town, or, if both dwell outside the state, by both such parties; provided, that if a registered physician makes affidavit to the satisfaction of the clerk or registrar that a party so required is unable, by reason of illness, to appear, such notice may be given on behalf of such party, by his or her parent or legal guardian, or, in case there is no parent or legal guardian competent to act, by the physician certifying to the illness, or by the other party irrespective of such other party's residence. The oath to such notice shall be to the truth of all the statements contained therein whereof the party subscribing the same could have knowledge, and may be given before the clerk or registrar or before a regularly employed clerk in his office designated by him in writing and made a matter of record in the office. No fee shall be charged for administering such oath. In towns having an assistant clerk or registrar, he may administer the oath.

Certificate, etc.,
of divorce to
accompany
notice of di-
vorcee person.
1912, 535, § 1.
4 Op. A. G. 223.

SECTION 21. Persons filing such notice of intention, one or both of whom have previously been married and divorced, shall file therewith a certificate or certified copy from the clerk or corresponding official of the court or other tribunal by which the divorce was granted, showing the title and location of the tribunal and the names of the parties to the proceeding for divorce, and showing which party obtained the divorce, the cause therefor and the date when the decree became absolute. If there has been more than one divorce, the said certificate or certified copy as to every such divorce shall accompany the notice of intention.

Oath before
judge of prob-
ate court in
place of certifi-
cate.
1912, 535, § 2.

SECTION 22. If a person cannot obtain the certificate or certified copy described in the preceding section, he shall apply to the judge of probate in the county where the notice of intention is to be filed and state under oath the facts required to be stated in the said certificate or certified copy, and the reasons why such certificate or certified copy cannot be obtained. The judge of probate, if satisfied of the truth of the statements so made to him, shall thereupon grant to the party a certificate stating the facts required, and such certificate shall be filed with the notice of intention.

1 SECTION 23. The clerk or registrar need not receive notices of in-
2 tention of marriage on Sunday or a legal holiday, nor at any place
3 except his office.

1894, 409, § 3.

R. L. 151, § 18.

Notice, where
and when re-
ceivable.

1 SECTION 24. The clerk or registrar shall not, except as provided in
2 the following section, receive a notice of the intention of marriage of a
3 male under eighteen, nor of a female under sixteen.

1894, 401, § 1.

R. L. 151, § 19.

Notice not re-
ceivable from
certain minors.

1 SECTION 25. The probate court for the county where, or a district
2 court within the judicial district of which, a minor under the age specified
3 in the preceding section resides may, after hearing, make an order allow-
4 ing the marriage of such minor, if the parents or surviving parent of such
5 minor, or, if only one such parent resides in the commonwealth, that
6 parent, or, if neither such parent is alive and a resident thereof, or if the
7 parent or parents qualified as aforesaid to consent are disqualified as
8 hereinafter provided, a legal guardian with custody of the person of such
9 minor has consented to such order. If a parent has deserted his family,
10 or if found to be insane and incapable of consent, or if found unfit under
11 the provisions of section five of chapter two hundred and one to have
12 custody of such minor, it shall not be necessary to obtain his consent to
13 such order. If a parent whose consent would be required if living in the
14 commonwealth lives outside thereof and the address of such parent is
15 known, such notice of the proceedings shall be given him as the probate
16 or district court may order. Said court may also after hearing make
17 such order in the case of a person whose age is alleged to exceed that
18 specified in the preceding section, but who is unable to produce an
19 official record of birth, whereby the reasonable doubt of the clerk or
20 registrar, as exercised under section thirty-five, may be removed. Upon
21 receipt of a certified copy of such order by the clerk or registrar of the
22 town where such minor resides, he shall receive the notice required by
23 law and issue a certificate as in other cases.

Marriage of
minors; how
authorized
1894, 401, § 2.
1899, 197.
R. L. 151, § 20
1907, 159.
1922, 98.
1923, 305, § 1.
1931, 212.

1 SECTION 26. Whoever, without the consent of both parties to an
2 intended marriage, gives the notice of their intention of marriage re-
3 quired by law shall be liable in damages to either of such parties whose
4 name was so used without such consent. The superior court, upon
5 petition of either party alleged to intend marriage in such a notice
6 given without the consent of both parties, and not followed by their
7 intermarriage, may, after notice and a hearing, order that such notice
8 of intention be cancelled in the town records.

Notice not to
be given with-
out consent of
parties. How
cancelled.
1894, 409,
§§ 6, 7.
R. L. 151, § 21.
[Penalty, § 51.]

1 SECTION 27. A party to an intended marriage who has been legally
2 adopted shall, in the notice of intention thereof, give the names of his
3 parents by adoption; and the names of his parents may also be added.
4 The consent of a parent by adoption to the marriage of a minor shall
5 be sufficient if the consent of a parent of a minor is required by law as
6 a preliminary to marriage. If the natural parents of a minor have been
7 divorced and the consent of one of them is required by law, preliminary
8 to the marriage of such minor, the consent of the parent having the
9 custody of such minor shall be sufficient.

Notice in case
of adopted
persons.
1897, 424, § 4.
R. L. 151, § 22.

Certificate of intention of marriage.
 1727, § 11.
 1786, § 3.
 1834, 177, § 2.
 R. S. 75, § 9.
 1850, 121, § 2.
 G. S. 106, § 8.
 1867, 58, § 1.
 P. S. 145, § 17.
 R. L. 151, § 23.
 1911, 736, § 2.
 1912, 463, § 1.
 1914, 428, § 1.
 1930, 51, § 1.
 3 Op. A. G. 467.

SECTION 28. On or after the fifth day from the filing of notice of intention of marriage, except as otherwise provided, but not in any event later than six months after such filing, the clerk or registrar shall deliver to the parties a certificate signed by him, specifying the date when notice was filed with him and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate before whom the marriage is to be contracted, before he proceeds to solemnize the same. If such certificate is not sooner used, it shall be returned to the office issuing it within six months after the date when notice of intention of marriage was filed.

Five days' notice not required of immigrants.
 1911, 736, § 6.

SECTION 29. If either of the parties to an intended marriage has arrived as an immigrant from a foreign country within five days, the notice of intention may be filed at any time before the marriage, and the certificate required by the preceding section shall be issued at any time after the filing of such intention.

Five days' notice, how dispensed with.
 1911, 736, § 4.
 1912, 463, § 2.

SECTION 30. Upon application by both of the parties to an intended marriage, when both parties are residents of the commonwealth or both parties are non-residents, or upon application of the party residing within the commonwealth when one of the parties is a resident and the other a non-resident, a judge of probate or a justice of a district court may, after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon presentation of such a certificate, or, in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi or attending physician, the clerk or registrar of the town where the notice of intention has been filed shall at once issue the certificate prescribed in section twenty-eight.

Alteration of certificate of intention prohibited.
 1897, 424, § 1.
 R. L. 151, § 24.

SECTION 31. No alteration or erasure shall be made by any person on the certificate under section twenty-eight until it has been returned to the clerk or registrar, and then only in such form and to such extent as he may prescribe. Any such certificate may be recorded after correction in accordance herewith.

Clerk or registrar not to issue certificate without facts relative to divorce.
 1912, 535, § 3.

SECTION 32. The clerk or registrar shall not issue a certificate under section twenty-eight, if either of the parties has been previously married and divorced, unless the certificate or certified copy described in section twenty-one or the certificate described in section twenty-two is filed with the notice of intention of marriage, and in such cases, if he issues the certificate of entry of notice of intention, he shall attach thereto such certified copy or certificate, which shall be a part thereof.

Certificate not to be issued to certain minors.
 1853, 335, § 1.
 G. S. 106, § 9.
 P. S. 145, § 18.
 R. L. 151, § 25.
 1911, 736, § 3.

SECTION 33. The clerk or registrar shall not issue the certificate under section twenty-eight before the time therein specified, except as otherwise provided; nor to a male under twenty-one, or to a female under eighteen, when he has reasonable cause to believe the person to be under such age, except upon the application or consent in writing of

6 the parent or guardian of such person or by order of the probate or dis-
 7 trict court under section twenty-five. If there is no parent or guardian
 8 in this commonwealth competent to act, a certificate may be issued
 9 without such application or consent. Such certificate shall not be issued
 10 if a parent or guardian whose consent is required thereto has withdrawn
 11 such consent by a writing filed with the clerk or registrar.

1923, 305, § 2.
 1931, 341.
 [Penalty for
 unlawful issue
 of certificate,
 § 53.]

1 SECTION 33A. If it appears from the statements made in the writ-
 2 ten notice of intention of marriage that a party to such intended mar-
 3 riage is under twenty-one, if a male, or under eighteen if a female, the
 4 clerk or registrar shall not, except as required under section twenty-five,
 5 issue a certificate under section twenty-eight before receiving proof of
 6 the age of the parties. Such proof shall be contained in any of the fol-
 7 lowing documents, graded and taking precedence in the order named:
 8 (1) an original or certified copy of a record of birth; (2) an original or
 9 certified copy of a baptismal record; (3) a passport; (4) a life insurance
 10 policy; (5) an employment certificate; (6) a school record; (7) an immi-
 11 gration record; (8) a naturalization record; or (9) a court record. Doc-
 12 umentary evidence of a lower grade as aforesaid shall not be received
 13 by the clerk or registrar unless he is satisfied that evidence of a higher
 14 grade is not readily procurable. If no such documentary proof of age
 15 is procurable, the consent of the parent shall be sufficient. If the clerk
 16 or registrar has reasonable cause to believe that a party to an intended
 17 marriage represented to be twenty-one or over, if a male, or eighteen or
 18 over, if a female, is under such age, he shall, before issuing such certifi-
 19 cate, require documentary proof of age as aforesaid.

Proof of age
 may be
 required.
 1931, 264.

1 SECTION 34. If it is necessary to give notice in two towns of the
 2 intention of marriage of a minor, the clerk or registrar who first takes
 3 the consent of the parent or guardian shall take it in duplicate, retaining
 4 one copy and delivering the other duly attested by him to the person
 5 obtaining the certificate, to be given to the clerk or registrar issuing
 6 the second certificate; and no fee shall be charged for such consent
 7 or copy.

Duplicate
 copies of notice
 of intention of
 minors, when.
 1894, 409, § 4.
 R. L. 151, § 26.
 [Penalty, § 51.]

1 SECTION 35. The clerk or registrar may refuse to issue a certificate
 2 if he has reasonable cause to believe that any of the statements con-
 3 tained in the notice of intention of marriage are incorrect; but he may,
 4 in his discretion, accept depositions under oath, made before him, which
 5 shall be sufficient proof of the facts therein stated to authorize the
 6 issuing of a certificate. He may also dispense with the statement of any
 7 facts required by law to be given in a notice of intention of marriage,
 8 if they do not relate to or affect the identification or age of the parties,
 9 or a former marriage of either party, if he is satisfied that the same
 10 cannot with reasonable effort be obtained.

Refusal of cer-
 tificate, when.
 1894, 409, § 2.
 R. L. 151, § 28.
 [Penalty for
 false statement,
 § 52.]

1 SECTION 36. If a marriage is solemnized in another state between
 2 parties living in this commonwealth, who return to dwell here, they
 3 shall, within seven days after their return, file with the clerk or registrar
 4 of the town where either of them lived at the time of their marriage a
 5 certificate or declaration of their marriage, including the facts required
 6 in a notice of intention of marriage.

Citizens mar-
 ried outside
 commonwealth
 to file certifi-
 cate here.
 1859, 121, § 3.
 G. S. 106, § 12
 P. S. 145, § 21
 R. L. 151, § 29.

[Penalty, § 55.]

List of impediments to marriage to be posted in office of clerk or registrar.
1913, 752, § 1.

SECTION 37. The state secretary shall furnish to the clerk or registrar of every town a printed list of all legal impediments to marriage, and the clerk or registrar shall forthwith post and thereafter maintain it in a conspicuous place in his office.

[Penalty, § 52.]

SOLEMNIZATION OF MARRIAGE.

Solemnization of marriage.
C. L. 102, § 5.
1692-3, 25, § 1.
1695-6, 2, § 4.
1716-17,
16, § 1.
1762-3, 28.
1772-3, 31,
§ 1, 2.
1786, 3, §§ 1,
2, 8.
1817, 141.
1820, 55.
1834, 177,
§ 1, 6.
R. S. 75, §§ 16,
22.
1850, 121, § 5.
G. S. 106,
§ 14, 15.
1867, 58, § 2.
P. S. 145,
§ 22, 23.
1803, 461, § 1.
1804, 409, § 5.
1806, 306, § 4.
1809, 387, § 1.
R. L. 151, § 30.
1929, 169.
1 Mass. 240.
7 Mass. 48.
1 Pick. 235.
127 Mass. 459.
163 Mass. 453.
1 Op. A. G. 445.

SECTION 38. A marriage may be solemnized in any place within the commonwealth by a minister of the gospel who resides in the commonwealth and who is recognized by his church or denomination as duly ordained and in good and regular standing as a minister of such church or denomination; by a rabbi of the Israelitish faith, duly licensed by a congregation of said faith established in the commonwealth, who has filed with the clerk or registrar of the city or town where he resides a certificate of the establishment of the synagogue, the date of his appointment thereto and of the term of his engagement; by a justice of the peace if he is also clerk or assistant clerk of a city or town, or a registrar or assistant registrar, in the city or town where he holds such office, or, if he is also clerk or assistant clerk of a court, in the city or town where the court is authorized to be held, or, if he has been designated as provided in the following section and has received a certificate of designation and has qualified thereunder, in the city or town where he resides; and it may be solemnized among Friends or Quakers according to the usage of their societies; but no person shall solemnize a marriage in the commonwealth unless he can read and write the English language.

Churches and other religious organizations shall file in the office of the state secretary information relating to persons recognized or licensed as aforesaid, in such form and at such times as the secretary may require.

Designation of justices of the peace, non-resident clergymen, etc., to solemnize marriage.
1899, 387,
§ 2, 3.
R. L. 151, § 31.
1926, 102.

SECTION 39. The governor may in his discretion designate a justice of the peace in each town and such further number, not exceeding one for every five thousand inhabitants of a city or town, as he considers expedient, to solemnize marriages, and may for cause at any time revoke such designation. The state secretary, upon payment of five dollars to him by a justice of the peace so designated, shall issue to him a certificate of such designation. The governor may also in his discretion designate a minister of the gospel or rabbi who resides out of the commonwealth to solemnize a specified marriage, and the state secretary shall issue to him a certificate of such designation. A minister or rabbi so designated, after qualifying under said certificate, may solemnize said marriage in any place within the commonwealth.

Persons solemnizing marriages to keep records and make returns.
C. L. 130, § 2.
1692-3, 25, § 3.
1695-6, 2,
§ 4, 6.
1716-17,
16, § 3.
1786, 3, §§ 6, 8.
1795, 7.
1817, 61.
1834, 177,
§ 5, 6.
R. S. 75, §§ 17,
23.
1844, 159, § 3.
G. S. 106, § 16.

SECTION 40. Every justice of the peace, minister, rabbi and clerk or keeper of the records of a meeting wherein marriages among Friends or Quakers are solemnized shall make and keep a record of each marriage solemnized by him, or in such meeting, and of all facts relative to the marriage required to be recorded by section one of chapter forty-six. He shall also, between the first and tenth days of the month following each marriage solemnized by him, return each certificate issued under section twenty-eight to the clerk or registrar who issued the same; and if the marriage was solemnized in a town other than the place or places where the parties to the marriage resided, return a copy of the certificate, or of either certificate if two were issued, to the clerk or registrar

12 of the town where the marriage was solemnized. Each certificate and
 13 copy so returned shall contain a statement giving the place and date of
 14 marriage, attested by the signature of the person who solemnized the
 15 same or of said clerk or keeper of the records of a Friends or Quaker
 16 meeting. The person who solemnized the marriage shall add the title
 17 of the office by virtue of which the marriage was solemnized, as "jus-
 18 tice of the peace", "minister of the gospel", "clergyman", "priest" or
 19 "rabbi", and his residence. All certificates or copies so returned shall
 20 be recorded by the clerk or registrar receiving them.

1879, 116, § 1.
 1881, 11, § 1.
 P. S. 145, § 24.
 1887, 202, § 3.
 1892, 300.
 1897, 424, § 5.
 R. L. 151, § 32.
 201 Mass. 261.
 [Penalty, § 56.]

1 SECTION 41. If a certificate of marriage is found, upon its return to
 2 the clerk or registrar, to have been incorrectly filled out by the person
 3 who solemnized a marriage under it, the clerk or registrar shall have
 4 it corrected and shall enforce the penalties provided by law relative
 5 thereto. Such imperfect certificates shall be recorded and indexed by
 6 the clerk or registrar.

Correction of
 imperfect cer-
 tificates of
 marriage.
 1897, 424, § 2.
 R. L. 151, § 33.

1 SECTION 42. A marriage solemnized by a person professing to be a
 2 justice of the peace having authority to solemnize marriages, a minister
 3 of the gospel or a rabbi, or solemnized among Friends or Quakers ac-
 4 cording to their usages, shall not be void, nor shall the validity thereof
 5 be in any way affected by want of authority in such person or society,
 6 or by an omission or by informality in the manner of filing the notice
 7 of intention, if the marriage is in other respects lawful and is consum-
 8 mated with a full belief of either of the persons so married that they
 9 have been lawfully married.

Marriages
 valid though
 irregularly
 solemnized.
 1834, 177, § 7.
 R. S. 75, § 24.
 G. S. 106, § 20.
 1881, 11, § 2.
 P. S. 145, § 27.
 1893, 461, § 2.
 R. L. 151, § 34.
 110 Mass. 314.
 127 Mass. 459.
 144 Mass. 163.

155 Mass. 534.

1 SECTION 43. Marriages solemnized in a foreign country by a con-
 2 sul or diplomatic agent of the United States shall be valid in this
 3 commonwealth.

Marriage by
 consul, etc.
 G. S. 106, § 23.

P. S. 145, § 28.

R. L. 151, § 35.

5 Allen, 257.

1 SECTION 44. A city by ordinance and a town by vote may authorize
 2 its clerk or registrar to pay on demand, in his office, twenty-five cents
 3 to any person who has legally solemnized a marriage in the common-
 4 wealth, after the receipt by such clerk or registrar of the certificate
 5 in legal form of the solemnization of such marriage. A city or town
 6 which passes such ordinance or vote shall annually appropriate the
 7 money necessary therefor, and the clerk or registrar thereof shall file
 8 quarterly with the treasurer or other proper financial officer of said
 9 city or town proper vouchers for all such payments.

Fees by cities
 and towns to
 persons solemn-
 izing mar-
 riages.
 1897, 424, § 3.
 R. L. 151, § 36.

EVIDENCE OF MARRIAGE.

1 SECTION 45. The record of a marriage made and kept as provided
 2 by law by the person by whom the marriage was solemnized, or by the
 3 clerk or registrar, or a copy thereof duly certified, shall be prima facie
 4 evidence of such marriage.

Record.
 R. S. 75, § 25.
 G. S. 106, § 21.
 P. S. 145, § 29.
 R. L. 151, § 37.
 10 Allen, 161.

133 Mass. 242.

156 Mass. 226.

229 Mass. 435.

1 SECTION 46. A copy of the record of a marriage solemnized by a
 2 consul or diplomatic agent of the United States or a certificate from
 3 such consul or agent shall be prima facie evidence of such marriage.

Certificate,
 etc., of consul,
 etc.
 G. S. 106, § 23.

P. S. 145, § 30.

R. L. 151, § 38.

229 Mass. 435.

Admissions and
general repute,
etc.
1840, § 4.
1841, 20.
G. S. 106, § 22.
P. S. 145, § 31.

SECTION 47. Marriage may be proved by evidence of an admission thereof by an adverse party, by evidence of general repute or of cohabitation of the parties as married persons, or of any other fact from which it may be inferred.

R. L. 151, § 39.	10 Allen, 196	120 Mass. 387.	255 Mass. 611.
3 Pick. 293	99 Mass. 444	156 Mass. 226.	264 Mass. 112.
14 Gray, 411	110 Mass. 314	163 Mass. 453.	265 Mass. 420.
5 Allen, 257			

PENALTIES.

Penalty for solemnizing marriage without authority.
1786, 3, § 5.
1834, 177, § 4.
R. S. 75, § 20.

SECTION 48. Whoever, not being duly authorized by the laws of the commonwealth, undertakes to join persons in marriage therein shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

G. S. 106, § 19.	P. S. 145, § 26.	1896, 306, § 2.	R. L. 151, § 40.
------------------	------------------	-----------------	------------------

Penalty for joining persons in marriage without certificate.
1695-6, 2, § 4.
1772-3, 31, § 3.
1786, 3, § 5.
1834, 177, § 4, 9.

SECTION 49. Whoever, being duly authorized to solemnize marriages in the commonwealth, joins in marriage persons who have not complied with the laws relative to procuring certificates of notice of intention of marriage shall be punished by a fine of not more than five hundred dollars.

R. S. 75, § 19	1867, 58, § 3.	1896, 306, § 1.
G. S. 106, § 18.	P. S. 145, § 25.	R. L. 151, § 41.

Penalty for knowingly issuing certificate or performing marriage in evasion of laws of another state
1913, 360, § 4.

SECTION 50. Any official issuing a certificate of notice of intention of marriage knowing that the parties are prohibited by section eleven from intermarrying, and any person authorized to solemnize marriage who shall solemnize a marriage knowing that the parties are so prohibited, shall be punished by a fine of not less than one hundred or more than five hundred dollars or by imprisonment for not more than one year, or both.

Penalty for violation of certain provisions of this chapter.
1894, 409, § 8.
R. L. 151, § 43.

SECTION 51. Violations of any provision of section seven, twenty-six or thirty-four, shall, upon complaint made within one year thereafter, be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

Penalty for violation of law relative to making out notice of intention, and false statement therein

SECTION 52. Whoever violates any provision of section twenty or of section thirty-seven, and whoever falsely swears or affirms in making any statement required under section twenty, shall be punished by fine or imprisonment at the discretion of the court.

1857, 34.	P. S. 145, § 20.	R. L. 151, §§ 43, 44
G. S. 106, § 11.	1894, 409, § 8.	1913, 752, § 3.

Penalty for issuing certificate of intention to persons under age.

SECTION 53. A clerk or registrar issuing a certificate of intention of marriage contrary to section thirty-three shall forfeit not more than one hundred dollars.

1853, 335, § 1.	P. S. 145, § 18.	1911, 736, § 3.
G. S. 106, § 9.	R. L. 151, § 25.	

Penalty for illegal alteration of certificate of intention.
1897, 424, § 1.

SECTION 54. Whoever makes an illegal alteration or erasure on a certificate of intention of marriage shall be punished by a fine of not more than one hundred dollars.

R. L. 151, § 42.

- 1 SECTION 55. Whoever violates section thirty-six shall forfeit ten
 2 dollars.
 1850, 121, § 3. G. S. 106, § 12. P. S. 145, § 21. R. L. 151, § 29. Penalty for failure of citizens married outside commonwealth to file certificate.
- 1 SECTION 56. Whoever neglects to make the record and returns
 2 required by section forty shall forfeit not less than twenty nor more
 3 than one hundred dollars.
 1834, 177, §§ 5, 6. 1844, 159, § 3. 1879, 116, § 2. 1892, 300.
 R. S. 75, §§ 18, 23. G. S. 106, § 17. P. S. 145, § 24. R. L. 151, § 32. Penalty for failure to make records and returns of marriages.
- 1 SECTION 57. Whoever performs a ceremony of marriage upon a
 2 certificate more than six months after the filing of the notice of intention
 3 of marriage as set forth in such certificate, and whoever having taken
 4 out such certificate and not having used it fails to return it, within six
 5 months after such filing, to the office issuing the same, shall be punished
 6 by a fine of not more than ten dollars. Penalty for failure to return certificate of intention of marriage. 1914, 428, § 2. 1930, 51, § 2.
- 1 SECTION 58. Whoever advertises in a newspaper circulated in the
 2 commonwealth, or by any other means, to perform or to procure the
 3 performance of the marriage ceremony, shall be punished by a fine of
 4 not less than ten nor more than one hundred dollars. Penalty for advertising to perform marriage ceremony. 1902, 249.

CHAPTER 208.

DIVORCE.

SECT.	CAUSES FOR DIVORCE.	SECT.	LIBELS FOR DIVORCE.	GENERAL PROVISIONS.
1.	Causes for divorce.	18.	Venue of libel.	Resumption of former name by wife.
2.	Same subject.	19.	6A. [Repealed.]	Remarriage of divorced parties.
3.	Divorce after absence raising a presumption of death.	20.	7. Libel to be signed.	Divorce for adultery of wife not to affect legitimacy of issue.
4.	Divorce only if parties have lived together in commonwealth.	21.	8. Notice to libellee.	Effect of divorce for adultery of wife upon her separate property.
5.	Exception.	22.	9. Co-respondent may contest.	No dower to wife after divorce, except, etc.
			9A. [Repealed.]	Care and maintenance of minor children.
			10. Co-respondent not to be named, except, etc.	Same when divorce obtained out of commonwealth.
			11. Same subject.	Children not to be removed from commonwealth.
			12. Attachment of husband's property.	Custody of children.
			13. Attachment, how made.	Writ of habeas corpus to bring child before court.
			14. Same subject.	
			15. Guardian for insane libellee. Compensation.	
			16. Investigation of divorce case.	
			17. Allowance and alimony during pendency of libel.	

- SECT.
 33. Procedure under this chapter.
 34. Alimony.
 35. Enforcement of alimony, etc.
 36. Security for same.
 37. Revision of decree for same.
 38. Costs.
 39. Validity of foreign divorces.

CRIMINAL PROVISIONS.

40. Cohabitation after divorce to be adultery.
 41. Penalty for personation, etc., in divorce suits.

- SECT.
 42. Penalty for procuring unlawful divorce.
 43. Penalty for advertising to procure divorces.
 44. Penalty for unlawfully issuing certificates of divorce.
 45. Notice to district attorney of criminal offences.

STATISTICS OF DIVORCE.

46. Returns of statistics of divorce.
 47. Publication of abstracts of returns.

CAUSES FOR DIVORCE.

Causes for divorce.
 1785, 69, § 3.
 1810, 119.
 R. S. 76, §§ 5, 6.
 1838, 126, § 1.
 1857, 228, § 2.
 G. S. 107, §§ 6, 7, 9.
 1870, 404, § 2.
 1873, 371, §§ 2, 6.
 P. S. 146, § 1.

SECTION 1. A divorce from the bond of matrimony may be decreed for adultery, impotency, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication caused by the voluntary and excessive use of intoxicating liquor, opium or other drugs, cruel and abusive treatment or, on the libel of the wife, if the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.

1
2
3
4
5
6
7
8

- | | | |
|--------------------|---------------------|-------------------------|
| 1889, 447. | 103 Mass. 577. | 168 Mass. 50, 204, 456. |
| R. L. 152, § 1. | 104 Mass. 195, 198. | 171 Mass. 146. |
| 1 Mass. 240, 346. | 111 Mass. 327. | 175 Mass. 7. |
| 2 Mass. 150, 154. | 112 Mass. 298. | 190 Mass. 349. |
| 4 Mass. 586, 587. | 113 Mass. 314. | 191 Mass. 72. |
| 5 Mass. 320. | 117 Mass. 202. | 192 Mass. 194. |
| 7 Mass. 474. | 126 Mass. 205. | 210 Mass. 156. |
| 11 Pick. 461. | 140 Mass. 528. | 219 Mass. 107. |
| 21 Pick. 509. | 141 Mass. 495. | 225 Mass. 183. |
| 2 Cash. 551. | 142 Mass. 361. | 229 Mass. 592. |
| 7 Gray, 279. | 143 Mass. 577. | 230 Mass. 59. |
| 8 Allen, 418. | 150 Mass. 111. | 234 Mass. 37, 250. |
| 97 Mass. 327, 373. | 154 Mass. 515. | 238 Mass. 150. |
| 98 Mass. 155. | 157 Mass. 503. | 243 Mass. 51. |
| 99 Mass. 39, 493. | 159 Mass. 281. | 244 Mass. 349. |
| 100 Mass. 150. | 160 Mass. 216, 258. | |
| 101 Mass. 111. | | |

Same subject.
 R. S. 76, § 5.
 1850, 100, § 1.
 G. S. 107, § 6.
 P. S. 146, § 2.
 R. L. 152, § 2.
 124 Mass. 394.
 151 Mass. 151.
 169 Mass. 592.

SECTION 2. A divorce may also be decreed if either party has been sentenced to confinement at hard labor for life or for five years or more in the state prison, a jail, house of correction or reformatory for women; and, after a divorce for such cause, no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights.

1
2
3
4
5

216 Mass. 594.

Divorce after absence raising a presumption of death.
 1884, 219.
 R. L. 152, § 3.
 113 Mass. 314.

SECTION 3. A divorce may be decreed for any of the causes allowed by the two preceding sections although the libellee has been continuously absent for such time and under such circumstances as would raise a presumption of death.

1
2
3
4

147 Mass. 294

Divorce only if parties have lived together in commonwealth.
 R. S. 76, §§ 9-11.
 G. S. 107, § 12.
 P. S. 146, § 4.
 R. L. 152, § 4.
 98 Mass. 158.

SECTION 4. A divorce shall not, except as provided in the following section, be decreed if the parties have never lived together as husband and wife in this commonwealth; nor for a cause which occurred in another jurisdiction, unless before such cause occurred the parties had lived together as husband and wife in this commonwealth, and one of them lived in this commonwealth at the time when the cause occurred.

1
2
3
4
5
6

- | | | | |
|----------------|----------------|----------------|----------------|
| 103 Mass. 574. | 135 Mass. 83. | 205 Mass. 388. | 236 Mass. 256. |
| 575. | 143 Mass. 274. | 210 Mass. 156. | 241 Mass. 431. |
| 115 Mass. 438. | 191 Mass. 128. | 230 Mass. 59. | 256 Mass. 97. |

1 SECTION 5. If the libellant has lived in this commonwealth for five
 2 years last preceding the filing of the libel, or if both parties were inhabit-
 3 ants of this commonwealth at the time of their marriage and the libellant
 4 has lived in this commonwealth for three years last preceding such filing,
 5 a divorce may be decreed for any cause allowed by law, whether it
 6 occurred in this commonwealth or elsewhere, unless it appears that the
 7 libellant has removed into this commonwealth for the purpose of obtain-
 8 ing a divorce.

191 Mass. 128.	230 Mass. 59.	244 Mass. 349.
210 Mass. 319.	236 Mass. 256.	256 Mass. 97.
225 Mass. 82.		

Exception.
 1843, 77.
 G. S. 107, § 11.
 1877, 174.
 P. S. 146, § 5.
 R. L. 152, § 5.
 6 Gray, 157.
 135 Mass. 83.
 151 Mass. 515.
 161 Mass. 508.
 188 Mass. 550.
 190 Mass. 349.

LIBELS FOR DIVORCE.

1 SECTION 6. Libels for divorce shall be filed, heard and determined in
 2 the superior court or probate court, held for the county where one of the
 3 parties lives, except that, if the libellant has left the county where the
 4 parties lived together and the libellee still lives therein, the libel shall be
 5 heard and determined in a court held for that county.

G. S. 107, §§ 13, 14.	1922, 532, § 5; 542, § 1.	191 Mass. 128.
P. S. 146, § 6.	111 Mass. 158.	210 Mass. 156.
1887, 332, § 1.	135 Mass. 83.	223 Mass. 451.
R. L. 152, § 6.	150 Mass. 280.	253 Mass. 411.
1921, 466, § 1.		

Venue of libel
 1692-3, 25, § 4.
 1785, 69, § 7.
 1820, 14, § 10.
 R. S. 76,
 §§ 7, 8.
 1851, 82, § 2.

1 SECTION 6A. [INSERTED, 1922, 532, § 6; REPEALED, 1931, 426, § 88.]

1 SECTION 7. The libel shall be signed by the libellant, if of sound mind
 2 and of legal age to consent to marriage; otherwise, it may be signed by
 3 the guardian of the libellant or by a person admitted by the court to
 4 prosecute the libel as his next friend.

R. L. 152, § 7.	1 Met. 382.	139 Mass. 377.
7 Mass. 96.	8 Allen, 311.	

Libel to be
 signed.
 R. S. 76, § 12.
 G. S. 107, § 16.
 P. S. 146, § 7.

1 SECTION 8. The court or the clerk or the register of probate may
 2 order the libellee to be summoned to appear and answer at the court
 3 having jurisdiction of the cause, by the publication of such a form of
 4 notice, as it or he may require, in one or more newspapers to be designated
 5 in the order, or by delivering to the libellee an attested copy of the libel
 6 and a summons, or in such other manner as it or he may require. If such
 7 order is made by the clerk or register, the court may order an additional
 8 notice. If the libellee does not appear and the court considers the notice
 9 defective or insufficient, it may order further notice. Personal service of
 10 the libel may be made upon the libellee, if outside of the commonwealth,
 11 by a sheriff or deputy sheriff of the commonwealth or by any duly con-
 12 stituted public officer qualified to serve like process in the place in which
 13 service is made, and when so made no publication shall be required.

Notice to
 libellee.
 1785, 69, § 8.
 R. S. 76,
 §§ 15-17.
 G. S. 107,
 §§ 19, 20.
 1862, 90.
 1863, 109, § 1.
 P. S. 146,
 §§ 9, 10.
 1890, 370.
 1898, 487.
 R. L. 152, § 8.
 1923, 60.
 1924, 133.
 1931, 426, § 89.
 135 Mass. 191.
 141 Mass. 432.
 223 Mass. 451.

1 SECTION 9. A person named as co-respondent in an amended libel,
 2 cross libel or answer may appear and contest the charge of adultery
 3 therein made against him.

Co-respondent
 may contest.
 1890, 370.
 1898, 487.

R. L. 152, § 9.

1 SECTION 9A. [INSERTED, 1921, 466, § 2; REPEALED, 1922, 542, § 3.]

1 SECTION 10. In a libel for divorce, wherein the commission of adultery
 2 by either party is alleged as ground for the divorce or as the ground for
 3 contesting the divorce, no libel, cross libel or answer at the time of filing

Co-respondent
 not to be
 named, except,
 etc.
 1911, 121, § 1.

1931, 426, § 90. shall name any person as co-respondent. The party alleging such adul- 4
 252 Mass. 281. tery may by motion, after the libel has been entered, upon an ex parte 5
 hearing before a justice or judge of the court having jurisdiction, obtain 6
 permission to amend his libel, cross libel or answer by inserting the name 7
 of the co-respondent if the justice or judge finds probable cause has been 8
 shown that such accused person has committed adultery as alleged, and 9
 thereupon notice shall be sent to said co-respondent and to the other 10
 party to the libel. 11

Same subject. SECTION 11. The evidence produced at such ex parte hearing shall 1
 1911, 121, § 2. not be reported or made a part of the record in the case and the motion 2
 1919, 194. for said amendment shall not be read to the court during the divorce pro- 3
 1931, 426, § 91. ceedings, but the clerk of the court or register of probate shall make an 4
 252 Mass. 281. entry in the docket of "Motion to insert name of co-respondent allowed", 5
 or "Motion to insert name of co-respondent denied", as the case may be. 6
 If the amendment is allowed upon affidavits, they shall be retained by 7
 the court and placed in the custody of the clerk of the court for the county 8
 where the divorce proceedings are brought or of the register of probate 9
 for the county aforesaid, as the case may be, and shall be open for the 10
 purposes of inspection, and taking copies thereof, to counsel of record, or 11
 the libellee or any co-respondent named in the amended libel. 12

Attachment of husband's property. SECTION 12. Upon a libel by a wife for divorce for a cause accruing 1
 1855, 137, § 1. after marriage, the real and personal property of the husband may be 2
 G. S. 107, § 50. attached to secure suitable support and maintenance to her and to such 3
 1866, 148, § 2. children as may be committed to her care and custody. 4
 P. S. 146, § 11.
 R. L. 152, § 10. 150 Mass. 92. 196 Mass. 509.
 107 Mass. 428. 186 Mass. 420.

Attachment, how made. SECTION 13. The attachment may be made upon the summons 1
 1855, 137, §§ 2, issued upon the libel, in the same manner as attachments are made 2
 3, 5. upon writs in actions at law, for an amount which shall be expressed in 3
 G. S. 107, § 51. the summons or order of notice. The attachment may be made by trustee 4
 1866, 148, § 3. process, in which case there shall be inserted in the summons or order 5
 P. S. 146, § 12. of notice a direction to attach the goods, effects and credits of the libellee 6
 R. L. 152, § 11. in the hands of the alleged trustee, and service shall be made upon the 7
 196 Mass. 509. trustee by copy. If attachment is made by trustee process, the libel 8
 shall be filed as provided in section six notwithstanding the provisions 9
 of section two of chapter two hundred and forty-six. The court may in 10
 such cases make all necessary orders to secure to the trustee his costs. 11
 The attachment may be made by injunction, as in suits in equity, to 12
 reach shares of stock or other property which cannot be reached to be 13
 attached as in an action at law, and the property so attached may there- 14
 after, by appropriate order, be applied to the satisfaction of any order 15
 or decree for the payment of money by the husband to the wife for her 16
 support or that of the children. 17

Same subject. SECTION 14. The laws relative to attachments of real or personal 1
 1855, 137, § 4. property shall apply to attachments herein provided for, so far as they 2
 G. S. 107, § 52. are consistent with the two preceding sections. 3
 P. S. 146, § 13.
 R. L. 152, § 12. 196 Mass. 509.

Guardian for insane libellee. Compensation. SECTION 15. If during the pendency of a libel the libellee is insane, 1
 the court shall appoint a suitable guardian to appear and answer in like 2

3 manner as a guardian for an infant defendant in an action at law may be
 4 appointed. The compensation of such guardian shall be determined by
 5 the court and, together with his necessary expenses, shall be paid by the
 6 libellant if the court so orders.

R. S. 76, § 18.
 G. S. 107, § 21.
 P. S. 146, § 14.
 R. L. 152, § 13.
 1902, 544, § 21.

1914, 385. 13 Gray, 261. 114 Mass. 379. 263 Mass. 143.

1 SECTION 16. Any justice of the superior court or judge of a probate
 2 court wherein any libel for divorce is pending may appoint an attorney
 3 to investigate and report to the court in relation thereto and may direct
 4 such attorney, or any other attorney, to defend the libel. The attorney
 5 may be appointed either before or after a decree of divorce nisi has been
 6 granted, and may enter objections to such decree nisi becoming absolute
 7 in the same manner as the libellee. His compensation shall be fixed by
 8 the court, and shall be paid by the county where the libel is pending,
 9 together with any expenses approved by the court, upon certificate by
 10 a justice or the judge thereof to the county treasurer. The state police,
 11 local police and probation officers shall assist the attorneys so appointed,
 12 upon his request.

Investigation
 of divorce case.
 1907, 390.
 1931, 426, § 92.
 263 Mass. 143.

1 SECTION 17. The court may require the husband to pay into court
 2 for the use of the wife during the pendency of the libel an amount to
 3 enable her to maintain or defend the libel, and to pay to the wife alimony
 4 during the pendency of the libel.

Allowance and
 alimony during
 pendency of
 libel.
 1851, 82, § 1.

1855, 65; 137, § 6 6 Gray, 341. 257 Mass. 225.
 G. S. 107, § 22 161 Mass. 111. 269 Mass. 65.
 P. S. 146, § 15. 239 Mass. 443 273 Mass. 62.
 R. L. 152, § 14.

1 SECTION 18. The superior court sitting in any county or the probate
 2 court in which the libel is pending may, upon petition of the wife, pro-
 3 hibit the husband from imposing any restraint upon her personal liberty
 4 during the pendency of the libel.

Protection of
 personal
 liberty of
 wife during
 pendency.

1820, 56, § 1. G. S. 107, § 31. R. L. 152, § 15.
 R. S. 76, § 24. P. S. 146, § 16. 1931, 426, § 93.

1 SECTION 19. The court may in like manner, upon application of either
 2 party, make such order relative to the care and custody of the minor
 3 children of the parties during the pendency of the libel as it may consider
 4 expedient and for the benefit of the children.

Custody of
 children during
 pendency.
 1820, 56, § 1.
 R. S. 76, § 25.

G. S. 107, § 32. P. S. 146, § 17. R. L. 152, § 16. 220 Mass. 38.

1 SECTION 20. The court may, without entering a decree of divorce,
 2 order the libel continued upon the docket from time to time, and during
 3 such continuance may make orders and decrees relative to a temporary
 4 separation of the parties, the separate maintenance of the wife and the
 5 custody and support of minor children. Such orders and decrees may
 6 be changed or annulled as the court may determine, and shall, while
 7 they are in force, supersede any order or decree of the probate court
 8 under section thirty-two of chapter two hundred and nine and may
 9 suspend the right of said court to act under said section.

Continuance
 of libel, and
 orders for
 temporary
 separation, etc.
 1881, 234, § 3.
 P. S. 146, § 18.
 R. L. 152, § 17.
 160 Mass. 232.
 220 Mass. 38.
 225 Mass. 228.
 237 Mass. 563.
 254 Mass. 506.

1 SECTION 21. Decrees of divorce shall in the first instance be decrees
 2 nisi, and shall become absolute after the expiration of six months from the
 3 entry thereof, unless the court within said period, for sufficient cause,
 4 upon application of any party interested, otherwise orders.

Decrees of
 divorce to be
 entered nisi.
 1867, 222, § 1.
 1870, 404, § 3.

1873, 371, § 2. 1882, 223. 157 Mass. 503. 207 Mass. 254.
 1881, 234, § 2. 1893, 194; 280 168 Mass. 228. 214 Mass. 270.
 P. S. 146, § 19. R. L. 152, § 15.

Libel for
desertion not
to be defeated
by temporary
return.
1855, 137, § 8.
G. S. 107, § 8.

SECTION 22. A libel for divorce for desertion shall not be defeated by a temporary return or other act of the libellee if the court finds that such return or other act was not made or done in good faith, but with intent to defeat such libel.

P. S. 146, § 20.

R. L. 152, § 19.

GENERAL PROVISIONS.

Resumption of
former name
by wife.

SECTION 23. The court granting a divorce to a woman may allow her to resume her maiden name or that of a former husband.

1849, 141.
G. S. 107, § 23.

P. S. 146, § 21.
R. L. 152, § 20.

256 Mass. 30.

Remarriage
of divorced
parties.
1841, 83.
1853, 349.
1855, 137, § 9;
426.

SECTION 24. After a decree of divorce has become absolute, either party may marry again as if the other were dead, except that the party from whom the divorce was granted shall not marry within two years after the decree has become absolute.

G. S. 107, § 25.
1864, 216.
1873, 371, § 4.
1881, 234, § 4.

P. S. 146, § 22.
R. L. 152, § 21.
1 Pick. 506.
113 Mass. 458.

122 Mass. 3.
126 Mass. 34.
152 Mass. 533.
191 Mass. 166.

219 Mass. 111.
264 Mass. 453.
265 Mass. 242.

Divorce for
adultery of
wife not to
affect legiti-
macy of issue.
1785, 69, § 6.
R. S. 76, § 20.
G. S. 107, § 27.

SECTION 25. A divorce for adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but such legitimacy, if questioned, shall be tried and determined according to the course of the common law.

P. S. 146, § 23.

R. L. 152, § 22.

189 Mass. 64.

Effect of
divorce for
adultery of
wife upon her
separate
property.
1877, 178, § 5.
P. S. 146, § 27.
R. L. 152, § 23.
197 Mass. 112.

SECTION 26. Upon a divorce for adultery committed by the wife, her title to her separate real and personal property during her life shall not be affected, except that the court may decree to the husband so much of such property as it considers necessary for the support of any minor children of the marriage decreed to the husband's custody; and if the wife afterward contracts a lawful marriage, the interest of the divorced husband in the wife's separate real and personal property, after her death, shall cease, except in so much thereof as may have been decreed to him as herein provided.

No dower to
wife after
divorce,
except, etc.
1785, 69, § 5.
R. S. 76, § 32;
102, § 9.
G. S. 107, § 38;
135, § 29.
1870, 404, § 4.

SECTION 27. After a divorce, a wife shall not be entitled to dower in the land of her husband, unless, after a decree of divorce nisi granted upon the libel of the wife, the husband dies before such decree becomes absolute; but if the divorce was for the cause of adultery committed by the husband or because of his sentence to confinement at hard labor, she shall be entitled to her dower in the same manner as if he were dead.

P. S. 146, § 28;
174, § 13.
R. L. 152, § 24.

14 Mass. 219.
2 Pick. 316.
2 Allen, 45.

110 Mass. 463.
128 Mass. 34.

192 Mass. 5.
214 Mass. 204.

Care and
maintenance
of minor
children.
1820, 56, § 1.
R. S. 76, § 26.
1853, 23, § 1.
G. S. 107,
§§ 33, 48.
1873, 371, § 7.
P. S. 146, § 29.

SECTION 28. Upon decree of divorce, or petition of either parent, or of a next friend in behalf of the children, after notice to both parents, after such decree, the court may make such decree as it considers expedient relative to the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain, or may award their custody to

7 some third person if it seems expedient or for the benefit of the children; R. L. 152, § 25.
 8 and afterward may from time to time, upon the petition of either parent, 1918, 257,
 9 or of a next friend, revise and alter such decree or make a new decree, § 400.
 10 as the circumstances of the parents and the benefit of the children may 1919, 5.
 11 require. 1920, 2.
 1931, 261.
 152 Mass. 16.

196 Mass. 509.
220 Mass. 38.

244 Mass. 281.
258 Mass. 460.

271 Mass. 545.
273 Mass. 62.

1 SECTION 29. If, after a divorce has been decreed in another juris-
 2 diction, minor children of the marriage are inhabitants of or residents in
 3 this commonwealth, the superior or probate court for the county in
 4 which said minors or any of them are inhabitants or residents, upon
 5 petition of either parent or of a next friend in behalf of the children, after
 6 notice to both parents, shall have the same power to make decrees relative
 7 to their care, custody, education and maintenance, and to revise and
 8 alter such decrees or make new decrees, as if the divorce had been de-
 9 creed in this commonwealth.

Same when
 divorce
 obtained out
 of common-
 wealth
 1842, 83, § 1.
 G. S. 107, § 34.
 P. S. 146, § 30.
 R. L. 152, § 26.
 1931, 327, § 1.
 156 Mass. 27.
 260 Mass. 562.
 271 Mass. 252.

1 SECTION 30. A minor child of divorced parents who is a native of or
 2 has resided five years within this commonwealth and over whose custody
 3 and maintenance the superior court or a probate court has jurisdiction
 4 shall not, if of suitable age to signify his consent, be removed out of this
 5 commonwealth without such consent, or, if under that age, without the
 6 consent of both parents, unless the court upon cause shown otherwise
 7 orders. The court, upon application of any person in behalf of such
 8 child, may require security and issue writs and processes to effect the
 9 purposes of this and the two preceding sections.

Children not
 to be removed
 from com-
 monwealth.
 1842, 83, § 2.
 G. S. 107, § 35.
 P. S. 146, § 31.
 R. L. 152, § 27.
 1931, 426, § 94.
 271 Mass. 252,
 545.

1 SECTION 31. In making an order or decree relative to the custody of
 2 children pending a controversy between their parents, or relative to their
 3 final possession, the rights of the parents shall, in the absence of mis-
 4 conduct, be held to be equal, and the happiness and welfare of the children
 5 shall determine their custody or possession.

Custody of
 children.
 1855, 137, § 7.
 G. S. 107, § 37.
 P. S. 146, § 32.
 R. L. 152, § 28.
 151 Mass. 349.
 227 Mass. 77.

260 Mass. 562.

1 SECTION 32. Any court having jurisdiction of libels for divorce or for
 2 nullity of marriage, of petitions for separate support or maintenance, or
 3 of any other proceeding in which the care and custody of any child is
 4 drawn in question, may issue a writ of habeas corpus to bring before
 5 it such child. The writ may be made returnable forthwith before the
 6 court by which it is issued, and, upon its return, said court may make
 7 any appropriate order or decree relative to the child who may thus be
 8 brought before it.

Writ of habeas
 corpus to
 bring child
 before court.
 1902, 324.

1 SECTION 33. The court may, if the course of proceeding is not
 2 specially prescribed, hear and determine all matters coming within the
 3 purview of this chapter according to the course of proceedings in eccle-
 4 siastical courts or in courts of equity, and may issue process of attach-
 5 ment and execution and all other proper and necessary processes.

Procedure
 under this
 chapter.
 1785, 69, § 8.
 1820, 56, § 1.
 R. S. 76, § 38.
 G. S. 107, § 58.
 P. S. 146, § 33.

1887, 332, § 1.	109 Mass. 306.	196 Mass. 509.	230 Mass. 59.
R. L. 152, § 29.	150 Mass. 57.	197 Mass. 112.	250 Mass. 41.
1931, 426, § 95.	161 Mass. 111.	206 Mass. 449.	259 Mass. 486.
107 Mass. 428.	186 Mass. 244.	214 Mass. 77.	272 Mass. 154.

Alimony.
1785, 69, § 5.
1805, 57.
1811, 119.
1829, 55.

SECTION 34. Upon a divorce, or upon petition at any time after a divorce, the court may decree alimony to the wife, or a part of her estate, in the nature of alimony, to the husband.

R. S. 76, § 31.	1873, 371, § 7	108 Mass. 314	211 Mass. 139.
1838, 126, § 2.	P. S. 146, § 36.	120 Mass. 390.	222 Mass. 415.
1844, 129.	1887, 332, § 1.	128 Mass. 34	244 Mass. 270.
1850, 100, § 3.	R. L. 152, § 30.	135 Mass. 393.	245 Mass. 383.
1853, 23, § 1.	1931, 426, § 96.	147 Mass. 159.	246 Mass. 270.
1857, 228, § 3.	109 Mass. 365.	168 Mass. 511	262 Mass. 278.
G. S. 107, §§ 43, 44, 48.	107 Mass. 428.	190 Mass. 573.	266 Mass. 150.

Enforcement
of alimony, etc.
1858, 47.
G. S. 107, § 45.
P. S. 146, § 37.

SECTION 35. The court may enforce decrees for allowance, alimony or allowance in the nature of alimony, in the same manner as it may enforce decrees in equity.

R. L. 152, § 31.	105 Mass. 385.	130 Mass. 163, 189.	206 Mass. 449
12 Gray, 28	106 Mass. 499	134 Mass. 353	208 Mass. 458
100 Mass. 373	107 Mass. 428.	166 Mass. 226.	246 Mass. 270.

Security for
same.
1820, 56, § 2.
R. S. 76, § 35.
G. S. 107, § 46.

SECTION 36. When alimony or an annual allowance is decreed for the wife or children, the court may require sufficient security for its payment according to the decree.

P. S. 146, § 38.	R. L. 152, § 32.	262 Mass. 278.
------------------	------------------	----------------

Revision of
decree for same.
1785, 69, § 5.
1825, 138.
R. S. 76, § 36.
1853, 23, § 1.
G. S. 107,
§§ 47, 48.
P. S. 146, § 39.
R. L. 152, § 33.

SECTION 37. After a decree for alimony or an annual allowance for the wife or children, the court may, from time to time, upon the petition of either party, revise and alter its decree relative to the amount of such alimony or annual allowance and the payment thereof, and may make any decree relative thereto which it might have made in the original suit.

134 Mass. 353.	190 Mass. 573.	257 Mass. 225.	272 Mass. 297.
161 Mass. 111	225 Mass. 392.	266 Mass. 150.	273 Mass. 62.
168 Mass. 511	245 Mass. 383.		

Costs.
1820, 56, § 2.
R. S. 76, § 37.

SECTION 38. In proceedings under this chapter, the court may award costs in its discretion.

1853, 23, § 2	P. S. 146, § 40.	161 Mass. 111.
G. S. 107, § 49.	R. L. 152, § 34.	273 Mass. 62.

Validity of
foreign
divorces.
R. S. 76,
§§ 39, 40.
G. S. 107,
§§ 54, 55.
P. S. 146, § 41.
R. L. 152, § 35.
2 Gray, 367.
6 Gray, 157.
13 Gray, 209.
11 Allen, 196.
97 Mass. 538.

SECTION 39. A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth.

110 Mass. 463.	136 Mass. 328	167 Mass. 474.	225 Mass. 82.
115 Mass. 438	149 Mass. 223	176 Mass. 92	234 Mass. 269.
122 Mass. 3, 156.	154 Mass. 290	218 Mass. 21.	188 U. S. 14.
129 Mass. 14	157 Mass. 42	224 Mass. 427.	

CRIMINAL PROVISIONS.

Cohabitation
after divorce
to be adultery.
1785, 69, § 6.
R. S. 76, § 19.

SECTION 40. Persons divorced from each other cohabiting as husband and wife or living together in the same house shall be held to be guilty of adultery.

G. S. 107, § 24.	P. S. 146, § 42.	R. L. 152, § 36.
------------------	------------------	------------------

Penalty for
personation,
etc., in di-
vorce suits.

SECTION 41. Whoever falsely personates another or wilfully and fraudulently procures a person so to do, or fraudulently procures false

3 testimony to be given, or makes a false or fraudulent return of service
 4 of process upon a libel for divorce or in any proceeding connected there-
 5 with, shall be punished by a fine of not more than one thousand dollars
 6 or by imprisonment for not more than two years.

1873, 371, § 1.
 P. S. 146, § 43.
 R. L. 152, § 37.

1 SECTION 42. Whoever knowingly procures or obtains or assists an-
 2 other to procure or obtain any false, counterfeit or fraudulent divorce
 3 or decree of divorce, or any divorce or decree of divorce from a court of
 4 another state for or in favor of a person who at the time of making ap-
 5 plication therefor was a resident of this commonwealth, such court not
 6 having jurisdiction to grant such decree, shall be punished by a fine of
 7 not more than two hundred dollars or by imprisonment for not more
 8 than six months.

Penalty for
 procuring un-
 lawful divorce.
 1886, 342.
 R. L. 152, § 38.

1 SECTION 43. Whoever writes, prints or publishes, or solicits another
 2 to write, print or publish, any notice, circular or advertisement soliciting
 3 employment in the business of procuring divorces or offering induce-
 4 ments for the purpose of procuring such employment shall be punished
 5 by a fine of not more than two hundred dollars or by imprisonment for
 6 not more than six months.

Penalty for
 advertising to
 procure
 divorces.
 1887, 320.
 R. L. 152, § 39.
 1911, 85.

1 SECTION 44. Whoever, except in compliance with an order of a court
 2 of competent jurisdiction, gives, signs or issues any writing purporting
 3 to grant a divorce to persons who are husband and wife according to the
 4 laws of the commonwealth, or purporting to be a certificate that a divorce
 5 has been granted to such persons, shall be punished by a fine of not more
 6 than one thousand dollars, or by imprisonment in the jail for not more
 7 than three years, or both.

Penalty for
 unlawfully
 issuing certifi-
 cates of
 divorce.
 1891, 59.
 R. L. 152, § 40.

1 SECTION 45. If a divorce is granted for a cause constituting a crime,
 2 other than adultery, committed within the commonwealth and within the
 3 time provided by law for making complaints and finding indictments
 4 therefor, the court granting the divorce may, in its discretion, cause
 5 notice of such facts to be given by the clerk of the court or register of
 6 probate to the district attorney for the district where such crime was
 7 committed, with a list of the witnesses proving such crime and any other
 8 information which it considers proper; but if the divorce is granted
 9 because of adultery the court shall cause notice of such facts, informa-
 10 tion and list of witnesses to be given to the district attorney, and there-
 11 upon the district attorney may cause complaint therefor to be made
 12 before a magistrate having jurisdiction thereof, or may present the
 13 evidence thereof to the grand jury.

Notice to dis-
 trict attorney
 of criminal
 offences.
 1881, 234, § 1.
 P. S. 146, § 44.
 R. L. 152, § 41.
 1911, 127.
 1931, 426, § 97.
 240 Mass. 264.

STATISTICS OF DIVORCE.

1 SECTION 46. The clerks of the courts, the clerk of the superior court
 2 for civil business in Suffolk county and the registers of probate shall
 3 annually, in February, make returns for the last preceding calendar year
 4 to the state secretary, upon suitable blank forms provided by him, of
 5 the number of libels pending at the beginning of the year, the number
 6 of libels filed within the year, the number of divorces granted, the num-
 7 ber of divorces refused, the number of libels contested, the number of
 8 libels uncontested, the alleged cause for divorce in each case, the sex of

Returns of
 statistics of
 divorce.
 1882, 194,
 §§ 1, 2.
 R. L. 152, § 42.
 1931, 426, § 98.

the libellant and the length of time the parties have been married, and the number of cases in which notice has been given to the district attorney for prosecution under the preceding section and the crime for which divorce has been granted in such cases.

Publication of abstracts of returns. 1882, 194, § 3. R. L. 152, § 43.

SECTION 47. The state secretary shall annually prepare from said returns abstracts and tabular statements of the facts relative to divorces for each county, and embody them, with necessary analyses, in his annual report to the general court relative to the registry of births, marriages and deaths.

CHAPTER 209.

HUSBAND AND WIFE

SECT.	GENERAL PROVISIONS.	SECT.	MARRIAGE CONTRACTS.
1.	Married woman may control separate property.	25.	Ante-nuptial marriage contracts.
2.	Married woman may contract.	26.	Record of contract and description of property.
3.	Transfers between husband and wife.	27.	Marriage contract of female minor ward.
4.	Labor of married woman.		
5.	Married woman may be executrix, etc.		
6.	Married woman may sue and be sued.		
7.	Liabilities of married woman.		
8.	Husband not liable for wife's debts.		
9.	Husband not liable on certain contracts of wife after marriage.		
10.	Separate business certificate.		
11.	Record of certificates.		
12.	Trustee for married woman's separate estate.		
13.	Marriage settlements not affected.		
	PROVISIONS IF HUSBAND OR WIFE IS UNDER DISABILITY.		
14.	Release of dower by wife of ward.		
15.	Sale of her real estate.		
16.	Disposition of proceeds of such sales.		
17.	Joinder of wife or husband of ward with guardian in making partition.		
18.	Release of dower or curtesy of insane person.		
19.	Reservation for insane husband of portion of proceeds upon release of curtesy.		
20.	Reservation for insane wife of portion of proceeds upon release of dower.		
21.	Like reservation for insane wife upon release of homestead.		
22.	Conveyance if provision in lieu of curtesy or dower.		
23.	Same subject.		
24.	Venue of proceedings.		
			MARRIED WOMEN COMING FROM OTHER STATES, ETC.
		28.	Rights of woman coming into commonwealth without her husband.
		29.	Rights of persons married out of commonwealth and coming here to reside.
			MARRIED WOMEN ABANDONED BY THEIR HUSBANDS, ETC.
		30.	Conveyance, etc., of property by married woman abandoned, etc. Venue.
		31.	Sale of real estate by non-resident married woman.
		32.	Orders for support, etc., of wife deserted, etc.
		32A.	Where criminal act with third person is alleged, such person not to be named, except, etc.
		32B.	Same subject.
		32C.	Third person so named may contest.
		33.	Attachment of husband's property in such case.
		34.	Venue of petition.
		35.	Conveyance and will of married woman living apart.
		36.	Conveyance and will of husband living apart.
		37.	Support, etc., of children of parents living separately.

GENERAL PROVISIONS.

1 SECTION 1. The real and personal property of a woman shall upon
 2 her marriage remain her separate property, and a married woman may
 3 receive, receipt for, hold, manage and dispose of property, real and per-
 4 sonal, in the same manner as if she were sole. But no conveyance by a
 5 married woman of real estate shall, except as otherwise provided in this
 6 chapter, extinguish or impair her husband's tenancy by the curtesy by
 7 statute or his right to curtesy existing on December thirty-first, nine-
 8 teen hundred and one, in such property unless he joins in the conveyance
 9 or otherwise releases the same.

Married woman may control separate property.
 1845, 208, § 3.
 1846, 209, § 1
 1855, 304, §§ 1, 3
 1857, 249, §§ 1, 2
 G. S. 108, §§ 1, 3, 6, 10
 1864, 198
 1874, 184, § 1.

P. S. 147, § 1.	5 Cush. 56	9 Allen, 403.	114 Mass. 550
1889, 204.	2 Gray, 161.	11 Allen, 538.	117 Mass. 62, 241.
R. L. 153, § 1.	10 Gray, 72.	12 Allen, 476.	128 Mass. 169,
16 Pick. 137.	16 Gray, 105.	13 Allen, 64, 213.	269
1 Met. 542.	4 Allen, 440.	99 Mass. 241, 561.	167 Mass. 390.
10 Met. 192.	5 Allen, 103, 379.	111 Mass. 308.	252 Mass. 582.
2 Cush. 264.	7 Allen, 504	112 Mass. 271.	269 Mass. 433.

1 SECTION 2. A married woman may make contracts, oral and written,
 2 sealed and unsealed, in the same manner as if she were sole, except that
 3 she shall not be authorized hereby to make contracts with her husband.

Married woman may contract.
 1855, 304, § 3
 1857, 249, § 2

G. S. 108, § 3.	107 Mass. 437	155 Mass. 52.
1863, 165.	109 Mass. 79, 502.	158 Mass. 388.
1869, 304.	110 Mass. 51, 311.	162 Mass. 527.
1874, 184, § 1.	111 Mass. 245	166 Mass. 198.
P. S. 147, § 2.	112 Mass. 99, 271, 515.	168 Mass. 471.
R. L. 153, § 2.	113 Mass. 255.	186 Mass. 244.
10 Cush. 550.	114 Mass. 133, 520, 550	187 Mass. 315.
12 Cush. 486.	115 Mass. 374	190 Mass. 507.
8 Gray, 542.	117 Mass. 382, 532	195 Mass. 124.
10 Gray, 222.	118 Mass. 541, 588.	200 Mass. 437.
15 Gray, 328, 453	123 Mass. 96	203 Mass. 233.
3 Allen, 127, 315, 541.	124 Mass. 108	209 Mass. 193.
4 Allen, 342, 346, 412.	125 Mass. 25, 374.	217 Mass. 411.
5 Allen, 460.	126 Mass. 297.	227 Mass. 166.
6 Allen, 136, 300, 305, 565.	130 Mass. 407.	228 Mass. 305, 549.
7 Allen, 146, 176, 481	133 Mass. 140.	229 Mass. 11, 87.
8 Allen, 321, 581.	134 Mass. 77, 291.	244 Mass. 453.
10 Allen, 512.	135 Mass. 87, 299.	247 Mass. 273.
11 Allen, 345.	138 Mass. 49, 58, 540.	248 Mass. 177, 549.
14 Allen, 36.	139 Mass. 202	250 Mass. 341.
99 Mass. 559, 562.	140 Mass. 63, 202, 521, 560.	251 Mass. 218.
101 Mass. 66.	141 Mass. 283.	266 Mass. 150.
102 Mass. 246.	145 Mass. 359.	268 Mass. 334.
105 Mass. 115, 414.	146 Mass. 460, 517.	9 Wall 743.
106 Mass. 303, 307.	150 Mass. 275, 374.	3 Op. A. G. 120, 260.

1 SECTION 3. Gifts of personal property, and conveyances of real
 2 estate other than mortgages, between husband and wife, shall be valid
 3 to the same extent as if they were sole, except that no such conveyance
 4 of real estate shall have any effect, either in passing title or otherwise,
 5 until the deed describing the property to be transferred is duly acknowl-
 6 edged and recorded in the registry of deeds for the district where the
 7 land lies.

Transfers between husband and wife.
 1857, 249, § 5.
 G. S. 108, § 10.
 1874, 184, § 1.
 1879, 133.
 P. S. 147, § 3.
 1884, 132, § 1.
 R. L. 153, § 3.
 1912, 304.

1920, 478.	116 Mass. 490.	138 Mass. 358.	229 Mass. 11.
15 Gray, 322.	119 Mass. 596.	140 Mass. 202.	243 Mass. 207.
12 Allen, 107, 114.	126 Mass. 113.	141 Mass. 283.	262 Mass. 555.
103 Mass. 300.	128 Mass. 169.	146 Mass. 25.	264 Mass. 166.
113 Mass. 157.	130 Mass. 378, 407.	158 Mass. 342.	265 Mass. 428.
114 Mass. 167.	134 Mass. 138.	212 Mass. 486.	268 Mass. 407.

1 SECTION 4. Work and labor performed by a married woman for a
 2 person other than her husband and children shall, unless there is an
 3 express agreement on her part to the contrary, be presumed to be per-
 4 formed on her separate account.

Labor of married woman.
 1846, 209
 1855, 304, § 7.
 G. S. 108, §§ 3, 6

1874, 184, § 1.	14 Gray, 389.	131 Mass. 533	227 Mass. 166.
P. S. 147, § 4.	1 Allen, 258.	165 Mass. 100.	243 Mass. 374.
R. L. 153, § 4.	97 Mass. 113.	219 Mass. 572.	247 Mass. 273.

Married woman may be executrix, etc. 1837, 171, § 1. G. S. 109, § 25.

SECTION 5. A married woman may be an executrix, administratrix, guardian, conservator, trustee or receiver, and may bind herself and the estate which she represents without any act or assent of her husband.

1869, 409. 1874, 184, § 4. P. S. 147, § 5. R. L. 153, § 5.

Married woman may sue and be sued. 1845, 208, § 5. 1855, 304, §§ 2, 4.

SECTION 6. A married woman may sue and be sued in the same manner as if she were sole; but this section shall not authorize suits between husband and wife.

1857, 249, § 3. 2 Allen, 48. 129 Mass. 407. 195 Mass. 124.
 G. S. 108, § 8. 6 Allen, 305. 135 Mass. 87. 200 Mass. 437.
 1871, 312. 10 Allen, 512. 155 Mass. 136. 208 Mass. 458.
 1874, 184, § 3. 110 Mass. 238. 173 Mass. 214. 235 Mass. 261.
 P. S. 147, § 7. 115 Mass. 115. 190 Mass. 69. 243 Mass. 374.
 R. L. 153, § 6. 118 Mass. 58. 191 Mass. 283. 269 Mass. 56.
 6 Gray, 562. 120 Mass. 89. 563.

Liabilities of married woman. 1855, 304, §§ 1, 6. G. S. 108, §§ 1, 7. P. S. 147, § 8. R. L. 153, § 7. 1910, 576. 217 Mass. 15. 228 Mass. 305.

SECTION 7. A married woman shall not be liable for her husband's debts, nor shall her property be liable to be taken on an execution against him, except as provided in section ten. But a married woman shall be liable jointly with her husband for debts due, to the amount of one hundred dollars in each case, for necessities furnished with her knowledge or consent to herself or her family, if she has property to the amount of two thousand dollars or more.

229 Mass. 87.

Husband not liable for wife's debts. 1855, 304, § 2. G. S. 108, § 8.

SECTION 8. A husband shall not be liable upon a cause of action which originated against his wife prior to their marriage, or to pay a judgment recovered against her, except under section ten.

1871, 312. P. S. 147, § 9. R. L. 153, § 8.

Husband not liable on certain contracts of wife after marriage. 1855, 304, § 7. 1857, 249, § 6. G. S. 108, § 5. P. S. 147, § 10.

SECTION 9. Contracts made by a married woman relative to her separate property, trade, business, labor or services shall not, except as provided in the following section, bind her husband or render him or his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole.

R. L. 153, § 9.

Separate business certificate. 1862, 198, 1881, 64, §§ 1, 3. P. S. 147, § 11. 1898, 416. R. L. 153, § 10. 1 Allen, 258. 11 Allen, 546. 104 Mass. 589. 105 Mass. 40. 106 Mass. 471. 108 Mass. 47, 229. 109 Mass. 289. 112 Mass. 250. 114 Mass. 77. 125 Mass. 421. 126 Mass. 332, 411. 129 Mass. 296. 130 Mass. 247. 135 Mass. 580. 137 Mass. 134. 138 Mass. 83, 194. 150 Mass. 82, 275. 163 Mass. 255. 170 Mass. 142. 175 Mass. 90.

SECTION 10. If a married woman does or proposes to do business on her separate account, she shall cause to be recorded in the clerk's office of the town where she does or proposes to do such business a certificate stating her name and that of her husband, the nature of the business and the place where it is or is proposed to be carried on, giving, if practicable, the street and number, and the name, which shall not be her husband's, under which she proposes to carry on business. If the nature of the business or the place where or the name under which it is carried on is changed, a new certificate shall be recorded accordingly. If she fails to cause such certificates to be recorded her husband may do so. If such certificates are not so recorded by either husband or wife, the personal property employed in such business shall be liable to be attached as the property of the husband and to be taken on execution against him, and the husband shall be liable upon all contracts lawfully made in the prosecution of such business in the same manner and to the same extent as if such contracts had been made by him. This section shall not, however, affect the rights of any person under any certificate filed or recorded prior to August first, eighteen hundred and ninety-eight.

190 Mass. 556. 197 Mass. 504. 270 Mass. 49.
 191 Mass. 283. 223 Mass. 168. 271 Mass. 485.

1 SECTION 11. The town clerk shall, upon receipt of twenty-five cents,
 2 record said certificate in a book kept therefor, noting therein and on the
 3 certificate the time when received; and a certificate shall be considered as
 4 recorded at the time when left for record. The clerk shall keep an index
 5 of all such certificates.

Record of
 certificates.
 1881, 64, § 2.
 P. S. 147, § 12.
 R. L. 153, § 11.
 150 Mass. 75.

1 SECTION 12. The probate court may, upon petition of a married
 2 woman having separate property, appoint a trustee to hold the same in
 3 trust for her, to whom she may thereupon convey it upon such trusts and
 4 to such uses as she may declare. The trustee may prosecute and defend
 5 all actions relative to such property brought by or against her; and the
 6 property in his hands shall be liable to be attached or taken on execution
 7 in any such action.

Trustee for
 married
 woman's sepa-
 rate estate.
 1845, 208, § 8.
 G. S. 108, § 4.
 P. S. 147, § 13.
 1887, 332, § 2.
 R. L. 153, § 12.
 10 Allen, 127.
 133 Mass. 175.

136 Mass. 342.

1 SECTION 13. The twelve preceding sections shall not invalidate a mar-
 2 riage settlement or contract.

Marriage
 settlements
 not affected.

1855, 304, § 9.
 G. S. 108, § 10.

1874, 184, § 6.
 P. S. 147, § 15.

R. L. 153, § 14.
 136 Mass. 342.

PROVISIONS IF HUSBAND OR WIFE IS UNDER DISABILITY.

1 SECTION 14. If the guardian or conservator of a married man is
 2 licensed to sell real estate of his ward, the wife of the ward may join with
 3 the guardian or conservator in the conveyance, and release dower and
 4 homestead in the granted property, in like manner as she might have
 5 done by joining in a conveyance thereof made by her husband if he had
 6 been under no legal disability.

Release of
 dower by wife
 of ward.
 1823, 146, § 2.
 R. S. 77, § 14.
 G. S. 108, § 11.
 P. S. 147, § 16.
 1898, 527, § 2.
 R. L. 145, § 41;
 153, § 15.

1910, 95.

1915, 23.

1 SECTION 15. If such guardian or conservator is licensed to sell the
 2 interest of the ward in any real estate of his wife, the wife may join with
 3 the guardian or conservator in the conveyance, and convey all her
 4 estate and interest in the granted property in like manner as she might
 5 have done by a conveyance thereof made jointly with her husband, if
 6 he had been under no legal disability.

Sale of her
 real estate.
 1823, 146, § 1.
 R. S. 77, § 15.
 G. S. 108, § 12.
 P. S. 147, § 17.
 1898, 527, § 2.
 R. L. 145, § 41;
 153, § 16.

1910, 95.

1915, 23.

1 SECTION 16. If the wife so releases her dower or homestead, or so
 2 conveys her own estate, the proceeds of the sale may be so invested and
 3 disposed of as to secure to her, and to the minor children of the owner if
 4 it is an estate of homestead, the same rights in the principal and income
 5 thereof as she or they would have had therein if it had not been sold. An
 6 agreement made between her and the guardian or conservator for securing
 7 and disposing of the proceeds or any part thereof for the purpose afore-
 8 said, if approved by the probate court for the county where the guardian
 9 or conservator was appointed, or, in default of such agreement, an order
 10 therefor made by the probate court, shall be valid and binding on all
 11 persons interested in the granted property or in said proceeds, and may
 12 be enforced by the court or by an action at law.

Disposition of
 proceeds of
 such sales.
 1823, 146, § 1.
 R. S. 77, § 16.
 G. S. 108, § 13.
 P. S. 147, § 18.
 1898, 527, § 2.
 R. L. 145, § 41;
 153, § 17.
 1910, 95.
 1915, 23.

1 SECTION 17. The wife of a man under guardianship or conservator-
 2 ship may join with his guardian or conservator, and the guardian or con-
 3 servator of a woman may join with her husband, in making partition of
 4 her real estate which is held in joint tenancy or in common, and they may

Joinder of wife
 or husband of
 ward with
 guardian in
 making parti-
 tion
 1830, 54

R. S. 77, § 20.
G. S. 108, § 15.
P. S. 147, § 19.

make any release or other conveyance necessary or proper therefor, as the parties might do if neither of them were under legal disability.

1898, 527, § 2. R. L. 145, § 41; 153, § 18. 1910, 95. 1915, 23.

Release of dower or curtesy of insane person. 1856, 169, § 3. 1857, 298, § 10. G. S. 108, § 20. P. S. 147, § 20. 1886, 245, § 1. 1890, 105. 1899, 284, § 1. R. L. 153, § 19.

SECTION 18. The husband or wife of an insane person desiring to convey his or her real estate absolutely or by mortgage may file a petition in the probate court describing such real estate and praying that the wife's dower or homestead or the husband's curtesy therein may be released, and stating the facts and reasons why the prayer of the petition should be granted. The court may, after notice and a hearing, by a decree authorize the guardian of the insane person to make the release by joining in any deed or deeds, mortgage or mortgages of the whole or a part of said real estate which is or are made within five years after said decree by the husband or wife of the insane person or by a trustee for such husband or wife.

Reservation for insane husband of portion of proceeds upon release of curtesy. 1886, 245, § 2. 1899, 284, § 2. 1900, 450, § 5. 1901, 461. R. L. 153, § 20.

SECTION 19. If the guardian of an insane husband is authorized under the preceding section to release such curtesy, and the probate court finds that a portion of the proceeds of such real estate, or of an amount loaned on mortgage thereof, should be reserved for the use of such ward, it may order a certain portion, not exceeding one third of the net amount, if it is in respect of the tenancy by the curtesy by statute, of the proceeds or amount actually realized from such sale or mortgage, exclusive of any encumbrance then existing on said real estate, to be set aside and paid over to such guardian, to be invested and held for the benefit of the husband during his life if he survives his wife. The income of such portion shall be received and enjoyed by the wife during the life of her husband, or until otherwise ordered by the court for cause. If she survives him, the principal shall upon his death be paid over to her, but if she does not survive him, to her heirs, executors or administrators.

Reservation for insane wife of portion of proceeds upon release of dower. 1856, 169, § 4. G. S. 108, § 21. P. S. 147, § 21. R. L. 153, § 21.

SECTION 20. If the guardian of an insane wife is authorized under section eighteen to release the dower of his ward, and the probate court finds that a portion of the proceeds of such real estate, or of an amount loaned on mortgage thereof, should be reserved for the use of such ward, it may order a certain portion, not exceeding one third of the net amount of the proceeds or amount actually realized from such sale or mortgage, exclusive of any encumbrance then existing on said real estate, to be set aside and paid over to such guardian, to be invested and held for the benefit of the wife during her life if she survives her husband. The income of such portion shall be received and enjoyed by the husband during the life of his wife, or until otherwise ordered by the court for cause. If he survives her, the principal shall upon her death be paid over to him, but if he does not survive her, to his heirs, executors or administrators.

Like reservation for insane wife upon release of homestead. 1857, 298, § 11. G. S. 108, § 22. P. S. 147, § 22. R. L. 153, § 22.

SECTION 21. If the guardian of an insane wife is authorized under section eighteen to release an estate of homestead, and the probate court finds that a portion of the proceeds of the real estate sold, or of an amount loaned on mortgage thereof, should be reserved for the use of the ward, it may order a certain portion, not exceeding eight hundred dollars, to be set aside and paid over to such guardian to be invested in a homestead, and held by him for the benefit of his ward, if she survives her husband; the rent or use thereof to be received and enjoyed by the husband dur-

9 ing the life of his wife, or until otherwise ordered by the court for cause;
 10 and the homestead to be his, and to be conveyed to him by said guardian,
 11 if he survives her.

1 SECTION 22. If the husband or wife of an insane person conveys real
 2 estate in trust without a power of revocation and makes a provision
 3 therein for the insane husband or wife, respectively, which the probate
 4 court, upon petition, after notice and hearing, finds is sufficient in lieu
 5 of curtesy or dower, the trustee may convey such real estate free from all
 6 right of curtesy or dower.

Conveyance if
 provision in
 lieu of curtesy
 or dower.
 1856, 169, § 5.
 G. S. 108, § 23.
 P. S. 147, § 23.
 R. L. 153, § 23.

1 SECTION 23. The court, under the preceding section, may find that
 2 the provision for the husband or wife is sufficient in lieu of curtesy or
 3 dower either in the whole or in particular portions of the real estate of
 4 the husband or wife, and thereupon the guardian of such insane husband
 5 or wife may be authorized to release the curtesy or dower in the whole or
 6 in particular portions thereof.

Same subject.
 1856, 169, § 6.
 G. S. 108, § 24.
 P. S. 147, § 24.
 R. L. 153, § 24.

1 SECTION 24. Proceedings under the six preceding sections shall, if
 2 the husband or wife of such insane person is an inhabitant of this com-
 3 monwealth, be in the county where he or she resides; otherwise, in a
 4 county where any of his or her real estate is situated; and a certified copy
 5 of all final orders or decrees in such proceedings shall be recorded in the
 6 registry of deeds in every county or district where such real estate lies.

Venue of
 proceedings.
 1856, 169, § 7.
 G. S. 108, § 25.
 P. S. 147, § 25.
 1886, 245, § 3.
 R. L. 153, § 25.

MARRIAGE CONTRACTS.

1 SECTION 25. At any time before marriage, the parties may make a
 2 written contract providing that, after the marriage is solemnized, the
 3 whole or any designated part of the real or personal property or any right
 4 of action, of which either party may be seized or possessed at the time
 5 of the marriage, shall remain or become the property of the husband or
 6 wife, according to the terms of the contract. Such contract may limit
 7 to the husband or wife an estate in fee or for life in the whole or any part
 8 of the property, and may designate any other lawful limitations. All
 9 such limitations shall take effect at the time of the marriage in like
 10 manner as if they had been contained in a deed conveying the property
 11 limited.

Ante-nuptial
 marriage con-
 tracts.
 1845, 208, § 1.
 G. S. 108, § 27.
 P. S. 147, § 26.
 R. L. 153, § 26.
 8 Gray, 542.
 2 Allen, 36.
 5 Allen, 187.
 9 Allen, 234.
 10 Allen, 278.
 109 Mass. 261.
 110 Mass. 461.
 128 Mass. 509.
 139 Mass. 144.
 148 Mass. 132.
 195 Mass. 236.

212 Mass. 131.

227 Mass. 331.

1 SECTION 26. A schedule of the property intended to be affected, con-
 2 taining a sufficiently clear description thereof to enable a creditor of the
 3 husband or wife to distinguish it from other property, shall be annexed
 4 to such contract; and such contract and schedule shall, either before the
 5 marriage or within ninety days thereafter, be recorded in the registry of
 6 deeds for the county or district where the husband resides at the time of
 7 the record, or, if he is not a resident of this commonwealth, then in the
 8 registry of deeds for the county or district where the wife resides at the
 9 time of the record, if it is made before the marriage, or where she last
 10 resided, if made after the marriage. If the contract is not so recorded, it
 11 shall be void except as between the parties thereto and their heirs and
 12 personal representatives. It shall also be recorded in the registry of
 13 deeds for every county or district where there is land to which it relates.

Record of
 contract and
 description of
 property.
 1845, 208, § 2.
 G. S. 108, § 28.
 1867, 248.
 P. S. 147, § 27.
 R. L. 153, § 27.
 4 Allen, 412.
 100 Mass. 337.
 109 Mass. 261.
 148 Mass. 132.
 169 Mass. 186.
 175 Mass. 349.

Marriage contract of female minor ward 1869, 292
P. S. 147, § 28.
R. L. 153, § 28.

SECTION 27. A female minor who has become eighteen may join with her guardian in making such marriage contract, and for such purpose the guardian and ward may convey her real and personal property to trustees approved by the probate court having jurisdiction over said minor, to be held upon the trusts declared in such contract, and such conveyance shall have like effect as if said minor were of full age, and the guardian in the settlement of his accounts shall be allowed by the probate court for all property so conveyed to said trustees. The court may require said trustees to give bond with sufficient sureties for the faithful performance of their trust.

MARRIED WOMEN COMING FROM OTHER STATES, ETC.

Rights of woman coming into commonwealth without her husband. R. S. 77, § 18.
G. S. 108, § 29.
P. S. 147, § 29.
R. L. 153, § 29.
15 Mass. 31.

SECTION 28. If a married woman comes from another state or country into this commonwealth without her husband, who has never lived with her in this commonwealth, she shall have all the rights and powers given to married women by the foregoing sections, and may transact business, make contracts, sue and be sued in her own name, and dispose of her property which may be found here, in like manner as if she were sole.

Rights of persons married out of commonwealth and coming here to reside. R. S. 77, § 19.
1855, 304, § 8.
G. S. 108, § 30.
P. S. 147, § 30.
R. L. 153, § 30.

SECTION 29. If a husband and his wife, married in another state or country, come into this commonwealth, either at the same or at different times, and reside here as husband and wife, she shall retain all property which she had acquired by the laws of any other state or country, or by a marriage contract or settlement made out of this commonwealth. Such residence together here shall have the same effect, relative to their subsequent rights and liabilities, as if they had married here at the beginning of such residence.

MARRIED WOMEN ABANDONED BY THEIR HUSBANDS, ETC.

Conveyance, etc., of property by married woman abandoned, etc. Venue. 1787, 32, §§ 1, 3.
1833, 127.
R. S. 77, §§ 1-3, 5,
6, 11-13.
G. S. 108, §§ 31, 33, 35.
P. S. 147, §§ 31, 32.
1887, 332, § 2.
R. L. 153, §§ 31, 32.
1 Met. 204.
4 Met. 478.
12 Allen, 133.
252 Mass. 582.

SECTION 30. A probate court, upon petition of a married woman whose husband abandoning and not sufficiently maintaining her has absented himself from this commonwealth, or has been sentenced to confinement in the state prison, may authorize her to sell, convey, receive and receipt for her real and personal property, any personal property which may have come to her husband by reason of the marriage and remains in this commonwealth undisposed of by him or any personal property to which he is entitled in her right, and to use and dispose of the same or the proceeds thereof, during his absence or imprisonment, as if she were sole; and the authority so granted shall continue until the husband returns to this commonwealth and claims his marital rights, or is discharged from prison. Such petition may be filed, heard and determined in the probate court in any county, and notice shall be given as provided in case of divorce libels when the libellee is out of this commonwealth.

Sale of real estate by non-resident married woman. 1914, 477.

SECTION 31. A married woman residing without this commonwealth, and owning in her own right real estate situated herein, whose husband abandoning and not sufficiently maintaining her has absented himself from the place where they last dwelt together, may petition the probate court in any county where the land lies, describing such real estate and praying for authority to sell and convey it in the same manner and with the same effect as if she were sole. The court, after such notice as it may order, if it finds that the petitioner has been abandoned by her husband and that he does not sufficiently maintain her, may authorize

10 the petitioner to sell and convey within one year from the date of such
 11 decree such real estate as if she were sole.

1 SECTION 32. If a husband fails, without justifiable cause, to provide
 2 suitable support for his wife, or deserts her, or if the wife, for justifiable
 3 cause, is actually living apart from her husband, or if the husband is
 4 deserted by the wife, or is actually living apart from his wife for justifi-
 5 fiable cause, the probate court may, upon his or her petition, or if he or
 6 she is insane, upon the petition of the guardian or next friend, prohibit
 7 the husband or wife from imposing any restraint on the personal liberty
 8 of the other during such time as the court shall by its order direct or
 9 until the further order of the court thereon; and, upon the application
 10 of the husband or wife or of the guardian of either, the court may make
 11 further orders relative to the support of the wife and the care, custody
 12 and maintenance of their minor children, may determine with which of
 13 their parents the children or any of them shall remain and may, from
 14 time to time, upon a similar application, revise and alter such order or
 15 make a new order or decree, as the circumstances of the parents or the
 16 benefit of the children may require.

Orders for support, etc., of wife deserted, etc. 1874, 205. 1878, 199, § 1. 1880, 64, § 1. P. S. 147, § 33. R. L. 153, § 33. 1921, 56. 3 Met. 257. 3 Gray, 387. 120 Mass. 320. 130 Mass. 163. 136 Mass. 187. 138 Mass. 106. 140 Mass. 560. 141 Mass. 432. 144 Mass. 278. 146 Mass. 49. 150 Mass. 111. 153 Mass. 38. 154 Mass. 262. 156 Mass. 485. 159 Mass. 91, 474. 160 Mass. 149, 232, 464.

161 Mass. 58.	196 Mass. 179, 509.	237 Mass. 279, 563.	255 Mass. 19.
175 Mass. 316.	208 Mass. 458.	239 Mass. 443.	257 Mass. 225.
176 Mass. 229.	218 Mass. 21, 73.	240 Mass. 417.	262 Mass. 209.
184 Mass. 394, 488.	220 Mass. 38, 197.	244 Mass. 61, 302.	264 Mass. 40, 453.
186 Mass. 244.	222 Mass. 563.	246 Mass. 270.	271 Mass. 252.
189 Mass. 281.	234 Mass. 37.	249 Mass. 552.	273 Mass. 450.
195 Mass. 436.	236 Mass. 248, 353.		

1 SECTION 32A. If in any proceedings under section thirty-two, adul-
 2 tery or any other specific criminal act with a third person is alleged in
 3 the petition, answer, or in any bill of particulars or specifications, or if
 4 any allegations are made in such pleadings which would be derogatory
 5 to the character or reputation of a third person, if named therein, the
 6 pleadings shall not contain the name of such third person. The party
 7 making such allegations may, at any time after filing the pleadings con-
 8 taining the same, upon an ex parte hearing before a judge of the court
 9 in which the proceedings are pending, obtain permission to amend such
 10 pleadings by inserting the name of the person concerning whom the
 11 allegations are made, if the judge finds probable cause has been shown
 12 that such allegations are true; and thereupon the pleadings may be
 13 amended accordingly and notice of said amendment shall be sent to all
 14 parties interested.

Where criminal act with third person is alleged, such person not to be named, except, etc. 1922, 242.

1 SECTION 32B. The evidence produced at such ex parte hearing shall
 2 not be reported or made a part of the record in the case, and the motion
 3 for said amendment shall not be read in open court during the proceed-
 4 ings, but the register shall make an entry in the docket of "Motion to
 5 insert name of third person allowed", or "Motion to insert name of third
 6 person denied", as the case may be. If the amendment is allowed upon
 7 affidavits, they shall be retained by the court and placed in the custody
 8 of the register, and shall be open for the purposes of inspection and
 9 taking copies thereof to counsel of record, the parties or the third person
 10 named in the amendment.

Same subject. 1922, 242.

1 SECTION 32C. Any person whose name has been inserted in the
 2 pleadings by amendment in accordance with the two preceding sections
 3 may appear in person or by attorney and defend himself against the
 4 allegations contained in such pleadings.

Third person so named may contest. 1922, 242.

Attachment
of husband's
property in
such case.
1878, 199, § 2.
1879, 31.
P. S. 147, § 35.

SECTION 33. Upon such petition, an attachment of the husband's property may be made as upon a libel for divorce; and sections seven-
teen, thirty-three and thirty-five of chapter two hundred and eight shall
apply to proceedings upon such petition, so far as appropriate.

R. L. 153, § 35.
150 Mass. 92.
163 Mass. 530.

186 Mass. 244.
196 Mass. 509.
208 Mass. 458.

218 Mass. 73.
239 Mass. 443.
246 Mass. 270.

Venue of
petition.
1881, 33.
P. S. 147, § 34.
R. L. 153, § 34.
184 Mass. 557.

SECTION 34. A petition under section thirty-two or thirty-six may be brought in the county where either of the parties lives, except that if the petitioner has left the county where the parties have lived together and the respondent still lives therein, the petition shall be brought in that county.

Conveyance
and will of
married woman
living apart.
1884, 301.
1885, 255, § 1.
R. L. 153, § 36.
1924, 345, § 1.
184 Mass. 488.
220 Mass. 197.
249 Mass. 219.

SECTION 35. If a court having jurisdiction has entered a decree that a married woman has been deserted by her husband or is living apart from him for justifiable cause, she may convey her real estate in the same manner and with the same effect as if she were sole; and the surviving husband shall not be entitled under section fifteen of chapter one hundred and ninety-one to waive the provisions of a will made by her or to claim such portion of her estate as he would take if she had died intestate, nor shall he be entitled upon her death, if she leaves a will, to his tenancy by curtesy in her estate, as provided in section one of chapter one hundred and eighty-nine.

Conveyance
and will of
husband living
apart.
1906, 129.
1919, 333, § 27.
1920, 2.
1924, 345, § 2.
198 Mass. 136.
244 Mass. 14.

SECTION 36. A probate court may upon petition of a husband or, if he is insane, of his guardian or next friend, enter a decree that said husband has been deserted by his wife or that he is living apart from her for justifiable cause, and he may thereafter convey his real estate in the same manner and with the same effect as if he were sole; and the surviving wife shall not be entitled under section fifteen of chapter one hundred and ninety-one to waive the provisions of a will made by him or to claim such portion of his estate as she would take if he had died intestate, nor shall she be entitled upon his death, if he leaves a will, to dower in his estate, as provided in section one of chapter one hundred and eighty-nine. Section seventeen of chapter two hundred and eight shall apply to proceedings upon such petition, so far as applicable.

Support, etc.,
of children of
parents living
separately.
1856, 24.
G. S. 107,
§§ 36, 37.
P. S. 147, § 36.
1887, 332, § 2.
R. L. 153, § 37.
1919, 333, § 28.
1920, 2.
138 Mass. 449.
162 Mass. 375.

SECTION 37. If the parents of minor children live apart from each other, not being divorced, the probate court for the county in which said minors or any of them are residents or inhabitants, upon petition of either parent, or of a next friend in behalf of the children after notice to both parents, shall have the same power to make decrees relative to their care, custody, education and maintenance, and to revise and alter such decrees or make new decrees, as the superior court has relative to children whose parents are divorced.

189 Mass. 281.

227 Mass. 77.

236 Mass. 248.

271 Mass. 252.

CHAPTER 210.

ADOPTION OF CHILDREN AND CHANGE OF NAMES.

<p>SECT.</p> <p style="padding-left: 2em;">ADOPTION OF CHILDREN.</p> <p>1. When adoption permitted.</p> <p>2. Written consent of certain persons required.</p> <p>3. Consent not required in certain cases. Notice of petition if child supported by town, etc.</p> <p>4. Notice.</p> <p>5. Proceedings upon failure to object after notice.</p> <p>5A. Adoption of children under fourteen regulated.</p> <p>6. Decree of court and its effect.</p> <p>7. Rights of adopted child as to succession to property.</p>	<p>SECT.</p> <p>8. Rights of adopted child under wills, trusts, etc.</p> <p>9. Rights in this commonwealth of a child adopted in another state.</p> <p>10. Effect of second adoption.</p> <p>11. Appeals.</p> <p>11A. Newspaper advertisements relative to adoption of children regulated. Penalty.</p> <p style="text-align: center;">CHANGE OF NAMES.</p> <p>12. Petitions for change of name.</p> <p>13. Notice and certificate.</p> <p>14. Annual return of changes.</p>
--	--

ADOPTION OF CHILDREN.

1 SECTION 1. A person of full age may petition the probate court in the
 2 county where he resides for leave to adopt as his child another person
 3 younger than himself, unless such other person is his or her wife or hus-
 4 band, or brother, sister, uncle or aunt, of the whole or half blood. If the
 5 petitioner has a husband or wife living, competent to join in the petition,
 6 such husband or wife shall join therein, and upon adoption the child
 7 shall in law be the child of both. If a person not an inhabitant of this
 8 commonwealth desires to adopt a child residing here, the petition may
 9 be made to the probate court in the county where the child resides.

203 Mass. 556.
206 Mass. 294.
226 Mass. 396.
240 Mass. 18.

When adop-
 tion permitted.
 1851, 324.
 §§ 1, 4
 G. S. 110, § 1.
 1871, 310, § 1.
 1876, 213.
 § 10, 11.
 P. S. 148, § 1.
 R. L. 154, § 1.
 124 Mass. 592.
 137 Mass. 346.
 171 Mass. 99.
 183 Mass. 404.
 195 Mass. 187.

1 SECTION 2. A decree for such adoption shall not be made, except as
 2 hereinafter provided, without the written consent of the child, if above
 3 the age of fourteen; of her husband, if she is a married woman; of the
 4 lawful parents or surviving parent; of the mother only of the child, if
 5 illegitimate; or of the person substituted for any of the above named
 6 by this chapter. Illegitimacy shall in no case be expressly averred
 7 upon the record. A person whose consent is hereby required shall not
 8 thereby be debarred from being the adopting parent. If the child has
 9 been previously adopted, a subsequent decree of adoption of the child
 10 shall not be made without the written consent of the previous adopting
 11 parents or parent surviving, nor unless notice of the subsequent peti-
 12 tion for adoption has been given to the persons whose consent to the
 13 original adoption was required under this section; but such subsequent
 14 decree may be made without the consent of such persons. Notice of
 15 any petition for adoption shall be given to the guardian of the child, if
 16 any.

Written con-
 sent of certain
 persons
 required.
 1851, 324.
 §§ 2, 3.
 1852, 262.
 1853, 31.
 G. S. 110,
 § 2, 5.
 1871, 310.
 § 2, 4.
 1876, 213, § 2.
 P. S. 148, § 2.
 R. L. 154, § 2.
 1902, 544, § 22.
 1904, 302.
 1929, 221, § 1.
 115 Mass. 262.
 137 Mass. 346.
 154 Mass. 378.
 195 Mass. 187.
 240 Mass. 18.
 256 Mass. 140.

1 SECTION 3. The consent of the persons named in the preceding sec-
 2 tion, other than the child or her husband, if any, shall not be required
 3 if the person to be adopted is of full age, nor shall the consent of any

Consent not
 required in
 certain cases.
 Notice of
 petition if

child supported by town, etc.
 1853, 402.
 1859, 61, § 1.
 G. S. 110, § 3.
 1871, 310,
 §§ 3, 6.
 1872, 311, § 1.
 1876, 213,
 §§ 3, 4.
 P. S. 148, § 3.
 1886, 101, § 4.
 1898, 433, § 24.
 R. L. 154, § 3.
 1907, 405.
 1919, 350, § 87.
 1928, 155, § 57.
 137 Mass. 346.
 183 Mass. 404.
 195 Mass. 187.
 240 Mass. 18.

such person other than the child be required if such person is adjudged 4
 by the court hearing the petition to be hopelessly insane, or is impris- 5
 oned in the state prison or in a house of correction in this common- 6
 wealth under sentence for a term of which more than three years re- 7
 main unexpired at the date of the petition; or if he has wilfully deserted 8
 and neglected to provide proper care and maintenance for such child 9
 for two years last preceding the date of the petition; or if he has suf- 10
 fered such child to be supported for more than two years continuously 11
 prior to the petition by an incorporated charitable institution or by a 12
 town or by the commonwealth; or if he has been sentenced to imprison- 13
 ment for drunkenness upon a third conviction within one year and 14
 neglects to provide proper care and maintenance for such child; or if 15
 such person has been convicted of being a common night walker or a 16
 lewd, wanton and lascivious person, and neglects to provide proper 17
 care and maintenance for such child. A giving up in writing of a child, 18
 for the purpose of adoption, to an incorporated charitable institution 19
 shall operate as a consent to any adoption subsequently approved by 20
 such institution. Notice of the petition shall be given to the depart- 21
 ment of public welfare, if the child is supported by a town or by the 22
 commonwealth, and if the child is supported by a town, notice shall also 23
 be given to the board of public welfare thereof, and in Boston said 24
 notice shall be given both to the overseers of the public welfare in the 25
 city of Boston and to the institutions department. 26

Notice.
 1859, 61, § 2.
 G. S. 110, § 4.
 1864, 213, § 1.
 1871, 310, § 5.
 1872, 311, § 3.
 1876, 213, § 5.
 P. S. 148, § 4.
 R. L. 154, § 4.
 1915, 53.
 1919, 350, § 87.
 1929, 221, § 2.
 137 Mass. 84,
 346.
 154 Mass. 378.
 240 Mass. 18.

SECTION 4. If the written consent required by the two preceding 1
 sections is not submitted to the court with the petition, the court shall 2
 order notice by personal service upon the parties of an order of notice, 3
 in such form as shall be prescribed under section thirty of chapter two 4
 hundred and fifteen, or, if the parties are not found within this com- 5
 monwealth, by publication of said order of notice once in each of three 6
 successive weeks in such newspaper as the court orders, the last pub- 7
 lication to be seven days at least before the time appointed for the 8
 hearing, and the court may require additional notice and consent. But 9
 if such child is of unknown parentage and is a foundling, publication as 10
 herein set forth shall not be required; but notice of the petition shall be 11
 given to the department of public welfare. 12

Proceedings upon failure to object after notice.
 1851, 324, § 2.
 1853, 31
 G. S. 110, § 2.

SECTION 5. If, after such notice, a person whose consent is required 1
 does not appear and object to the adoption, the court may act upon the 2
 petition without his consent, subject to his right of appeal, or it may 3
 appoint a guardian ad litem with power to give or withhold consent. 4

1864, 213, § 3.	P. S. 148, § 5.	137 Mass. 346.
1876, 213, § 6.	R. L. 154, § 5.	256 Mass. 140.

Adoption of children under fourteen regulated.
 1931, 342.

SECTION 5A. Upon the filing of a petition for adoption of a child 1
 under the age of fourteen, notice shall be given to the department of pub- 2
 lic welfare which shall make appropriate inquiry to determine the con- 3
 dition and antecedents of the child for the purpose of ascertaining 4
 whether he is a proper subject for adoption, and to determine whether 5
 the petitioners and their home are suitable for the proper rearing of the 6
 child, due regard being given the race and religion of the child and of 7
 the petitioners. The department shall submit to the court not later 8
 than thirty days after receipt of such notice, or within such further 9
 time as the court may allow, such written report as will give the court 10

11 full knowledge as to the desirability of the proposed adoption. The
 12 court may require such further investigation and report by the depart-
 13 ment as may be necessary. All reports submitted hereunder shall be
 14 filed separate and apart from the other papers in the case, and shall not
 15 at any time be open to inspection except by the parties and their at-
 16 torneys, unless the court, for good cause shown, shall otherwise order.
 17 No decree shall be made upon such a petition until such report has been
 18 received, nor until the child shall have resided for not less than six
 19 months in the home of the petitioner; provided, that for good cause
 20 shown the court may, in its discretion, waive the requirement of resi-
 21 dence. This section shall not apply in the case of a petition for adoption
 22 presented, sponsored or recommended by any charitable corporation
 23 organized under general or special laws of the commonwealth for the
 24 purpose of engaging in the care of children and principally so engaged.

1 SECTION 6. If the court is satisfied of the identity and relations of the
 2 persons, and that the petitioner is of sufficient ability to bring up the
 3 child and provide suitable support and education for it, and that the child
 4 should be adopted, it shall make a decree, by which, except as regards
 5 succession to property, all rights, duties and other legal consequences of
 6 the natural relation of child and parent shall thereafter exist between the
 7 child and the petitioner and his kindred, and such rights, duties and
 8 legal consequences shall, except as regards marriage, incest or cohabita-
 9 tion, terminate between the child so adopted and his natural parents
 10 and kindred or any previous adopting parent; but such decree shall
 11 not place the adopting parent or adopted child in any relation to any
 12 person, except each other, different from that before existing as regards
 13 marriage, or as regards rape, incest or other sexual crime committed
 14 by either or both. The court may also decree such change of name as
 15 the petitioner may request. If the person so adopted is of full age, he
 16 shall not be freed by such decree from the obligations imposed by sec-
 17 tion six of chapter one hundred and seventeen and section twenty of
 18 chapter two hundred and seventy-three.

Decree of court
 and its effect.
 1851, 324,
 §§ 5-7.
 G. S. 110,
 §§ 6-8.
 1871, 310,
 §§ 7, 9.
 1876, 213,
 §§ 7, 10.
 P. S. 148, § 6.
 R. L. 154, § 6.
 140 Mass. 568.
 226 Mass. 479.
 258 Mass. 85.

1 SECTION 7. A person adopted in accordance with this chapter shall
 2 take the same share of the property which the adopting parent could
 3 dispose of by will as he would have taken if born to such parent in lawful
 4 wedlock, and he shall stand in regard to the legal descendants, but to no
 5 other of the kindred of such adopting parent, in the same position as if
 6 so born to him. If the person adopted dies intestate, his property ac-
 7 quired by himself or by gift or inheritance from his adopting parent or
 8 from the kindred of such parent shall be distributed according to chapters
 9 one hundred and ninety and one hundred and ninety-six among the
 10 persons who would have been his kindred if he had been born to his adopt-
 11 ing parent in lawful wedlock; and property received by gift or inheritance
 12 from his natural parents or kindred shall be distributed in the same man-
 13 ner as if no act of adoption had taken place. The apportionment and
 14 distribution shall be ascertained by the court. A person shall not by
 15 adoption lose his right to inherit from his natural parents or kindred.

Rights of
 adopted child
 as to succes-
 sion to prop-
 erty.
 1851, 324, § 6.
 G. S. 110, § 7.
 1871, 310, § 8.
 1876, 213, § 8.
 P. S. 148, § 7.
 R. L. 154, § 7.
 115 Mass. 262.
 144 Mass. 441.
 148 Mass. 619.
 153 Mass. 525.
 183 Mass. 404.
 194 Mass. 540.
 212 Mass. 454.
 214 Mass. 172.
 225 Mass. 66.
 226 Mass. 396,
 479.
 234 Mass. 540.

1 SECTION 8. The word "child", or its equivalent, in a grant, trust
 2 settlement, entail, devise or bequest shall include a child adopted by the
 3 settlor, grantor or testator, unless the contrary plainly appears by the
 4 terms of the instrument; but if the settlor, grantor or testator is not

Rights of
 adopted child
 under wills,
 trusts, etc.
 1876, 213, § 9.
 P. S. 148, § 8.
 R. L. 154, § 8.

112 Mass. 184. himself the adopting parent, the child by adoption shall not have, under 5
 115 Mass. 262. such instrument, the rights of a child born in lawful wedlock to the 6
 144 Mass. 441. adopting parent, unless it plainly appears to have been the intention of 7
 189 Mass. 142. the settlor, grantor or testator to include an adopted child. 8
 194 Mass. 510.
 212 Mass. 154.
 214 Mass. 172.

226 Mass. 396.

251 Mass. 582.

253 Mass. 55.

Rights in this commonwealth of a child adopted in another state. SECTION 9. An inhabitant of another state, adopted as a child in 1
 1876, 213, § 11. accordance with the laws thereof, shall upon proof of such fact be en- 2
 P. S. 148, § 9. titled in this commonwealth to the same rights of succession to prop- 3
 R. L. 154, § 9. erty as he would have had in the state where he was adopted, except 4
 124 Mass. 592. so far as such rights are in conflict with this chapter. 5

129 Mass. 243.

Effect of second adoption. SECTION 10. If the child has been previously adopted, all the legal 1
 1876, 213, § 13. consequences of the former decree shall, upon a subsequent adoption, 2
 P. S. 148, § 10. determine, except so far as any interest in property may have vested 3
 R. L. 154, § 10. in the adopted child, and a decree to that effect shall be entered on the 4
 records of the court. 5

Appeals. SECTION 11. The supreme judicial court may allow a parent, who, 1
 1851, 324, § 8. upon a petition for adoption, had no personal notice of the proceedings 2
 1859, 61, § 2. before the decree, to appeal therefrom within one year after actual notice 3
 G. S. 110, thereof, if he first makes oath that he was not, at the time of filing such 4
 §§ 9, 10. petition, undergoing imprisonment as specified in section three, or that, 5
 1871, 310, § 10. if so imprisoned, he has since been pardoned on the ground of innocence 6
 1876, 213, § 12. or has had his sentence reversed. 7
 P. S. 148, § 11.
 R. L. 154, § 11.
 154 Mass. 574.

Newspaper advertisements relative to adoption of children regulated. Penalty. SECTION 11A. No person shall cause to be published in a newspaper 1
 1931, 376. circulated in the commonwealth an advertisement or notice of a child 2
 offered or wanted for adoption without first obtaining the written 3
 approval of the department of public welfare to such advertisement or 4
 notice and stating therein the fact of such approval. Violation of this 5
 section shall be punished by a fine of not less than ten or more than one 6
 hundred dollars. 7

CHANGE OF NAMES.

Petitions for change of name. SECTION 12. A petition for the change of name of a person may be 1
 1851, 256, § 1. heard by the probate court in the county where the petitioner resides. 2
 1854, 24. No change of the name of a person, except upon the adoption of a child 3
 G. S. 110, under this chapter or upon the marriage or divorce of a woman, shall be 4
 §§ 11, 13. lawful unless made by said court for a sufficient reason consistent with 5
 P. S. 148, § 12. public interests. 6
 R. L. 154, § 12.

Notice and certificate. SECTION 13. The court shall, before decreeing a change of name, 1
 1851, 256, § 2. require public notice of the petition to be given and any person may be 2
 G. S. 110, § 12. heard thereon, and, upon entry of a decree, the name as established 3
 P. S. 148, § 13. thereby shall be the legal name of the petitioner, and the register may 4
 R. L. 154, § 13. issue a certificate, under the seal of the court, of the name as so estab- 5
 1930, 153, § 1. lished. 6
 1931, 115, § 1.

Annual return of changes. SECTION 14. Each register of probate shall annually, in December, 1
 1851, 256, § 4. make a return to the state secretary of all changes of names made in 2
 G. S. 110, § 14. his court. 3
 P. S. 148, § 14.

PART III.

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES.

TITLE I.

COURTS AND JUDICIAL OFFICERS.

(For the Land Court see Chapter 185.)

- CHAPTER 211. The Supreme Judicial Court.
- CHAPTER 212. The Superior Court.
- CHAPTER 213. Provisions Common to the Supreme Judicial and Superior Courts.
- CHAPTER 214. Equity Jurisdiction and Procedure in the Supreme Judicial and Superior Courts.
- CHAPTER 215. Probate Courts.
- CHAPTER 216. Courts of Insolvency.
- CHAPTER 217. Judges and Registers of Probate and Insolvency.
- CHAPTER 218. District Courts.
- CHAPTER 219. Trial Justices.
- CHAPTER 220. Courts and Naturalization.
- CHAPTER 221. Clerks, Attorneys and Other Officers of Judicial Courts.
- CHAPTER 222. Justices of the Peace, Notaries Public and Commissioners.

CHAPTER 211.

THE SUPREME JUDICIAL COURT.

SECT.	SECT.
1. Number of justices.	14. Transfer of cases by full court.
2. Quorum.	15. Hearings in certain criminal cases.
3. Superintendence of inferior courts.	16. Hearings in Boston of questions arising in other counties.
4. Removal of certain officers.	17. Jury sittings.
5. Questions of law to be heard by full court.	18. Sittings at Fall River.
6. Reservation of questions of law.	19. Dukes County or Nantucket cases to be tried in Bristol.
7. Law questions, when argued.	20. Powers of justices at jury and law sittings.
8. Judgment or rescript after decision.	21. Audit of accounts, etc.
9. Contents of rescripts, etc.	22. Salaries, etc.
10. Frivolous exceptions, etc.	23. Clerical assistance, etc.
11. Late entry of appeal.	
12. Law sitting for the commonwealth.	
13. Other law sittings.	

1 SECTION I. The supreme judicial court shall consist of one chief ^{Number of} justice and six associate justices. _{justices.}

Decl. of Rights, art. 29.	1799, 82, § 1.	1837, 78.	G. S. 112, § 1.
(Const. Rev. art. 29.)	1804, 105, § 1.	1840, 87, § 6.	1873, 40.
1699-1700, 3, § 1.	1823, 98.	1848, 9.	P. S. 150, § 1.
1780, 17.	R. S. 81, § 1.	1852, 127, § 1.	R. L. 156, § 1.
1782, 9, § 1.			

Quorum.
1699-1700,
3, § 1.
1780, 17.
1782, 9, § 1.

SECTION 2. The full court shall be the supreme judicial court in banc, and four justices shall constitute a quorum to decide all matters required to be heard by it.

1800, 71, § 1. 1852, 127, § 2. G. S. 112, § 2. 1883, 223, § 2.
R. S. 81, § 11. 1859, 196, § 39. P. S. 150, § 2. R. L. 156, § 2.

Superintendence of inferior courts.
1782, 9, § 2.
R. S. 81, §§ 4, 5.
1859, 196, § 38.
G. S. 112, § 3.
P. S. 150, § 3.
R. L. 156, § 3.
3 Cush. 212.
S Cush. 529.

SECTION 3. The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

2 Allen, 463 163 Mass. 446. 208 Mass. 528. 260 Mass. 369.
102 Mass. 310. 167 Mass. 123, 424. 222 Mass. 542. 267 Mass. 343.
123 Mass. 418, 460. 188 Mass. 443. 239 Mass. 349. 272 Mass. 417.
127 Mass. 50, 254. 197 Mass. 194. 254 Mass. 103.

Removal of certain officers.
1856, 173, § 7.
G. S. 112, § 4.
1876, 209.
P. S. 150, § 4.
1897, 224.
R. L. 156, § 4.
11 Gray, 206.
1 Allen, 358.
239 Mass. 458.
240 Mass. 264.

SECTION 4. A majority of the justices may, if in their judgment the public good so requires, remove from office a clerk of the courts or of their own court; and if sufficient cause is shown therefor and it appears that the public good so requires, may, upon a bill, petition or other process, upon a summary hearing or otherwise, remove a clerk of the superior court in Suffolk county, or of a district court, a county commissioner, sheriff, register of probate and insolvency or district attorney.

Questions of law to be heard by full court.
1804, 105, § 6.
R. S. 81, § 13.
G. S. 112, § 5.

SECTION 5. Questions of law arising upon exceptions or report, upon appeals from the superior court, upon cases stated or upon special verdicts and all issues in law, except as otherwise provided, shall be heard and determined by the full court.

P. S. 150, § 7. 120 Mass. 86. 170 Mass. 152. 226 Mass. 430.
R. L. 156, § 6. 137 Mass. 536. 206 Mass. 408. 242 Mass. 401.
2 Met. 376. 168 Mass. 297. 215 Mass. 209.

Reservation of questions of law.
R. S. 81, § 26.
G. S. 112, § 10.
P. S. 150, § 8.
R. L. 156, § 7.
6 Allen, 150.
9 Allen, 159.

SECTION 6. Questions of law arising upon a trial or other proceeding, or upon a motion for a new trial by reason of an opinion, direction, order or refusal of one justice in matter of law, may be reserved for the consideration of the full court, and so much of the case as is necessary for understanding the question shall be reported.

144 Mass. 260. 187 Mass. 509, 516. 201 Mass. 248.
161 Mass. 46. 200 Mass. 386. 225 Mass. 399.

Law questions, when argued.
1859, 196, § 45.
G. S. 112, § 34.
1864, 111, § 1.
P. S. 150, § 9.
R. L. 156, § 8.
1926, 329, § 8.
115 Mass. 335.

SECTION 7. Unless the court for cause shown directs otherwise, questions of law in criminal cases which are entered upon the docket of the full court shall be argued in their order and before any civil cases are argued, and thereafter questions of law in civil cases which are entered upon said docket shall, when reached, be argued in their order if either party is ready. But no party shall be compelled to be ready for argument within ten days after the question has been duly reserved of record in the court in which the case is pending.

Judgment or rescript after decision.
1859, 196, § 48.
G. S. 112, § 11.
1866, 220.
P. S. 150, § 12.
R. L. 156, § 11.
4 Gray, 572.
12 Allen, 201.
109 Mass. 248.

SECTION 8. The full court shall, as soon as may be after the decision of the questions submitted to it, make and enter a proper order, direction, judgment or decree for the further disposition of the case, or cause a rescript, containing a brief statement of the grounds and reasons of the decision, to be filed therein; or it may by a writ of certiorari or other proper process remove the record of the case, or order it to be removed,

7 into the supreme judicial court, there enter judgment, and remand the
 8 record to the court from which it was removed to carry such judgment
 9 into effect, or instead thereof, the full court may order a new trial or
 10 further proceedings at the bar of the supreme judicial court, or order
 11 sentence to be awarded or execution issued in said court.

123 Mass. 418.
 124 Mass. 353.
 130 Mass. 201.
 133 Mass. 536.

1 SECTION 9. The records and rescripts which are made after the
 2 decision of questions of law shall contain a brief statement of the reasons
 3 therefor; and if no further opinion is written within sixty days, the
 4 reporter shall publish the case with the opinion contained in such record
 5 or rescript.

Contents of
 rescripts, etc.
 1859, 196, § 48.
 G. S. 112, § 12.
 P. S. 150, § 13.
 R. L. 156, § 12.

1 SECTION 10. If, upon the hearing of an appeal or exceptions in any
 2 proceeding, it appears that the appeal or exceptions are frivolous, im-
 3 material or intended for delay, the court may, either upon motion of a
 4 party or of its own motion, award against the appellant or excepting
 5 party double costs from the time when the appeal was taken or the
 6 exceptions were allowed, and also interest from the same time at the
 7 rate of twelve per cent a year on any amount which has been found
 8 due for debt and damages, or which he has been ordered to pay, or for
 9 which judgment has been recovered against him, or may award any
 10 part of such additional costs and interest.

Frivolous ex-
 ceptions, etc.
 1820, 79, § 5
 R. S. 81, § 31;
 82, § 16.
 G. S. 112, § 13.
 P. S. 150, § 14
 1883, 223, § 15.
 R. L. 156, § 13.
 2 Cush. 465.
 9 Cush. 321.
 13 Gray, 91.
 117 Mass. 69.
 120 Mass. 218,
 221.
 121 Mass. 586.

126 Mass. 21.	181 Mass. 120.	208 Mass. 270.	250 Mass. 268, 580.
130 Mass. 265.	182 Mass. 439.	210 Mass. 346.	256 Mass. 269.
158 Mass. 590.	192 Mass. 147.	225 Mass. 231.	258 Mass. 525.

1 SECTION 11. If, by mistake or accident, an appeal from the superior
 2 court or a bill of exceptions which has been allowed by the supreme
 3 judicial court or the superior court is not duly entered in the full court,
 4 that court, upon petition filed within one year after the appeal or bill
 5 of exceptions should have been entered, and upon terms, may allow the
 6 appellant to enter his appeal or the excepting party to enter his bill of
 7 exceptions. But no security by bond, attachment or otherwise which
 8 has been discharged by the omission to enter an appeal or bill of excep-
 9 tions shall be revived or continued in force by the entry thereof.

Late entry
 of appeal.
 1791, 17, § 1.
 R. S. 81,
 §§ 34-37.
 G. S. 112, § 17.
 P. S. 150, § 17.
 R. L. 156, § 14.
 4 Met. 371.
 117 Mass. 279.
 161 Mass. 593.
 254 Mass. 137.
 273 Mass. 122.

1 SECTION 12. A law sitting of the court for the commonwealth shall be
 2 held annually at Boston on the first Wednesday of January and may be
 3 adjourned to places and times most conducive to the despatch of business
 4 and to the interests of the public. At such sitting, questions of law arising
 5 in criminal cases in any county in the commonwealth, questions of law
 6 arising in civil cases in the counties of Barnstable, Essex, Middlesex,
 7 Norfolk, Plymouth and Suffolk, and, by consent of the parties filed in
 8 the case, such questions arising in civil cases in other counties, and such
 9 questions for which no other provision is made, shall be entered and
 10 determined.

Law sitting
 for the com-
 monwealth.
 1859, 196, § 36.
 G. S. 112, § 26;
 115, § 13.
 P. S. 150, § 30;
 153, § 16
 R. L. 156, § 15.
 1903, 54, § 1.
 1913, 107, § 1.
 1926, 329, § 9.

1 SECTION 13. For hearing questions of law arising in the following
 2 counties, law sittings shall be held once in each year in September and
 3 October at such times as the court shall by rule determine:

1799, 82, §§ 2, 3.	1828, 2.	R. L. 156, § 16.
1800, 71, § 2.	R. S. 81, § 50	1903, 54, § 2
1802, 39.	1859, 196, § 36.	1913, 107, § 2.
1804, 105, §§ 2, 3.	G. S. 112, § 27.	1920, 386.
1820, 14, §§ 1, 6.	P. S. 150, § 31.	

4 For Berkshire, at Pittsfield.

Berkshire.
 1861, 99, § 1.

1868, 325, § 1.

Franklin and Hampshire. 1861, 99, § 2.	For Franklin and Hampshire, alternately at Greenfield and Northampton, the sitting at Northampton being in the even year.	5 6
Hampden.	For Hampden, at Springfield.	7
Worcester.	For Worcester, at Worcester.	8

1885, 48.

Bristol, Dukes County and Nantucket. 1861, 206.	For Bristol, Dukes County and Nantucket, at Taunton.	9
---	--	---

1877, 178, § 3. 1891, 287, § 1.

Provided, that when no case has been set down for oral argument at least two weeks before the day determined for any one of the said sittings, the sitting may be omitted; and if only one case shall have been set down for oral argument, that case may be transferred to any other of 13 said sittings which may be most accessible and convenient for the parties, 14 or to a sitting for the commonwealth if the parties so agree. 15

Transfer of cases by full court. 1892, 127. R. L. 156, § 17. 1920, 386. 162 Mass. 90.	SECTION 14. The full court sitting in any county, or for the commonwealth, shall have jurisdiction of all questions of law and of all cases and matters at law or in equity, civil or criminal, which arise in any county other than that in or for which it is sitting, and which might properly be heard and determined by it sitting for such county; and, upon the application of a party, the full court may order any such questions of law, or case or matter, to be entered and determined by the full court sitting in any county, or for the commonwealth.	1 2 3 4 5 6 7 8
---	--	--------------------------------------

Hearings in certain criminal cases. 1872, 232, § 2. P. S. 150, § 20. 1891, 379, § 2. 1894, 204. R. L. 156, § 18. 1925, 279, § 5. 1926, 329, § 10. 162 Mass. 90.	SECTION 15. The exceptions alleged at the trial of a criminal case in any county, not subject to the provisions of sections thirty-three A to thirty-three G, inclusive, of chapter two hundred and seventy-eight in accordance with said provisions or not made subject thereto by order of a justice of the superior court in accordance with section thirty-one of said chapter, may be entered and determined either at the law sitting of the supreme judicial court held for the county in which they arise, or, upon the order of the justice presiding at the trial, at the sitting of the court for the commonwealth including an adjourned sitting.	1 2 3 4 5 6 7 8 9
---	---	---

Hearings in Boston of questions arising in other counties. 1859, 196, § 36. G. S. 115, § 13. P. S. 153, § 16. R. L. 156, § 19. 1903, 54, § 2. 1915, 107, § 2. 162 Mass. 90. 249 Mass. 299.	SECTION 16. If the justice before whom an action or proceeding is tried in the supreme judicial court or the superior court in counties other than Barnstable, Essex, Middlesex, Norfolk, Plymouth or Suffolk considers that a question of law which arises for the determination of the full court is immaterial, frivolous, or intended merely for delay, or that the interests of the parties or of the public require a more speedy determination thereof than can be reached in the sitting established for the county in which the action or proceeding is tried, he shall so certify and order the question of law to be entered and heard at the sitting of the court for the commonwealth; and all the other proceedings shall be the same as if the question had arisen in one of the above named counties.	1 2 3 4 5 6 7 8 9 10 11 12
--	---	---

Jury sittings. 1782, 9, § 1. 1799, 82, §§ 2, 3. 1800, 71, § 2. 1802, 39. 1804, 105, §§ 2, 3.	SECTION 17. Jury sittings of the court shall be held by one justice, who shall have all the powers not expressly reserved to the full court. If there are pending before the court in the respective counties matters requiring trial by jury, such sittings shall be held as follows:	1 2 3 4
--	--	------------------

1820, 14, §§ 1, 6.	1859, 196, § 56.	P. S. 150, § 32.
1828, 2.	G. S. 112, § 28.	R. L. 156, § 21.
R. S. 81, § 59.		

Barnstable.	For Barnstable, at Barnstable, on the first Tuesday of May.	5
Berkshire. 1868, 325, § 1.	For Berkshire, at Pittsfield, on the second Tuesday of May.	6

- 7 For Bristol, Dukes County and Nantucket, at Taunton, on the third
 8 Tuesday of April, and at New Bedford, on the second Tuesday of
 9 November. Bristol, Dukes
County and
Nantucket.
 1827, 135, § 1. 1860, 210. 1877, 178, § 3. 1878, 151, § 1.
- 10 For Essex, at Salem, on the third Tuesday of April and the first Tues- Essex.
 11 day of November. 1860, 210, § 1.
 1870, 351.
- 12 For Franklin, at Greenfield, on the second Tuesday of April. Franklin.
 1860, 57, § 1.
- 13 For Hampden, at Springfield, on the fourth Tuesday of April. Hampden.
 14 For Hampshire, at Northampton, on the third Tuesday of April. Hampshire.
- 15 For Middlesex, at Lowell, on the third Tuesday of April, and at Cam- Middlesex.
 16 bridge, on the third Tuesday of October. 1836, 275, § 1.
 1837, 89, § 2. 1860, 57, § 2; 210, § 1.
- 17 For Norfolk, at Dedham, on the third Tuesday of February. Norfolk.
- 18 For Plymouth, at Plymouth, on the second Tuesday of May. Plymouth.
 1860, 57, § 3.
- 19 For Suffolk, at Boston, on the first Tuesday of April, and the second Suffolk.
 20 Tuesday of September. 1871, 168.
- 21 For Worcester, at Worcester, on the second Tuesday of April. Worcester.
 1859, 274.

1 SECTION 18. If the public business so requires, the court may ad- Sittings at
Fall River.
 2 journ an established sitting for the county of Bristol from either Taun- 1878, 107, § 1.
 3 ton or New Bedford to Fall River, in the manner and with the effect of P. S. 150, § 34.
 4 an adjournment to another shire town; and such adjournment shall be R. L. 156, § 22.
 5 subject to all the provisions of law relative to adjournments to another
 6 shire town.

1 SECTION 19. An action, suit or proceeding arising or pending in the Dukes County
or Nantucket
cases to be
tried in
Bristol.
 2 county of Dukes or Nantucket, which is cognizable by the supreme R. S. 81, § 56.
 3 judicial court and which is to be heard before one justice, shall be G. S. 112, § 30.
 4 entered, heard, tried and determined at the court held in the county of 1877, 178, § 3.
 5 Bristol, in all respects as if the same court were held in the county of 1878, 151, § 1.
 6 Dukes or Nantucket, as the case may be; and all matters cognizable by P. S. 150, § 35.
 7 the full court arising or pending in the county of Dukes or Nantucket R. L. 156, § 23.
 8 shall be heard and determined as if arising in the county of Bristol. 243 Mass. 516.

1 SECTION 20. Four or more justices present at a jury sitting shall Powers of
justices at
jury and law
sittings.
 2 have the powers of a full court. One justice present at a law sitting
 3 shall have the same authority as at a jury sitting.
 R. S. 81, § 38. G. S. 112, § 18. R. L. 156, § 24.
 1859, 196, § 39. P. S. 150, § 36.

1 SECTION 21. The full court, sitting for the commonwealth, shall Audit of ac-
counts, etc.
 2 examine and audit all accounts for services and expenses incident to G. S. 112, § 39.
 3 said court, and they shall be paid by the commonwealth.
 P. S. 150, § 38. R. L. 156, § 25.

1 SECTION 22. The chief justice of the court shall receive a salary of Salaries, etc.
 2 fifteen thousand dollars and each associate justice a salary of fourteen Decl. of
Rights, art. 29.
 3 thousand dollars, and the chief justice and each associate justice shall 1780, 9.
 4 annually receive from the commonwealth, upon certificate of the chief 1789, 44.
1806, 3.
1809, 13.

R. S. 81, § 61. 1843, 9. 1844, 24.	justice, the amount of the expenses incurred by them in the discharge of their duties.	5 6
	1856, 10. G. S. 112, § 40. 1866, 46, § 1. 1872, 160.	P. S. 150, § 39. 1888, 274, § 1. 1892, 194. 1900, 385, § 1.
		R. L. 156, § 26. 1911, 743, § 1. 1919, 288, § 1.
		1920, 627, §§ 1, 4, 6. 1928, 295, § 1. 1931, 426, § 281.

Clerical assistance, etc. 1891, 89. R. L. 156, § 27. 1914, 619. 1919, 242.	SECTION 23. The justices of the court shall be allowed annually for law clerks, stenographers and other clerical assistance such amount as shall be appropriated by the general court, to be paid by the commonwealth upon the certificate of the chief justice.	1 2 3 4
	G. L. (ed. of 1920) 221, § 90.	1922, 228, § 2.

CHAPTER 212.

THE SUPERIOR COURT.

<p>SECT.</p> <ol style="list-style-type: none"> 1. Number of justices. 2. Court, how held. 3. Exclusive original jurisdiction. 4. Concurrent jurisdiction. 5. Appellate civil jurisdiction. 6. Criminal jurisdiction. 7. Transmission of indictment. 8. Security to stand upon appeal. 9. Decrees of supreme judicial court to be recorded. 10. Judgment final by agreement. 11. [Repealed.] 12. Affirmation of judgment of district court upon non-entry of appeal. 13. Late entry of appeal. 14. Sittings of court. 15. Jury sessions in Suffolk. 16. Speedy trials in Suffolk. 17. Adjournment to place other than shire town. 	<p>SECT.</p> <ol style="list-style-type: none"> 18. Special adjourned criminal session at Brockton. 18A. [Repealed.] 19. Clerk's office. 19A. Special master. 20. Separation of civil and criminal business, except as to jurors. 21. Special sittings for criminal business. 22. Return day in criminal cases. 23. Assembling of grand jury. 24. Precedence of certain prosecutions. 25. Extension of sitting. 26. Custody of records. 27. Salaries, etc. 28. Executive clerk to chief justice. Miscellaneous expenses. 28A. Rules of court, printing, sale, etc. 29. Speedy trial of persons held in jail in default of bail.
--	--

Number of justices. 1799, 81, § 1.	SECTION 1. The superior court shall consist of one chief justice and thirty-one associate justices.	1 2
	1820, 79, § 2. R. S. 82, § 1; 86, § 1. 1843, 7, § 4. 1845, 155. 1851, 330, § 1.	1855, 449, § 1. 1859, 196, § 7. G. S. 114, § 1. 1875, 230. P. S. 152, § 1. 1886, 31.
		1888, 58. 1892, 271. 1896, 526. R. L. 157, § 1. 1902, 383.
		1903, 472, § 2. 1907, 286. 1911, 567. 1922, 532, § 3. 1925, 304, § 1.

Court, how held. 1820, 79, § 1. R. S. 82, § 32. G. S. 114, § 2. P. S. 152, § 2. R. L. 157, § 2. 1910, 555, § 1. 227 Mass. 598. 261 Mass. 299.	SECTION 2. The court shall be held by one of the justices, and when so held shall have and exercise all the power and jurisdiction committed to said court. The chief justice shall make such assignments for the attendance of a justice at the several times and places appointed for holding the court as will be most convenient and as will insure the prompt performance of its duties.	1 2 3 4 5 6
---	---	----------------------------

Exclusive original jurisdiction. 1820, 79, § 1. R. S. 82, § 2.	SECTION 3. The court shall have exclusive original jurisdiction of writs of entry for the foreclosure of mortgages, and of real and mixed actions, except those of which the land court or district courts have	1 2 3
--	---	-------------

4 jurisdiction, of complaints for flowing lands, and of claims against the
5 commonwealth.

1842, 14, § 1.	1880, 28.	1917, 326.	218 Mass. 463
1855, 449, § 3.	P. S. 152, §§ 3, 4.	1922, 532, § 4	247 Mass. 127
1859, 196, § 1.	1887, 332, § 1	1931, 426, § 104	251 Mass. 198
G. S. 114, §§ 3, 4	R. L. 157, § 3.	10 Allen, 429.	262 Mass. 297
1879, 255, § 1.			

1 SECTION 4. The court shall have original jurisdiction of all civil
2 actions, except those of which other courts have exclusive original
3 jurisdiction.

1859, 196, § 1.	P. S. 152, §§ 3, 4.	1917, 326.
G. S. 114, §§ 3, 4.	R. L. 157, §§ 3, 4.	

Concurrent
jurisdiction.
R. S. 82, § 4.
1855, 449, § 3.

1 SECTION 5. The court shall have jurisdiction of all civil actions and
2 proceedings which are legally brought before it by appeal or removal.

R. S. 82, § 3.	P. S. 152, § 5	1890, 127, § 1.	1899, 131, § 2.
1859, 196, § 5.	1887, 332, § 3.	1898, 562, § 14	R. L. 157, § 6.
G. S. 114, § 5.			

Appellate civil
jurisdiction
1820, 79, § 1.

1 SECTION 6. The court shall have original jurisdiction of all crimes,
2 and appellate jurisdiction of crimes tried before a district court or a trial
3 justice. Crimes committed in that part of Scituate described in chapter
4 three hundred and ninety-four of the acts of nineteen hundred and twelve
5 shall be within the territorial jurisdiction of the court both in Norfolk
6 county and in Plymouth county, and arrests and service of process in
7 such cases may be made by an officer qualified to serve criminal process
8 in Cohasset. Crimes committed in any part of Cambridge, Watertown
9 or Newton lying in the Charles river basin shall be within the territorial
10 jurisdiction of the court both in Middlesex county and in Suffolk county.

R. L. 157, § 7.	1912, 394, § 1.	242 Mass. 427.
1909, 524, § 9	235 Mass. 383.	254 Mass. 190.

Criminal juris-
diction
1799, 81, § 1.
1800, 44, § 3.
1812, 133.
1830, 113, § 1.
1832, 130, § 1.
R. S. 81, § 17;
82, § 25;
86, § 4
1843, 7, § 1
1855, 449, § 3.
1859, 196, § 1.
G. S. 112, § 5;
114, § 6.
P. S. 150, § 5;
152, § 6.
1891, 379, § 1.

1 SECTION 7. The clerk of the courts for the county in which an in-
2 dictment for a capital crime has been entered, or, in the county of
3 Suffolk, the clerk of the superior court for criminal business, shall forth-
4 with send notice thereof, with a copy of the indictment, to the chief or
5 first justice of the court and to the attorney general. Any justice of
6 said court may thereupon appoint a time for the arraignment of the
7 prisoner, which shall take place either at a regular sitting or on a day
8 specially assigned therefor.

Transmission
of indictment.
1869, 433, § 2.
P. S. 150, § 18.
1891, 379, § 3.
R. L. 157, § 9.

1 SECTION 8. If an appeal or a bill of exceptions in a case, civil or
2 criminal, has been duly entered in the supreme judicial court, any se-
3 curity taken in the case, by bond, attachment or otherwise, shall stand
4 as if no judgment had been rendered or exception taken in the superior
5 court, until final judgment shall be entered, unless, in the case of a bill
6 of exceptions, execution is awarded because the exceptions are in-
7 material, frivolous or intended for delay.

Security to
stand upon
appeal
R. S. 82, § 18.
1859, 196, § 31.
G. S. 114, § 11
P. S. 152, § 12.
R. L. 157, § 18.

1 SECTION 9. Orders or decrees of the supreme judicial court upon
2 questions arising in a case pending in the superior court shall be entered
3 of record in the superior court, and such case shall be disposed of as
4 law and justice require, conformably to the rescript or order of the
5 supreme judicial court.

Decrees of
supreme judi-
cial court to
be recorded.
G. S. 114, § 12.
P. S. 152, § 13.
R. L. 157, § 19

Judgment final by agreement.

SECTION 10. Parties to an action submitted to the determination of the court may agree that the judgment therein shall be final.

R. S. 82, § 11. G. S. 114, § 13. P. S. 152, § 14. R. L. 157, § 20.

SECTION 11. [REPEALED, 1929, 265, § 4.]

Affirmation of judgment of district court upon non-entry of appeal.

SECTION 12. If, upon an appeal in a civil action or proceeding from a judgment of a district court, the appellant fails to enter and prosecute his appeal, the court may, upon complaint of the appellee, affirm the former judgment or render such other judgment as law and justice require.

P. S. 155, § 34. 1893, 396, § 30. R. L. 157, § 22. 1917, 326. 117 Mass. 279. 118 Mass. 418. 171 Mass. 444. 207 Mass. 437. 216 Mass. 113.

Late entry of appeal.

SECTION 13. If, by mistake or accident, an appeal to the superior court is not duly entered therein, or if, for a like reason, a complaint founded on an omission to enter an appeal has not been entered by the appellee, the court, upon petition filed within one year after the appeal or complaint should have been entered, may upon terms allow the appeal or complaint to be entered; but attachments made and security given in the original action shall not thereby be revived or continued in force.

Sittings of court.

SECTION 14. Sittings of the court in the several counties shall be held as follows:

R. S. 82, §§ 40, 41; 86, § 1. 1859, 196, § 10. G. S. 114, § 16. P. S. 152, § 17. R. L. 157, § 24. 183 Mass. 199. 243 Mass. 472. 261 Mass. 294.

Barnstable.

For Barnstable, at Barnstable, the first Monday of April and the second Monday of October.

1833, 51. 1869, 354. 1891, 175. 1899, 271. 1902, 456, § 2.

Berkshire.

For Berkshire, at Pittsfield, for civil business, the first Mondays of April and October; for criminal business, the second Mondays of January and July.

1850, 258. 1868, 325, § 1. 1871, 84. 1904, 38.

Bristol.

For Bristol, for civil business, at Taunton, the first Monday of March and the second Monday of September, and at New Bedford, the first Mondays of May and December; for criminal business, at Taunton, the first Monday of February, at New Bedford, the first Monday of June, and at Fall River, the first Monday of November.

Dukes County.

For Dukes County, at Edgartown, the last Tuesdays of April and September.

1827, 135, § 2. 1878, 95. 1888, 314, §§ 1, 3. 1891, 287, § 2. 1899, 140. 1833, 51. 1874, 34. 1889, 308.

Essex.

For Essex, for civil business, at Salem, the first Mondays of June and December; at Lawrence, the first Monday of March; and at Newburyport, the second Monday of November; for criminal business, at Salem, the second Monday of January; at Newburyport, the second Monday of May; and at Lawrence, the second Monday of September.

1839, 150. 1849, 39. 1852, 288. 1860, 62. 1870, 315. 1885, 191, § 1. 1889, 461. 1896, 412. 1911, 430. 1917, 88. 1921, 35.

Franklin.

For Franklin, at Greenfield, the second Mondays of March, July and November.

1831, 44. 1889, 327. 1898, 355.

- 22 For Hampden, at Springfield, for civil business, the first Monday of Hampden.
 23 March, the second Monday of June and the fourth Monday of October; 1830, 30.
 24 for eriminal business, the first Monday of May, the second Monday of 1844, 171.
 25 September and the third Monday of December. 1845, 253.
 1849, 53.
 1868, 250. 1885, 27. 1904, 144. 1907, 26.
- 26 For Hampshire, at Northampton, the third Monday of February, the Hampshire.
 27 first Monday of June and the third Monday of October. 1816, 193.
 1852, 114. 1911, 254.
- 28 For Middlesex, for civil business, at Lowell, the first Mondays of Middlesex.
 29 April and October, and at Cambridge, the first Monday of January; 1836, 275.
 30 for criminal business, at Cambridge, the first Mondays of January, 1837, 89, § 2.
 31 February, April, May, June, October, November and December, and 1839, 117.
 1841, 111.
 1843, 41.
 32 at Lowell, the first Monday of March and the Tuesday after the first 1867, 220, § 2.
 1878, 9.
 33 Monday of September. 1892, 391.
 1901, 162. 1903, 97. 1909, 197. 1921, 327.
- 34 For Nantucket, at Nantucket, on the first Tuesdays of July and Nantucket
 35 October. 1825, 107, § 1.
 1833, 51. 1878, 100.
- 36 For Norfolk, at Dedham, for civil business, the first Mondays of Norfolk
 37 January, May and October; for criminal business, the first Mondays of 1867, 105.
 38 April, September and December. 1889, 287.
- 39 For Plymouth, at Plymouth, for eriminal business, the first Mondays Plymouth.
 40 of February, June and October; for civil business, at Plymouth, the 1830, 22.
 41 second Mondays of March and September, and at Brockton, the first 1862, 215, § 3.
 42 Mondays of April and November. 1903, 54, § 3.
 1919, 109.
- 43 For Suffolk, at Boston, for civil business, the first Mondays of Jan- Suffolk.
 44 uary, April, July and October; for criminal business, the first Monday 1902, 456, § 1.
 45 of every month. 107 Mass. 209.
- 46 For Worcester, for civil business, at Worcester, the first Monday of Worcester.
 47 March and the second Monday of December, and at Fitchburg, the 1835, 116.
 48 first Mondays of June and November; for criminal business, at 1894, 169.
 49 Worcester, the third Monday of January, the second Monday of May 1901, 70.
 50 and the third Monday of October, and at Fitchburg, the third Monday
 51 of August.

1 SECTION 15. The court shall hold in Suffolk county each month, Jury sessions
 2 except July, August and September, seven jury sessions for the trial of in Suffolk.
 3 civil causes. 1903, 472, § 1.

1 SECTION 16. The court shall, except in July, August and September, Speedy trials
 2 hold a separate and continuous session, so far as is practicable, in Suffolk in Suffolk.
 3 county for the speedy trial of causes advanced for speedy trial according 1894, 283; 547.
 4 to law, of causes entered in said court on appeal or removal, of actions 1897, 381.
 5 of contract originally commenced in the superior court in which the R. L. 157, § 25.
 6 amount demanded does not exceed two thousand dollars, and, upon the 1915, 292, § 4.
 7 application of either party, of actions in which a new trial by jury has 1922, 532, § 11.
 8 been granted or an auditor's report has been filed, and of all other cases
 9 in which, in the opinion of a justice of said court, substantial justice and
 10 relief require a speedy trial. A trial list of such cases shall be made
 11 every month.

Adjournment to place other than shire town
1877, 68.
1880, 48.
P. S. 152, § 18.
1885, 134.
1888, 314, § 4
R. L. 157, § 27.
1909, 193.
1923, 262, § 1.

SECTION 17. The court may adjourn any established sitting for Bristol county from Taunton or New Bedford to Fall River, or for Plymouth county from Plymouth to Brockton, and for the hearing of jury waived cases may adjourn any established sitting for Essex county from Salem, Lawrence or Newburyport to Haverhill, or for Norfolk county from Dedham to Quincy, in the manner and with the effect of an adjournment to another shire town; and such adjournment shall be subject to all laws relative thereto.

1
2
3
4
5
6
7
8

Special adjourned criminal session at Brockton.
1918, 148.

SECTION 18. An adjourned sitting of each criminal term of the court for Plymouth county shall be held at Brockton, for the hearing and disposition of such criminal cases on the trial list as have arisen within the judicial district of the police court of Brockton or within the towns of Whitman, Abington and Rockland, where the defendants are not in confinement awaiting trial.

1
2
3
4
5
6

SECTION 18A. [INSERTED, 1921, 350, § 1; REPEALED, 1923, 262, § 2.]

1

Clerk's office.
1919, 156.

SECTION 19. The clerks of the courts, and in Suffolk county of the superior court, may maintain regularly established offices in such cities and towns as may be designated by the chief justice of the superior court.

1
2
3
4

Special master.
1922, 533.

SECTION 19A. The justices of the superior court may appoint for a term of five years, and may at any time for cause remove, a special master, who shall receive from the commonwealth a salary of five thousand dollars. He shall perform such administrative duties pertaining to the court and shall hear and dispose of such interlocutory matters relating to the assignment, postponement, continuance and order of trial of cases, at such times and places as the chief justice of said court may determine. Every order or decision of said master shall be subject to appeal to the court and the appellant shall be granted an immediate hearing.

1
2
3
4
5
6
7
8
9

Separation of civil and criminal business, except as to jurors.
1835, 116, § 3.
R. S. 82, § 42.
1859, 196, § 11.
G. S. 114, § 17.
P. S. 152, § 22.
1897, 490, § 4.
R. L. 157, § 29.
1912, 209.

SECTION 20. Except as provided in section twenty-nine, in counties in which separate sittings of the court are established for civil and criminal business, criminal cases only shall be tried by jury at the criminal sittings, and civil cases only at the civil sittings; but jurors summoned for either civil or criminal business may by order of the court be used interchangeably for either civil or criminal business as occasion may require.

1
2
3
4
5
6
7

1920, 167.

183 Mass. 199.

243 Mass. 472.

Special sittings for criminal business.
1874, 200.
P. S. 152, § 19.
1897, 490, § 5.
R. L. 157, § 30.
243 Mass. 472.
261 Mass. 294.

SECTION 21. The chief justice may, by written order to the sheriff, order a special jury for a sitting for criminal business to be held in any county at such time and place as may be appointed in such order. The sheriff shall give notice thereof as directed in the order therefor; but no person under recognizance to answer to an indictment or to a criminal complaint shall be held to appear at such special sitting or at any time and place other than the regular sittings of the court, unless duly notified by written summons from the clerk.

1
2
3
4
5
6
7
8

Return day in criminal cases.
1841, 111, § 3.

SECTION 22. The first Monday of every month shall be a return day for the entry of appeals in criminal cases from district courts and

1
2

3 trial justices and of suits upon recognizances and bonds in such cases. 1859, 196, § 12.
 4 Such appeals shall be entered on the return day next after the appeal G. S. 114, § 18
 5 is taken. Such suits may be made returnable at the election of the dis- P. S. 152, § 23.
 6 trict attorney at any such return day within three months after the date 1897, 490, § 3.
 7 of the writ. Trials by jury of such suits shall take place at criminal R. L. 157, § 28.
 8 sittings; and such suits shall be filed, docketed and recorded as criminal 1907, 176.
 9 cases. If said first Monday is a legal holiday, such entry shall be made 11 Gray, 205.
 10 on the day following.

1 SECTION 23. The chief justice may, by written order to the sheriff, Assembling of
grand jury
 2 cause the grand jury in any county to be assembled at a time and place 1897, 490, § 6.
 3 appointed therein. R. L. 157, § 31.

1 SECTION 24. At a sitting of the court at which criminal business may Precedence of
certain prosecu-
tions.
 2 be transacted, cases arising under chapters two hundred and forty-eight, 1852, 215, § 35.
 3 one hundred and thirty-eight, one hundred and thirty-nine and two hun- 1859, 196, § 54
 4 dred and seventy-three shall have precedence in the order in which said G. S. 86, § 58;
 5 chapters are herein named, next after the cases of persons who are actually 114, § 20.
 6 confined in prison and awaiting trial; provided, that the court, on motion P. S. 152, § 25.
 7 of the district attorney, may order that the trial of any specified case of R. L. 157, § 32.
 8 erime shall take precedence over all other cases. 1913, 563, § 8.
 1926, 228, 296.

1 SECTION 25. If a criminal case is on trial at the end of a sitting, Extension
of sitting.
 2 such sitting may be continued, and jurors serving in such case may be 1863, 33.
 3 required to serve until the case is finished.
 P. S. 152, § 26. R. L. 157, § 33. 121 Mass. 31. 183 Mass. 199.

1 SECTION 26. The records of courts which are transferred to the Custody of
records
 2 superior court shall remain in custody of its clerks. In Suffolk county, 1859, 196, § 4
 3 the clerk of said court for civil business shall have the custody of said G. S. 114, § 21.
 4 records in civil cases, and the clerk for criminal business shall have the P. S. 152, § 27.
 5 custody of said records in criminal cases. Copies of said records may R. L. 157, § 34.
 6 be certified by said clerks respectively. Judicial writs and processes
 7 which are founded upon such records shall issue under the seal of the
 8 superior court, in like manner and with the same effect as similar writs
 9 and processes founded upon its own records.

1 SECTION 27. The chief justice shall receive a salary of thirteen Salaries, etc.
 2 thousand dollars and each associate justice a salary of twelve thousand 1859, 196, § 17.
 3 dollars, and the chief justice and each associate justice shall annually G. S. 114, § 22.
 4 receive from the commonwealth, upon the certificate of the chief justice, 1867, 165.
 5 the amount of the expense incurred by them in the discharge of their 1872, 279.
 6 duties. 1879, 279.
 P. S. 152, § 28.
 1882, 205.
 1888, 274. R. L. 157, § 35. 1920, 627, §§ 2, 4, 6.
 1892, 328. 1911, 743, § 2. 1928, 295, § 2.
 1900, 385, § 2. 1919, 288, § 1.

1 SECTION 28. There may annually be expended out of the treasury of Executive
clerk to chief
justice.
 2 the commonwealth, under the direction of the chief justice, such sums as Miscellaneous
expenses.
 3 may be appropriated for printing, for transportation of papers and docu- 1907, 80.
 4 ments, for clerical work, for inspection of the records and doings of persons 1914, 511.
 5 authorized to admit to bail, for an executive clerk to said chief justice, 1924, 188.
 6 who may be an assistant clerk, and for certain other expenses incident to
 7 the work of the court. Said chief justice may appoint and remove said
 8 executive clerk and define his duties.

Rules of court, printing, sale, etc. 1931, 363.

SECTION 28A. In printing copies of rules of the court at the expense of the commonwealth under section twenty-eight, there may be included such notes and annotations, if any, as shall be directed by vote of the justices. Copies of general revisions of the rules not otherwise disposed of may be sold to the general public at such price per copy as shall be fixed by vote of the justices, which price may be less than, but shall not exceed, the cost of printing, binding and paper. Copies intended for sale shall be transmitted, under the direction of the chief justice, to the several clerks of the courts and to each clerk of the superior court in Suffolk county, and shall be placed on sale by them at the price so fixed. Each such clerk shall, in January, April, July and October in each year, pay into the state treasury all sums received from the sale of such copies during the preceding quarter and shall also in said months report in writing to the chief justice the number of such copies sold during the preceding quarter and the number remaining on hand at the end thereof.

Speedy trial of persons held in jail in default of bail 1929, 167.

SECTION 29. A prisoner held in jail for trial upon an indictment for an offence not punishable by death or by imprisonment for life, or so held upon an appeal, at any time except during a sitting of the superior court for eriminal business in the county where he is held, may petition said court that he be brought before the court at a sitting thereof for civil business in that county in order that disposition may be made of his case. After due notice to the district attorney, and with his consent, the court may grant the petition, and the presiding justice may dispose of the case, as if he were holding a sitting of the court for eriminal business, or he may continue the case to the next sitting of the court for eriminal business. When a person who has a right to so petition is committed to jail, the keeper thereof shall notify him of such right, furnish him with a blank form for its exereise, and transmit it to the court, if signed by him. This section shall not apply in eases in which two or more persons are held on one complaint or indictment, unless all the defendants join in the petition.

CHAPTER 213.

PROVISIONS COMMON TO THE SUPREME JUDICIAL AND SUPERIOR COURTS.

SECT.

1. Vacancies, etc.
2. Issue of process in any county.
3. Rules. Providing procedure to secure binding interpretation of written instruments.
4. Courts always open.
5. Transaction of business in any county.
6. Duration of sittings.

SECT.

7. Simultaneous sessions.
8. Allowance of accounts.
9. Attendance of justices.
10. Adjournment to another shire town.
11. Adjournment in absence of justice.
12. Same subject.
13. Seal and officers of court.

Vacancies, etc. R. S. 81, § 49. G. S. 115, § 1. P. S. 153, § 1. R. L. 158, § 1.

SECTION 1. In case of a vacancy in the office of chief justice of the supreme judicial or the superior court, or of his illness or absence, his duties shall be performed by the senior justice present and qualified to act.

1 SECTION 2. If, in the opinion of a justice of either court, it is im-
 2 portant that a writ or other process should be speedily issued in a cause
 3 pending in the court of which he is a justice, he may order it to be issued
 4 by the clerk of the courts in the county in which he is sitting; and
 5 such clerk shall transmit the order to the clerk of the courts of the
 6 county in which the cause is pending, to be filed and recorded with the
 7 other papers in the case.

Issue of
 process in any
 county
 1886, 223.
 R. L. 158, § 2.

1 SECTION 3. The courts shall, respectively, make and promulgate
 2 uniform codes of rules, consistent with law, for regulating the practice
 3 and conducting the business of such courts in cases not expressly pro-
 4 vided for by law, for the following purposes:

Rules. Pro-
 viding pro-
 cedure to
 secure binding
 interpretation
 of written
 instruments
 1782, 9, § 1
 1820, 79, § 7
 R. S. 81, § 10,
 82, § 37.
 1836, 273, § 2.
 1851, 233,
 §§ 44, 113.
 1852, 312,
 §§ 34, 76
 1853, 371, § 4.
 1857, 267, § 3.
 1859, 196,
 §§ 35, 49
 G. S. 113, § 26;
 115, § 4
 1874, 339, § 4
 P. S. 151, § 33;
 153, § 4.
 R. L. 158, § 3.
 127 Mass. 518.
 227 Mass. 375.
 229 Mass. 178.
 236 Mass. 330.
 249 Mass. 495.
 251 Mass. 225.
 252 Mass. 258.

5 First, Simplifying and shortening pleadings and procedure.
 6 Second, Prescribing the terms upon which amendments will be allowed
 7 or unnecessary counts and statements stricken from the record; dis-
 8 couraging negligence and deceit; preventing delay; securing parties
 9 from being misled; placing the party not in fault as nearly as possible
 10 in the condition in which he would have been if no mistake had been
 11 made; distinguishing between form and substance; and substituting
 12 fixed and certain requirements for the discretion of the court.

13 Third, Conducting trials.

14 Fourth, Presenting distinctly the questions to be tried by the jury.

15 Fifth, Giving a party such notice of the evidence which is intended to
 16 be offered by the adverse party as will prevent surprise and enable him
 17 to prepare for trial.

18 Sixth, Prescribing such forms of verdicts as will place upon record
 19 the finding of the jury.

20 Seventh, The entry of judgment by the clerk under a general order
 21 in all cases ripe for judgment.

22 Eighth, Expediting the decision of causes and securing the speedy
 23 trial thereof.

24 Ninth, Remedying abuses and imperfections in practice and di-
 25 minishing costs.

26 Tenth, Filing and hearing motions to set aside verdicts and notifying
 27 adverse parties thereof.

28 Tenth A, Providing that an action at law or a suit in equity shall not
 29 be open to objection on the ground that a mere judgment, order or decree
 30 interpreting a written instrument or written instruments is sought
 31 thereby, and providing procedure under which the court may make
 32 binding determinations of right interpreting the same, whether any conse-
 33 quential judgment or relief is or could be claimed or not, provided that
 34 nothing contained herein shall be construed to authorize the change,
 35 extension or alteration of the law regulating the method of obtaining
 36 service on, or jurisdiction over, parties or to affect their right to jury
 37 trial.

1885, 384, § 12.

1894, 283, § 2.

1897, 472.

1929, 186, § 1.

38 Eleventh, The superior court may also make and promulgate such
 39 rules for the regulation of the printing, publication and distribution of
 40 trial lists and for notifying attorneys of trials in civil causes as the public
 41 convenience in the several counties requires.

1896, 401.

42 The rules of the superior court shall not conflict with those of the
 43 supreme judicial court.

1 SECTION 4. The courts shall always be open in every county and the
 2 business thereof, or of the justices thereof, may be transacted at any

Courts always
 open
 1885, 384, § 2.

1897, 490, § 1. time; but such business shall not, except as provided in section six 3
 R. L. 158, § 4. of chapter two hundred and twenty, be transacted on Sunday or on a 4
 153 Mass. 361. legal holiday unless it relates to an application which, in the opinion of 5
 168 Mass. 393. the justice to whom it is made, is of pressing necessity. 6
 175 Mass. 37.
 184 Mass. 575.
 227 Mass. 598.

Transaction of SECTION 5. The courts and the justices thereof, respectively, may 1
 business in any in any county transact any business of such courts and direct the entry 2
 county. 1885, 384, § 3. of any order, judgment or decree in an action, suit or proceeding pend- 3
 R. L. 158, § 5. ing in the same court in another county. 4
 266 Mass. 64.

Duration of SECTION 6. Regular sittings of the courts for the transaction of civil 1
 sittings. or criminal business shall commence on the day appointed by law there- 2
 1885, 384, § 4. for and end on the day preceding the day next appointed by law for a 3
 1897, 490. sitting in such county for the transaction of the same kind of business. 4
 R. L. 158, § 6. Such regular sittings may at any time be adjourned from time to time 5
 or without day, and such adjournment shall excuse the attendance 6
 during the adjournment of all persons required to attend at the sitting, 7
 unless expressly notified to attend, but shall not otherwise terminate 8
 the sitting. 9

Simultaneous SECTION 7. Two or more simultaneous sessions of the court may be 1
 sessions. held in the same shire town or in different shire towns in the same county, 2
 1851, 330, § 2. if public convenience requires; and the business may be so divided as to 3
 1859, 196, § 13. secure its speedy and convenient disposal. 4
 G. S. 115, § 16.
 P. S. 153, § 22.
 R. L. 158, § 7.

1924, 150.

Allowance of SECTION 8. The courts shall, respectively, receive, examine and 1
 accounts. allow accounts for services and expenses incident to their sittings in the 2
 1898, 53. several counties and order payment thereof out of the respective county 3
 R. S. 82, § 46. treasuries. 4
 1859, 196, § 20.
 G. S. 115, § 17.
 P. S. 153, § 23.

R. L. 158, § 8.

104 Mass. 537.

3 Op. A. G. 559.

Attendance of SECTION 9. The justices of each court, except as otherwise pro- 1
 justices. vided, shall make such arrangements for the attendance of a justice at 2
 1821, 23, § 1. the several times and places appointed for holding their court as will be 3
 R. S. 82, § 38. most convenient and as will insure the prompt performance of their 4
 G. S. 115, § 18. duties. 5
 P. S. 153, § 24.
 R. L. 158, § 12.
 1910, 555, § 2.

Adjournment SECTION 10. If public business requires, either court may adjourn 1
 to another an established sitting in one shire town to another in the same county. 2
 shire town. 1848, 236. Persons, recognizances and processes required to appear at or to be 3
 1859, 275. returned to the established sitting shall appear at, be returnable to and 4
 G. S. 115, § 19. have day in, the adjourned sitting. 5
 P. S. 153, § 25.
 R. L. 158, § 12.
 1 Op. A. G. 152.

Adjournment SECTION 11. If no justice is present at the time and place appointed 1
 in absence of for holding a court at the beginning of a sitting or at an adjournment 2
 justice. thereof, the sheriff of the county or any of his deputies may adjourn 3
 1782, 9, § 5. the court from day to day or from time to time, as circumstances re- 4
 1894, 105, § 8. quire, or as ordered by any of the justices, and shall give notice of such 5
 1820, 14, § 5;
 79, § 2
 1830, 113, § 9.
 R. S. 81, § 39,
 82, § 39

6 adjournment by making public proclamation in the court house, and
 7 by a notice posted on the door of the court house or published in a
 8 newspaper.

R. L. 158, § 13.

97 Mass. 214.

1 SECTION 12. In such case, any justice may by a written order re-
 2 quire the sheriff or his deputy to adjourn the court without day or to
 3 the time expressed in the order; and the officer shall adjourn the court
 4 accordingly by public proclamation in the court house.

R. L. 158, § 14.

1 SECTION 13. Each court may establish a seal and appoint all officers
 2 necessary for the transaction of its business.

1859, 196, § 16.

G. S. 115, § 22.

P. S. 153, § 28.

R. L. 158, § 15.

Same subject.
 1782, 9, § 5.
 R. S. 81, § 40.
 G. S. 115, § 21.
 P. S. 153, § 27.

CHAPTER 214.

EQUITY JURISDICTION AND PROCEDURE IN THE SUPREME JUDICIAL
 AND SUPERIOR COURTS.

- | | |
|---|---|
| <p>SECT.</p> <p style="text-align: center;">JURISDICTION.</p> <p>1. General equity jurisdiction, con-
current.</p> <p>2. Statutory equity jurisdiction.</p> <p>3. Special jurisdiction.</p> <p>4. Issue of process.</p> <p style="text-align: center;">VENUE.</p> <p>5. Venue.</p> <p style="text-align: center;">SUPERIOR COURT PRACTICE.</p> <p>6. Procedure in superior court.</p> <p style="text-align: center;">COMMENCEMENT OF SUITS, NOTICE, ETC.</p> <p>7. Commencement of suits in equity.</p> <p>8. Bill not required in summons.</p> <p>9. Preliminary injunctions and tem-
porary restraining orders, when
granted. Notice.</p> <p>10. Notice in questions under wills.</p> <p>11. Docket entry of equity suits.</p> <p style="text-align: center;">PLEADING.</p> <p>12. Form of bill.</p> <p>13. Demurrer, answer and plea.</p> <p>14. Effect of answer. No replication re-
quired.</p> <p>15. Signature to pleadings.</p> <p style="text-align: center;">HEARINGS.</p> <p>16. Hearing by one justice.</p> <p>17. Court always open.</p> <p>18. Hearing cases pending in another
county.</p> | <p>SECT.</p> <p style="text-align: center;">APPEALS.</p> <p>19. Appeal from final decree.</p> <p>20. Separate docket for equity and pro-
bate appeals.</p> <p>21. Injunction or receiver pending ap-
peal.</p> <p>22. Modification of decree of superior
court.</p> <p>23. Report of facts.</p> <p>24. Report of testimony upon appeal.</p> <p>25. Questions raised by exceptions to be
heard and determined with ap-
peal.</p> <p>25A. Practice as to exceptions regulated.</p> <p>26. Interlocutory decree, appeal from.</p> <p>27. Revision of interlocutory decree upon
appeal from final decree.</p> <p>28. Petition for leave to appeal.</p> <p>29. Execution on final decree.</p> <p style="text-align: center;">REPORT.</p> <p>30. Report of interlocutory decree or
order to full court.</p> <p>31. Reservation for full court.</p> <p style="text-align: center;">TRANSFER OF CAUSES BETWEEN SUPREME
JUDICIAL, SUPERIOR AND PROBATE
COURTS.</p> <p>32. Transfer of causes between supreme
judicial, superior and probate
courts.</p> <p>33. [Repealed.]</p> |
|---|---|

<p>SECT.</p> <p style="text-align: center;">ISSUES TO JURY.</p> <p>34. Jury issues.</p> <p>35. Jury may be summoned.</p> <p>36. Jury issues in superior court.</p> <p style="text-align: center;">SITTINGS OF THE COURTS.</p> <p>37. Continuous sitting in Boston.</p> <p>38. Hearings at chambers for western counties.</p>	<p>SECT.</p> <p style="text-align: center;">MISCELLANEOUS PROVISIONS.</p> <p>39. Control of case by court having jurisdiction.</p> <p>40. Decree, etc., to bear date of entry.</p> <p>41. Writs of seisin and execution.</p> <p>42. Receiver's bond.</p> <p>43. Taking papers from files.</p>
--	---

JURISDICTION.

General equity jurisdiction, concurrent.
 1857, 214
 G. S. 113, § 2.
 1877, 178, § 1.
 P. S. 151, § 4.
 1883, 223,
 §§ 1, 2.

SECTION 1. The supreme judicial and superior courts shall have original and concurrent jurisdiction in equity of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction.

R. L. 159, § 1.	141 Mass. 535.	185 Mass. 448.
10 Gray, 283	142 Mass. 206.	190 Mass. 40
5 Allen, 59, 60, 126,	144 Mass. 130.	203 Mass. 591.
221, 601	150 Mass. 73.	211 Mass. 238, 494.
8 Allen, 587.	155 Mass. 417.	215 Mass. 419, 480.
99 Mass. 208, 209.	159 Mass. 356.	218 Mass. 367.
100 Mass. 365.	161 Mass. 416.	220 Mass. 106.
101 Mass. 447.	165 Mass. 123.	224 Mass. 474
104 Mass. 239.	166 Mass. 294.	225 Mass. 377.
119 Mass. 123, 161.	168 Mass. 76.	226 Mass. 30
130 Mass. 16	172 Mass. 53.	246 Mass. 404
131 Mass. 291.	177 Mass. 230.	247 Mass. 127.
135 Mass. 140.	181 Mass. 41	248 Mass. 302, 310.
140 Mass. 459.	184 Mass. 571.	256 Mass. 125.

Statutory equity jurisdiction.
 G. S. 113, § 1.
 P. S. 151, § 1.
 1883, 223, § 1.
 R. L. 159, § 2.
 150 Mass. 73.
 155 Mass. 417.
 185 Mass. 448.
 203 Mass. 591.

SECTION 2. The supreme judicial court shall have original and exclusive jurisdiction in equity of all cases and matters of equity cognizable under any statute and not within the jurisdiction conferred by the preceding section, unless a different provision is made; and the superior court shall have like original and exclusive, or like original and concurrent, jurisdiction only if the statute so provides.

228 Mass. 191. 248 Mass. 302.

Special jurisdiction.
 R. S. 81, § 8.

SECTION 3. The supreme judicial and superior courts shall have original and concurrent jurisdiction in equity of the following cases:

G. S. 113, § 2.	4 Gray, 324	135 Mass. 140.
P. S. 151, § 2	100 Mass. 540.	137 Mass. 487.
1883, 223, § 2.	103 Mass. 341, 514	147 Mass. 23.
R. L. 159, § 3.	110 Mass. 1	148 Mass. 1
6 Pick 376	115 Mass. 170, 244,	228 Mass. 191.
13 Pick 169.	253.	240 Mass. 1
23 Pick 148.	120 Mass. 507	242 Mass. 1.
12 Met. 316.	134 Mass. 181, 593.	

Re-delivery, etc.
 1823, 140, § 1.
 1853, 371, § 4.
 8 Pick. 254.

(1) Suits to compel the re-delivery of goods or chattels taken or detained from the owner, and so secreted or withheld that they cannot be replevied.

20 Pick 28	16 Gray, 213.	195 Mass. 141.
23 Pick. 228.	131 Mass. 319.	221 Mass. 308
2 Met. 127	134 Mass. 181.	255 Mass. 270
5 Met. 525	192 Mass. 13	266 Mass. 74
7 Cush. 530.	194 Mass. 113.	269 Mass. 303.
7 Gray, 146.		

Contribution.
 1839, 96, § 2
 1853, 371, § 4.

(2) Suits for contribution by or between devisees, legatees or heirs liable for the debts of a deceased testator or intestate, and by or between other persons respectively liable for the same debt or demand, if there are two or more such persons liable at the same time to make such contribution.

10 (3) Other cases in which three or more parties have distinct rights
 11 or interests which cannot be justly and definitely decided and adjusted
 12 in one action at law.

Multiplicity
of interests.
5 Met. 140,
525.

6 Met. 425.	120 Mass. 481.	245 Mass. 94.
13 Gray, 5.	132 Mass. 410.	249 Mass. 71.
5 Allen, 379.	135 Mass. 179.	259 Mass. 295.
100 Mass. 355.	144 Mass. 130.	260 Mass. 469.
105 Mass. 543.	148 Mass. 1.	265 Mass. 327.
110 Mass. 54.	208 Mass. 326.	109 U. S. 578.
113 Mass. 495.		

13 (4) Suits between joint owners of personal property, and their legal
 14 representatives, relative to such property, with authority to determine
 15 their respective rights and interests therein, to order a division or sale
 16 thereof and make and order a proper distribution of the proceeds of a sale,
 17 and to do all other things relative to a determination of the ownership,
 18 division and distribution of such property or the proceeds thereof.

Joint owners,
etc
1891, 383.
193 Mass. 267.

19 (5) Suits between joint trustees, co-executors and co-administrators,
 20 and their legal representatives.

Joint trustees,
etc

1832, 162.	R. S. 70, § 35.	1853, 371, § 4
------------	-----------------	----------------

21 (6) Suits upon accounts of such a nature that they cannot be con-
 22 veniently and properly adjusted and settled in an action at law.

Accounts.
R. S. 118, § 43.
1 Cush. 82.

7 Cush. 445.	120 Mass. 507.	200 Mass. 579.
106 Mass. 48.	123 Mass. 117.	214 Mass. 134.
110 Mass. 32.	145 Mass. 56.	234 Mass. 458.
114 Mass. 121.	193 Mass. 251.	266 Mass. 537.

23 (7) Suits by creditors to reach and apply, in payment of a debt, any
 24 property, right, title or interest, legal or equitable, of a debtor, within
 25 or without the commonwealth, which cannot be reached to be attached
 26 or taken on execution in an action at law, although the property sought
 27 to be reached and applied is in the possession or control of the debtor
 28 independently of any other person or cannot be reached and applied
 29 until a future time or is of uncertain value, if the value can be ascer-
 30 tained by sale, appraisal or by any means within the ordinary procedure
 31 of the court. In such suit, the interest of the defendant in partner-
 32 ship property may be reached and applied in payment of the plaintiff's
 33 debt; but unless it is a judgment debt, the business of the partnership
 34 shall not be enjoined or otherwise interrupted further than to restrain
 35 the withdrawal of any portion of the debtor's share or interest therein
 36 until the plaintiff's debt is established; and if either partner gives to
 37 the plaintiff a sufficient bond, with sureties approved by the clerk,
 38 conditioned to pay to the plaintiff the amount of his debt and costs
 39 within thirty days after it is established, the court shall proceed no
 40 further therein than to establish the debt; and upon the filing of such
 41 bond, any injunction previously issued in such suit shall be dissolved.

Creditors'
bills.
1851, 206.
1858, 34.
1884, 285.
1902, 544, § 23.
1910, 531, § 2.
8 Gray, 199.
12 Gray, 365.
13 Gray, 305.
15 Gray, 457.
1 Allen, 566.
13 Allen, 33.
99 Mass. 267.
100 Mass. 396.
105 Mass. 423.
106 Mass. 373.
109 Mass. 383.
478.
115 Mass. 98.
118 Mass. 271.
119 Mass. 155.
123 Mass. 32.
125 Mass. 11.
127 Mass. 206.
210, 558.
128 Mass. 478.
131 Mass. 291.
132 Mass. 164.
408.
133 Mass. 180.
136 Mass. 73.
137 Mass. 523.
140 Mass. 271.
494.

142 Mass. 206.	190 Mass. 277, 285.	223 Mass. 325.
147 Mass. 81.	193 Mass. 77.	224 Mass. 193.
148 Mass. 76, 247, 411.	194 Mass. 601.	227 Mass. 15.
149 Mass. 24, 487.	195 Mass. 8, 456.	216, 501.
150 Mass. 211, 289.	196 Mass. 1.	229 Mass. 235.
151 Mass. 266.	199 Mass. 160, 516.	230 Mass. 67, 514.
428, 481, 515.	201 Mass. 479.	232 Mass. 387.
152 Mass. 64.	202 Mass. 562.	233 Mass. 522.
154 Mass. 302.	204 Mass. 362.	234 Mass. 279, 477.
159 Mass. 259, 484.	205 Mass. 228.	235 Mass. 244.
161 Mass. 58.	206 Mass. 373.	236 Mass. 117.
163 Mass. 127.	209 Mass. 590.	239 Mass. 80, 138.
164 Mass. 85, 274.	211 Mass. 28.	240 Mass. 1.
165 Mass. 389.	212 Mass. 118, 480.	244 Mass. 425.
171 Mass. 309, 600.	213 Mass. 203.	245 Mass. 94.
180 Mass. 543.	214 Mass. 134.	251 Mass. 334.
182 Mass. 302.	215 Mass. 415.	259 Mass. 295.
185 Mass. 58, 202, 380.	216 Mass. 118, 426.	260 Mass. 239.
186 Mass. 275, 484.	218 Mass. 360.	265 Mass. 249.
187 Mass. 266.	219 Mass. 61.	266 Mass. 39.
188 Mass. 502.	221 Mass. 302.	268 Mass. 156, 536.
189 Mass. 34, 112.	222 Mass. 131.	270 Mass. 565.
194, 424.	166, 405.	272 Mass. 413.

Suits to reach and apply corporate shares, etc. 1910, 531, § 2. 222 Mass. 27, 131. 227 Mass. 216. 230 Mass. 67.

(8) Suits to reach and apply shares or interests in corporations organized under the laws of the commonwealth or of the United States, and located or having a general office in the commonwealth, whether the plaintiff is a creditor or not, and whether the suit is founded upon a debt or not.

244 Mass. 421. 256 Mass. 367. 260 Mass. 239. 267 Mass. 350.

Fraudulent conveyances. 1875, 235. P. S. 151, § 3. 1883, 223, § 2. 122 Mass. 571. 137 Mass. 483. 141 Mass. 597. 142 Mass. 206. 147 Mass. 356. 148 Mass. 132. 247. 154 Mass. 310.

(9) Suits to reach and apply in payment of a debt any property, right, title or interest, real or personal, of a debtor, liable to be attached or taken on execution in an action at law against him and fraudulently conveyed by him with intent to defeat, delay or defraud his creditors, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the debtor.

186 Mass. 391. 198 Mass. 132. 219 Mass. 61. 248 Mass. 359. 484. 206 Mass. 39. 231 Mass. 563. 250 Mass. 347. 187 Mass. 426. 212 Mass. 118. 233 Mass. 85. 260 Mass. 239. 571. 215 Mass. 415. 499. 268 Mass. 73.

Certain insurance policies. 1914, 464, § 2. 1923, 149, § 3. 1930, 340, § 4. 228 Mass. 181, 191. 230 Mass. 35. 245 Mass. 364. 246 Mass. 510. 253 Mass. 610. 261 Mass. 409. 262 Mass. 235. 267 Mass. 394.

(10) Suits to reach and apply the obligation of an insurance company to a judgment debtor under a motor vehicle liability policy, as defined in section thirty-four A of chapter ninety, or under any other policy insuring a judgment debtor against liability for loss or damage on account of bodily injury or death or for loss or damage resulting therefrom, or on account of damage to property, in satisfaction of a judgment covered by such policy, which has not been satisfied within thirty days after the date when it was rendered.

Suits to enforce observance of the purposes of gifts and conveyances made to counties, municipalities, etc. 1929, 126, § 1.

(11) Suits to enforce the purpose or purposes of any gift or conveyance which has been or shall have been made to and accepted by any county, city, town or other subdivision of the commonwealth for a specific purpose or purposes in trust or otherwise, or the terms of such trust, or, if it shall have become impracticable to observe or carry out such purpose or purposes, or such terms, or, if the occasion therefor shall have terminated, to determine the purposes or uses to which the property involved shall be devoted and enforce the same. Such a suit shall be commenced only on petition of the attorney general or, by leave of court, on petition of ten tax-payers of such county, city, town or other subdivision. The respondent in any such suit may set up such impracticability or termination and request the judgment of the court as to such other use of said property in its answer without filing a cross bill or other independent proceeding. In the case of a petition by ten tax-payers as aforesaid, the attorney general shall be served with notice of the preliminary petition for leave, and may intervene as a party at any stage of the proceedings; and the petitioners shall be liable for costs, including reasonable counsel fees in the discretion of the court, which may, also in its discretion, award to the petitioners costs, including reasonable counsel fees, to be paid by the respondent or out of the fund involved, if any.

Issue of process. 1782, 9, § 2. 1817, 87, § 2. R. S. 81, § 9

SECTION 4. Each court may, if necessary to secure justice and equity, issue to courts of inferior jurisdiction, corporations and persons all general and special writs and processes required in proceedings in equity.

G. S. 113, § 1. 1883, 223, § 1. 271 Mass. 323. P. S. 151, § 1. R. L. 159, § 1

VENUE.

1 SECTION 5. Suits in equity in said courts may be brought in any
 2 county in which a transitory action between the same parties might be
 3 brought, as well as in counties in which it is elsewhere provided that
 4 such suits may be brought.

Venue.
 1883, 223, § 13.
 R. L. 159, § 5.
 158 Mass. 376.

SUPERIOR COURT PRACTICE.

1 SECTION 6. Procedure, process and practice in equity causes originat-
 2 ing in the superior court, or transferred thereto from any other court,
 3 shall while in the superior court be regulated by rules made from time
 4 to time by that court.

Procedure in
 superior court
 1883, 223, § 3.
 R. L. 159, § 7.
 1926, 138.

COMMENCEMENT OF SUITS, NOTICE, ETC.

1 SECTION 7. Suits in equity may be commenced by bill or petition
 2 with a writ of subpoena according to the usual course of proceedings in
 3 equity, or by an original writ of summons or of summons and attachment
 4 or by trustee process. If the suit is commenced by bill or petition, the
 5 court may order an attachment of property or the arrest of the defendant.
 6 If commenced by a writ, an attachment may be made without special
 7 order of court, if the writ authorizes such attachment. If the writ
 8 authorizes an arrest, such arrest may be made upon compliance with
 9 section two of chapter two hundred and twenty-four. A subpoena or
 10 other writ shall be returnable on one of the return days prescribed by
 11 section twenty-four of chapter two hundred and twenty-three. When a
 12 suit in equity is commenced by an original writ as provided in this section,
 13 such writ, with the bill or petition attached thereto, may at any time
 14 after service thereof, before the return day, be entered in the court to
 15 which it is returnable, and thereupon the court may make such orders
 16 as to attachment, arrest, and injunction, or for discharging from arrest,
 17 or for dissolving an attachment or injunction, or such other orders, as the
 18 court would have had power to make if the suit had been commenced by
 19 bill or petition.

Commence-
 ment of suits
 in equity.
 1798, 77, § 1
 R. S. 90, § 117,
 107, § 22.
 1853, 371,
 §§ 1, 2.
 1856, 38, § 2
 G. S. 113, § 3
 P. S. 151, § 5.
 1883, 223,
 §§ 2, 11.
 R. L. 159, § 8.
 1909, 183.
 5 Cush. 238.
 1 Allen, 572.
 137 Mass. 399.
 196 Mass. 509.
 212 Mass. 486.
 232 Mass. 7.
 265 Mass. 135.
 266 Mass. 315.

1 SECTION 8. If a suit in equity is commenced by bill or petition in-
 2 serted in an original writ of summons or of summons and attachment,
 3 or in a writ of trustee process, the bill or petition need not be inserted
 4 in the separate summons, in the copy of the original writ to be served on
 5 the defendant, or in the copy of the writ to be deposited or left with or
 6 in the office of a register of deeds or officer of a corporation or other per-
 7 son for the purpose of making an attachment.

Bill not re-
 quired in
 summons.
 1880, 37.
 P. S. 151, § 6.
 1883, 223, § 2.
 R. L. 159, § 9.
 196 Mass. 509.

1 SECTION 9. No preliminary injunction shall be granted without
 2 notice to the opposite party. No temporary restraining order shall be
 3 granted without notice to the opposite party, unless it shall clearly ap-
 4 pear from specific facts, shown by affidavit or by the verified bill, that
 5 immediate and irreparable loss or damage will result to the applicant
 6 before the matter can be heard on notice. If in such a case a temporary
 7 restraining order is granted without notice, notice of the application
 8 for a preliminary injunction shall be made returnable at the earliest
 9 possible time, and in no event later than ten days from the date of the
 10 order, and shall take precedence of all matters except older matters of

Preliminary
 injunctions and
 temporary re-
 straining
 orders, when
 granted.
 Notice.
 1913, 515; 840.
 244 Mass. 33.
 252 Mass. 512.
 266 Mass. 563.

the same character. When the matter comes up for hearing, the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be filed or noted forthwith in the clerk's office. This section shall not apply to proceedings in the probate courts.

Notice in questions under wills. 1899, 373.
R. L. 159, § 10.
211 Mass. 494.

SECTION 10. Upon petitions for the construction of wills, or for instruction relative to wills, the court, instead of service according to the usual course in equity, may order notice of the petition and of the time and place for hearing to be served on such number of the parties in interest representing all possible interests as the court shall direct, and to be published for three weeks successively in such newspaper as it directs. If it appears that any possible interest is not represented, further service may be ordered until all possible interests are represented before the court or until a guardian ad litem has been appointed. If all possible interests are represented by persons before the court, it shall be unnecessary to make other persons having similar interests parties defendant.

Docket entry of equity suits. 1883, 223, § 5.
1884, 316.
1892, 440.
R. L. 159, § 11.
1905, 107.

SECTION 11. Suits in equity in the superior court shall be entered on the same docket as other cases, except in Suffolk, Middlesex and Essex counties, where they shall be entered upon a separate equity docket. All processes shall be returnable at the return day occurring next after fourteen days from the date of the process, if required to be served fourteen days before the return day, or at the return day occurring next after thirty days from such date, if required to be served thirty days before the return day, or at any return day within three months after the date of the process.

PLEADING.

Form of bill. 1855, 194.
§§ 2, 3.
G. S. 113,
§§ 3, 4.
P. S. 151, § 7.
1883, 223,
§§ 2, 10.
R. L. 159, § 12
180 Mass. 487
219 Mass. 572
227 Mass. 382
235 Mass. 227
247 Mass. 334
254 Mass. 274.

SECTION 12. The material facts and circumstances relied on by the plaintiff shall be stated briefly, and immaterial and irrelevant matters omitted. The bill, unless actually inserted in a writ, shall be entitled in the proper court, with the full title of the cause, containing the names and descriptions of all the parties. It need not contain any address to the court, or the usual commencement, or any prayer for an answer, for general relief or for process. Discovery may be sought by inserting a prayer therefor in the bill or petition or by interrogatories.

260 Mass. 427.

264 Mass. 181.

270 Mass. 7

271 Mass. 475.

Demurrer, answer and plea. 1855, 194.
§§ 3, 4.
G. S. 113,
§§ 4, 5.
P. S. 151,
§§ 7, 10.
1883, 223,
§§ 2, 10

SECTION 13. A defence to a suit in equity shall be made by demurrer, plea or answer. A demurrer or plea need not contain a protestation or concluding prayer. An answer, except to a bill for discovery only, or a plea, shall not be made under oath or under seal, and it need not contain any saving of exceptions to the bill, or a prayer to be dismissed or for costs. Answers to interrogatories in a bill for discovery shall be made

7 within such time as the court orders, and questions arising thereon shall R. L. 159, § 13
8 be determined by the rules applicable to bills for discovery. 1921, 431, § 1.

9 Allen, 101. 111 Mass. 300. 258 Mass. 196.

1 SECTION 14. Facts well pleaded in the answer shall not be deemed Effect of
2 to be admitted unless the case is set down for hearing upon the bill replication
3 and answer without the introduction of evidence. The parties shall be No
4 deemed to be at issue when the answer is filed, and the plaintiff need not required
5 file any replication. § 405
1919, 5.

1920, 2. 231 Mass. 404 266 Mass. 503

1 SECTION 15. Bills, answers, petitions and other pleadings may be Signature to
2 signed by the party or his attorney, and shall not require any other pleadings.
3 signature. 1883, 223, § 10

R. L. 159, § 14 6 Allen, 305.

HEARINGS.

1 SECTION 16. Suits in equity, and motions and other applications Hearing by
2 therein, whether interlocutory or final, shall in the first instance be one justice.
3 heard and determined by one justice of the court. 1859, 237, § 1

G. S. 113, § 6 R. L. 159, § 17. 137 Mass. 487
P. S. 151, § 11 120 Mass. 86. 203 Mass. 159
1883, 223, § 2

1 SECTION 17. For hearings, and for making, entering and modifying Court always
2 orders and decrees in equity causes, by one justice, and for issuing writs open.
3 in such causes, the courts shall always be open in every county; and all 1826, 109, § 1.
4 such proceedings shall be considered as taking place in court and not in 1827, 26
5 chambers. R. S. 81,
§§ 20, 21
1859, 237, § 7.

G. S. 113, § 7 1883, 223, § 4. 5 Allen, 81.
P. S. 151, § 12 R. L. 159, § 18. 205 Mass. 529

1 SECTION 18. A justice of either court or the full court may, if neces- Hearing cases
2 sary, hear and determine cases pending in a county other than that in pending in
3 which such justice or court is sitting, or any motion therein; but a motion another
4 shall not be so heard nor a decree or order so made until reasonable county.
5 notice thereof has been given to the adverse party or his counsel; and 1826, 109,
6 either party may transmit his reasons in writing for or against the ap- §§ 1, 2.
7 plication to the court or justice, who shall examine the same and proceed R. S. 81,
8 thereon as if the parties were present. All orders and decrees made on §§ 22-24.
9 such hearings shall be transmitted to the clerk in the proper county, and G. S. 113,
10 be entered by him. §§ 18-20.
P. S. 151,
§§ 23-25.
1883, 223, § 2
R. L. 159, § 35.
5 Allen, 81.
162 Mass. 450.

APPEALS.

1 SECTION 19. A party aggrieved by a final decree of a justice of the Appeal from
2 supreme judicial court or a final decree of the superior court may, within final decree.
3 twenty days after the entry thereof, appeal therefrom. An appeal from 1859, 237, § 2
4 a final decree of a justice of the supreme judicial court shall be entered G. S. 113, § 8
5 on the docket of that court, and an appeal from a final decree of the P. S. 151, § 13.
6 superior court shall be entered in the supreme judicial court. The 1883, 223, § 2
7 pletion of an appeal hereunder shall be governed by section one hundred R. L. 159, § 19
8 and thirty-five of chapter two hundred and thirty-one. When such 1911, 284, § 1
9 appeals have been entered as aforesaid, all proceedings under such decree 1929, 265, § 5
10 shall be stayed, and the cause shall thereupon be pending before the full 13 Allen, 207
11 court, which shall hear and determine the same, and affirm, reverse or 114 Mass. 372
12 modify the decree appealed from. Upon the reversal of a final decree, the 115 Mass. 115.
334
116 Mass. 227
117 Mass. 27
120 Mass. 340,
390.
121 Mass. 127,
568
123 Mass. 443
125 Mass. 166

128 Mass. 11. court may remand the cause to a justice of the supreme judicial court or 13
 129 Mass. 435. to the superior court, with necessary and proper directions for further 14
 150 Mass. 56. proceeding therein. 15
 157 Mass. 68.
 160 Mass. 444.

161 Mass. 593.	215 Mass. 506.	250 Mass. 41.	263 Mass. 516.
171 Mass. 568.	222 Mass. 218.	251 Mass. 334.	264 Mass. 475.
186 Mass. 275.	223 Mass. 6.	254 Mass. 159.	265 Mass. 390.
203 Mass. 159.	226 Mass. 143.	257 Mass. 166.	266 Mass. 172.
204 Mass. 448.	230 Mass. 500.	258 Mass. 190.	267 Mass. 422.
206 Mass. 449.	233 Mass. 420.	319.	268 Mass. 121.
211 Mass. 334.	239 Mass. 443.	259 Mass. 595.	272 Mass. 197.
212 Mass. 118.	246 Mass. 346.	615.	

Separate docket for equity and probate appeals. 1859, 196, § 53. SECTION 20. The clerk of the court for the commonwealth shall enter 1
 appeals in equity and probate matters on a separate equity and probate 2
 docket. 3

G. S. 113, § 14.	1883, 223, § 2.	150 Mass. 56.
P. S. 151, § 14.	R. L. 159, § 20.	

Injunction or receiver pending appeal. 1859, 237, § 3. G. S. 113, § 9. P. S. 151, § 15. 1883, 223, § 2. R. L. 159, § 21. 203 Mass. 159. 252 Mass. 542. SECTION 21. Upon an appeal from a final decree, the justice of 1
 either court by whom it was made may make such orders for the ap- 2
 pointment of receivers, and of injunction or prohibition, or for continu- 3
 ing the same in force, as are needful for the protection of the rights of 4
 parties, until the appeal shall be heard by the full court, subject to be 5
 modified or annulled by the order of the full court, upon motion, after 6
 the appeal is taken. 7

Modification of decree of superior court. 1883, 223, § 6. 1901, 244. R. L. 159, § 22. 203 Mass. 159. 225 Mass. 30. 252 Mass. 542. 253 Mass. 90. SECTION 22. After an appeal has been taken from a decree of the 1
 superior court, the full court may, by an order, on terms or otherwise, 2
 suspend the execution or operation of the decree appealed from, pending 3
 the appeal, and may modify or annul any order made for the protection 4
 of the rights of the parties, pending the appeal; but, until such order 5
 has been modified or annulled, the justice of the superior court by whom 6
 the order or decree appealed from was made, or any other justice of said 7
 court, may make any proper interlocutory orders, pending such appeal, 8
 including orders for the appointment of receivers, of injunction, of pro- 9
 hibition, and orders for continuing in force such orders previously made, 10
 or for modifying or dissolving them. The justice who makes any such 11
 interlocutory orders may enforce them by appropriate proceedings, pend- 12
 ing the appeal. 13

Report of facts. 1883, 223, § 7. 1893, 61. R. L. 159, § 23. 1931, 426, § 282. 173 Mass. 170. 174 Mass. 299. SECTION 23. The justice of either court by whom a decree was made 1
 shall report the material facts found by him, on request of any party 2
 entitled to appeal therefrom made within four days after such party has 3
 been notified of the entry of the decree; otherwise, such report shall be in 4
 the discretion of the justice. 5

178 Mass. 539.	190 Mass. 4.	211 Mass. 334.	254 Mass. 471.
182 Mass. 110, 266.	192 Mass. 555.	222 Mass. 102.	257 Mass. 107.
183 Mass. 333.	193 Mass. 200.	382, 598.	159.
184 Mass. 429.	199 Mass. 262.	223 Mass. 97.	258 Mass. 190.
186 Mass. 83.	598.	226 Mass. 349.	573.
188 Mass. 16.	200 Mass. 179.	237 Mass. 153.	259 Mass. 615.
	204 Mass. 378.	250 Mass. 41.	

Report of testimony upon appeal. 1859, 237, § 6. G. S. 113, § 21. P. S. 151, § 26. 1883, 223, § 2. R. L. 159, § 24. 98 Mass. 462. 117 Mass. 403. 208 Mass. 510. 215 Mass. 506. 256 Mass. 78. SECTION 24. Upon an appeal, the testimony of witnesses who have 1
 been examined orally before a justice of either court shall, at the request 2
 of any party made before any evidence is offered, be reported to the full 3
 court. The courts shall provide by general rules for some convenient 4
 and effectual means of having the same reported by the justice by whom 5
 the case is heard or by a person designated by him for that purpose. 6
 Except as provided in section one hundred and twenty-five of chapter 7

8 two hundred and thirty-one, no oral evidence shall be exhibited to the
 9 full court, but the cause shall be heard on appeal upon the same evidence
 10 as on the original hearing.

271 Mass. 240.

1 SECTION 25. Upon an appeal in a suit in equity in which the evidence
 2 is reported to the full court, all questions raised by exceptions taken at the
 3 hearing shall be subject to revision by the court in the same manner as if
 4 they were contained in a bill of exceptions, and the report of the evidence
 5 shall include, as part thereof, notes of any exceptions properly taken
 6 and the rulings of the judge in respect thereto, and it shall not be neces-
 7 sary to file any bill of exceptions or to suspend the entry of a decree by
 8 reason of any such exceptions.

Questions raised by exceptions to be heard and determined with appeal. 1913, 716, § 4. 1918, 257, § 131. 1919, 5. 1920, 2.

216 Mass. 51.
 225 Mass. 580.

236 Mass. 81.
 246 Mass. 482.

262 Mass. 270.
 264 Mass. 166.

1 SECTION 25A. In suits in equity a final decree shall be entered al-
 2 though exceptions have been taken or a bill of exceptions has been filed
 3 and allowed, but execution and operation of the decree so entered shall be
 4 stayed until the exceptions have been disposed of unless the judge who
 5 made the ruling to which the exception or exceptions were taken finds
 6 that the exceptions are immaterial, frivolous or intended for delay.

Practice as to exceptions regulated. 1926, 177.

1 SECTION 26. A party aggrieved by an interlocutory decree of a
 2 justice of either court may, in like manner, appeal to the full court; but
 3 the appeal shall not suspend the execution of such decree, except as
 4 provided in section twenty-two, nor transfer to the full court the entire
 5 cause or any matter therein except the question whether the interlocutory
 6 decree appealed from shall be affirmed, reversed or modified.

Interlocutory decrees, appeal from. 1859, 237, § 4. G. S. 113, § 10. P. S. 151, § 16. 1883, 223, § 2. R. L. 159, § 25. 102 Mass. 45.

103 Mass. 496.
 115 Mass. 115.
 125 Mass. 20.
 165 Mass. 1.

216 Mass. 30.
 239 Mass. 443.
 257 Mass. 166.

265 Mass. 390.
 268 Mass. 121.
 273 Mass. 109.

1 SECTION 27. Interlocutory decrees not appealed from shall be open
 2 to revision upon appeals from final decrees, so far only as it appears to
 3 the full court that such final decrees are erroneously affected thereby.

Revision of interlocutory decree upon appeal from final decree.

1859, 237, § 5.
 G. S. 113, § 11.
 P. S. 151, § 17.
 1883, 223, § 2.
 R. L. 159, § 26.

127 Mass. 28.
 169 Mass. 417.
 189 Mass. 220.
 191 Mass. 310.
 197 Mass. 504.

210 Mass. 83.
 214 Mass. 560.
 216 Mass. 30.
 386.
 233 Mass. 403.

236 Mass. 556.
 238 Mass. 403.
 257 Mass. 509.
 261 Mass. 242.
 268 Mass. 121.

1 SECTION 28. A party who has, by accident or mistake, omitted to
 2 claim an appeal from a final decree within the time prescribed therefor
 3 may, within one year after the entry of the decree from which he de-
 4 sires to appeal, petition the full court for leave to appeal, which may be
 5 granted upon terms.

Petition for leave to appeal. 1859, 237, § 10. G. S. 113, § 13. P. S. 151, § 19. 1883, 223, § 2.

R. L. 159, § 28.
 121 Mass. 568.
 128 Mass. 16.

204 Mass. 432.
 220 Mass. 532.

226 Mass. 143.
 251 Mass. 503.

1 SECTION 29. No process for the execution of a final decree of either
 2 court shall issue until the expiration of twenty days after the entry
 3 thereof, unless all parties against whom such decree is made waive an
 4 appeal by a writing filed with the clerk or by causing an entry thereof
 5 to be made on the docket; except that if the justice by whose order the
 6 final decree was made is of opinion that the appeal from such decree is
 7 groundless and intended merely for delay, process for the execution of
 8 the decree may be awarded notwithstanding the appeal.

Execution on final decree. 1859, 237, § 9. G. S. 113, § 17. P. S. 151, § 22. 1883, 223, § 2. R. L. 159, § 34. 1911, 284, § 3. 138 Mass. 209. 224 Mass. 501.

REPORT.

Report of interlocutory decree or order to full court.
G. S. 113, § 12.
P. S. 151, § 18.
1883, 223, § 2.
R. L. 159, § 27.
115 Mass. 115.
120 Mass. 277.

SECTION 30. If, upon making an interlocutory decree or order, the justice is of opinion that it so affects the merits of the controversy that the matter ought, before further proceedings, to be determined by the full court, he may report the question for that purpose, and stay all further proceedings except those necessary to preserve the rights of the parties.

165 Mass. 1	224 Mass. 424.	268 Mass. 93.
211 Mass. 334	230 Mass. 526	233
212 Mass. 118	242 Mass. 8.	273 Mass. 109
216 Mass. 30	266 Mass. 537	

Reservation for full court.
1859, 237, § 11.
G. S. 113, § 15.
P. S. 151, § 20.
1883, 223, § 2.
R. L. 159, § 29.

SECTION 31. A justice of either court by whom a case is heard for final decree may reserve and report the evidence and all questions of law therein for the consideration of the full court; and thereupon like proceedings shall be had as upon appeals from final decrees.

141 Mass. 150.	200 Mass. 179.	224 Mass. 424.
184 Mass. 429.	207 Mass. 394.	242 Mass. 8.
186 Mass. 83	209 Mass. 470.	259 Mass. 615.
192 Mass. 555		

TRANSFER OF CAUSES BETWEEN SUPREME JUDICIAL, SUPERIOR AND PROBATE COURTS.

Transfer of causes between supreme judicial, superior and probate courts.
1883, 223, §§ 8, 9.
R. L. 159, §§ 30, 31.
1911, 284, § 2.
G. L. (ed. of 1920) 214, § 33.
1922, 532, § 1.

SECTION 32. The supreme judicial court or a justice thereof may transfer for partial or final disposition in the superior court or in the probate court, respectively, any cause which is within the concurrent jurisdiction of said courts, respectively, and of the supreme judicial court, subject to appeal, exceptions or other proceedings in the nature of an appeal applicable to such case if originally brought in the court to which it is transferred. The supreme judicial court may also direct any cause which is within such concurrent jurisdiction to be transferred to the supreme judicial court in whole or in part for further action or directions, and in case of partial transfer may issue such orders or directions in regard to the part of such cause not so transferred as justice may require.

SECTION 33. [REPEALED, 1922, 532, § 2.]

ISSUES TO JURY.

Jury issues.
1823, 24.
R. S. 83, § 46.
1859, 237, § 13.
G. S. 113, § 22.
P. S. 151, § 27.
1895, 116, § 1.
R. L. 159, § 36.
6 Pick. 376.

SECTION 34. The supreme judicial court, upon request of a party to an equity cause pending therein, may frame issues of fact to be tried by a jury and order the same to be tried in that court or in the superior court in the county in which such cause is pending, or upon the request of all parties in any other county.

16 Gray, 407.	128 Mass. 349	180 Mass. 334.
102 Mass. 45	137 Mass. 483, 487.	188 Mass. 16.
120 Mass. 113, 244	142 Mass. 161	221 Mass. 339.
123 Mass. 590	143 Mass. 543.	243 Mass. 516.

Jury may be summoned.
1874, 339, § 3.
P. S. 151, § 28.
R. L. 159, § 37.

SECTION 35. If there is no regular sitting of the supreme judicial court within three months after the framing of such issues, a justice thereof may order the clerk of the courts for the county in which the cause is pending to summon a jury to try such issues, and the proceedings at such trial shall be in all respects the same as in a trial at a regular sitting.

1 SECTION 36. The superior court, upon request of a party to an equity
 2 cause pending therein, may frame issues of fact to be tried by a jury and
 3 order them to be tried in the county in which such cause is pending.

188 Mass. 16.

221 Mass. 339.

236 Mass. 310.

Jury issues
 in superior
 court.
 1883, 223, § 16
 R. L. 159, § 38

SITTINGS OF THE COURTS.

1 SECTION 37. A justice of the supreme judicial court and a justice
 2 of the superior court shall, at all convenient times, sit in Boston to hear
 3 and determine suits in equity and motions therein arising in any county.

P. S. 151, § 30

R. L. 159, § 40.

Continuous
 sitting in
 Boston
 1859, 196, § 50.
 G. S. 113, § 24

1 SECTION 38. A justice of the supreme judicial court shall sit at Spring-
 2 field, on the first Monday of February, June, August and December, to
 3 hear such matters in equity as may be heard and determined at chambers,
 4 which arise in the counties of Berkshire, Franklin, Hampshire and
 5 Hampden.

Hearings at
 chambers for
 western
 counties.
 1874, 339, § 1
 P. S. 151, § 31
 R. L. 159, § 41.

MISCELLANEOUS PROVISIONS.

1 SECTION 39. A justice of either court shall not dissolve an injunction
 2 issued by the other court, or by a justice thereof, or interpose in any
 3 proceeding in the equity jurisdiction of the other court, except as pro-
 4 vided in sections twenty-two and thirty-two.

R. L. 159, § 32

1931, 426, § 84

Control of
 case by court
 having juris-
 diction
 1883, 223, § 12

1 SECTION 40. Every order and decree shall bear date of the day when
 2 actually entered by the clerk, and at the time of the entry he shall
 3 note such date upon the order or decree and upon the docket.

1859, 237, § 8
 G. S. 113, § 16

P. S. 151, § 21
 1883, 223, § 2.

R. L. 159, § 33.
 5 Allen, 81.

Decree, etc.,
 to bear date
 of entry.

1 SECTION 41. The courts may issue writs of seisin and execution in
 2 common form if such process is appropriate for the enforcement of a
 3 decree in equity.

R. S. 74, § 12;
 118, § 43.
 G. S. 113, § 23.

P. S. 151, § 29
 1883, 223, § 2.
 R. L. 159, § 39

106 Mass. 499.
 107 Mass. 428.
 233 Mass. 39.

Writs of
 seisin and
 execution

1 SECTION 42. Where a bond is required of a receiver appointed by
 2 either court the provisions of section seven of chapter two hundred and
 3 three shall apply.

Receiver's
 bond
 1917, 32

1 SECTION 43. The original papers in a suit in equity pending in either
 2 court may be taken from the files in any county by counsel of record
 3 of either party, for use before the court, upon leaving a memorandum
 4 and receipt on such files, containing a short description of the papers so
 5 taken.

Taking papers
 from files.
 1859, 196, § 50
 G. S. 113, § 25
 P. S. 151, § 32
 1883, 223, § 2.
 R. L. 159, § 42

CHAPTER 215.

PROBATE COURTS.

SECT.	SECT.	
COURTS AND THEIR JURISDICTION.		
1. Courts of record, etc.	32. Transaction of business out of court.	
2. Superior jurisdiction.	33. Same, ex parte matters.	
3. Jurisdiction in general.	34. Power to enforce orders and decrees.	
4. Same. Separate estate of married women, custody of minors, etc.	35. Revocation of warrants and commissions.	
5. Same. French spoliation awards.	36. Decrees to be in writing, and with certain instruments, etc., to be recorded.	
6. Equity jurisdiction.	37. Docket and index. Separate index of public administrators.	
6A. Equitable attachments.	38. Oaths.	
7. Court first taking jurisdiction to retain it.	39. Probate courts to determine and enforce payment for services in connection with administration of estates, etc.	
8. Jurisdiction of trusts.	40. Enforcement of delivery of property by executors, etc., who resign, etc.	
8A. Change of venue.	41. Temporary investments.	
APPEALS.		
9. Person aggrieved may appeal to supreme judicial court.	42. Appearances.	
10. Appeal to be heard by full court.	43. Interrogatories.	
11. Report of facts.	44. Persons suspected of concealing property may be examined under oath.	
12. Evidence upon appeal.	45. Costs.	
13. Judge may reserve and report case to the full court.	46. Service of citation by registered mail.	
14. Revision of interlocutory decrees on appeal.	47. Waiver of notice.	
15. Petition for late appeal.	48. Appointment of one appraiser.	
16. Jury issues.	49. Selection of newspapers for notices.	
17. Insolvent estates.	50. Receipts, etc., to executors, etc., may be recorded.	
18. Court may appoint stenographer to take testimony.	51. Copy of certain papers without charge.	
19. Consolidation of appeals by appellant.	52. Original will may be taken from registry.	
20. Consolidation of appeals by court.	53. Court rooms, rooms for record, etc., to be provided.	
21. Appeals to go on same docket as equity cases.	54. Same subject.	
22. Effect of appeal upon act appealed from.	55. Preservation of dockets, etc.	
23. Same, in equity cases.	56. Expense of recording probate proceedings in Suffolk.	
24. Same, in divorce, separate support and custody cases.	56A. Investigations.	
25. Same, in case of removal of executor, etc.	SESSIONS OF THE COURTS.	
26. Same subject.	57. To maintain order and punish for contempt.	
27. Modification of decree appealed from.	58. Courts always open.	
28. Reversal or affirmance of decree appealed from.	59. Adjournment.	
29. Waiver of or failure to complete or prosecute appeal.	60. No courts on holidays or election days.	
GENERAL PROVISIONS.		
30. Rules and forms.	61. Court not to be held without register, etc.	
30A. Administrative committee of the probate courts.	62. When and where courts are held.	
31. Notice of hearings, etc.	63. Changes in places of holding courts.	

COURTS AND THEIR JURISDICTION.

1 SECTION 1. Probate courts shall be courts of record, and the judge
2 and the register of probate and insolvency for each county shall be, re-
3 spectively, the judge and the register of the probate court of such county.

Courts of
record, etc.
1783, 46,
§§ 1, 2.

1817, 190, §§ 1, 2. 1862, 68, § 3. 12 Gray, 147
R. S. 83, §§ 1, 20. P. S. 156, § 1. 227 Mass. 77
1858, 93, § 1. R. L. 162, § 1. 260 Mass. 369
G. S. 117, § 1.

1 SECTION 2. Probate courts shall be courts of superior and general
2 jurisdiction with reference to all cases and matters in which they have
3 jurisdiction, and no order, decree, sentence, warrant, writ or process
4 made, issued or pronounced by them need set out any adjudication
5 or circumstances with greater particularity than would be required in
6 other courts of superior and general jurisdiction, and the like presump-
7 tion shall be made in favor of proceedings of the probate courts as would
8 be made in favor of proceedings of other courts of superior and general
9 jurisdiction.

Superior
jurisdiction.
1891, 415, § 4
R. L. 162, § 2
182 Mass. 205
188 Mass. 186
192 Mass. 596.
204 Mass. 310
207 Mass. 91
211 Mass. 238,
409
225 Mass. 12,
487
226 Mass. 258
227 Mass. 77

240 Mass. 18. 254 Mass. 491. 261 Mass. 209. 154 U. S. 34.
247 Mass. 288. 260 Mass. 369. 273 Mass. 372. 215 U. S. 203.

1 SECTION 3. Probate courts shall have jurisdiction of probate of wills,
2 of granting administration on the estates of persons who at the time of
3 their decease were inhabitants of or residents in their respective counties
4 and of persons who die out of the commonwealth leaving estate to be
5 administered within their respective counties; of the appointment of
6 guardians and conservators; of all matters relative to the estates of such
7 deceased persons and wards; of petitions for the adoption of children,
8 and for change of names; of libels for divorce or for affirming or annulling
9 marriage brought in the probate court; and of such other matters as have
10 been or may be placed within their jurisdiction.

Jurisdiction
in general.
1783, 46, § 1
1817, 190, § 1.
R. S. 64, § 3,
83, §§ 5, 6
1851, 256, § 1;
324, § 1
G. S. 117, § 2
P. S. 156, § 2
1898, 527, § 1
1901, 125,
§§ 1, 2
R. L. 145, § 40,
162, § 3.
1903, 96.

1905, 127 9 Pick. 259 126 Mass. 384. 218 Mass. 227.
1907, 169, § 3 4 Cush. 510. 128 Mass. 140. 221 Mass. 178.
1915, 23 8 Cush. 529 129 Mass. 513. 262 Mass. 297.
1921, 466, § 3 10 Cush. 17. 131 Mass. 477 263 Mass. 549.
1922, 532, § 7; 2 Gray, 228. 137 Mass. 195. 270 Mass. 461.
542, § 2 3 Gray, 536. 140 Mass. 194 273 Mass. 372,
5 Pick. 20, 65, 4 Allen, 410 192 Mass. 596. 402.
370, 519. 102 Mass. 186. 195 Mass. 133.

1 SECTION 4. Probate courts shall have exclusive original jurisdiction
2 of petitions of married women relative to their separate estate, and of
3 petitions or applications relative to the care, custody, education and
4 maintenance of minor children provided for by sections thirty and
5 thirty-seven of chapter two hundred and nine.

Same. Sep-
arate estate
of married
women, cus-
tody of
minors, etc.
1887, 332, § 2

R. L. 162, § 4.

1 SECTION 5. Probate courts shall have exclusive original jurisdiction
2 of all matters relative to the administration of moneys appropriated by
3 the congress of the United States on account of French spoliations.

Same. French
spoliation
awards
1902, 371, § 1.

1 SECTION 6. Probate courts shall have jurisdiction in equity, concur-
2 rent with the supreme judicial and superior courts, of all cases and matters
3 relative to the administration of the estates of deceased persons, to wills,
4 including questions arising under section twenty of chapter one hundred
5 and ninety-one, to trusts created by will or other written instrument and,

Equity juris-
diction
R. S. 69, § 12
G. S. 100, § 22.
1880, 163
P. S. 141, § 27
1891, 415, § 1.
1892, 116
R. L. 162, § 5.

1910, 100.
 1917, 126;
 279, § 44.
 1929, 342, § 1
 1931, 426, § 85
 12 Met. 316.
 131 Mass. 355.
 132 Mass. 452.
 144 Mass. 135.
 175 Mass. 199,
 265
 181 Mass. 501.
 183 Mass. 521.
 186 Mass. 244.

in cases involving in any way the estate of a deceased person or the prop- 6
 erty of any absentee whereof a receiver has been appointed under chapter 7
 two hundred or the property of a person under guardianship or conser- 8
 vatorship, to trusts created by parol or constructive or resulting trusts, 9
 of all matters relative to guardianship and conservatorship and of all 10
 other matters of which they now have or may hereafter be given juris- 11
 diction. Such jurisdiction may be exercised upon petition according to 12
 the usual course of procedure in probate courts. 13

192 Mass. 596.	238 Mass. 599	248 Mass. 310
203 Mass. 94	239 Mass. 301.	260 Mass. 19, 515
211 Mass. 494.	241 Mass. 112	267 Mass. 301, 316.
226 Mass. 459	242 Mass. 331.	273 Mass. 372

Equitable at-
 tachments.
 1927, 94, § 1.

SECTION 6A. In any proceeding before a probate court, an attach- 1
 ment may be made by injunction, as in suits in equity, to reach shares of 2
 stock or other property which cannot be reached to be attached as in an 3
 action at law, and the property so attached shall thereafter be subject to 4
 such order as justice and equity may require; and in relation to such 5
 probate proceedings said court shall have all the powers which the su- 6
 preme judicial and superior courts have in relation to bills to reach and 7
 apply. 8

Court first
 taking juris-
 diction to
 retain it.
 1785, 12, § 1.
 1817, 190,
 §§ 1, 16.
 R. S. 62, § 20;
 64, § 3; 79,
 § 21; 83, § 14
 G. S. 117, § 3
 P. S. 156, § 3.
 R. L. 162, § 6.

SECTION 7. If a case is within the jurisdiction of the probate courts 1
 of two or more counties, the court first taking cognizance thereof by the 2
 commencement of proceedings therein shall retain jurisdiction thereof, 3
 and shall exclude the jurisdiction of the probate courts of all other 4
 counties; and the administration, guardianship or conservatorship first 5
 granted shall extend to all the estate of the deceased or ward in the 6
 commonwealth. 7

1915, 23.

Jurisdiction
 of trusts.
 1874, 352, § 3.
 P. S. 141, § 25.
 R. L. 162, § 7.
 260 Mass. 19.

SECTION 8. All matters of trust of which probate courts have juris- 1
 diction, except those arising under wills, shall be within the jurisdiction 2
 of the probate court of any county where any of the parties interested in 3
 the trust reside, or where any of the land held in trust is situated; but 4
 such jurisdiction, when once assumed, shall exclude the probate court 5
 of any other county from taking jurisdiction of any matter subsequently 6
 arising in relation to the same trust. 7

Change of
 venue.
 1925, 159.
 253 Mass. 411.

SECTION 8A. If it appears before final decree in any proceeding pend- 1
 ing in a probate court that said proceeding was begun in the wrong county, 2
 said court may order the proceeding with all papers relating thereto to be 3
 removed to the probate court for the proper county, and it shall thereupon 4
 be entered and pending in the last mentioned court as if originally com- 5
 menced therein, and all prior proceedings otherwise regularly taken shall 6
 thereupon be valid. 7

APPEALS.

Person
 aggrieved may
 appeal to
 supreme
 judicial court
 1692-3, 14, § 1;
 46, § 1
 1696, s. § 2.
 1700-1, 5.

SECTION 9. A person aggrieved by an order, decree or denial of a 1
 probate court made after this chapter takes effect, may, within twenty 2
 days after the entry thereof, appeal from the same to the supreme judi- 3
 cial court, and the appeal shall be heard and determined by the full 4
 court, which shall have like powers and authority in respect thereto 5

6 as upon an appeal in a suit in equity under the general equity 1719-20,
7 jurisdiction. 10, § 5.

1783, 46, §§ 3, 4.	6 Gray, 137.	211 Mass. 494.
1817, 190, §§ 6, 7.	13 Gray, 336.	218 Mass. 33.
R. S. 83, §§ 33,	16 Gray, 577.	221 Mass. 108.
34, 36.	3 Allen, 556.	223 Mass. 6.
G. S. 117, §§ 7-9.	10 Allen, 357.	224 Mass. 145.
P. S. 156, §§ 5-7.	111 Mass. 346.	228 Mass. 39, 466.
1888, 290, § 1.	118 Mass. 110.	232 Mass. 259.
R. L. 162, §§ 8-10.	123 Mass. 270.	269, 500.
1917, 279, § 27.	128 Mass. 592.	235 Mass. 33.
1918, 257, § 401.	129 Mass. 527.	236 Mass. 326.
1919, 5, 17, 274,	140 Mass. 596.	237 Mass. 577.
§§ 1, 10, 11.	143 Mass. 234.	239 Mass. 439.
1920, 2.	144 Mass. 135.	240 Mass. 159.
2 Mass. 140.	146 Mass. 373.	243 Mass. 149.
9 Mass. 386.	147 Mass. 204.	246 Mass. 482.
3 Pick. 443.	148 Mass. 421.	250 Mass. 41.
4 Pick. 33.	154 Mass. 574.	252 Mass. 197.
16 Pick. 264.	170 Mass. 93.	254 Mass. 325.
18 Pick. 1, 285.	184 Mass. 394.	255 Mass. 611.
6 Met. 194.	186 Mass. 420.	256 Mass. 203.
11 Met. 390.	190 Mass. 459.	260 Mass. 369.
4 Cush. 408.	195 Mass. 436.	263 Mass. 521.
8 Cush. 529.	198 Mass. 136.	267 Mass. 528.
1 Gray, 518.	203 Mass. 556.	271 Mass. 467.

1 SECTION 10. The appeal shall be pending before the full court as soon
2 as it has been filed in the probate court, and proper copies of papers in
3 the proceeding, as specified in section one hundred and thirty-five of
4 chapter two hundred and thirty-one, have been prepared by the register
5 and transmitted to the supreme judicial court and entered in the docket
6 of the full court under said section. Appeal to be heard by full court. 1719-20, 10, § 5. 1783, 46, § 4. 1817, 190, § 7. R. S. 83, §§ 36, 37.

G. S. 117, § 9.	1919, 17, 274, §§ 2,	128 Mass. 11.	259 Mass. 74.
P. S. 156, §§ 7, 8.	10; 333, §§ 30, 31.	236 Mass. 326.	262 Mass. 270.
1888, 290, § 1.	1920, 2.	246 Mass. 482.	263 Mass. 521.
R. L. 162, §§ 10, 11.	1929, 265, § 6.	254 Mass. 161, 471.	267 Mass. 444.

1 SECTION 11. The judge by whom an order, decree or denial was made
2 shall report the material facts found by him, on request of any party
3 entitled to appeal therefrom made within four days after such party has
4 notice of such order, decree or denial; otherwise such report shall be in
5 the discretion of the judge. Report of facts. 1919, 274, § 3. 1931, 426, § 283. 174 Mass. 299. 239 Mass. 188. 246 Mass. 482.

250 Mass. 41.	261 Mass. 321.	264 Mass. 112.	269 Mass. 41.
254 Mass. 471.	263 Mass. 521.	266 Mass. 50.	273 Mass. 53.
256 Mass. 78.			

1 SECTION 12. Upon the appeal, the evidence and all questions relating
2 thereto shall be governed by sections twenty-four and twenty-five of
3 chapter two hundred and fourteen and section one hundred and twenty-
4 five of chapter two hundred and thirty-one. Evidence upon appeal. 1919, 274, § 4. 239 Mass. 188. 243 Mass. 149.

246 Mass. 482.	260 Mass. 369.	263 Mass. 521.
250 Mass. 41, 177.	262 Mass. 270.	271 Mass. 240.
256 Mass. 78.		

1 SECTION 13. A judge of the probate court by whom a case or matter
2 is heard for final determination may reserve and report the evidence and
3 all questions of law therein for consideration of the full court, and there-
4 upon like proceedings shall be had as upon appeal. And if, upon making
5 an interlocutory decree or order, he is of opinion that it so affects the
6 merits of the controversy that the matter ought, before further pro-
7 ceedings, to be determined by the full court, he may report the question
8 for that purpose, and stay all further proceedings except such as are
9 necessary to preserve the rights of the parties. Judge may reserve and report case to the full court. 1919, 274, § 5. 169 Mass. 157. 241 Mass. 103, 315. 256 Mass. 78. 259 Mass. 74. 263 Mass. 521. 271 Mass. 240.

1 SECTION 14. Interlocutory decrees not appealed from shall be open
2 to revision upon appeals from final decrees so far only as it appears to
3 the full court that such final decrees are erroneously affected thereby. Revision of interlocutory decrees on appeal. 1919, 274, § 6.

Petition for late appeal. 1719-20, § 6. 1783, 46, § 4. 1812, 29. 1817, 190, §§ 7, 8.

SECTION 15. A person who has, by accident or mistake, omitted to claim an appeal from a final decree within the time prescribed therefor may, within one year after the entry of the decree from which he desires to appeal, petition the full court for leave to appeal, which may be granted upon terms.

- | | | |
|----------------------|----------------|---------------------|
| R. S. 83, §§ 39-42 | 7 Allen, 242 | 225 Mass. 487. |
| G. S. 117, §§ 11-13 | 13 Allen, 207. | 229 Mass. 508, 537. |
| P. S. 156, §§ 9, 10 | 139 Mass. 190. | 230 Mass. 14 |
| 1890, 261, § 2 | 145 Mass. 287. | 231 Mass. 258. |
| R. L. 162, §§ 13, 14 | 153 Mass. 8. | 232 Mass. 525. |
| 1919, 274, §§ 6, 10 | 192 Mass. 126. | 233 Mass. 136 |
| J Gray, 518 | 223 Mass. 297. | 263 Mass. 521. |
| 14 Gray, 279. | | |

Jury issues. 1783, 46, § 4. 1817, 190, § 7. R. S. 83, § 46. G. S. 117, § 18. 1874, 339, § 3. P. S. 156, § 19. 1895, 116, § 1. R. L. 162, §§ 25, 26. 1917, 279, § 22. 1919, 274, §§ 7, 8, 10. 120 Mass. 277. 123 Mass. 590. 143 Mass. 349. 154 Mass. 498. 157 Mass. 83. 90. 167 Mass. 524. 188 Mass. 16. 198 Mass. 345. 221 Mass. 339. 225 Mass. 68. 226 Mass. 158. 240 Mass. 49. 241 Mass. 427. 246 Mass. 250. 252 Mass. 197.

SECTION 16. A probate court in any proceeding, upon the application of a party and in accordance with the practice established by the supreme judicial court in like cases, may direct that any issues of fact shall be tried by a jury in the superior court for the same county, or, if there shall not be any regular sitting for such trial within three months after such order, or by consent of the parties, in any other county. The form of such issues shall be settled in the probate court, and certified copies of the issues and other material papers in the case shall be entered by the applicant in the superior court forthwith, or within such time as the probate court may direct, but the same may be entered by any other party; and, if the same shall not so be entered, the probate court may discharge the order for a trial. On motion of any party in the superior court the issues shall be advanced for a speedy trial. Questions of law arising upon the trial of any such issues may be considered and determined by the supreme judicial court in the same manner and with like effect as in actions at law tried in the superior court.

- | | | | |
|---------------|---------------------|---------------|----------------|
| 255 Mass. 152 | 263 Mass. 427, 521. | 264 Mass. 36. | 268 Mass. 531. |
|---------------|---------------------|---------------|----------------|

Insolvent estates. 1919, 274, § 9. 263 Mass. 521.

SECTION 17. In the case of an estate of a deceased person represented insolvent, if the court, instead of appointing commissioners to receive and examine the claims of creditors against the estate, receives and examines such claims itself, the provisions of this chapter, so far as applicable, shall govern the proceedings for proof of the same and appeals from the allowance or disallowance thereof, exclusive of the provisions of sections eleven and sixteen of chapter one hundred and ninety-eight.

Court may appoint stenographer to take testimony. 1919, 274, § 13. 1923, 392. 1924, 194, § 1. 1930, 400, §§ 5, 7-9. 1931, 301, § 24. 243 Mass. 149. 252 Mass. 197. 261 Mass. 321. 271 Mass. 240.

SECTION 18. At the trial of any issue of fact in a probate court the presiding judge may appoint a stenographer, who shall be sworn and shall attend the trial, or such part thereof as the judge may direct, and perform like duties and receive the same compensation therefor as a stenographer appointed by the superior court who is not on salary; and the sums so payable for his attendance at court and for any transcript of his notes or part thereof furnished to the judge by his direction shall be paid by the county upon the certificate of the judge. The judges of probate of any county, except Suffolk, may, subject to the approval of the county commissioners of such county, appoint a stenographer for the probate court of such county. The compensation and expenses of such stenographer shall be paid by the county.

Consolidation of appeals by appellant. 1888, 290, § 4. R. L. 162, § 12. 1915, 23.

SECTION 19. An appellant from decrees of a probate court settling different accounts of an executor, administrator, guardian, conservator, trustee or receiver may unite his appeals in one notice of appeal, and they

4 shall thereupon be entered as one appeal in the supreme judicial court;
 5 and an appeal taken by another appellant from any of the same decrees,
 6 or from another decree made at the same time or earlier, settling any
 7 other account of such fiduciary, may be entered in the supreme judi-
 8 cial court as part of the matter comprised in the appeal previously
 9 entered. The court may, upon appeal, deal with such different accounts
 10 as if they formed one continuous account, and may give effect to any
 11 alterations which it may make in any account by altering the balance of
 12 the last account without altering the balance of any previous account.

1 SECTION 20. The supreme judicial court may at any time, upon
 2 terms, consolidate any separate appeals from a probate court pending
 3 therein, and may thereafter deal with such consolidated appeals to-
 4 gether or otherwise, as justice requires.

Consolidation
 of appeals by
 court
 1888, 290, § 4
 R. L. 162, § 27.

1 SECTION 21. Appeals and petitions therefor shall be entered on the
 2 same docket with cases in equity, and shall have the same rights as to
 3 hearing and determination as such cases.

Appeals to go
 on same docket
 as equity
 cases.

G. S. 117, § 14.	198 Mass. 401.	242 Mass. 43.
P. S. 156, § 11.	206 Mass. 395.	254 Mass. 471.
R. L. 162, § 15.	224 Mass. 427.	260 Mass. 556.
162 Mass. 450.	239 Mass. 443.	

1 SECTION 22. After an appeal has been claimed and filed in the reg-
 2 istry of probate, all proceedings in pursuance of the act appealed from
 3 shall, except as otherwise expressly provided, be stayed until the deter-
 4 mination thereof by the supreme judicial court; but if, upon such appeal,
 5 such act is affirmed, it shall thereafter be of full force and validity. An
 6 appeal from an interlocutory order or decree, however, shall not suspend
 7 proceedings under the same pending the appeal, except as otherwise ex-
 8 pressly provided by law, but an appeal from an order granting or refusing
 9 jury issues shall be heard and determined by the full court without await-
 10 ing further proceedings in the probate court.

Effect of
 appeal upon
 act appealed
 from
 1783, 46, § 5.
 1817, 190, § 9
 R. S. 83, § 43.
 G. S. 117, § 15.
 1860, 189
 P. S. 156, § 12
 R. L. 162, § 16.
 1919, 274, § 1.
 18 Pick. 1
 4 Cush. 46
 16 Gray, 577.
 128 Mass. 578.

136 Mass. 297.	211 Mass. 494.	246 Mass. 250.
144 Mass. 415.	219 Mass. 178.	251 Mass. 163.
153 Mass. 8.	221 Mass. 108.	258 Mass. 85.
175 Mass. 483.	227 Mass. 303.	266 Mass. 363.
186 Mass. 59.	240 Mass. 49.	

1 SECTION 23. An appeal from a final or interlocutory order or decree
 2 in equity of a probate court made in the exercise of any jurisdiction in
 3 equity shall not suspend or stay proceedings under such order or decree
 4 pending the appeal. But the probate court or a justice of the supreme
 5 judicial court, in case of such appeal, may stay all proceedings under
 6 such order or decree and make necessary or proper orders to protect the
 7 rights of persons interested pending the appeal; and any such order of
 8 the probate court for a stay of proceedings or for protection of any such
 9 rights may be varied or discharged by a justice of the supreme judicial
 10 court upon motion, and shall not be otherwise subject to an appeal.

Same, in
 equity cases
 1891, 415, § 3.
 R. L. 162, § 17
 211 Mass. 494

1 SECTION 24. The preceding section shall apply to orders or decrees
 2 of probate courts in proceedings under chapter two hundred and eight
 3 and under sections thirty-two and thirty-seven of chapter two hundred
 4 and nine.

Same, in
 divorce, separ-
 ate support
 and custody
 cases.

1880, 64, § 2	1907, 266.	195 Mass. 436.
P. S. 156, § 13.	1919, 274, §§ 10, 12.	198 Mass. 136.
1890, 261, §§ 1, 3.	1926, 214	239 Mass. 443.
R. L. 162, §§ 18, 19.	184 Mass. 488.	

Same, in case of removal of executor, etc.
 1860, 189
 1880, 186, §§ 1-3.
 1881, 296.
 P. S. 156, § 14.
 R. L. 162, § 20.
 1915, 23.
 143 Mass. 226.
 155 Mass. 433.
 232 Mass. 259.
 242 Mass. 363.

SECTION 25. A decree of a probate court removing an executor, administrator, guardian, conservator, trustee or receiver shall have effect, notwithstanding an appeal therefrom, until otherwise ordered by a justice of the supreme judicial court. The probate court may in such case appoint a successor to the person removed, and the latter shall forthwith deliver all the property of the estate held by him to his successor, who shall proceed in the performance of his duties in like manner as if no appeal had been taken; but if the decree of removal is reversed by a final decree of the supreme judicial court, the powers of such successor shall thereupon cease and he shall forthwith deliver to his predecessor in the trust, or to such person as the court may order, all property of the estate in his hands.

Same subject.
 1860, 189
 1880, 186, § 4
 P. S. 156, § 15.
 R. L. 162, § 21.

SECTION 26. A decree of a probate court made under the preceding section shall have effect, notwithstanding an appeal therefrom, until otherwise finally determined by the supreme judicial court.

Modification of decree appealed from.
 1880, 186, § 5.
 P. S. 156, § 16.
 R. L. 162, § 22.

SECTION 27. After an appeal is claimed from an order or decree referred to in the two preceding sections, and before such appeal has been finally determined, a justice of the supreme judicial court may suspend or modify such order or decree during the pendency of such appeal.

Reversal or affirmance of decree appealed from.
 R. S. 83, § 44.
 G. S. 117, § 16.
 P. S. 156, § 17.
 R. L. 162, § 23.
 146 Mass. 373.

SECTION 28. The supreme judicial court may, upon appeal, reverse or affirm, in whole or in part, any decree or order of the probate court, and may enter such decree thereon as the probate court ought to have entered, may remand the case for further proceedings, or make any other order therein as law and justice may require.

167 Mass. 338.	184 Mass. 394	228 Mass. 236
170 Mass. 295	204 Mass. 394.	239 Mass. 443
177 Mass. 238.	226 Mass. 231.	262 Mass. 321.

Waiver of or failure to complete or prosecute appeal.
 1719-20,
 10, § 5
 1783, 46, § 4
 1817, 190, § 7.
 R. S. 83, § 45.
 G. S. 117,
 §§ 15, 17.
 1880, 19
 P. S. 156,
 §§ 12, 18.
 R. L. 162,
 §§ 16, 24.
 128 Mass. 11.
 150 Mass. 56.
 153 Mass. 8
 251 Mass. 163.

SECTION 29. If an appellant fails to pay the entry fee in the supreme judicial court or otherwise fails to prosecute his appeal, the supreme judicial court, or a justice thereof, may, upon motion of any person interested, affirm the former decree or order, or make such other order as law and justice may require. If the appellant waives his appeal in writing before the copies have been transmitted to the supreme judicial court, the probate court may proceed as if no appeal had been taken; or if he fails to cause the necessary copies to be prepared or otherwise fails to perfect his appeal, the probate court from which the appeal was taken may, upon petition of any person interested, and upon such notice to the appellant as the probate court shall order, dismiss the appeal and affirm the decree or order appealed from, and further proceed as if no appeal had been taken.

GENERAL PROVISIONS.

Rules and forms
 R. S. 83, § 8
 G. S. 117, § 19.
 P. S. 156, § 22.
 1893, 372, § 1
 R. L. 162, § 29.
 128 Mass. 543.
 216 Mass. 106.
 227 Mass. 77.
 264 Mass. 453.

SECTION 30. The judges of the probate courts or a majority of them shall from time to time make rules for regulating the practice and for conducting the business in their courts in all cases not expressly provided for by law and shall prescribe forms, and, as soon as convenient after making or prescribing them, shall submit a copy of their rules, forms and course of proceedings to the supreme judicial court, which may alter and amend them, and from time to time make such other rules and forms for regulating the proceedings in the probate court as it considers necessary in order to secure regularity and uniformity.

1 SECTION 30A. There shall be an administrative committee of the
 2 probate courts, hereinafter called the committee, which shall consist of
 3 three judges thereof, assigned to service thereon by the chief justice of
 4 the supreme judicial court for such period of time as he may deem
 5 advisable. The committee shall be authorized to visit any probate
 6 court, as a committee or by sub-committee, to recommend uniform
 7 practice and procedure, and shall have general advisory powers in rela-
 8 tion to such courts. To promote co-ordination in the work of such
 9 courts, the committee may from time to time call conferences of any or
 10 all of the judges thereof or of other officials connected therewith, and the
 11 traveling expenses of such judges or officials for attending such confer-
 12 ences, and also the necessary expenses of the members of the committee
 13 incurred in the performance of their duties as aforesaid, shall, subject
 14 to the approval of the governor and council, be paid from the state
 15 treasury.

Administrative
 committee of
 the probate
 courts
 1931, 401, § 1

1 SECTION 31. The supreme judicial court and the probate courts
 2 shall make rules requiring notice of any hearing, motion or other pro-
 3 ceeding before said courts to be given to parties interested or to the
 4 attorneys of record therefor.

Notice of
 hearings, etc.
 1899, 420, § 2
 R. L. 162, § 39
 201 Mass. 23

1 SECTION 32. Judges of the probate courts may transact business out
 2 of court at any time and place, if all parties entitled to notice assent
 3 thereto in writing or voluntarily appear; and in such cases their decrees
 4 shall be entered as of such sessions of the court as the convenience of the
 5 parties may require.

Transaction of
 business out
 of court.
 1899, 424
 1870, 275
 P. S. 156, § 24
 R. L. 162, § 31

1 SECTION 33. Orders of notice and other official acts which are passed
 2 as of course and which do not require previous notice to an adverse
 3 party may be issued and performed at any time.

Same, ex parte
 matters.
 R. S. 83, § 4

G. S. 117, § 23. P. S. 156, § 25. R. L. 162, § 32.

1 SECTION 34. Probate courts shall have like power and authority for
 2 enforcing orders, sentences and decrees made or pronounced in the exer-
 3 cise of any jurisdiction vested in them, and for punishing contempts of
 4 such orders, sentences and decrees and other contempts of their author-
 5 ity, as are vested for such or similar purposes in the supreme judicial
 6 or superior court in equity in relation to any suit in equity pending
 7 therein.

Power to
 enforce orders
 and decrees
 1891, 415, § 2
 R. L. 162, § 33
 1915, 151, § 5
 260 Mass. 345,
 369.

1 SECTION 35. A warrant or commission for the appraisal of an estate,
 2 for examining the claims against insolvent estates, for the partition of
 3 land or for the assignment of dower or curtesy or other interests in land,
 4 may be revoked by the court for sufficient cause, and a new commission
 5 may be issued or other appropriate proceedings taken.

Revocation of
 warrants and
 commissions
 R. S. 83, § 31
 G. S. 117, § 24
 P. S. 156, § 26
 R. L. 162, § 34

1 SECTION 36. Decrees and orders of probate courts shall be in writing.
 2 The registers shall record in books kept therefor such decrees, orders
 3 and other proceedings in said courts and such instruments, as shall be
 4 determined by rules made from time to time under section thirty.

Decrees to be
 in writing, and
 with certain
 instruments,
 etc., to be
 recorded.

R. S. 83, § 7. P. S. 156, § 27. 1929, 189, § 1; 6 Met. 360.
 G. S. 117, § 21. R. L. 162, § 35. 328, § 1. 195 Mass. 187.

1 SECTION 37. Each register shall keep a docket of all cases and mat-
 2 ters in his court, and shall enter therein every case or matter by its

Docket and
 index. ^{Sepa-}
 rate index

of public
administrators.
1881, 215, § 3.
P. S. 156, § 28.
R. L. 162, § 36.
1931, 305, § 4.

appropriate title and number, brief memoranda of all proceedings had and papers filed therein, the dates of such proceedings or filing of such papers, and references to the places in which the proceedings or papers are recorded, if there is a record thereof. He shall also keep a separate alphabetical index of all such cases and matters which shall refer both to said docket and to the files of the court, and a separate alphabetical index of all public administrators seeking appointment or appointed to administer any estates, with the names of such estates. Such docket and indexes shall be open to public inspection at all reasonable times.

Oaths.
R. S. 83, § 30.
1851, 29.
1852, 241.
1858, 93, § 7.
G. S. 14, § 34;
117, § 28;
119, § 12.
1871, 122, § 1.
P. S. 18,
§ 1; 156, § 30;
158, § 14.

SECTION 38. Oaths required in proceedings in probate courts may be administered by the judge, register or assistant register in or out of court or by a justice of the peace or notary public, and, when administered out of court, a certificate thereof shall be returned and filed or recorded with the proceedings; but the judge may require any such oath to be taken before him in open court.

1883, 252, § 1. 1896, 476, § 1.
1889, 197, § 1. R. L. 162, § 37. 1931, 394, § 187.

Probate courts
to determine
and enforce
payment for
services in
connection
with adminis-
tration of
estates, etc.
1915, 151, § 6.
224 Mass. 145.
266 Mass. 50,
340.
272 Mass. 499.

SECTION 39. Probate courts may ascertain and determine the amount due any person for services as appraiser, for premiums of surety companies for acting as surety upon the official bonds of administrators, executors, trustees, guardians, conservators or receivers, or for services rendered by any person in connection with the administration of the estate of a deceased person, or with the administration of any trust, guardianship, conservatorship or receivership; and payment of said amount when ascertained and determined to be due may be enforced summarily by said court upon motion of the person to whom the amount is due in the same manner as a like payment under a decree in equity may be enforced, and execution may also be issued therefor against the executor, administrator, trustee, guardian, conservator or receiver personally as upon a judgment at law.

Enforcement
of delivery of
property by
executors,
etc., who
resign, etc.
1881, 140.
P. S. 156, § 31.
R. L. 162, § 38.
1907, 129.
1915, 23.

SECTION 40. If an executor, administrator, guardian, conservator, trustee or receiver resigns or is removed, and neglects or refuses to deliver to his successor all property held by him under the trust, the probate court may, upon application of such successor or any person beneficially interested, order such delivery made, and shall have like powers for enforcing such order as are given to it by section thirty-four.

215 Mass. 242.

Temporary
investments.
1873, 224, § 1.
P. S. 156, § 32.
R. L. 162, § 39.

SECTION 41. A probate court may, upon application of a person interested in an estate in process of settlement in such court, direct the temporary investment of any money belonging to such estate in securities approved by the judge; or it may authorize the money to be deposited in any bank or institution in the commonwealth empowered to receive such deposits, upon such interest as such bank or institution may agree to pay.

Appearances.
1890, 420, § 1.
R. L. 162, § 40.
191 Mass. 96.
223 Mass. 297.

SECTION 42. A duly authorized attorney at law may enter his appearance as attorney for the party represented by him in any proceeding in a probate court, and all processes and notices served upon him shall have the same force and effect as if served upon the party whom he represents.

1 SECTION 43. In any proceeding in a probate court, the petitioner or
 2 respondent may at any time after the filing of the petition file inter-
 3 rogatories in the registry of probate for the discovery of facts and docu-
 4 ments material to the support or defence of the proceeding. All pro-
 5 visions of chapter two hundred and thirty-one relative to interrogatories
 6 in civil actions shall, so far as applicable, apply to such interrogatories.
 7 If a party neglects or refuses to expunge, amend or answer according to
 8 said chapter, the petition shall be dismissed or its prayer granted, or
 9 such other order or decree entered as may be required.

Interrogatories.
 1879, 186,
 §§ 1, 2,
 P. S. 156,
 §§ 33, 34,
 R. L. 162,
 §§ 41, 42,
 1913, 815, § 8,
 155 Mass. 433
 206 Mass. 395
 212 Mass. 335.
 227 Mass. 7.

1 SECTION 44. Upon complaint to a probate court by a person inter-
 2 ested in the estate of a deceased person against a person suspected of
 3 having fraudulently received, concealed, embezzled or conveyed away
 4 any property, real or personal, of the deceased, the court may cite such
 5 suspected person, although he is executor or administrator, to appear and
 6 be examined on oath upon the matter of the complaint. If the person
 7 so cited refuses to appear and submit to examination, or to answer such
 8 interrogatories as may be lawfully propounded to him, the court may
 9 commit him to jail until he submits to the order of the court. The in-
 10 terrogatories and answers shall be in writing, signed by the party exam-
 11 ined, and shall be filed in the court.

Persons sus-
 pected of con-
 cealing prop-
 erty may be
 examined
 under oath.
 C. L. 331, § 2
 1892-3, 16, § 2.
 1896, 8, § 2.
 1700-1, 5
 1752-3, 12,
 §§ 4, 5.
 1783, 32, § 11.
 R. S. 65, 7
 1857, 71, 2
 G. S. 96, 6
 P. S. 133, § 1
 R. L. 162, § 43

4 Mass. 318	12 Met. 316.	175 Mass. 4.
7 Pick. 14	4 Cush. 46	251 Mass. 27.
8 Pick. 484.	99 Mass. 470.	254 Mass. 180.

1 SECTION 45. In contested cases before a probate court or before the
 2 supreme judicial court on appeal, costs and expenses in the discretion of
 3 the court may be awarded to either party, to be paid by the other, or may
 4 be awarded to either or both parties to be paid out of the estate which is
 5 the subject of the controversy, as justice and equity may require. In
 6 any case wherein costs and expenses, or either, may be awarded hereunder
 7 to a party, they may be awarded to his counsel or may be apportioned
 8 between them. Execution may issue for costs awarded hereunder.

Costs.
 1783, 46, § 4.
 1817, 190,
 §§ 7, 44,
 R. S. 83,
 §§ 47, 48,
 G. S. 117,
 §§ 25, 26,
 P. S. 156,
 §§ 35, 36,
 1884, 131,
 R. L. 162, § 44

1931, 120, § 1	5 Allen, 87, 279	111 Mass. 132.	210 Mass. 299.
12 Mass. 525	7 Allen, 491.	112 Mass. 269.	224 Mass. 145.
4 Pick. 465	12 Allen, 1	121 Mass. 220.	226 Mass. 231.
20 Pick. 378	99 Mass. 136	129 Mass. 46	228 Mass. 236.
12 Cush. 342.	103 Mass. 287.	131 Mass. 389.	229 Mass. 231.
7 Gray, 167.	106 Mass. 100.	134 Mass. 249.	259 Mass. 578.
16 Gray, 89.	108 Mass. 277.	139 Mass. 59	266 Mass. 50, 310.
2 Allen, 334.	109 Mass. 179.	147 Mass. 15	268 Mass. 467.
3 Allen, 587.	110 Mass. 88.	169 Mass. 216.	272 Mass. 46, 142.

1 SECTION 46. When personal service is required of any citation issued
 2 by a probate court, the court may direct such service to be made by
 3 registered mail addressed to the party entitled thereto at his post office
 4 address. Further service may be ordered.

Service of
 citation by
 registered mail.
 1915, 24.

1 SECTION 47. The notice required in any proceeding in a probate court
 2 may be dispensed with if all parties entitled thereto assent in writing to
 3 such proceeding or waive notice.

Waiver of
 notice.
 1874, 346, § 3

P. S. 156, § 37.	R. L. 162, § 45.	151 Mass. 595.
------------------	------------------	----------------

1 SECTION 48. In appraisals of property, the judge or register may,
 2 except as provided in section six of chapter one hundred and ninety-five,
 3 appoint only one appraiser if in his opinion the nature of the property
 4 makes it advisable.

Appointment
 of one ap-
 praiser.
 1896, 210,
 1897, 147.

R. L. 162, § 46.	1930, 213, § 2.
------------------	-----------------

Selection of newspapers for notices. 1851, 138. G. S. 117, § 29. P. S. 156, § 38. R. L. 162, § 47. 1905, 229. 209 Mass. 111.

SECTION 49. Parties to probate proceedings may select the newspapers in which the notices ordered upon their petitions shall be published, preference to be given to a newspaper, if any, published in the town where the deceased last dwelt, unless, in the judgment of the register, the interests of all parties require publication in some other locality; but the court may order the notice published in one other newspaper.

Receipts, etc., to executors, etc., may be recorded. 1864, 93. P. S. 156, § 39. 1898, 527, § 2. R. L. 145, § 41; 162, § 48. 1910, 95. 1915, 23.

SECTION 50. A paper or instrument, discharging a claim or purporting to acknowledge the performance of a duty or payment of money for which an executor, administrator, guardian, conservator, trustee or receiver is chargeable or accountable in a probate court, shall, upon the request of a party interested, be recorded in the registry of said court; and the registers of probate in their respective counties shall enter, record, index and certify any original paper or instrument offered as aforesaid, and shall receive for such services like compensation as registers of deeds would be entitled to demand for like services. Such compensation shall be paid by the person leaving such paper or instrument for record at the time of leaving it.

Copy of certain papers without charge. 1823, 141, § 3. R. S. 83, § 53. G. S. 117, § 30. P. S. 156, § 40. R. L. 162, § 49.

SECTION 51. A register shall make without charge one certified copy of any will proved, inventory returned, account settled, partition of land, assignment of dower or curtesy, and of any order or decree of the court, and shall deliver such copy upon demand to the executor, administrator, guardian, conservator, trustee, receiver, widow, heir or other person principally interested.

Original will may be taken from registry. 1876, 165. P. S. 156, § 41. R. L. 162, § 50. 1919, 17; 274, § 1.

SECTION 52. The probate court in which a will has been duly proved, allowed and recorded may, after the expiration of twenty days within which an appeal may be taken from the decree admitting such will to probate, upon the petition of the executor or of a legatee named in such will, or of any person interested in the estate of the testator, and after notice and a hearing, permit the original will, if it appears necessary, to be taken from the files of such court to establish the right or title of such executor, legatee or person to the estate of the testator in any foreign country.

Court rooms, rooms for record, etc., to be provided. 1823, 141, § 4. R. S. 83, § 54. G. S. 117, § 31. 1872, 125. 1876, 234, § 1. P. S. 156, § 42. R. L. 162, § 51.

SECTION 53. County commissioners shall provide and maintain suitable rooms for the use of the probate courts, ample fireproof rooms and suitable alcoves, cases and boxes for the safe keeping of all records, files, papers and documents belonging to the several registries of probate, and shall also provide all books necessary for keeping the records, and all printed blanks and stationery used in probate proceedings.

Same subject. 1876, 234, § 2. P. S. 156, § 43. R. L. 162, § 52.

SECTION 54. If in the opinion of a justice of the supreme judicial court such fireproof rooms are insufficient, he shall, upon application of the judge or register of probate of the county, certify the need of additional accommodations to the county commissioners of such county, and they shall forthwith provide such additional fireproof rooms and other necessary accommodations.

Preservation of dockets, etc. 1891, 225. R. L. 162, § 53. 1 Op. A. G. 443.

SECTION 55. If in the judgment of the county commissioners, public convenience so requires, they may, at the county's expense, cause the files and records of the probate courts, except in the county of Suffolk, to be rearranged, indexed and docketed, worn or defaced dockets renewed

5 and the indexes consolidated, under the direction and supervision of the
6 registers of said courts.

1 SECTION 56. The expense of recording probate proceedings in Suf- Expense of recording probate
2 folk county, not exceeding forty-five hundred dollars in any one year, proceedings in
3 shall be paid by said county, upon the official certificate of the register, Suffolk
4 countersigned by a judge of the probate court for said county, in the 1875, 238, § 2
5 amounts and to the persons named in such certificate. P. S. 156, § 44.
1884, 118

1887, 217.

1893, 422.

R. L. 162, § 54.

1 SECTION 56A. Any judge of a probate court may appoint a guardian Investigations.
2 ad litem to investigate the facts in any proceeding pending in said court 1923, 432
3 relating to or involving questions as to the care, custody or maintenance
4 of minor children and as to any matter involving domestic relations
5 except those for the investigation of which provision is made by section
6 sixteen of chapter two hundred and eight. Said guardian ad litem shall,
7 before final decree in such proceeding, report in writing to the court the
8 results of the investigation, and such report shall be open to inspection
9 to all the parties in such proceeding or their attorneys. The compensa-
10 tion shall be fixed by the court and shall be paid by the county where the
11 proceeding is held, together with any expenses approved by the court,
12 upon certificate by the judge to the county treasurer. The state police,
13 local police and probation officers shall assist the guardian ad litem so
14 appointed, upon his request.

SESSIONS OF THE COURTS.

1 SECTION 57. The judge of a probate court may keep order in court, To maintain
2 and may punish any contempt of his authority. order and
1783, 46, § 1. R. S. 83, § 10. P. S. 156, § 45. 114 Mass. 230. punish for
1817, 190, § 1. G. S. 117, § 33. R. L. 162, § 55. 260 Mass. 369. contempt.

1 SECTION 58. The probate courts shall always be open, except on Courts always
2 Sundays and legal holidays, for hearings, matters in equity, proceedings open.
3 in contempt and for making orders and decrees in matters before them; Const. pt 2,
4 but the times of hearings shall be discretionary with the judges of said c. 3, art 4
5 courts. (Const. Rev. art. 142.)
1895, 215.

1901, 61.

R. L. 162, § 56.

1 SECTION 59. A judge of a probate court may adjourn court as Adjournment
2 occasion requires; and if he is absent at the time appointed for holding 1811, 139
3 court, the register shall adjourn it as he may consider necessary or as the 1829, 110, § 2.
4 judge may order. The register may also adjourn court when the office R. S. 83, § 3.
5 of judge is vacant. 1836, 41
G. S. 117, § 34
P. S. 156, § 46

R. L. 162, § 57.

1 SECTION 60. If the regular time for holding a probate court occurs No courts on
2 on a legal holiday or on the day of a state election, the court shall be held, holidays or
3 and all notices, citations, orders and other papers which would otherwise election days.
4 be made returnable at said regular time shall be made returnable on the 1884, 141.
5 next secular day thereafter. R. L. 162, § 58

1 SECTION 61. No court shall be held by adjournment or otherwise Court not to
2 unless the register, assistant register or a temporary register is present. be held without
1884, 118. register, etc.
R. S. 83, § 20. G. S. 117, § 35. P. S. 156, § 47. R. L. 162, § 59.

When and where courts are held.

SECTION 62. Probate courts shall be held at the following times and in the following towns, at such places therein as the judges shall designate:

Const. pt 2, c. 3, art. 4	1817, 190, § 3	P. S. 156, § 48
(Const. Rev. art. 112)	R. S. 83, §§ 2, 55, 56.	R. L. 162, § 60.
1719-20, 10, § 8	G. S. 117, § 36.	

For the county of — 3

Barnstable, at Barnstable, the second and fourth Tuesday of each month except July and August, and the second Tuesdays of July and August. 4 5 6

1867, 307	1877, 94, § 1	R. L. 162, § 60.
1868, 196	P. S. 156, § 48.	1917, 38
1869, 277.	1893, 343.	

Berkshire, at Pittsfield, on each Tuesday of each month except August and November, and on the third Tuesday of August, on the Wednesday next after the first Monday in November and on each Tuesday in November after said Wednesday. 7 8 9 10

1869, 60, § 1.	P. S. 156, § 48	1923, 325, § 1; 483.
1872, 202	R. L. 162, § 60.	1931, 28, § 1.

Bristol, at Fall River, the first Friday of each month except August; at New Bedford, the second Friday of each month except July, and except also that in August it shall be held on the first Friday; at Taunton, the third Friday of each month except July and August; at Attleboro, the fourth Fridays of January, March, May, June, September and November. 11 12 13 14 15 16

1916, 73.	1918, 123.
-----------	------------

Dukes, at Edgartown, the third Tuesdays of January and July, and the first Tuesdays of March and December; at Vineyard Haven, the third Tuesday of April and the first Tuesday of September; at West Tisbury, the first Tuesday of June and the third Tuesday of October. 17 18 19 20

R. L. 162, § 60.	1922, 257.
------------------	------------

Essex, at Salem, the first, third and fifth Mondays of each month except August, and the first Monday of August; at Lawrence, the second Monday of each month except August; at Newburyport, the fourth Monday of each month except April, August and October; at Haverhill, the fourth Mondays of April and October. 21 22 23 24 25

1908, 218.

Franklin, at Greenfield, the first Tuesday of each month except November, and the third Tuesday of each month except August; and at least four adjourned sessions shall be held at Orange in each year. 26 27 28

P. S. 156, § 48.	1898, 218.	R. L. 162, § 60.
1887, 46.	1901, 259.	1919, 43.

Hampden, at Springfield, every Wednesday of each month except the fourth Wednesdays of January, March, May, July, September and November and the first, second, fourth and fifth Wednesdays of August; at Holyoke, the fourth Wednesdays of January, March, May, July, September and November. 29 30 31 32 33

1884, 294	1905, 79	1930, 112, § 1.
R. L. 162, § 60.	1910, 262.	

Hampshire, at Northampton, the first Tuesday of each month and the third Tuesdays of February, April, May, October and December; at Amherst, the third Tuesdays of January, March and November; and at Ware, the third Tuesdays of June and September. 34 35 36 37

P. S. 156, § 48.	1886, 145.	R. L. 162, § 60.	1922, 41.
------------------	------------	------------------	-----------

38 Middlesex, at Cambridge, every Monday, every Tuesday except the
 39 third Tuesday of each month, and every Wednesday, Thursday and
 40 Friday, between the second Monday of September and the fourth Tues-
 41 day of July, both dates inclusive, and the third Thursday of August; at
 42 Lowell, the third Tuesday of each month except August.

1868, 213. 1880, 182. 1907, 273. 1919, 7.
 P. S. 156, § 48. R. L. 162, § 60. 1914, 134. 1929, 112.

Middlesex.
 R. S. 83, § 55.
 1848, 210.
 1857, 78.
 G. S. 117, § 36.
 1866, 116.
 1867, 220, § 2.

43 Nantucket, at Nantucket, the Thursday next after the second Tues-
 44 day of each month.

1838, 26. G. S. 117, § 36. P. S. 156, § 48.
 1843, 4. 1863, 146. R. L. 162, § 60.
 1859, 161.

Nantucket.
 R. S. 83, § 55.

45 Norfolk, at Dedham, the first and third Wednesdays, at Quiney, the
 46 second Wednesday, and at Brookline, the fourth Wednesday of each
 47 month except August. The county commissioners of said county may
 48 provide, furnish and maintain suitable rooms and accommodations in
 49 Boston for the use of the probate court for said county for hearings and
 50 trials of such contested cases in said court as the parties thereto or their
 51 counsel desire to have heard and tried in Boston.

R. L. 162, § 60.

Norfolk.
 1830, 117.
 R. S. 83, § 55.
 1841, 127.
 §§ 1, 2.
 G. S. 117, § 36.
 1868, 214.
 1870, 193.
 P. S. 156, § 48.
 1898, 201.
 1900, 319.

52 Plymouth, at Plymouth, the second Monday of each month except
 53 August; at Broekton, the fourth Monday of each month except July.

1850, 204, §§ 1, 2. 1863, 245. P. S. 156, § 48.
 1852, 249. 1868, 169. 1887, 63.
 1855, 320. 1870, 37. 1889, 237; 269.
 1856, 122, § 1. 1881, 203. R. L. 162, § 60.
 G. S. 117, § 36.

Plymouth.
 R. S. 83, § 55.
 1845, 73.

54 Suffolk, at Boston, each Thursday except the first, second, fourth and
 55 fifth Thursdays of August.

1838, 54. 1878, 127. P. S. 156, § 48.
 G. S. 117, § 36. 1881, 115. R. L. 162, § 60.
 1873, 375. 1892, 202.

Suffolk.
 R. S. 83, § 55.

56 Worcester, at Worcester, each Tuesday of every month except the first,
 57 second, fourth and fifth Tuesdays of August.

R. S. 83, § 55. 1854, 318. P. S. 156, § 48.
 1836, 231. 1856, 162. 1893, 348.
 1837, 141. G. S. 117, § 36. R. L. 162, § 60.
 1846, 128. 1869, 253. 1908, 227.
 1848, 134, 255, §§ 1, 2. 1878, 128. 1929, 183.

Worcester.
 1822, 2.

1 SECTION 63. The judges of said courts, as often as changes are made
 2 in the places designated for holding courts, shall give sufficient notice
 3 thereof, either by advertisement in some newspaper or by posting the
 4 same in public places.

Changes in
 places of
 holding courts.
 1719-20.
 10, § 8.

1817, 190, § 3. G. S. 117, § 36. R. L. 162, § 60.
 R. S. 83, § 57. P. S. 156, § 48.

CHAPTER 216.

COURTS OF INSOLVENCY.

SECT.

GENERAL PROVISIONS.

1. Courts of record, etc.
2. Courts of insolvency to be courts of superior jurisdiction, etc.
3. Jurisdiction.
4. Petitions filed in more than one county.
5. Equity jurisdiction.
6. Enforcement of orders in equity.
7. Courts, where held.
8. Approval of compositions, etc.
9. Contempt, administering of oaths, etc.
10. Proceedings matters of record. Evidence.
11. Docket. Duties of register.
12. Warrants, etc., when returnable, etc.
13. Selection of newspapers for notices.
14. Counties to provide court rooms, etc.
15. Expenses.
16. Rules, etc.
17. Jurisdiction of supreme judicial court.
18. Rules as to notice.
19. Appearance by attorney.

PETITION BY DEBTOR. FIRST MEETING.

20. Petition.
21. Warrant to messenger.
22. Messenger to receive property.
23. Delivery of property and schedule by debtor.
24. Late schedule.
25. Sale of perishable property.
26. Messenger to commence action by order of court.
27. Delivery of schedule of creditors, etc., by debtor to register.
28. Late schedules.
29. First meeting.
30. Death of debtor.

DEBTS AND PROOF OF CLAIMS.

31. Claims provable.
32. Equitable claims.
33. Leases, etc.
34. Set-off.
35. Proof of claim by assignee thereof.
36. Mortgage, pledge or lien.
37. Mortgage recorded more than four months after date.
38. Allowance for legal services.
39. Claims to be proved on oath.
40. Oath by attorney.
41. Before whom oath may be made.
42. Postponement of claims.
43. Claims not to be allowed.

SECT.

44. Allowance and expunging of claims.
45. Appeal.
46. Proceedings.
47. Judgment on appeal. Costs.
48. Evidence of withdrawal of claim.

ASSIGNMENT AND ASSIGNEE.

49. Choice of assignee.
50. Bond of assignee.
51. Assignment by judge.
52. Record of assignment and notice.
53. Agent of non-resident assignee.
54. Effect of assignment.
55. Attachments, how preserved.
56. Assignee to demand and receive property and keep accounts.
57. Inventory.
58. Assignee to account for property at appraised value.
59. Assignee to commence and prosecute actions, etc.
60. Limitation of actions.
61. Drafts, etc., assigned within six months not to be offset.
62. Property to be kept separate by assignee.
63. Temporary investment of property, when.
64. Carrying on of business.
65. Notice of dividends and meetings.
66. Compensation of assignee.
67. Submission to arbitration.
68. Sale of perishable property pending dispute of title.
69. Accounts.
70. Removal of assignee by creditors.
71. Removal by court upon complaint.
72. Other grounds of removal.
73. Resignation of assignee.
74. Filling of vacancies.
75. Effect of resignation, etc.
76. Vesting of estate upon death, etc.
77. Former assignee to execute deeds, etc.
78. Preferred creditors not to vote for, etc.
79. Penalty for neglect, etc.
80. Appointment upon death of assignee with accounts unsettled.
81. Distribution.

EXAMINATION OF DEBTOR.

82. Examination of debtor and other persons.
83. Examination of debtor if in prison.
84. Examination of debtor if ill or unable to attend.

SECT.

- 85. Examination of debtor if out of the commonwealth.
- 86. Debtor to do all necessary acts.
- 87. Failure to execute instruments, etc.

SECOND AND THIRD MEETINGS. OATH AND DISCHARGE.

- 88. Second meeting. Oath.
- 89. Oaths out of court.
- 90. Order of meeting by court.
- 91. Order of meeting by register on order of court.
- 92. Third meeting. Certificate of discharge.
- 93. Effect of discharge. How pleaded.
- 94. Discharge from imprisonment.
- 95. Discharge from arrest and property exempt from attachment, etc.
- 96. Debts not discharged.
- 97. Action on claim omitted from schedule.
- 98. Persons jointly liable not released.
- 99. Discharge by assent of creditors.
- 100. Discharge upon subsequent insolvency.
- 101. Assent of creditor notwithstanding appeal.
- 102. Preferred creditors not to vote.
- 103. Discharge of debtor failing by accident, etc., to take oath.
- 104. Appeal on question of discharge.
- 105. Proceedings.

MATTERS AVOIDING DISCHARGE.

- 106. Forfeiture of discharge by fraud of creditor.
- 107. Discharge when books of account not kept.
- 108. Discharge avoided by fraudulent preference.
- 109. Discharge, how contested.

PREFERENCES.

- 110. Fraudulent payments.
- 111. Fraudulent sales, etc.
- 112. Application of preceding sections.

ALLOWANCE AND SURPLUS.

- 113. Allowance to debtor.
- 114. Allowance, how paid in case of death.
- 115. Surplus to be returned to debtor.

ACCOUNTS AND DIVIDENDS.

- 116. Accounts.
- 117. Dividend.
- 118. Preferred claims.
- 119. Allowance to petitioning creditor for counsel fees, etc.
- 120. Wages due to an operative from an operative working under contract.
- 121. Reservation for absent creditors.
- 122. Unclaimed dividends.
- 123. Unclaimed deposits.

SECT.

- 124. Second dividend. Assignee's accounts.
- 125. Sale, etc., of outstanding debts, etc.
- 126. Actions on claims sold by assignees. Costs.
- 127. Further dividends.
- 128. Former dividends not to be disturbed.

PETITION BY CREDITORS.

- 129. Petition by creditors.
- 130. Notice of petition, etc.
- 131. Warrant. Proceedings thereon.
- 132. Stay of proceedings.

PETITION BY CREDITORS OF INSANE PERSON.

- 133. Petition by creditors of insane person.
- 134. Schedules.
- 135. Debtor, after recovering from insanity, may apply for discharge.

CONCEALMENT OF PROPERTY.

- 136. Concealment, etc., of property.

PARTNERSHIPS.

- 137. Petition by or against partnership.
- 138. Choice of assignee. Joint and separate property.
- 139. Limited partnerships.
- 140. Separate allowance to each partner.
- 141. Certificate of discharge to each partner.
- 142. Proof of partnership debts assumed by one or more partners, etc.

CORPORATIONS.

- 143. Petition by corporations.
- 144. Claims provable before last dividend.
- 145. Schedules. Duties, etc., of officers.
- 146. Powers and duties of assignee.
- 147. Land damages preferred claims.
- 148. Void preferences.
- 149. Petition by creditors.

COMPOSITION.

- 150. Composition.
- 151. Proposal for composition.
- 152. Stay of proceedings by court, etc.
- 153. Accounts and papers open to examination.
- 154. Provisions applicable.
- 155. Effect of notice of proposal.
- 156. Hearing and assent of creditors.
- 157. Confirmation of composition. Effect.
- 158. Unproved claims.
- 159. Disposition of property upon discharge.
- 160. Return of deposits.
- 161. Effect of failure of composition.
- 162. Stockholder's liability not affected.
- 163. Effect of composition upon pending action.

- SECT.
 161. Proceedings.
 165. Schedule of officers, etc.
 166. Effect of discharge upon attachments.
 167. Amendments and orders.
 168. Penalty for placing fictitious debt upon schedule.
 169. Penalty for proving fictitious debt.
- FEEES AND COSTS.
 170. Fee for receiving petition, etc.
 171. Accounts of register.

- SECT.
 172. No fees in composition cases, when.
 173. Messenger's fees.
 174. Costs if attachment dissolved.
 175. Costs, how paid.
- VACATING PROCEEDINGS.
 176. Vacating proceedings.
- RETURNS.
 177. Returns by registers.

GENERAL PROVISIONS.

Courts of record, etc.
 1856, 284, § 1.
 1858, 93.
 G. S. 118, § 1.

SECTION 1. Courts of insolvency shall be courts of record, and the judge and register of probate and insolvency for each county shall be the judge and register of the court of insolvency therefor.

P. S. 157, § 1.

R. L. 163, § 1.

1
2
3

Courts of insolvency to be courts of superior jurisdiction, etc.
 1894, 164, § 3.
 R. L. 163, § 2.
 1902, 544, § 25.
 188 Mass. 186.
 204 Mass. 310.
 207 Mass. 91.
 211 Mass. 409.
 225 Mass. 12.
 226 Mass. 258.

SECTION 2. Courts of insolvency shall be courts of superior and general jurisdiction with reference to all cases and matters in which they have jurisdiction, and it shall be unnecessary for any order, decree, sentence, warrant, writ or process which may be made, issued or pronounced by them, to set out any adjudication or circumstances with greater particularity than would be required in other courts of superior and general jurisdiction, and the like presumption shall be made in favor of proceedings of the courts of insolvency as would be made in favor of proceedings of other courts of superior and general jurisdiction.

1
2
3
4
5
6
7
8
9

Jurisdiction.
 1856, 284, § 2.
 1858, 93, § 10.

SECTION 3. Courts of insolvency shall have original jurisdiction in their respective counties of cases of insolvency under this chapter.

G. S. 118, § 2.

P. S. 157, § 2.

R. L. 163, § 3.

1
2

Petitions filed in more than one county.
 1893, 405, § 5.
 R. L. 163, § 4.

SECTION 4. If a petition in insolvency is within the jurisdiction of more than one court, the court in which it is first filed shall have exclusive jurisdiction thereof if a warrant is issued, and proceedings upon a petition filed in another county shall be stayed until the court in which the petition was first filed determines whether a warrant shall be issued.

1
2
3
4
5

Equity jurisdiction.
 1894, 164, § 1.
 R. L. 163, § 5.
 167 Mass. 10.

SECTION 5. Courts of insolvency shall have equity jurisdiction, concurrent with the supreme judicial court and the superior court, of all cases and matters pending in said courts of insolvency, and such jurisdiction may be exercised upon petition, according to the usual course of proceedings in courts of insolvency.

1
2
3
4
5

Enforcement of orders in equity.
 1894, 164, § 2.
 R. L. 163, § 6.

SECTION 6. Courts of insolvency shall have like power to enforce orders, decrees and sentences made by them in the exercise of any authority or jurisdiction conferred upon them and to punish contempts of their authority as the supreme judicial court has in like cases.

1
2
3
4

Courts, where held.
 1838, 163, § 15.
 1844, 178, § 16.
 1846, 168, § 2.
 1856, 284, § 3.
 13.

SECTION 7. Courts of insolvency shall be held at the shire towns of the county at times appointed by the court, and may be held at such other places as will best promote the convenience of the public. They shall always be open, except on Sunday and legal holidays, for hearings,

1
2
3
4

5 matters in equity, contempt proceedings and for making orders and
 6 decrees in all matters before them; but the times of all hearings shall
 7 be discretionary with the judges of said courts. The judge or, in his
 8 absence or in case of a vacancy in that office, the register may adjourn
 9 any court or meeting as occasion requires, and all acts lawfully done at
 10 an adjourned meeting shall have like effect as if done at the original
 11 meeting.

1858, 93, § 11.
 G. S. 118,
 §§ 3, 8,
 P. S. 157,
 §§ 3, 8,
 1893, 215,
 1901, 61,
 R. L. 163, § 7,
 7 Met. 431,
 4 Cush. 584,
 8 Gray, 193.

1 SECTION 8. The judge may approve compositions and assignees'
 2 bonds, approve or order sales, receive petitions, issue orders of notice
 3 and warrants and do such other official acts as are done as matters of
 4 course and do not require notice.

Approval of
 compositions,
 etc.
 1844, 178, § 2.
 1856, 284, § 4.
 G. S. 118, § 4.

P. S. 157, § 4. R. L. 163, § 8. 165 Mass. 317.

1 SECTION 9. The judge may keep order in his court and punish any
 2 contempt of his authority, administer oaths, issue commissions, compel
 3 the attendance of witnesses and the giving of evidence in like manner
 4 as the superior court; and may appoint necessary officers to attend upon
 5 the court to keep order therein and transact its business.

Contempt,
 administering
 of oaths, etc.
 1838, 163, § 13.
 1856, 284,
 §§ 7, 9,
 G. S. 118, § 5,
 P. S. 157, § 5.

R. L. 163, § 9.

1 SECTION 10. Proceedings in courts of insolvency shall be matters
 2 of record, and the assignment and certificate of discharge shall be re-
 3 corded in full. Other proceedings need not be so recorded, but shall be
 4 carefully numbered, filed and kept in the office of the register. Copies
 5 of all parts of the records and of records of prior proceedings in insolvency
 6 deposited in his office, certified by the register, shall be prima facie
 7 evidence of the facts therein stated.

Proceedings
 matters of
 record.
 Evidence.
 1838, 163, § 14.
 1858, 32,
 G. S. 118, § 6.
 P. S. 157, § 6.
 R. L. 163, § 10.
 6 Met. 518,
 5 Cush. 615.

6 Cush. 185, 362. 4 Allen, 77. 99 Mass. 64.
 10 Cush. 545. 5 Allen, 126. 130 Mass. 368.
 3 Gray, 252.

1 SECTION 11. Each register shall keep a docket with an alphabetical
 2 index of all cases in his court, in which he shall enter every case by its
 3 appropriate title and number with brief memoranda of all proceedings
 4 and papers filed therein. The docket, books, records, documents and
 5 papers in his office relative to insolvency shall at all reasonable times be
 6 open to public inspection. He shall make computations of dividends and
 7 orders of distribution, shall furnish to the assignee a certified copy of the
 8 schedules of creditors and assets filed in each case, and of the orders of
 9 distribution, and with each copy of an order of distribution a dividend
 10 sheet, without charge therefor. He may administer oaths in proceedings
 11 before the court, except the oath named in section eighty-eight.

Docket.
 Duties of
 register.
 1854, 329, § 3.
 1856, 284, § 13.
 1858, 32,
 141, § 5,
 G. S. 118, §§ 7,
 8, 10,
 1865, 259, § 2.
 P. S. 157,
 §§ 7-9,
 R. L. 163, § 11.

1 SECTION 12. Assignments, and processes issued by the court shall be
 2 under its seal, and shall be executed and obeyed throughout the com-
 3 monwealth; and any person to whom they are legally directed may serve
 4 them in any county. Warrants shall be returnable not less than ten nor
 5 more than sixty days from the date of issue.

Warrants, etc.,
 when return-
 able, etc.
 1848, 304, § 6.
 1856, 284,
 § 6,
 G. S. 118, § 11.
 P. S. 157, § 10.

R. L. 163, § 12.

1 SECTION 13. Parties to insolvency proceedings may select the news-
 2 papers where notices ordered upon their petitions shall be published, but
 3 the court may order the notice published in one other newspaper.

Selection of
 newspapers
 for notices.
 1851, 138,
 G. S. 118, § 12.

P. S. 157, § 11. R. L. 163, § 13.

Counties to provide court rooms, etc. 1856, 284, § 3. G. S. 118, § 13. P. S. 157, § 12. R. L. 163, § 14.

SECTION 14. Each county shall provide suitable court rooms and, in the town where the registry of probate and insolvency is situated, a suitable fireproof room where the records, books, documents and papers relative to the business of the court and the records in cases in insolvency shall be kept.

Expenses 1856, 284, § 23. G. S. 118, § 14. P. S. 157, § 13. R. L. 163, § 15.

SECTION 15. Expenses attending the sessions of the courts and the transaction of business therein, for blank books, records, blank forms and stationery necessary for the business of the courts shall be paid by the commonwealth.

Rules, etc. 1838, 163, § 18. 1851, 327, § 16. 1856, 284, § 10. G. S. 118, § 10. P. S. 157, § 15. § 15, 16.

SECTION 16. The judges or a majority of them shall, as provided in section thirty of chapter two hundred and fifteen, from time to time make rules and prescribe forms for their courts.

P. S. 157, §§ 14, 15. 1893, 372, § 1. R. L. 163, § 16.

Jurisdiction of supreme judicial court. 1838, 163, § 18. 1851, 327, § 16. G. S. 118, § 16. P. S. 157, § 15. 1894, 164, § 4. R. L. 163, § 17.

SECTION 17. The supreme judicial court shall have general superintendence and jurisdiction of cases arising under this chapter; and, except as otherwise provided, may, upon the bill, petition or other proper process of a party aggrieved, hear and determine the case as a court of equity.

- | | | | |
|------------------|--------------------|---------------------|---------------------|
| 4 Met. 392, 504. | 3 Gray, 239, 531. | 107 Mass. 79. | 152 Mass. 223. |
| 6 Met. 537. | 8 Gray, 316. | 129 Mass. 129. | 155 Mass. 400. |
| 8 Met. 19. | 9 Gray, 50, 355. | 131 Mass. 504. | 157 Mass. 33, 252. |
| 9 Met. 23. | 13 Gray, 564. | 132 Mass. 466. | 165 Mass. 582. |
| 1 Cush. 449. | 16 Gray, 137. | 138 Mass. 592. | 166 Mass. 379. |
| 2 Cush. 294. | 4 Allen, 545. | 139 Mass. 84. | 168 Mass. 100, 103. |
| 4 Cush. 448. | 5 Allen, 530. | 141 Mass. 283. | 171 Mass. 239. |
| 7 Cush. 183. | 6 Allen, 118, 560. | 142 Mass. 47. | 182 Mass. 208. |
| 10 Cush. 173. | 7 Allen, 57, 112. | 145 Mass. 366, 444. | 199 Mass. 116. |
| 11 Cush. 582. | 9 Allen, 197. | 150 Mass. 574. | 204 Mass. 432. |

Rules as to notice. 1890, 420, § 2. R. L. 163, § 18.

SECTION 18. The supreme judicial court and the courts of insolvency shall make rules requiring notice to be given to parties interested or their attorney of record of any motion, hearing or other proceeding before said courts.

Appearance by attorney. 1838, 163, § 15. G. S. 118, § 33. P. S. 157, § 34. 1890, 420, § 1. R. L. 163, § 19.

SECTION 19. A duly authorized attorney at law may enter his appearance as attorney for the party represented by him in any proceeding in a court of insolvency. Processes and notices served upon such attorney shall have like effect as if served upon the party whom he represents.

PETITION BY DEBTOR. FIRST MEETING.

Petition. 1838, 163, § 1. 1855, 363. 1858, 93, § 10. G. S. 118, § 17. 1881, 233. P. S. 157, § 16. 1893, 405, § 1. R. L. 163, § 20.

SECTION 20. An inhabitant of the commonwealth owing debts, contracted while such inhabitant, may file a petition in the court of insolvency for the county, if any, where he last resided or had a usual place of business for three consecutive months, otherwise in the court for the county where he resides or has a usual place of business, stating his inability to pay his debts and his willingness to assign his property for the benefit of his creditors, and praying that such proceedings may be had as are provided in this chapter.

Warrant to messenger. 1838, 163, § 1, 2. 1841, 124, § 1. 1844, 178, § 10. 1846, 168, § 4.

SECTION 21. If it appears to the satisfaction of the judge that the debts due from the petitioner amount to two hundred dollars or more, he shall forthwith sign and issue a warrant to the sheriff of the county or one of his deputies ordering him forthwith as messenger to take possession

5 of all property of the debtor not exempt from attachment, and of all his
 6 deeds, books of account and papers, and keep the same safely until the
 7 appointment of an assignee; to publish notice in such newspaper or news-
 8 papers as the warrant specifies, send written notice by mail or otherwise
 9 to all creditors upon the schedule furnished him by the debtor and to
 10 give such personal or other notice to any persons concerned as the war-
 11 rant orders. Such notice shall state that a warrant has issued against
 12 the property of the debtor; that the payment of any debts and the de-
 13 livery of any property belonging to such debtor, to him or for his use, and
 14 the transfer of any property by him are forbidden; that a meeting of
 15 the creditors of the debtor to prove their debts and choose one or more
 16 assignees of his property will be held at a court of insolvency to be held
 17 at a time and place stated in the warrant, not less than ten nor more than
 18 sixty days after the date of its issue.

1848, 304, § 6.
 1850, 319.
 1854, 329, § 4
 G. S. 118, § 18
 1879, 107
 P. S. 157, § 17.
 R. L. 163, § 21.
 2 Met. 258
 7 Cush. 136.
 13 Gray, 18.
 165 Mass. 317.

1 SECTION 22. The messenger shall forthwith demand and receive from
 2 the debtor and other persons all the property in his or their possession,
 3 ordered in the warrant to be assigned, with all deeds, books of account and
 4 papers of the debtor relative thereto.

Messenger
 to receive
 property.
 1838, 163, § 6.
 G. S. 118, § 19

P. S. 157, § 18 12 Met. 464. 8 Allen, 134.
 R. L. 163, § 22. 2 Cush. 48. 148 Mass. 69.

1 SECTION 23. Upon demand by the messenger under the preceding
 2 section, the debtor shall forthwith deliver to him such of the property
 3 and other things demanded as is in his possession or power, and shall
 4 disclose the situation of such portion thereof as is not in his possession.
 5 The debtor shall also, except as provided in the following section, within
 6 three days after the date of the warrant make on oath and deliver to the
 7 messenger a schedule, containing a full and true account of his creditors,
 8 with the residence of each, if known to the debtor, and the amount due
 9 to each, and the nature of each debt, whether founded on written security,
 10 account or otherwise, and also the true cause and consideration thereof,
 11 and a statement of any existing mortgage, pledge or other collateral
 12 security given for its payment.

Delivery of
 property and
 schedule by
 debtor
 1838, 163, § 6.
 1848, 304, § 8
 G. S. 118, § 20.
 1862, 179, § 1.
 P. S. 157, § 19.
 R. L. 163, § 23.
 8 Met. 75.
 8 Cush. 375.
 11 Cush. 442.
 137 Mass. 224.

1 SECTION 24. If by accident or mistake such schedule is not delivered
 2 to the messenger within said three days it shall be so delivered within
 3 such time thereafter as will enable the messenger to comply with the
 4 warrant, and such delay shall not affect the granting of a certificate of
 5 discharge unless caused by the debtor's default.

Late schedule.
 1886, 290.
 R. L. 163, § 24.

1 SECTION 25. If the court finds that the property of the debtor or any
 2 part thereof is perishable or likely to deteriorate in value before an as-
 3 signee can be appointed, it may order the same sold in such manner as it
 4 orders under the direction of the messenger who shall hold the funds
 5 received in place of the property sold.

Sale of perish-
 able property.
 1848, 304, § 15.
 G. S. 118, § 21.
 P. S. 157, § 20
 R. L. 163, § 25.

1 SECTION 26. After warrant has issued against the estate of an insol-
 2 vent debtor and before the appointment of an assignee, the judge may
 3 order the messenger to commence action for recovery of a debt due the
 4 debtor or do any other act which might be done by an assignee. The
 5 messenger shall thereupon in his own name commence and prosecute
 6 such action or do any other act so ordered as if he were assignee. If,

Messenger to
 commence
 action by order
 of court
 1862, 179, § 2
 P. S. 157, § 21.
 R. L. 163, § 26.

upon the appointment of an assignee, an action or proceeding commenced by the messenger has not been determined, the assignee may in his own name or in the name of the messenger with his consent prosecute it or otherwise proceed.

Delivery of schedule of creditors, etc., by debtor to register.
1838, 163, § 6.
1841, 124, § 2.
1854, 329, § 3.
G. S. 118, § 22.
1862, 179, § 1.
P. S. 157, § 22.

SECTION 27. The debtor shall, except as provided in the following section, within five days after the date of the warrant make on oath and deliver to the register a schedule of his creditors as provided in section twenty-three, and a schedule of all his property, with a description thereof, stating where situated, and all encumbrances thereon, with the date of each and the consideration thereof.

R. L. 163, § 27.

Late schedules.
1863, 71.
P. S. 157, § 23.
R. L. 163, § 28.

SECTION 28. If by accident or mistake such schedules are not delivered to the register within said five days they shall be so delivered before or at the first meeting of the creditors and such delay shall not affect the granting of a certificate of discharge unless caused by the debtor's default.

First meeting.
1838, 163, § 6.
1841, 124, § 2.
1848, 304, § 8.
1854, 329, § 3.
G. S. 118, § 22, 23.
P. S. 157, § 24.
R. L. 163, § 29.

SECTION 29. At the meeting held in pursuance of the notice, the messenger shall make return of the warrant and his doings thereon, and deliver to the register the schedule of creditors received from the debtor. If the court finds that the notice to creditors required by section twenty-one has not been given, it shall adjourn the meeting and order such notice.

Death of debtor.
1838, 163, § 5.
G. S. 118, § 24.
P. S. 157, § 25.

SECTION 30. If the debtor dies after the warrant has been issued, the proceedings shall be concluded in like manner and with like effect as if he had lived.

R. L. 163, § 30.

DEBTS AND PROOF OF CLAIMS.

Claims provable.
1838, 163, § 2.
3, 7, 12, 13.
G. S. 118, § 25.
P. S. 157, § 26.
R. L. 163, § 31.
3 Met. 61.
4 Met. 302.
7 Met. 348, 424, 435.
2 Cush. 173.
6 Cush. 537.
7 Cush. 592.
10 Cush. 476.
1 Gray, 305.
5 Gray, 574.
10 Gray, 600.
11 Gray, 400.
13 Gray, 15.
15 Gray, 274.
3 Allen, 22, 64.
5 Allen, 135, 163.
8 Allen, 314.
13 Allen, 294.
110 Mass. 345.
127 Mass. 242.
134 Mass. 69.
138 Mass. 111.
152 Mass. 596.
156 Mass. 515.
157 Mass. 33.

SECTION 31. Debts due and payable from the debtor at the time of the first publication of notice of issuing the warrant may be proved and allowed against his estate at any meeting; and debts at that time absolutely due, although not payable, may be proved and allowed as if payable, with a discount or rebate of interest if no interest is payable by the contract. Money due on a bottomry or respondentia bond or policy of insurance may be proved and allowed, if the contingency or loss happens before the making of the first dividend, in like manner as if it had happened before the first publication of the notice. If the debtor is liable for a debt by reason of having made or endorsed a bill of exchange or promissory note before said first publication, or of the payment by a party to a bill or note of a part of the money secured thereby, or of payment of an amount by a surety of the debtor in a contract, if the payment is made before the making of the first dividend, such debt may be proved and allowed as if due and payable by the debtor before the first publication. All demands against the debtor for or on account of goods or chattels wrongfully obtained, taken or withheld by him, may be proved and allowed as debts, up to the value thereof.

166 Mass. 379.
174 Mass. 470.

177 Mass. 224.
185 Mass. 178.

220 Mass. 486.
224 Mass. 347.

1 SECTION 32. An equitable liability of an insolvent debtor may be proved and allowed against his estate in like manner and subject to like conditions as a legal claim.

Equitable claims.
1884, 293.

R. L. 163, § 32.	141 Mass. 283.	158 Mass. 388.
S. Allen, 581.	143 Mass. 326.	177 Mass. 224.

1 SECTION 33. If any of the property of a debtor consists of a lease or written agreement, whereby he is liable for the rent therein reserved or for the use and occupation of premises as therein stipulated, the assignee at any time may, and upon written request by the debtor, or by the lessor or those having his estate in the premises shall, within twenty days after such request, by a writing filed in the case, elect to accept and hold under said lease or agreement or to disclaim it. If he elects to disclaim, such lease or written agreement shall be considered to have been surrendered as of the day when said disclaimer was so filed. If the debtor is discharged, he shall be discharged from all liability under or by reason of said lease or agreement, whether the assignee does or does not so disclaim it; and the lessor or those having his estate in the premises may prove any damages, caused by such surrender, as a debt against the estate of the debtor; but this section shall not apply to leases or written agreements as aforesaid in force on the twenty-second day of 16 April in the year eighteen hundred and seventy-nine.

Leases, etc.
1879, 245, § 1.
P. S. 157, § 26.
R. L. 163, § 33.
139 Mass. 168.
538.
140 Mass. 73.
146 Mass. 109.
155 Mass. 389.
260 Mass. 466.
245 U. S. 597.

1 SECTION 34. Mutual credit or mutual debts between the debtor and a creditor shall be set off and the balance allowed or paid.

Set-off.
1838, 163, § 3.

G. S. 118, § 26.	10 Met. 194.	7 Gray, 425.	137 Mass. 262.
P. S. 157, § 27.	5 Cush. 194.	3 Allen, 111.	138 Mass. 330.
R. L. 163, § 34.	3 Gray, 257.	4 Allen, 367.	148 Mass. 396.
6 Met. 537.	4 Gray, 284.	131 Mass. 19.	223 Mass. 553.

1 SECTION 35. The assignee, by written assignment of a non-negotiable legal chose in action, may prove a claim in insolvency, in his own name, subject to all defences and rights of counter-claim, recoupment or set-off to which the debtor would have been entitled if the claim had been proved in the name of the assignor.

Proof of claim by assignee thereof.
1897, 402.
R. L. 163, § 35.

1 SECTION 36. A creditor having a mortgage or pledge of property of the debtor, or a lien thereon, to secure payment of a debt claimed by him, may require such property to be sold, and the proceeds applied toward payment of his debt, and he shall be admitted as a creditor for the residue. The sale shall be made in such manner as the court orders and the creditor and assignee shall execute necessary and proper deeds and papers. If the creditor does not require such sale and join in the conveyance, he may release and deliver to the assignee the property held as security, and be admitted as a creditor for all of his debt. If the property is not so sold or released and delivered the creditor shall not prove any part of his debt.

Mortgage, pledge or lien.
1838, 163, § 3.
G. S. 118, § 27.
P. S. 157, § 28.
R. L. 163, § 36.
6 Met. 305.
8 Met. 19.
2 Cush. 294.
3 Cush. 409.
4 Cush. 99.
4 Gray, 553.
6 Gray, 523.
9 Gray, 55.
11 Gray, 134, 261.
12 Gray, 27.
15 Gray, 381, 453.

9 Allen, 175.	134 Mass. 291.	143 Mass. 376, 455.
130 Mass. 132.	137 Mass. 412.	150 Mass. 317.
133 Mass. 71, 534.	138 Mass. 515.	175 Mass. 547.

1 SECTION 37. A mortgage of land recorded more than four months after its date shall not be valid against an assignee of the estate of the mortgagor if insolvency proceedings are begun within one year from the recording of the mortgage.

Mortgage recorded more than four months after date.

1888, 393.	R. L. 163, § 37.	163 Mass. 85.	172 Mass. 384.
------------	------------------	---------------	----------------

Allowance for legal services. 1889, 420. R. L. 163, § 38. 150 Mass. 343.

SECTION 38. A mortgage or pledge of property, or payment of money given or made by an insolvent debtor for legal services rendered or to be rendered in, or in contemplation of, insolvency proceedings, shall be valid for such amount as the court allows. An appeal from the decision of said court shall be allowed in the manner provided in section forty-five.

Claims to be proved on oath. 1838, 163, § 4. 1848, 304, § 14. 1851, 189, § 1; 349, § 1. 1852, 189, §§ 1, 2. 1856, 284, § 35. G. S. 118, § 28. P. S. 157, § 29. R. L. 163, § 39. 8 Allen, 581. 139 Mass. 84. 147 Mass. 122.

SECTION 39. No debt shall be proved or allowed unless the creditor, or, if he resides in a foreign country and the debt is founded on a contract made by the debtor with the consignee or agent of the creditor residing in the United States, such consignee or agent makes oath in substance as follows:

I, _____, do swear that _____, of _____, by (or against) whom proceedings in insolvency have been instituted, at and before the date of such proceedings was and still is justly and truly indebted to me in the sum of _____, for which sum or any part thereof I have not, nor has any other person to my use, to my knowledge or belief, received any security or satisfaction whatever, beyond what has been disposed of agreeably to law. And I do further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case. And I do further swear that I have not directly or indirectly made or entered into any bargain, arrangement or agreement, express or implied, to sell, transfer or dispose of my claim, or any part of my claim, against said debtor, nor have directly or indirectly received or taken or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive directly or indirectly any money, property, or consideration whatsoever to myself, or to any person or persons to my use or benefit, under or with any understanding or agreement, express or implied, whereby my vote for assignee or my assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced or controlled.

No claim shall be allowed unless all the statements set forth in the oath are true.

Oath by attorney. 1852, 189, §§ 1, 2. G. S. 118, § 29. P. S. 157, § 30. R. L. 163, § 40.

SECTION 40. If the creditor is disabled by absence from the commonwealth, illness or other cause from proving his claim, the above oath may be made by his agent or attorney testifying to the best of his knowledge and belief; but the court may require further proof of the statements therein.

Before whom oath may be made. 1838, 163, § 4. 1858, 93, § 9. G. S. 118, § 30. 1879, 245, § 2. 1880, 246, § 1. P. S. 157, § 31. 1899, 178, § 4. R. L. 163, § 41. 3 Gray, 113.

SECTION 41. The oath may be made within the commonwealth before a justice of the peace, notary public or special commissioner and, without the commonwealth, before a justice of the peace, notary public or commissioner for Massachusetts, and, if the creditor is in a foreign country, before an ambassador, minister, consul or vice-consul of the United States. But the court may at any time require the affiant to appear personally before it to be further interrogated on oath. The debtor and any party proving a debt may be examined on oath in presence of the judge on all matters relative thereto.

Postponement of claims. 1856, 284, § 33. G. S. 118, § 31. P. S. 157, § 32. R. L. 163, § 42. 16 Gray, 137.

SECTION 42. If a claim is presented for proof before the election of an assignee, and the court is of opinion that the validity or right of such claim ought to be investigated by the assignee, it may postpone proof of the claim till after the assignee is chosen.

1 SECTION 43. A person who has accepted a preference, having reason-
 2 able cause to believe that it was made or given by the debtor contrary
 3 to any provision of this chapter, shall not prove the debt or claim on
 4 account of which such preference was made or given, nor receive a divi-
 5 dend thereon.

Claims not to
 be allowed.
 1838, 163, § 10.
 1856, 284, § 32.
 G. S. 118, § 32.
 P. S. 157, § 33.
 R. L. 163, § 43

172 Mass. 227.

177 Mass. 257.

1 SECTION 44. The court shall allow all debts proved and shall cause
 2 a list thereof to be made and certified by the register. It may upon
 3 application by the assignee, a creditor, or the debtor, examine on oath
 4 any person who has made proof of a claim and may summon any person
 5 to give evidence relative thereto, and may alter or expunge such claim if
 6 the evidence shows it to be founded in whole or in part in fraud, illegality
 7 or mistake.

Allowance and
 expunging of
 claims
 1808, 163, § 2
 G. S. 118, § 3.5.
 1880, 246, § 9.
 P. S. 157, § 34, 35.
 R. L. 163, § 44.
 138 Mass. 592
 145 Mass. 444.

165 Mass. 582.

190 Mass. 507.

1 SECTION 45. A supposed creditor whose claim is wholly or in part
 2 rejected or an assignee who is dissatisfied with the allowance of a claim
 3 may appeal from the decision to the superior court; but no appeal shall
 4 be allowed unless claimed and notice thereof given to the register, to be
 5 entered with the record of the proceedings, and also to the assignee or
 6 creditor, as the case may be, within ten days after the decision appealed
 7 from. The appeal shall be entered at the return day of the superior court
 8 for the county next after the expiration of fourteen days from the time
 9 of claiming it. If the appellant in writing waives his appeal before the
 10 entry thereof, proceedings may be had in the court of insolvency as if
 11 no appeal had been taken.

Appeal.
 1838, 163, § 4.
 G. S. 118, § 34.
 P. S. 157, § 36
 1885, 384, § 5.
 R. L. 163, § 45.
 2 Cush. 371.
 4 Cush. 270.
 5 Cush. 615.
 6 Cush. 28.
 1 Gray, 584.
 11 Gray, 184.
 16 Gray, 137.
 1 Allen, 403
 138 Mass. 592.
 141 Mass. 509.
 163 Mass. 26,
 295.

165 Mass. 582.

1 SECTION 46. Upon the entry of an appeal the appellant shall file in
 2 court a statement of his claim substantially as in a declaration at law.
 3 The subsequent pleadings and proceedings shall be substantially as in
 4 an action at law, except that no execution shall be awarded against the
 5 assignee for the amount of a debt found due the creditor.

Proceedings.
 1838, 163, § 4.
 G. S. 118, § 35.
 P. S. 157, § 37.
 R. L. 163, § 46.
 168 Mass. 514.

1 SECTION 47. The final judgment of the court shall be conclusive, and
 2 the lists of debts shall, if necessary, be altered to conform thereto. The
 3 prevailing party shall be entitled to costs, to be taxed and recovered
 4 as in an action at law; if recovered against the assignee, they shall be
 5 allowed out of the estate.

Judgment on
 appeal. Cost.
 1838, 163, § 4.
 G. S. 118, § 36.
 P. S. 157, § 38.
 R. L. 163, § 47.
 7 Met. 55.

1 SECTION 48. A bill of exchange, promissory note or other instrument
 2 used as evidence upon the proof of a claim and left in court or deposited
 3 in the registry may be delivered by the register to the person who used
 4 it, upon his filing a copy thereof attested by the register, who shall also
 5 endorse upon it the name of the party against whose estate it has been
 6 proved and the date and amount of any dividend declared thereon.

Evidence of
 withdrawal
 of claim.
 1852, 189, § 3.
 G. S. 118, § 37.
 P. S. 157, § 39.
 R. L. 163, § 48.

ASSIGNMENT AND ASSIGNEE.

1 SECTION 49. The creditors shall, subject to the court's approval,
 2 choose one or more assignees of the estate of the debtor in the presence
 3 of the court at the first meeting. The choice shall be made by a majority
 4 in value of the creditors who have proved their debts; but if the number

Choice of
 assignee.
 1838, 163, § 3.
 1858, 141, § 1.
 G. S. 118, § 37.
 § 38, 39.
 1862, 179, § 3.

1879, 95, § 2.
P. S. 157,
§§ 40, 41.
R. L. 163, § 49.
165 Mass. 317.

of creditors present amounts to five and less than ten, the votes of two 5
at least, and, if the number of creditors amounts to ten or more, the votes 6
of three at least, shall be necessary for a choice, and no creditor having 7
a preferred claim shall vote thereon, except on so much of said claim as 8
exceeds the amount preferred by law. If no choice is made by the creditors 9
at said meeting, the court shall appoint one or more assignees. If an 10
assignee so chosen or appointed fails within four days to accept in writing 11
the trust, the court may fill the vacancy. The court may appoint addi- 12
tional assignees or order a new election, or it may at the first meeting 13
without an election appoint one or more disinterested assignees. 14

Bond of
assignee.
1844, 178, § 11.
1853, 116.
G. S. 118,
§§ 40, 41.
1862, 179, § 4.
1879, 245, § 9.
P. S. 157,
§§ 42, 43.
R. L. 163, § 50.
4 Gray, 286.
6 Gray, 364.

SECTION 50. The court at any time may, and, upon written request 1
by one fourth in number and value of the creditors who have proved their 2
claims, shall, require the assignee to file a bond, approved by the judge, 3
to the judge and his successors in office, conditioned for the faithful per- 4
formance of his duties, which shall enure to the benefit of all creditors 5
proving their claims and may be prosecuted in like manner as an admin- 6
istration bond. An assignee failing to give a bond within such time as 7
the court orders, not exceeding ten days after notice to him of such 8
order, shall be removed and another appointed by the court. 9

Assignment
by judge.
1838, 163, § 5.
G. S. 118, § 42.
P. S. 157, § 44.
R. L. 163, § 51.
13 Gray, 18.

SECTION 51. The judge shall, by an instrument under his hand, 1
assign and convey to the assignee all the property of the debtor, not 2
exempt from attachment, and all his deeds, books and papers relative 3
thereto. 4

9 Allen, 156.

97 Mass. 246.

153 Mass. 311.

Record of as-
signment and
notice
1838, 163, § 11.
G. S. 118, § 43.
P. S. 157, § 45.
R. L. 163, § 52.

SECTION 52. The assignee shall forthwith cause the assignment to be 1
recorded in the registry of deeds in each county or district where there 2
is land of the debtor upon which it may operate; and shall give such 3
public notice of his appointment as the judge may order. 4

5 Allen, 126.

102 Mass. 437.

130 Mass. 368.

219 Mass. 211.

Agent of
non-resident
assignee.
1889, 313.
1893, 118.
R. L. 163, § 53.

SECTION 53. An assignee appointed in, but residing out of, the com- 1
monwealth shall not receive the instrument of assignment until he shall 2
have appointed an agent as provided in sections eight to ten, inclusive, 3
of chapter one hundred and ninety-five, and said sections shall apply to 4
such appointment except that said writing shall be filed in the registry 5
of insolvency. Notice of a new appointment of an agent, with his name 6
and address, shall be given in the next notice required to be given by the 7
assignee, or as the court may order. 8

Effect of
assignment.
1838, 163, § 5.
1851, 327, § 20.
G. S. 118,
§§ 44, 123.
1862, 179, § 7.
1879, 245, § 3.
1880, 246, § 7.
P. S. 157, § 46.
R. L. 163, § 54.
2 Met. 258.
3 Met. 139,
522.
4 Met. 316,
537.
5 Met. 562,
582.
6 Met. 537.
8 Met. 19.

SECTION 54. The assignment shall vest in the assignee all the prop- 1
erty of the debtor, not exempt from being taken on execution, which he 2
could have lawfully sold, assigned or conveyed at the time of the first 3
publication of the notice of issuing the warrant in case of voluntary 4
proceedings, or at the time of the first publication of notice of the fil- 5
ing of the petition in case of involuntary proceedings, and shall, subject 6
to the following section, dissolve any attachment on mesne process made 7
not more than four months prior to the said first publication. The as- 8
signment shall vest in the assignee all debts due the debtor or a person 9
for his use, and all liens and securities therefor, and all his rights of action 10
for, and of redeeming, property. The assignee may redeem all mort- 11

12 gages, conditional contracts, pledges and liens of or upon any property of
 13 the debtor, or sell it subject to such mortgage or other encumbrance, and
 14 if a mortgage is foreclosed pending proceedings in insolvency and before,
 15 or within sixty days after, the appointment of an assignee the assignee
 16 may redeem the same within sixty days after his appointment, with reme-
 17 dies similar to those provided for the redemption of mortgages before
 18 foreclosure.

9 Met 23.
 4 Cush. 357,
 393.
 6 Cush. 30, 87.
 10 Cush. 92.
 12 Cush. 389.
 3 Gray, 245,
 398.
 7 Gray, 242,
 539.
 9 Gray, 42.

15 Gray, 316.	102 Mass. 475.	153 Mass. 311.
1 Allen, 373, 566.	125 Mass. 469.	154 Mass. 302.
5 Allen, 126, 382, 582.	133 Mass. 140, 515.	159 Mass. 420.
8 Allen, 20, 134, 302, 597.	134 Mass. 247.	163 Mass. 350,
10 Allen, 258, 460, 468.	135 Mass. 299.	530.
11 Allen, 345.	139 Mass. 33, 84.	172 Mass. 384.
12 Allen, 345.	140 Mass. 169.	185 Mass. 58.
98 Mass. 305.	144 Mass. 168, 207, 281.	201 Mass. 554.
99 Mass. 63.	147 Mass. 8.	146 U. S. 303.
100 Mass. 446, 453.	149 Mass. 158, 310.	175 U. S. 396.

1 SECTION 55. If a debtor whose property is attached conveys before
 2 judgment in the action any part of such property, and subsequently
 3 thereto and before execution issues, proceedings are commenced by or
 4 against him as an insolvent debtor, or if a dissolution of an attachment
 5 under the preceding section might prevent the property attached from
 6 passing to the assignee, the court in which proceedings in insolvency are
 7 pending or to which the writ of attachment is returnable, may, upon
 8 application on or before the day of the third meeting of creditors by a
 9 person interested, for cause, order the lien created by the attachment to
 10 continue. The action may be continued or execution stayed until the
 11 assignee is chosen and takes charge of the action. The assignee may
 12 proceed with the action and levy the execution at the expense of the
 13 estate; and the amount recovered, exclusive of costs due to the original
 14 plaintiff, shall vest in the assignee.

Attachments,
 how preserved.
 1841, 124, § 5.
 1855, 66.
 1857, 247.
 G. S. 118, § 45.
 P. S. 157, § 47.
 R. L. 163, § 55.
 4 Met. 470.
 13 Met. 200.
 2 Cush. 124.
 4 Gray, 429.
 6 Gray, 523.
 5 Allen, 452.
 133 Mass. 435,
 515.
 137 Mass. 399,
 483.
 156 Mass. 147.

1 SECTION 56. The assignee shall demand and receive from the mes-
 2 senger and all other persons all the property in their hands assigned or
 3 intended to be assigned under this chapter; and shall keep a regular
 4 account of all money received by him as assignee, to which every creditor
 5 shall at reasonable times have free access.

Assignee to
 demand and
 receive prop-
 erty and keep
 accounts.
 1838, 163, § 11.
 G. S. 118, § 46.

P. S. 157, § 48.

R. L. 163, § 56.

1 SECTION 57. The assignee shall, unless the court otherwise orders, at
 2 or before the second meeting of the creditors, make and return on oath
 3 to the court a true inventory of all the debtor's property, of all debts
 4 due the debtor or another person for his use, of all his rights of action
 5 for and of redeeming property, which the assignment has vested in such
 6 assignee and which have come to his possession or knowledge. The
 7 property included in such inventory shall be appraised in like manner as
 8 the estate of a deceased person, and the appraisal returned at or before
 9 said meeting.

Inventory.
 1861, 104, § 1.
 P. S. 157, § 49.
 R. L. 163, § 57.

1 SECTION 58. The assignee shall account for all property of the debtor
 2 vested in him by the assignment, at the appraised value, except as herein
 3 provided. He shall make no profit by the increase and sustain no loss by
 4 the decrease or destruction, without his fault, of any part of the property;
 5 if he sells any thereof for more than the appraised value, he shall ac-
 6 count for the excess, but if he sells for less, the court may, if it appears
 7 that the sale was expedient and for the interest of all concerned, allow

Assignee to
 account for
 property at ap-
 praised value.
 1861, 104, § 2.
 P. S. 157, § 50.
 R. L. 163, § 58.
 10 Cush. 173.
 98 Mass. 305.
 116 Mass. 589.
 154 Mass. 51.

him for the loss. In either case the assignee shall return to the court a true account of sales, and shall sell the property at public auction unless the court, upon petition therefor, otherwise orders.

Assignee to commence and prosecute actions, etc.
 1838, 163, § 5.
 G. S. 118, § 47.
 P. S. 157, § 51.
 R. L. 163, § 59.
 4 Met. 504
 1 Gray, 416.
 3 Gray, 239, 382.
 10 Gray, 329.
 11 Gray, 222.
 5 Allen, 582.
 10 Allen, 36, 460.
 130 Mass. 368.
 148 Mass. 299.
 157 Mass. 468

SECTION 59. He may recover all the property and debts, in his own name, as the debtor might have done had no assignment been made. If at the date of the assignment an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he so requires, be admitted to prosecute the action in his own name, in like manner and with like effect as if commenced by him. No action pending in the name of the assignee shall be abated by his death or removal; but the surviving, remaining or new assignee, as the case may be, shall be admitted to prosecute the action. The assignment by the judge shall be conclusive evidence of the authority of an assignee to sue.

163 Mass. 350.

Limitation of actions.
 1895, 432.
 R. L. 163, § 60.
 7 Met. 348.
 219 Mass. 211.

SECTION 60. An assignee shall not commence or be made a party to a proceeding at law or in equity relative to any property or rights thereto unless it is commenced within six years from the time when the right accrued to or against the insolvent. Section nine of chapter two hundred and sixty shall apply to such proceedings.

Drafts, etc., assigned within six months not to be offset.
 1856, 284, § 28.
 G. S. 118, § 48.
 P. S. 157, § 52.
 R. L. 163, § 61.
 S Gray, 572.

SECTION 61. A draft, bill of exchange, promissory note, claim, demand or other cause of action, which within six months before the filing of the petition by or against a debtor has been assigned, transferred, conveyed or delivered to a person indebted or liable to the debtor shall not be set off or pleaded in defence in an action by the assignee to recover such debt or liability; but the assignee may recover the same, notwithstanding such draft, bill of exchange, promissory note, claim, demand or cause of action, if the person to whom it was assigned, transferred, conveyed or delivered had at the time of such assignment, transfer, conveyance or delivery reasonable cause to believe the debtor insolvent.

Property to be kept separate by assignee.
 1838, 163, § 11.
 G. S. 118, § 49.
 P. S. 157, § 53.
 R. L. 163, § 62.

SECTION 62. The assignee shall, as soon as may be after receiving any money belonging to the estate, deposit it in a bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall as far as practicable keep all other property of the estate separate and apart from all other property in his possession, or designated by appropriate marks, so that it may be easily and clearly distinguished and not be exposed or liable to be taken as his property or for the payment of his debts.

Temporary investment of property, when.
 1859, 119.
 G. S. 118, § 50.
 P. S. 157, § 54.
 R. L. 163, § 63.

SECTION 63. If the court finds that the distribution of the estate may be delayed by litigation or other cause it may order the temporary investment of the money of such estate in securities approved by it, or may authorize its deposit in a bank in the commonwealth upon such interest as the bank may contract with the assignee to pay thereon.

Carrying on of business.
 1897, 120.
 R. L. 163, § 64.

SECTION 64. The court may for cause order the messenger or assignee to carry on the business of the debtor or any part thereof under its direction.

1 SECTION 65. The assignee shall give written notice to all known
 2 creditors by mail or otherwise of all dividends, and such notice of meet-
 3 ings after the first as the judge orders.

1846, 168, § 4
 1850, 319.

G. S. 118, § 51.
 P. S. 157, § 55.

R. L. 163, § 65.

Notice of
 dividends and
 meetings.

1 SECTION 66. He shall be allowed by the court from the money in his
 2 hands the necessary disbursements made by him in the performance of
 3 his duty, and a reasonable compensation for his services.

G. S. 118, § 52.

P. S. 157, § 56.

R. L. 163, § 66.

Compensation
 of assignee,
 1838, 163, § 11

1 SECTION 67. He may, under the direction of the court submit any
 2 controversy arising in the settlement of claims by or against the estate
 3 to the determination of arbitrators to be chosen by him and the adverse
 4 party; and may under such direction compromise and settle any such
 5 controversy if in his judgment it is proper and for the interest of the
 6 creditors.

Submission to
 arbitration
 1838, 163, § 11.
 G. S. 118, § 53.
 P. S. 157, § 57.
 R. L. 163, § 67.
 11 Cush. 582.

1 SECTION 68. If the court finds that the title to any property of the
 2 estate in the hands of the assignee is in dispute and that the property is
 3 perishable or liable to deteriorate in value, it may, upon petition by the
 4 assignee and notice to the claimant, or his agent, order it sold under
 5 the direction of the assignee, who shall hold the proceeds in place of the
 6 property sold; and such proceeds shall be the measure of the value of
 7 the property in an action or controversy between the parties. But this
 8 section shall not prevent the recovery of the property from the possession
 9 of the assignee by replevin commenced at any time before the court
 10 orders the sale.

Subj. of perish-
 able property
 pending dispute
 of title,
 1858, 73
 G. S. 118, § 54.
 P. S. 157, § 58.
 R. L. 163, § 68.

1 SECTION 69. When an assignee has received from the estate assets
 2 sufficient to pay fifty per cent of the debts and claims proved against
 3 it, he shall certify the fact and render his accounts therefor to the court;
 4 and when he has received twenty-five per cent more from the assets, he
 5 shall in like manner certify and render his accounts therefor. He shall
 6 also certify and render his accounts when required by the court.

Accounts,
 1844, 178, § 7.
 G. S. 118, § 55.
 P. S. 157, § 59.
 R. L. 163, § 69.

1 SECTION 70. At a meeting called by order of the judge in his discretion
 2 for the purpose, and which shall be called upon the petition of a majority
 3 of the creditors in number or value, the creditors may, with the consent
 4 of the court, remove an assignee by such vote as is provided in section
 5 forty-nine for the choice of assignee.

R. L. 163, § 70.

9 Cush. 382.

Removal of
 assignee by
 creditors
 1838, 163, § 12
 1850, 69.
 G. S. 118, § 56
 P. S. 157, § 60

1 SECTION 71. If the court, upon complaint of any person interested in
 2 the estate, after notice and a hearing, finds that an assignee has fraudu-
 3 lently received, concealed, embezzled or conveyed away any of the money
 4 or other property of the estate or has been interested in an action rela-
 5 tive to said estate for the purpose of securing to himself a preference
 6 or priority over the other creditors, or has in possession or control any
 7 part of the estate with intent to appropriate the same unlawfully to his
 8 own use, or has been guilty of a fraudulent act relative thereto it may
 9 remove him.

Removal by
 court upon
 complaint,
 1848, 304, § 12.
 G. S. 118, § 57.
 P. S. 157, § 61.
 R. L. 163, § 71.
 12 Gray, 144.

1 SECTION 72. The court may also remove an assignee who, having
 2 removed from the commonwealth, unreasonably refuses or neglects to

Other grounds
 of removal,
 1851, 349, § 2

1858, 141, § 1. obey a lawful order for calling meetings of the creditors, to settle his 3
 G. S. 118, § 58. accounts, or otherwise to perform his duties; or for any other sufficient 4
 P. S. 157, § 62. cause. 5
 R. L. 163, § 72.

Resignation of assignee. SECTION 73. An assignee may with the consent of the court resign 1
 1858, 141, § 3. his trust and be discharged therefrom. 2

G. S. 118, § 59.

P. S. 157, § 63.

R. L. 163, § 73.

Filling of vacancies. SECTION 74. Vacancies caused by death or otherwise in the office of 1
 1838, 163, assignee may be filled by the court or in its discretion by an election by 2
 §§ 2, 11. the creditors as provided in section forty-nine at a regular meeting or 3
 1858, 141, the creditors as provided in section forty-nine at a regular meeting or 3
 §§ 2, 3. at a meeting called therefor, after written notice thereof to all known 4
 G. S. 118, § 60. creditors by such person as the court orders. 5
 P. S. 157, § 64.
 R. L. 163, § 74.

9 Allen, 197, 199.

Effect of resignation, etc. SECTION 75. The resignation or removal of an assignee shall not 1
 1858, 141, § 3. release him from performing all things required of him for the proper 2
 G. S. 118, § 61. closing up of his trust and the transmission thereof to his successors, 3
 P. S. 157, § 65. nor affect his liability or that of a surety on his bond. 4
 R. L. 163, § 75.

Vesting of estate upon death, etc. SECTION 76. If by death or otherwise the number of assignees is 1
 1838, 163, § 11. reduced, the estate of the debtor not lawfully disposed of shall vest in 2
 1848, 304, § 12. the remaining assignees, or the persons selected to fill vacancies, with the 3
 1851, 349, § 2. same powers and duties relative thereto as if originally chosen. 4
 G. S. 118, § 62.

P. S. 157, § 66.

R. L. 163, § 76.

Former assignee to execute deeds, etc. SECTION 77. A former assignee, his executor or administrator, upon 1
 1838, 163, § 11. request and at the expense of the estate, shall make and execute to the 2
 1851, 349, § 2. new assignee all deeds, conveyances and assurances, and do all other 3
 1858, 141, § 4. lawful acts, necessary to enable him to recover and receive all the estate; 4
 G. S. 118, § 63. and the court may pass orders to secure performance of the duties of a 5
 P. S. 157, § 67. former assignee, and the rights and interests of all persons interested in 6
 R. L. 163, § 77. the estate. 7

Preferred creditors not to vote for, etc. SECTION 78. No person who has received a preference contrary to 1
 1856, 284, § 34. this chapter shall vote or be eligible as assignee; but no title to property, 2
 G. S. 118, § 64. sold, transferred or conveyed by an assignee shall be affected by reason 3
 P. S. 157, § 68. of his ineligibility. 4
 R. L. 163, § 78.

Penalty for neglect, etc. SECTION 79. An assignee refusing or unreasonably neglecting to exe- 1
 1838, 163, § 23. cute an instrument when lawfully required by the court, or disobeying 2
 G. S. 118, § 65. a lawful order or decree of the court, may be committed to jail in the 3
 P. S. 157, § 69. county where found or where he resided when appointed, until he obeys 4
 R. L. 163, § 79. such order or decree. 5

Appointment upon death of assignee with accounts unsettled. SECTION 80. If an assignee has died and it does not appear of record 1
 1891, 400, § 1. that his accounts have been settled or that the property of the estate has 2
 R. L. 163, § 80. been disposed of or distributed by him, and the court in which proceed- 3
 ings in insolvency were commenced, upon petition by a creditor or the 4
 insolvent or a person claiming under either of them, after public notice 5
 and a hearing, finds as alleged in such petition that there is property to 6
 which the assignee would be entitled if living and which, if real estate, 7
 does not appear of record to have been conveyed by him or his heirs, 8

9 representatives or devisees, it shall, unless cause is shown to the contrary,
 10 although there may be no record of the proceedings in the case, appoint
 11 an assignee who may be required to give bond in such form and with such
 12 surety or sureties as it may order. Such property shall thereupon vest
 13 in said assignee, shall be sold at public or private sale by him and the net
 14 proceeds disposed of as hereinafter provided.

1 SECTION 81. The assignee shall give notice of his appointment in a
 2 daily newspaper published in Boston and in one published in the county
 3 where appointed, once in each of five successive weeks, calling upon cred-
 4 itors to file their claims in said court within three months from a date
 5 stated in the notice subsequent to the first publication thereof. The
 6 court shall hear and decide all claims so filed within said period, subject
 7 to appeal in like manner as other claims in insolvency, and all other claims
 8 shall be barred. When the amount due on such claims finally allowed
 9 has been ascertained or upon the expiration of said period without claim,
 10 the assignee shall apply for a decree of distribution, which shall be made
 11 after public notice, shall designate the claimants, to whom and in what
 12 proportions the amount in his hands shall be paid, and shall bind all
 13 parties. But this and the preceding section shall not divest any title
 14 held by a bona fide purchaser claiming directly or indirectly under the
 15 insolvent.

Distribution.
 1891, 400,
 §§ 2, 3.
 R. L. 163, § 81.

EXAMINATION OF DEBTOR.

1 SECTION 82. The debtor shall, if required by the court at any time
 2 before the granting of his certificate, upon reasonable notice, attend and
 3 submit to an examination on oath before the court, by the assignee or by
 4 a creditor, relative to his trade and dealings, his property and debts, and
 5 all matters affecting the settlement of his estate; and upon cause shown
 6 by affidavit of any person interested in the estate, the court may summon
 7 any person suspected of having fraudulently received, concealed, em-
 8 bezzled or conveyed away property of the debtor, or of having assets of
 9 the debtor in his hands, or having knowledge of anything material rela-
 10 tive to the assets or dealings of the debtor, to appear and submit to an
 11 examination in like manner. If the person summoned fails after notice
 12 to appear and submit to such examination, or to answer such interroga-
 13 tories as are lawfully propounded to him, the court may commit him to
 14 the jail of the county until he submits to the order of the court. The judge
 15 may require such examinations to be in writing, signed by the person
 16 examined, and filed in court.

Examination of
 debtor and
 other persons.
 1838, 163, § 6.
 G. S. 118, § 66.
 1881, 235, § 1.
 P. S. 157, § 70.
 R. L. 163, § 82.
 9 Met. 292.
 4 Cush. 448.
 3 Gray, 113,
 250.
 9 Allen, 573.
 11 Allen, 439.
 152 Mass. 577.
 159 Mass. 193.
 168 Mass. 82.

1 SECTION 83. If the debtor is in jail on a proceeding for or on account
 2 of a debt or claim provable against his estate, at any time before the grant-
 3 ing of his certificate and if his attendance is required before the court or
 4 the assignee, or at a meeting of his creditors, the judge may, by a writ,
 5 require the jailer to produce the debtor for said purposes, at a time and
 6 place specified therein.

Examination of
 debtor if in
 prison.
 1838, 163, § 9.
 G. S. 118, § 67.
 P. S. 157, § 71.
 R. L. 163, § 83.

1 SECTION 84. If the debtor, by reason of imprisonment, illness or
 2 other sufficient cause, is unable to attend before the court or the assignee
 3 or at a meeting of his creditors, the court or a person appointed by it and
 4 the assignee, or a person appointed by him, shall conduct the examina-
 5 tion of the debtor in jail or elsewhere, if within the commonwealth.

Examination
 of debtor if ill
 or unable to
 attend.
 1838, 163, § 9.
 G. S. 118, § 68.
 P. S. 157, § 72.
 R. L. 163, § 84.

Examination of debtor if out of the commonwealth. 1838, 163, § 9. G. S. 118, § 69. P. S. 157, § 73. R. L. 163, § 85.

SECTION 85. If the debtor is without the commonwealth and unable to return and personally attend at any of the times and for the purposes specified in this chapter, and if the court finds such absence was not caused by his wilful default, and as soon as may be after the removal of such impediment he offers to attend and submit to an examination on oath before the court and the assignee as herein provided and to do all things required by this chapter for obtaining his certificate, he shall be entitled thereto in like manner as if he had done the same things at the times herein provided.

Debtor to do all necessary acts. 1838, 163, § 5. G. S. 118, § 70. P. S. 157, § 74. R. L. 163, § 86. 157 Mass. 468.

SECTION 86. The debtor shall, at the expense of the estate, make and execute such deeds and writings and endorse such bills, notes and other negotiable papers, draw such checks and orders for money deposited in banks or elsewhere and do such other lawful acts as the assignee reasonably requires and as are necessary or useful to confirm the assignment, and enable the assignee to demand, recover and receive all property so assigned, especially any part thereof without the commonwealth.

Failure to execute instruments, etc. 1838, 163, § 23. G. S. 118, § 71. P. S. 157, § 75. R. L. 163, § 87. 2 Met. 573. 157 Mass. 468.

SECTION 87. If the debtor refuses or unreasonably neglects to execute an instrument lawfully required by the court or disobeys a lawful order or decree, the court shall issue its warrant to a civil officer, commanding him to arrest and commit the debtor to the jail in the county where he may be found, or where he dwelt at the time of his insolvency until he obeys such order or decree.

SECOND AND THIRD MEETINGS. OATH AND DISCHARGE.

Second meeting. Oath. 1838, 163, § 7. 1854, 329, § 3. G. S. 118, § 72. P. S. 157, § 76. R. L. 163, § 88. 11 Cush. 164.

SECTION 88. The judge shall appoint a second meeting of the creditors, to be held at a court not more than three months after the date of the warrant. The debtor may then amend and correct his schedule of creditors, and shall take and subscribe an oath before the court, which shall be certified by him and filed in the case, in substance as follows:

I, _____, do swear that the account of my creditors contained in the schedule made and signed by me and now on file in court is in all respects just and true, according to my best knowledge and belief. And I do further swear, that I have delivered to _____, the messenger, all my estate, not exempt from attachment, except such as has been necessarily expended for the support of myself and my family, and all my books of account and papers, relative to my said estate, that were within my possession or power when the same were demanded of me by the messenger; that I have delivered to my assignee such of my said estate, books and papers as has since come to my possession; and that if any other estate, books of account or papers, which shall or ought to be assigned and delivered to the assignee, shall hereafter come to my knowledge or possession, I will forthwith disclose or deliver them to him. And I do further swear that there is not any part of my property made over or disposed of in any manner for the future benefit of myself or my family, or in order to defraud my creditors.

Oaths out of court. 1862, 68, § 1. P. S. 157, § 77. R. L. 163, § 89.

SECTION 89. If a debtor or assignee who is required to make oath before the judge is unable by reason of illness or other cause to attend personally in court, the oath may be administered out of court by the judge or by a person to whom a commission is issued therefor.

Order of meeting by court. 1854, 329, § 1.

SECTION 90. If by reason of proceedings in the supreme judicial court or for other cause, a failure to call or hold a second or third meeting

3 within the time provided occurs, the court may, upon petition by an in- G. S. 118, § 73.
 4 terested party, order such meeting held at a subsequent date. 1862, 179, § 8.

P. S. 157, § 78. R. L. 163, § 90. 4 Cush. 529. 7 Cush. 341.

1 SECTION 91. Upon the death, resignation or neglect of the assignee, Order of meet-
 2 or his absence from the county, whereby a meeting to be notified by him ing by register
 3 is liable to be defeated, it may be notified by the register on order of on order of
 4 judge upon petition by an interested party, with notice at the discretion court.
 5 of the judge to the assignee if living. 1834, 329, § 2.
 G. S. 118, § 71
 P. S. 157, § 79

R. L. 163, § 91.

1 SECTION 92. The judge shall appoint a third meeting of the creditors Third meeting
 2 to be held within six months after the appointment of the assignee. If Certificate of
 3 at such meeting or a meeting thereafter, the court finds that the debtor discharge
 4 has made a full disclosure and delivery of all his property as herein 1838, 163, § 7.
 5 required, and that he has conformed to the laws relative to insolvent 1844, 178, § 3.
 6 debtors, the judge shall grant him a certificate which shall state all fidu- 1848, 504, § 9.
 7 ciary debts exempt from discharge, and be in substance as follows: G. S. 118, § 75
 P. S. 157, § 80.
 R. L. 163, § 92.
 11 Cush. 355,
 412.

7 Allen, 112. 139 Mass. 84

COMMONWEALTH OF MASSACHUSETTS.

, ss.

COURT OF INSOLVENCY.

To all people to whom these presents shall come, I, A. B., judge of the court of Form of cer-
 insolvency for said county of _____, send greeting. tificate of
 discharge.

Whereas it has been made to appear to me that C. D., of B., in said county
 of _____, whose estate has been assigned for the benefit of his creditors
 according to law, has made a full disclosure and delivery of all his estate, and that
 he has conformed to the provisions of law in that behalf made and provided, I do
 certify that said C. D. is absolutely and wholly discharged from all his debts
 which have been or shall be proved against his estate assigned as aforesaid, and
 from all debts provable against his estate, and which are founded on any contract
 made by him within this commonwealth or to be performed within the same, and
 from all debts which are provable as aforesaid, and which are founded on any
 contract made by him, and due to any persons who were resident within this
 commonwealth on the _____ day of _____ last, being the day (of
 the first publication of the notice of the warrant issued for the seizure of the
 estate of said C. D. — or in involuntary proceedings — of the first publication
 of the notice of the filing of the petition against said C. D.); and from all claims
 against him for or on account of any goods or chattels wrongfully obtained, taken
 or withheld by him, according to the provisions of chapter two hundred and six-
 teen of the General Laws. And I do further certify that said C. D. is by force
 of said chapter forever discharged and exempted from arrest or imprisonment in
 an action or upon any proceeding, for or on account of any debt or demand which
 might have been proved against his estate assigned as aforesaid.

Given under my hand and the seal of said court this _____ day of _____
 in the year _____.

1 SECTION 93. The debtor shall thereupon, except as provided in sec- Effect of
 2 tions ninety-six and ninety-seven, be discharged from debts proved discharge.
 3 against his estate and from all debts provable under this chapter and How pleaded.
 4 founded on any contract made by him while an inhabitant of the com- 1838, 163, § 7.
 5 monwealth, if made within the commonwealth, to be performed therein G. S. 118, § 76.
 6 or due to any person resident therein at the time of the first publication 1879, 245, § 4
 7 of the notice of the issuing of the warrant in voluntary proceedings or of P. S. 157, § 81.
 8 the first publication of the notice of the filing of the petition in involun- R. L. 163, § 93.
 9 tary proceedings, and from all demands for or on account of any property 4 Met. 302.
 10 wrongfully obtained, taken or withheld by him, as provided in section 8 Met. 129.
 11 thirty-one, while such inhabitant. Such discharge may be pleaded by a 10 Met. 332.
 1 Cush. 430.
 2 Cush. 33.
 6 Cush. 225.
 7 Cush. 592.
 8 Cush. 375.
 10 Cush. 523.
 11 Cush. 29,
 355.

11 Gray, 400.
 13 Gray, 203.
 1 Allen, 456,
 512.
 5 Allen, 10.
 8 Allen, 314.
 9 Allen, 27.

simple averment that on the day of its date it was granted to the debtor, 12
 setting forth a copy thereof, as a full and complete bar to all actions 13
 brought on such debts or claims. The certificate shall be conclusive evi- 14
 dence of the fact and regularity of such discharge. 15

100 Mass. 87.	133 Mass. 557.	166 Mass. 577.
103 Mass. 21.	134 Mass. 488.	168 Mass. 28.
106 Mass. 563.	150 Mass. 353.	172 Mass. 154.
111 Mass. 77.	151 Mass. 589.	173 Mass. 258.
130 Mass. 236, 503.	156 Mass. 515.	177 Mass. 224.
132 Mass. 186, 466.	165 Mass. 76.	1 Wall. 223.

Discharge
 from imprison-
 ment.
 1838, 163, § 9.
 G. S. 118, § 77.
 P. S. 157, § 82.
 R. L. 163, § 94.

SECTION 94. If the debtor at the time of obtaining his certificate is 1
 in jail on a proceeding for or on account of a claim provable against his 2
 estate, he shall be discharged therefrom, upon producing to the jailer his 3
 certificate granted under this chapter. 4

150 Mass. 411.

Discharge
 from arrest
 and property
 exempt from
 attachment,
 etc.
 1838, 163, § 7.
 1850, 97.
 G. S. 118, § 78.
 P. S. 157, § 83.
 R. L. 163, § 95.
 7 Met. 257.
 8 Met. 102.
 12 Allen, 365.
 136 Mass. 73.
 139 Mass. 112.
 150 Mass. 411.
 152 Mass. 64.
 164 Mass. 155.
 166 Mass. 126,
 128.
 170 Mass. 405.

SECTION 95. The debtor shall also be forever thereafter discharged 1
 and exempt from arrest or imprisonment in any proceeding for or on 2
 account of a debt or demand provable against his estate. And the prop- 3
 erty of the debtor acquired by him subsequently to the first publication 4
 of the notice of the issuing of the warrant in voluntary proceedings or to 5
 the first publication of the notice of the filing of the petition in involun- 6
 tary proceedings shall not be subject to attachment by trustee process 7
 or otherwise in any action to recover a debt which may have been so 8
 provable and due to any person not resident in the commonwealth at 9
 the time of such first publication, or founded on a contract existing at 10
 the time of said first publication and made or to be performed out of the 11
 commonwealth. 12

172 Mass. 519.

Debts not
 discharged.
 1844, 178, § 3.
 1848, 304, § 10.
 G. S. 118, § 79.
 1879, 245, § 5.
 1881, 257, § 2.
 P. S. 157, § 84.
 1885, 353, § 6.
 R. L. 163,
 § 96.
 1915, 23.
 10 Cush. 43.
 9 Gray, 211.
 15 Gray, 547.
 1 Allen, 219,
 456.
 5 Allen, 210.
 7 Allen, 264.
 9 Allen, 106.
 12 Allen, 366.

SECTION 96. No debt created by the debtor's defalcation as a public 1
 officer, executor, administrator, guardian, conservator, receiver, trustee 2
 or assignee of an insolvent estate, or by his fraud or embezzlement, or 3
 claim for goods attached on mesne process or taken on execution by the 4
 debtor as an officer or for misfeasance in office, or debt or claim against 5
 a pledgee created by his sale of collateral securities in a manner not au- 6
 thorized by his contract with the pledgor or by sections eight and nine 7
 of chapter two hundred and fifty-five shall be discharged under this 8
 chapter, but the dividend declared thereon shall be payment of so much 9
 of said debt or claim. A claim for necessities furnished to the debtor 10
 or his family shall not be so discharged unless the claim has been proved 11
 against his estate. 12

100 Mass. 498.	158 Mass. 250.	176 Mass. 460.
132 Mass. 283.	171 Mass. 111.	

Action on
 claim omitted
 from schedule.
 1897, 427.
 R. L. 163, § 97.

SECTION 97. A creditor having a claim against an insolvent debtor 1
 which was omitted from the schedule of creditors as filed by said debtor, 2
 and who has not proved his claim, may, subject to the preceding section, 3
 recover from the debtor in an action at law, notwithstanding a discharge 4
 in insolvency, the same amount that the other creditors received who 5
 proved their claims. 6

Persons
 jointly liable
 not released.
 1838, 163, § 7.
 G. S. 118, § 80.

SECTION 98. A discharge shall not release a person liable for the 1
 same debt as a partner, joint contractor, endorser, surety or otherwise 2
 for or with the debtor. 3

P. S. 157, § 85.	1 Gray, 623.	168 Mass. 102.
R. L. 163, § 98.	10 Gray, 333.	170 Mass. 179.

1 SECTION 99. A discharge shall not be granted to a debtor whose
 2 assets do not pay fifty per cent of the claims proved against his estate,
 3 unless the written assent of a majority in number and value of his credi-
 4 tors who have proved their claims has been filed within six months after
 5 the date of the assignment.

P. S. 157, § 86. 3 Gray, 252. 5 Allen, 10.
 R. L. 163, § 99. 9 Gray, 364. 11 Allen, 566.
 8 Cush. 104.

Discharge
 by assent of
 creditors
 1838, 163, § 7.
 1844, 178, § 4.
 1848, 304, § 9.
 G. S. 118, § 81.

1 SECTION 100. A discharge shall not be granted to a debtor a second
 2 time insolvent whose assets do not pay fifty per cent of the claims proved
 3 against his estate, unless the written assent of three fourths in value of
 4 his creditors who have proved their claims has been filed within six
 5 months after the date of the assignment. No discharge shall be granted to
 6 a debtor a third time insolvent, unless he has paid all the debts owed
 7 by him at the time of his previous insolvency or has been voluntarily re-
 8 leased therefrom by his creditors.

156 Mass. 224.

Discharge
 upon subse-
 quent insol-
 vency
 1844, 178,
 §§ 5, 6
 1856, 257
 G. S. 118, § 82.
 P. S. 157, § 87.
 R. L. 163,
 § 100
 5 Cush. 83.
 10 Gray, 327.

1 SECTION 101. A creditor may assent to the debtor's discharge under
 2 the two preceding sections, although an appeal from the allowance of
 3 his claim is pending, and such assent shall be valid if the claim is finally
 4 allowed.

P. S. 157, § 88. R. L. 163, § 101. 3 Gray, 252.

Assent of
 creditor not-
 withstanding
 appeal.
 1852, 293
 G. S. 118, § 83.

1 SECTION 102. In determining the requisite assent of creditors, no
 2 preferred claim which is paid in full, and, if not paid in full, no part
 3 thereof which is paid, shall be regarded.

P. S. 157, § 89. R. L. 163, § 102.

Preferred cred-
 itors not to
 vote.
 1881, 257, § 1.

1 SECTION 103. If a discharge has been refused a debtor for the sole
 2 reason that the assent of the requisite majority of his creditors has not
 3 been seasonably obtained or filed, or for the reason that he has not taken
 4 the oath required by section eighty-eight, the judge, upon petition by
 5 the debtor within two years after the date of the assignment and with
 6 the written assent of a majority, or, in case of his second insolvency, of
 7 three fourths in number and value of the creditors who have proved
 8 their claims, may, if the debtor takes the oath and obeys all lawful orders
 9 of the court, grant his discharge, if after notice and hearing, he finds
 10 that the failure to obtain or file the assent was caused by accident or
 11 mistake or other sufficient cause and by no fault of his own, or that
 12 the omission to take the oath was owing to his inability by reason of
 13 illness, accident or mistake to attend and take such oath.

Discharge of
 debtor failing
 by accident,
 etc., to take
 oath
 1858, 121.
 G. S. 118, § 81.
 1880, 246, § 4
 P. S. 157, § 90.
 R. L. 163,
 § 103
 168 Mass. 232.

1 SECTION 104. The debtor or the assignee may, within ten days after
 2 the decision of the judge upon the question of granting the certificate
 3 of discharge to a debtor, upon notice to the register to be entered with
 4 the record of proceedings, appeal from such decision to the superior court.
 5 The appeal shall be entered at the return day next after the expiration of
 6 fourteen days from the time of claiming it. If the appellant in writing
 7 waives his appeal before the entry thereof, proceedings may be had in
 8 the court of insolvency as if no appeal had been taken.

132 Mass. 466. 177 Mass. 580.

Appeal on
 question of
 discharge.
 1838, 163, § 8
 1848, 304, § 11
 G. S. 118, § 85
 P. S. 157, § 91.
 1885, 384, § 5.
 R. L. 163,
 § 104.
 11 Gray, 184.
 7 Allen, 112.

1 SECTION 105. The superior court shall, upon written demand filed
 2 with the clerk by the debtor, the assignee or a creditor, frame issues of

Proceedings.
 1838, 163, § 8.
 G. S. 118, § 86.

1864, 254
P. S. 157, § 92.
R. L. 163,
§ 105.

fact for jury trial, which shall be tried as nearly as may be as an action 3
at law; otherwise the appeal shall be heard and determined by the court. 4
The assignee or a creditor may appear and object to the allowance of the 5
certificate. If upon hearing the court finds that the debtor has made a 6
full disclosure and delivery of all his estate as herein required, and that 7
he has conformed to this chapter, it shall cause a certificate thereof sub- 8
stantially as provided in section ninety-two to be made under its seal, 9
signed by the clerk and delivered to the debtor. 10

MATTERS AVOIDING DISCHARGE.

Forfeiture of
discharge by
fraud of
creditor.
1838, 163, § 10.
1841, 124, § 3.
1844, 178, § 8.
1848, 304, § 9.
1856, 284, § 31.
1858, 54, § 7.
G. S. 118, § 87.
1881, 235, § 2.
P. S. 157, § 93.
1886, 322, § 2.
1898, 465, § 2.
R. L. 163,
§ 106.
8 Met. 490.
13 Met. 62.
8 Cush. 103,
377.
12 Cush. 596.
6 Gray, 327.
3 Allen, 583.
5 Allen, 124.
6 Allen, 327.
11 Allen, 555.
13 Allen, 182.
128 Mass. 120.
132 Mass. 233.
136 Mass. 38,
340.
166 Mass. 379.

SECTION 106. A discharge shall not be granted or be valid, if the 1
debtor has wilfully sworn falsely to a material fact in the proceedings. 2
or if he has fraudulently concealed any part of his property or any books 3
or writings relative thereto; or has made a fraudulent payment, gift, 4
transfer, conveyance or assignment of any part of his property, or spent 5
any part thereof in gaming; or if, within six months before the filing of 6
the petition by or against him, he has obtained on credit from a person 7
any property or other thing of value, with intent not to pay therefor; 8
or has procured his property to be attached, sequestered or seized on 9
execution; or has destroyed, altered, mutilated or falsified any of his 10
books, documents, papers, writings or securities or has made or been 11
privy to the making of any false or fraudulent entry in a book of account 12
or other document with intent to defraud his creditors; or with intent 13
to defraud his creditors has expended, invested or used any part of his 14
property in the erection, alteration, repair or location of a building, 15
portion of a building, structure or other object, on land owned or leased 16
wholly or in part by another so that it cannot be lawfully removed; or 17
has removed himself or removed or caused to be removed any part of his 18
property from the commonwealth with intent to defraud his creditors; 19
or if, having knowledge that a person has proved a false claim against 20
his estate, he has not disclosed the same to his assignee within one month 21
after such knowledge; or, except as provided in the following section, 22
if, being a merchant or tradesman, he has not kept proper books of 23
account. A discharge shall be void if the debtor or a person in his behalf 24
has procured the assent of a creditor thereto by a pecuniary consideration. 25

Discharge when
books of ac-
count not kept.
1894, 496.
R. L. 163,
§ 107.

SECTION 107. If the sole reason for not granting a discharge to a 1
debtor is that he has not kept proper books of account and if no fraud 2
is proved and the debtor has never been discharged in insolvency, the 3
judge may after the expiration of six months from the date of the assign- 4
ment grant his discharge if the total amount of the claims proved do not 5
exceed five thousand dollars and two thirds in number and a majority in 6
value of the creditors who have proved their claims assent thereto in 7
writing. 8

Discharge
avoided by
fraudulent
preference.
1838, 163, § 10.
1841, 124, § 3.
1856, 284, § 25.
G. S. 118, § 88.
P. S. 157, § 94.
R. L. 163, § 108.
8 Met. 62, 377.
5 Allen, 109.

SECTION 108. If a person, in contemplation of becoming insolvent 1
and of obtaining a discharge in insolvency, makes a payment, pledge, 2
assignment, transfer or conveyance of any part of his property, directly 3
or indirectly, absolutely or conditionally, in order to prefer a creditor or 4
person having a claim against him, or who is or may be under any liability 5
for him, or in order to prevent the property from coming to his assignee 6
in insolvency, or from being distributed under the laws relative to insol- 7

8 vency, he shall not be entitled to a discharge, and a discharge, if received
9 by him, shall be void.

1 SECTION 109. A creditor whose debt was proved or provable against
2 an estate may, within two years after the date of a certificate of dis-
3 charge, apply by petition to the court granting it to annul the same, on
4 the ground that it was fraudulently obtained, specifying all acts men-
5 tioned in section one hundred and six relied on in avoidance, and no
6 evidence shall be admitted as to any other of such acts; but the petition
7 may be amended in the discretion of the court. If after notice to the
8 debtor and a hearing the fraudulent acts charged or any of them are
9 proved and the court finds that the creditor had no knowledge thereof
10 until after the granting of the discharge, it shall be annulled; otherwise
11 it shall not be affected thereby.

Discharge, how
contested.
1879, 245, § 4.
P. S. 157, § 95.
R. L. 163,
§ 109.
173 Mass. 431.

PREFERENCES.

1 SECTION 110. If a person who is insolvent or in contemplation of
2 insolvency, within six months before the filing of the petition by or
3 against him, in order to prefer a creditor or person having a claim against
4 him or who is under any liability for him, procures any part of his property
5 to be attached, sequestered or seized on execution, or makes a payment,
6 pledge, assignment, transfer or other conveyance of any part of his prop-
7 erty, either directly or indirectly, absolutely or conditionally, the person
8 receiving such payment, pledge, assignment, transfer or conveyance, or
9 to be benefited thereby, having reasonable cause to believe such person
10 is insolvent or in contemplation of insolvency and that such payment,
11 pledge, assignment, or conveyance is made in fraud of the laws relative
12 to insolvency, it shall be void; and the assignees may recover the property
13 or its value from the person so receiving it or so to be benefited.

Fraudulent
payments
1838, 163, 19.
1841, 124, 3.
1856, 284,
§§ 25, 26.
G. S. 118, 89.
P. S. 157, 96.
R. L. 163,
§ 110
1 Met. 366.
7 Met. 164,
520
8 Met. 496.
9 Met. 292,
469.
13 Met. 167,
434.
2 Cush. 160.
3 Cush. 160.
7 Cush. 181.
10 Cush. 545.

3 Gray, 539, 594.	9 Allen, 492.	136 Mass. 237.	161 Mass. 274.
4 Gray, 111.	10 Allen, 491.	138 Mass. 18.	164 Mass. 182.
6 Gray, 100.	11 Allen, 97.	142 Mass. 17.	166 Mass. 323.
11 Gray, 190.	14 Allen, 32.	144 Mass. 188.	168 Mass. 401.
13 Gray, 18.	97 Mass. 342, 434.	148 Mass. 69, 507.	169 Mass. 291.
15 Gray, 358.	99 Mass. 535.	151 Mass. 64, 142.	171 Mass. 74.
1 Allen, 109.	102 Mass. 475.	152 Mass. 249.	341.
2 Allen, 18, 448.	128 Mass. 120.	153 Mass. 242.	177 Mass. 257.
3 Allen, 32.	131 Mass. 504, 589.	502.	189 Mass. 301.
5 Allen, 142.	133 Mass. 198.	156 Mass. 114.	204 Mass. 279.
6 Allen, 567.	135 Mass. 299.	159 Mass. 363.	164 U. S. 347.

1 SECTION 111. If a person who is insolvent or in contemplation of
2 insolvency, within six months before the filing of the petition by or
3 against him, except as provided in section thirty-eight, makes a sale,
4 assignment, transfer or other conveyance of any part of his property to
5 a person having reasonable cause to believe him insolvent or in con-
6 templation of insolvency, and that such sale, assignment, transfer or
7 other conveyance is made to prevent the property from coming to his
8 assignee in insolvency, or to prevent it from being distributed under the
9 laws relative to insolvency, or to defeat the object of, or to impair, hinder,
10 unpede or delay the operation and effect of, or to evade, any of said pro-
11 visions, the sale, assignment, transfer or other conveyance shall be void,
12 and the assignee may recover the property or its value as assets of the es-
13 tate. If such sale, assignment, transfer or conveyance is not made in the
14 usual and ordinary course of business of the debtor, that fact shall be
15 prima facie evidence of such cause of belief.

Fraudulent
sales, etc.
1856, 284, 27.
G. S. 118, 91.
P. S. 157, 98.
R. L. 163,
§ 111.
8 Met. 62.
15 Gray, 38.
2 Allen, 20.
3 Allen, 32.
8 Allen, 451.
9 Allen, 482.
10 Allen, 491.
11 Allen, 97.
13 Allen, 172,
182.
97 Mass. 160.
99 Mass. 535,
613.
131 Mass. 589.
133 Mass. 140.
135 Mass. 299.
139 Mass. 566.
142 Mass. 366.
518.

144 Mass. 29.	150 Mass. 343.	171 Mass. 341.
147 Mass. 388, 510.	153 Mass. 242, 502.	164 U. S. 347.
148 Mass. 48, 507.	159 Mass. 271, 363, 498.	

Application of preceding sections. 1856, 284, § 25. G. S. 118, § 90. P. S. 157, § 97. R. L. 163, § 112.

SECTION 112. The six preceding sections shall not apply to a payment of money or transfer of property in payment, not exceeding twenty-five dollars in amount, upon a debt contracted for necessaries furnished the debtor or his family.

ALLOWANCE AND SURPLUS.

Allowance to debtor. 1838, 163, §§ 6, 8. G. S. 118, § 92. P. S. 157, § 99. 1888, 67. R. L. 163, § 113. 8 Cush. 109. 160 Mass. 232.

SECTION 113. The debtor shall receive from the assignee one dollar a day for his attendance upon the court or the assignee if required under section eighty-two. He shall also be allowed out of his estate, for the necessary support of himself and family, such amount not exceeding the rate of three dollars a week for each member of his family, and for such time not exceeding two months, as the court orders. A debtor who is discharged shall be allowed five per cent on the net proceeds of all his estate received by the assignee, if such net proceeds after such allowance is sufficient to pay the creditors entitled to a dividend the amount of fifty per cent on their debts; but the allowance shall not exceed in all five hundred dollars. In case of the absence of the debtor or his failure to apply for either of said allowances the judge may allow the same amount to his wife or any minor child or children of the debtor.

Allowance, how paid in case of death. 1838, 163, § 5. G. S. 118, § 93. P. S. 157, § 100. R. L. 163, § 114.

SECTION 114. If an allowance to the debtor on the net proceeds of his estate becomes due and is not paid to him in his lifetime, it shall be paid to his executor or administrator, and be disposed of in like manner as other property of which he may be possessed at his decease.

Surplus to be returned to debtor. 1838, 163, § 13. G. S. 118, § 94.

SECTION 115. If after the payment of all debts proved a surplus remains in the hands of the assignee, it shall be paid or reconveyed to or revert in the debtor or his legal representatives.

P. S. 157, § 101. 6 Met. 203. 137 Mass. 397.
R. L. 163, § 115. 125 Mass. 469.

ACCOUNTS AND DIVIDENDS.

Accounts. 1838, 163, § 12. G. S. 118, § 95. 1862, 179, § 6. P. S. 157, § 102. 1884, 126. R. L. 163, § 116. 10 Cush. 173, 498. 6 Gray, 364. 14 Gray, 154.

SECTION 116. At the third meeting the assignee shall exhibit under oath to the court and creditors present fair and just accounts of all his receipts and payments relative to the estate, and may be examined relative thereto by the court. If there are two or more joint assignees their accounts may be allowed on the oath of one of them. The notice of the third and all subsequent meetings of creditors shall contain a statement that the accounts of the assignee will be presented, and that creditors may appear and object to the allowance thereof. Special notice of the presentation of accounts may be ordered at other times by the court to be given in such manner as it orders. In all cases the judge shall pass upon the reasonableness of the accounts of assignees, although no creditor objects.

Dividend. 1838, 163, § 12. G. S. 118, § 95. 1879, 245, § 6. P. S. 157, § 103. R. L. 163, § 117. 8 Allen, 318.

SECTION 117. The judge shall at said third meeting order a dividend of the property, or a part thereof, among the creditors who have proved their claims, in proportion to their respective debts; but, at any time after the assignment, upon request of the assignee or a creditor, and upon notice to the creditors and assignee, the judge may order the payment,

6 in whole or in part, of claims entitled to priority or preference under this
7 chapter.

1 SECTION 118. In the order for a dividend under the preceding section, Preferred
 2 the following claims shall be first paid in full in the following order: claims
 3 First, The twenty-five dollars or expense of publication as provided 1838, 163,
 4 in section one hundred and seventy paid by a creditor and the legal fees, §§ 12, 21,
 5 paid by him, of an officer for the service of the order of notice to the 1847, 124, § 6.
 6 debtor upon the original petition and for the service of a writ of injunc- 1850, 218,
 7 tion issued to restrain the transfer or disposition of any part of the 1856, 284, § 24.
 8 debtor's property, not exempt from attachment, and from any interfer- 1858, 119,
 9 ence therewith. G. S. 118,
 §§ 25, 96,
 1862, 179, § 5;
 183, § 11.
 1879, 95, § 1
 P. S. 157,
 §§ 104, 137.

1895, 394, §§ 6-8. R. L. 163, § 118. 215 Mass. 156.

10 Second, The legal fees of the messenger.
 11 Third, Debts due to the United States, and debts due to and taxes 138 Mass. 99.
 12 assessed by the commonwealth, or a county, city or town therein.
 13 Fourth, Wages to an amount not exceeding one hundred dollars, due 2 Cush. 371.
 14 to a clerk, servant or operative for labor performed within one year last
 15 preceding the first publication of the notice, or for labor for the recovery
 16 of payment for which an action commenced within one year after the
 17 performance thereof is pending, or has terminated within one year from
 18 said first publication.
 19 Fifth, Debts due to physicians for medical attendance on the debtor
 20 or his family, rendered within six months prior to the institution of pro-
 21 ceedings in insolvency, to an amount not exceeding fifty dollars.
 22 Sixth, Debts due to persons who by the laws of the United States or of
 23 this commonwealth are or may be entitled to a priority or preference in
 24 like manner as if this chapter had not been enacted.
 25 Seventh, Other legal fees, costs and expenses of suit, and for the cus- 13 Gray. 307.
 26 tody of the property proved as preferred under section one hundred and 150 Mass. 180.
 27 seventy-four. 152 Mass. 596.

1 SECTION 119. Upon petition by a creditor upon whose petition a Allowance to
 2 warrant has issued against a debtor and after notice to such debtor and petitioning
 3 his assignee, if any, the court may allow as a preferred claim against the creditor for
 4 estate such amount as said creditor has actually paid for his expenses and counsel fees,
 5 for counsel fees incurred for services rendered upon such petition and etc.
 6 in the legal proceedings connected therewith prior to the issuing of the 1897, 119.
 7 warrant. Such petition shall be verified by the oath of the creditor and R. L. 163,
 8 of the counsel to whom such money was paid. § 119.

1 SECTION 120. The estate shall be liable for wages due to an operative Wages due to
 2 from another operative who has contracted or agreed to do certain an operative
 3 specified work for the debtor, to the amount of one hundred dollars, for from an opera-
 4 labor actually performed on such work within one year last preceding tive working
 5 the first publication of the notice, and in the division of the estate such under contract.
 6 wages shall have the priority given to wages due to operatives under 1879, 204
 7 section one hundred and eighteen; but all payments under this section P. S. 157, § 105.
 8 shall be charged to the account of the operative who, as principal has R. L. 163,
 9 tracted or agreed to do the work, and such payments, and the liability § 120.
 10 herein imposed, shall not exceed the amount due such principal operative
 11 for such work performed within the time hereinbefore mentioned. This
 12 section shall not apply to cases within the provisions of sections ninety-
 13 six to one hundred, inclusive, of chapter one hundred and fifty-nine.

Reservation
for absent
creditors.
1838, 163, § 12.
G. S. 118, § 97.
P. S. 157, § 106.
R. L. 163,
§ 121.

SECTION 121. If at the time of ordering the dividend it appears 1
probable that there are just claims against the estate which for sufficient 2
reason have not been proved, the judge in ordering the dividend shall 3
leave in the hands of the assignee an amount sufficient to pay every such 4
absent creditor a proportion equal to that which shall be then paid to the 5
other creditors. Such amount shall remain thus unappropriated in the 6
hands of the assignee until the final dividend is declared, or until the 7
judge orders its distribution. 8

Unclaimed
dividends.
1883, 242.
1897, 303, § 1.
R. L. 163,
§ 122.

SECTION 122. If a dividend, which the judge has declared or which has 1
become payable to a creditor who has proved his claim under a com- 2
position confirmed by the court remains for six months unclaimed, the 3
assignee, or, in a case of composition, the register, may deposit it in a 4
savings bank or other like institution or invest it in bank stock or other 5
stocks, as the court may order, to accumulate for the benefit of the per- 6
son entitled thereto. Such deposit or investment shall be made in the 7
name of the judge and shall be subject to his order and that of his suc- 8
cessors in office as hereinafter provided. The person making such de- 9
posit or investment shall file in court a memorandum thereof, with the 10
original certificate or other evidence of title thereto, which shall be al- 11
lowed as a voucher for such payment. When the person entitled to the 12
money deposited has satisfied the judge of his right to receive the same, 13
he shall cause it to be transferred and paid over to him. 14

Unclaimed
deposits.
1897, 303, § 2.
R. L. 163,
§ 123.
1908, 168.

SECTION 123. If money deposited with a register to secure the pay- 1
ment of fees or to carry out a composition confirmed by the court remains 2
unclaimed for one year after the depositor or other person is entitled to 3
receive it, the register may, under the direction of the judge, deposit it 4
in a savings bank or invest it in the manner and subject to the preceding 5
section. 6

All moneys deposited with the registers of the courts of insolvency to 7
secure the payment of fees, and in composition, remaining unpaid to the 8
persons entitled thereto, or to their attorneys, for more than ten years 9
after the date of deposit, may be paid over to the state treasurer. The 10
courts of insolvency shall have full power to regulate such payments and 11
to decree what sums shall be paid and the time of payments thereof. The 12
treasurer shall give his receipt therefor, which shall be in full discharge 13
of the register for the same. 14

Any person asserting a right to money deposited with the state treas- 15
urer hereunder, may establish the same by petition to the court of insolv- 16
ency having jurisdiction over the original case, and the treasurer shall 17
pay such money in accordance with the decree of said court. Such sums 18
as are not so paid within three years after the time of their receipt as 19
aforesaid by the state treasurer shall escheat to the commonwealth. 20

Second
dividend.
Assignee's
accounts.
1838, 163, § 13.
G. S. 118, § 98.
P. S. 157, § 107.
R. L. 163,
§ 124.

SECTION 124. The assignee shall, at such time as the judge orders 1
within eighteen months after his appointment, declare a second dividend, 2
if the property was not wholly distributed upon the first dividend, and 3
shall give notice of a meeting of all the creditors of the debtor therefor. 4
At such meeting the accounts of the assignee shall be produced and ex- 5
amined as provided in section one hundred and sixteen and settled by 6
the court; and any balance in the hands of the assignee shall, by order 7
of the judge be divided among all the creditors who have proved their 8
debts, in proportion thereto. 9

1 SECTION 125. If at any time before the final dividend any outstand-
 2 ing debts or other property due or belonging to the estate which cannot
 3 in the opinion of the court be collected and received by the assignee with-
 4 out unreasonable or inconvenient delay, remain in the hands of the as-
 5 signee he may under the direction of the court sell and assign such debts
 6 or other property in such manner as the court orders.

Sale, etc., of
 outstanding
 debts, etc.
 1838, 163, § 13.
 G. S. 118, § 99.
 P. S. 157, § 108.
 R. L. 163,
 § 125.

1 SECTION 126. An action upon a claim sold by an assignee shall be
 2 brought in the name of the purchaser. The fact of sale and of purchase
 3 by the plaintiff shall be set forth in the writ, and the defendant may
 4 avail himself of any matter of defence of which he could have availed
 5 himself in an action upon the claim by the assignee. Costs in such ac-
 6 tions shall be recovered by or against the plaintiff, and the assignee shall
 7 not be liable therefor.

Actions on
 claims sold by
 assignees,
 Costs
 1859, 194
 G. S. 118, § 100.
 P. S. 157, § 109
 R. L. 163,
 § 126.
 1 Allen, 213.
 3 Allen, 99.

132 Mass. 385.

163 Mass. 70.

1 SECTION 127. The second dividend shall be final; but if an action
 2 relative to the estate is then pending or part of the estate is outstanding
 3 or other property of the debtor afterward comes to the hands of the as-
 4 signee, another dividend shall be made by order of the judge. Further
 5 dividends shall be made in like manner as often as occasion requires.

Further
 dividends.
 1838, 163, § 13.
 G. S. 118, § 101.
 P. S. 157, § 110.
 R. L. 163,
 § 127.

1 SECTION 128. No creditor whose debt is proved at the time of the
 2 second or any subsequent dividend shall disturb a prior dividend, but
 3 he shall be paid so far only as the funds remaining unappropriated in the
 4 hands of the assignee are sufficient therefor.

Former divi-
 dends not to
 be disturbed
 1838, 163, § 13.
 G. S. 118, § 102.

P. S. 157, § 111.

R. L. 163, § 128.

PETITION BY CREDITORS.

1 SECTION 129. If a person arrested on mesne process in a civil action
 2 for the amount of one hundred dollars or more founded upon a claim
 3 provable against the estate of an insolvent debtor, has not given bail
 4 therein on or before the return day of such process, or has been actually
 5 imprisoned thereon for more than thirty days; or if a person whose prop-
 6 erty has been attached on mesne process in such action founded upon
 7 such contract has not before the return day of such process dissolved
 8 the attachment as provided by law; or if a person has removed himself
 9 or any part of his property from the commonwealth, with intent to de-
 10 fraud his creditors; or has concealed himself to avoid arrest, or any part
 11 of his property to prevent its being attached or taken on a legal process;
 12 or procured his arrest or his property to be attached or taken on legal
 13 process; or made a fraudulent payment, conveyance or transfer of any
 14 part of his property; or, being a banker, broker, merchant, trader,
 15 manufacturer, contractor, builder or miner, has fraudulently stopped
 16 payment, or has stopped or suspended and not resumed payment of his
 17 commercial paper within fourteen days; any of his creditors whose claims
 18 provable against his estate amount to one hundred dollars, may, within
 19 ninety days thereafter, or, in the case of any such fraudulent conveyance
 20 of land, within ninety days after it has been recorded, if the debtor has
 21 resided in the commonwealth within one year, file a petition under oath
 22 in the court of insolvency for the county, if any, where the debtor has
 23 last resided or had a usual place of business for three consecutive months
 24 before the filing of said petition, otherwise in the court for the county
 25 where he resides or last resided, or has or has had a usual place of business,

Petition by
 creditors.
 1838, 163, § 19.
 1844, 178, §§ 9,
 12, 13.
 1851, 189, § 2.
 1856, 284,
 §§ 25, 29.
 G. S. 118, § 103.
 1879, 245, § 7.
 1880, 246, § 5.
 1881, 233,
 P. S. 157, § 112.
 1890, 431.
 1893, 405, § 2.
 1894, 261
 1895, 209.
 R. L. 163,
 § 129.
 2 Met. 573.
 9 Met. 292.
 1 Cush. 449.
 4 Cush. 121
 8 Cush. 99
 4 Gray, 550
 5 Gray, 144
 6 Gray, 329.
 8 Gray, 316
 9 Gray, 50.
 15 Gray, 556.
 6 Allen, 118
 128 Mass. 120.
 145 Mass. 366.
 146 Mass. 385.
 150 Mass. 574.
 163 Mass. 171.

stating the facts and the nature of their claims and praying that his property may be seized and distributed according to this chapter.

Notice of petition, etc. 1879, 245, § 7. 1880, 246, § 12. 1881, 235, § 3. P. S. 157, § 113. R. L. 163, § 130.

SECTION 130. The register shall cause notice of the filing of such petition to be published twice in not more than two newspapers, and shall forthwith make and file a certificate of the fact and date of publication. The actual expense of such publication shall be paid from the amount deposited by the creditor therefor as provided in section one hundred and seventy; but a hearing upon the petition may be had or a warrant issued thereon prior to the completion of the publication of said notice. The court may, after the commencement of proceedings by or against the debtor and before the hearing upon the petition, by injunction restrain the debtor and any other person from making, transferring or disposing of any part of the debtor's property not exempt from attachment, and from any interference therewith; and if probable cause appears for believing that the debtor is about to conceal or remove from the commonwealth his property or his evidence of property, or any part thereof or to make a fraudulent conveyance or disposition thereof, the judge may issue a warrant under his hand to the sheriff of the county or one of his deputies, ordering him forthwith as messenger to take possession of all the property of the debtor, not exempt from attachment, and safely keep it until the further order of the court.

Warrant. Proceedings thereon. 1838, 163, § 19. G. S. 118, § 104. P. S. 157, § 114. R. L. 163, § 131. 6 Met. 518. 4 Cush. 121. 137 Mass. 224.

SECTION 131. If, after notice of the petition to the debtor by a copy thereof served upon him personally or left at his last and usual place of abode, and a hearing of the petitioner and debtor, or a default by the debtor to appear in pursuance of said notice, the court finds the facts stated in the petition to be true, the judge shall forthwith issue a warrant to take possession of the property of the debtor. The warrant shall be directed, and the property of the debtor shall be thereupon taken and distributed in like manner and with proceedings similar to those herein provided in case of voluntary petitions.

Stay of proceedings. 1851, 189, § 3. G. S. 118, § 105. 1880, 246, § 6. P. S. 157, § 115. 1894, 139. R. L. 163, § 132.

SECTION 132. If a person has committed an act of insolvency from which he should be equitably relieved, the court may upon petition by him, with or without notice to the petitioning creditor, stay proceedings in insolvency and if, upon a hearing, it finds that he is solvent or that the proceedings ought to be stayed it may dismiss the petition in insolvency.

163 Mass. 171.

PETITION BY CREDITORS OF INSANE PERSON.

Petition by creditors of insane person. 1880, 217, §§ 1, 4. 1881, 233. P. S. 157, § 116. 1893, 405, § 3. R. L. 163, § 133.

SECTION 133. Any of the creditors of an insolvent insane person, whose claims provable against his estate amount to one hundred dollars, may file a petition under oath in the court of insolvency for the county, if any, where the debtor has last resided or had a usual place of business for three consecutive months before the filing of said petition, otherwise in the court for the county where he resides, or has a usual place of business, stating his insolvency and the nature of their claims, and praying that his property may be seized and distributed according to this chapter. If after public notice and the appointment of a guardian ad litem for such insane person, and a hearing, the court finds that the interests of the debtor and creditors so require, the judge may issue a warrant to take possession of the property of the debtor and thereupon like proceedings shall be had as in the settlement of estates of other insolvent debtors.

1 SECTION 134. In such case, the schedules of creditors and of property
 2 required by this chapter shall be made and filed by the messenger, upon
 3 his best information and belief. The debtor shall not be required to attend
 4 at any meeting of creditors nor be subject to examination, unless ordered
 5 by the court.

Schedules,
 1880, 217, § 2.
 P. S. 157, § 117.
 R. L. 163,
 § 134.

1 SECTION 135. Within six months after recovering from his insanity,
 2 the debtor may petition the court for his discharge, and shall thereupon
 3 be required to deliver to his assignee for the benefit of his creditors any
 4 property which was in his hands or possession or to which he was entitled
 5 at the time of filing the original petition, and which had not come into
 6 the hands or possession of his assignee; shall make a full disclosure
 7 thereof, and shall take and subscribe an oath that he has so done; shall
 8 submit himself to examination thereon, and may within three months
 9 after the filing of his petition file the written assent to his discharge of
 10 a majority in number and value of his creditors who have proved their
 11 claims, as provided in section ninety-nine. If the court finds, at a meet-
 12 ing of the creditors called therefor, that he has made a full disclosure and
 13 delivery of his property as herein required, that he has conformed to this
 14 chapter so far as applicable and that his assets have paid fifty per cent of
 15 the claims proved against his estate, or that the written assent to his
 16 discharge of a majority in number and value of his creditors who have
 17 proved their claims has been filed, the judge shall grant him a certificate,
 18 which shall state all fiduciary debts exempt from discharge and shall be in
 19 the form and have the effect provided by this chapter for discharges of
 20 other insolvent debtors.

Debtor, after
 recovering
 from insanity,
 may apply for
 discharge
 1880, 217, § 3.
 P. S. 157, § 118.
 R. L. 163,
 § 135.

CONCEALMENT OF PROPERTY.

1 SECTION 136. A debtor who after notice of the filing of a petition by
 2 or against him secretes or conceals property belonging to his estate, or any
 3 books, deeds, documents or writings relative thereto, or removes or causes
 4 to be removed the same or any part thereof out of the commonwealth, or
 5 otherwise disposes of any part thereof, in order to prevent it from coming
 6 to the possession of the messenger or assignee, or to hinder, impede or
 7 delay either of them in recovering or receiving the same, or who makes a
 8 payment, gift, sale, assignment or other conveyance of property belong-
 9 ing to his estate; or spends any part thereof in gaming, or otherwise except
 10 such as may reasonably be expended for the support of himself and fam-
 11 ily, not exceeding the amount allowable by law, shall be punished by
 12 imprisonment in the state prison for not more than five years, or in jail
 13 for not more than two years.

Concealment,
 etc., of
 property.
 1856, 284, § 30.
 G. S. 118, § 106.
 P. S. 157, § 119.
 R. L. 163,
 § 136.
 130 Mass. 465.

PARTNERSHIPS.

1 SECTION 137. Upon petition by one or more partners who are in-
 2 solvent to the court for the county, if any, where the partnership has last
 3 had a usual place of business for three consecutive months before the
 4 filing of such petition, otherwise to the court for the county where it has
 5 or last had a usual place of business, after notice to the other partners if
 6 within the commonwealth, or upon petition by a creditor of the partners,
 7 the judge may issue a warrant as provided in this chapter, upon which the
 8 property of the firm and the separate estate of each of the partners, not
 9 exempt from attachment, shall be taken, and the creditors of the firm

Petition by or
 against part-
 nership.
 1838, 163, § 21.
 1856, 284, § 37.
 1858, 93, § 10.
 G. S. 118, § 108.
 1881, 233.
 P. S. 157, § 120.
 1893, 405, § 4.
 1894, 30.
 R. L. 163,
 § 137.
 4 Met. 398,
 537.
 2 Cush. 175.

4 Cush. 127.
5 Cush. 224.
11 Cush. 236.

and the separate creditors of each partner may prove their respective debts. 10 11

3 Gray, 239, 539.
6 Gray, 329.

3 Allen, 554.
101 Mass. 300.

148 Mass. 269.
167 Mass. 123.

Choice of assignee. Joint and separate property. 1838, 163, § 21. G. S. 118, § 109. P. S. 157, § 121. R. L. 163, § 138. 4 Cush. 99. 9 Cush. 553. 10 Cush. 458, 592. 4 Gray, 120. 5 Gray, 574. 10 Gray, 254, 260, 263. 13 Gray, 114, 462. 5 Allen, 183. 148 Mass. 269. 160 Mass. 171. 163 Mass. 352. 165 Mass. 312. 166 Mass. 379. 177 Mass. 52.

SECTION 138. The assignee shall be chosen by the firm creditors and shall keep separate accounts of the joint property of the firm, and of the separate estate of each member thereof; and after deducting from the whole amount received by him the total expenses and disbursements paid, the net proceeds of such joint property shall be appropriated to pay the firm creditors, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. Any balance of the separate estate of a partner after payment of his separate debts shall be added to such joint property for the payment of the firm creditors. Any balance of such joint property after payment of the firm debts shall be divided and appropriated to and among the separate estates of the several partners according to their respective rights and interests therein, and as it would have been had the partnership been dissolved without insolvency; and the amount so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

Limited partnerships. 1838, 163, § 22. G. S. 118, § 110. P. S. 157, § 122. R. L. 163, § 139. 101 Mass. 300.

SECTION 139. The two preceding sections shall apply to insolvent limited partnerships formed under chapter one hundred and nine or the corresponding provisions of earlier laws; but the separate estates and separate debts of the special partners shall not be subject to the proceedings against the partnership. 1 2 3 4 5

Separate allowance to each partner. 1838, 163, § 21. G. S. 118, § 111. P. S. 157, § 123. R. L. 163, § 140. 8 Cush. 109. 163 Mass. 295.

SECTION 140. Each partner shall be entitled to allowance as provided in this chapter for the maintenance of himself and family; and the allowance from the net proceeds of the estates as provided in section one hundred and thirteen shall be computed on the firm estate and also on each of the separate estates as if there had been a separate warrant against each; but none of the partners shall receive in all more than five hundred dollars. 1 2 3 4 5 6 7

Certificate of discharge to each partner. 1838, 163, § 21. G. S. 118, § 112. P. S. 157, § 124.

SECTION 141. The certificate of discharge shall be granted or refused to each partner as it would or ought to be if the proceedings had been against him alone; otherwise the proceedings against partners shall be the same as against an individual. 1 2 3 4

R. L. 163, § 141.

5 Cush. 613.

5 Gray, 574.

Proof of partnership debts assumed by one or more partners, etc. 1865, 113, §§ 1, 2. P. S. 157, §§ 125, 126. R. L. 163, § 142. 13 Gray, 114. 14 Gray, 534. 3 Allen, 579. 97 Mass. 256. 101 Mass. 482. 156 Mass. 375. 181 Mass. 492.

SECTION 142. If upon dissolution of a partnership, one or more of the partners or a new partnership formed by the addition of new members has agreed to pay any outstanding debts of such partnership, or if a person or firm, in consideration of the receipt or transfer of property, has agreed to pay any outstanding debts of the person from whom such property was received or transferred, and the person agreeing to pay has become insolvent, such debts may, if the creditors so elect, be proved against the estate of such insolvent debtor or debtors, and the proof and allowance thereof shall discharge the person originally liable therefor. If the original debtor, in either of such cases has been compelled to pay the debt so agreed to be paid, he may prove the amount so paid as the original creditor might have done. 1 2 3 4 5 6 7 8 9 10 11 12

CORPORATIONS.

1 SECTION 143. A domestic corporation or a foreign corporation men-
 2 tioned in section three of chapter one hundred and eighty-one, except
 3 railroad and banking corporations and foreign insurance companies,
 4 may file a petition signed by an officer duly authorized by a vote of a
 5 majority of the corporators present and voting at a legal meeting called
 6 therefor, in the court for the county where the corporation has its prin-
 7 cipal place of business, stating its inability to pay its debts and its will-
 8 ingness to assign its property for the benefit of its creditors, and praying
 9 that such proceedings may be had as are hereinafter provided. The
 10 judge shall forthwith issue a warrant, as upon a petition by a debtor
 11 under section twenty, requiring that the notice given by the messenger
 12 shall state further that the making of any contract by the corporation is
 13 forbidden by law. The proceedings thereon, except as hereinafter pro-
 14 vided, shall be the same as upon the petition of a natural person, and in
 15 the case of foreign corporations shall apply only to property of the cor-
 16 poration within the commonwealth and the oath provided for in section
 17 one hundred and forty-five shall be modified in accordance herewith.

Petition by
 corporations.
 1851, 327.
 §§ 1, 2, 26.
 G. S. 118,
 §§ 113, 114.
 P. S. 157,
 §§ 127, 128.
 1890, 321, § 1.
 R. L. 163,
 § 143.
 13 Allen, 105.
 167 Mass. 28.
 205 Mass. 261.
 240 Mass. 244.
 245 Mass. 69.

1 SECTION 144. Claims on account of bills of exchange, endorsements,
 2 money due on bottomry or respondentia bonds or paid upon endorse-
 3 ments or as surety may be proved against an insolvent corporation be-
 4 fore the making of the last dividend, in like manner as against the estate
 5 of an insolvent debtor before the making of the first dividend.

Claims prov-
 able before last
 dividend.
 1851, 327, § 3.
 G. S. 118,
 § 115.
 P. S. 157, § 129.

1890, 321, § 1. R. L. 163, § 144. 152 Mass. 596.

1 SECTION 145. The schedules to be furnished shall be prepared and
 2 furnished by the treasurer or other financial officer of the corporation,
 3 with such assistance from the other officers as he may require; and the
 4 provisions of this chapter which apply to the debtor or set forth his
 5 duties relative to executing papers, submitting to examinations, dis-
 6 closing, making over, secreting, concealing, conveying, assigning or
 7 paying away his money or property, shall apply to each officer of the
 8 corporation relative to the same matters concerning the corporation
 9 and the money and property thereof. Said officers shall at the second
 10 meeting severally make and subscribe an oath in substance as follows:

Schedules.
 Duties, etc.,
 of officers.
 1851, 327,
 §§ 7, 8.
 G. S. 118,
 § 116.
 P. S. 157, § 130
 1890, 321, § 1.
 R. L. 163,
 § 145.
 168 Mass. 82.

I, _____, (president, etc., or treasurer, etc.,) do swear that I verily
 believe the account of the creditors of the corporation, contained in the schedule
 signed by A. B., and now on file in court, is in all respects just and true; that I
 do verily believe that all the property and estate of said corporation, and all its
 books of account and papers, have been delivered to the messenger or the assignee;
 and that if any goods or estate not so delivered hereafter come to my
 knowledge, I will faithfully and diligently apprise the assignee thereof. And I do
 further swear that, to the best and utmost of my knowledge, information and
 belief, there is no part of the estate or effects of said corporation made over or
 disposed of in any manner in fraud of the laws relative to insolvency or of the
 creditors of said corporation.

Oath.

1 SECTION 146. An assignee of a foreign corporation shall have like
 2 rights and duties as an assignee of a domestic corporation relative to
 3 property within the commonwealth or which may be put into his posses-
 4 sion by said corporation. He shall as far as practicable so distribute
 5 the assets that all the creditors within or without the commonwealth
 6 shall receive proportionate dividends from the assets whether in the

Powers and
 duties of
 assignee.
 1890, 321, § 2.
 R. L. 163,
 § 146.

control of the assignee or not. The claims entitled to priority under this chapter shall have like priority in the case of such corporations.

Land damages preferred claims. 1851, 327, § 19. G. S. 118, § 119.

SECTION 147. Claims against a corporation authorized to take land or materials for damages for such taking shall be preferred claims, next after debts due to the United States and to the commonwealth.

P. S. 157, § 133.

R. L. 163, § 147.

Void preferences. 1851, 327, § 9. G. S. 118, §§ 120, 121. P. S. 157, §§ 134, 135.

SECTION 148. Sections one hundred and ten and one hundred and eleven shall apply to corporations subject to this chapter, and an allowance or discharge shall not be granted to a corporation, nor to a person as officer or member thereof.

R. L. 163, § 148.

10 Gray, 243.

121 Mass. 399.

Petition by creditors. 1851, 327, § 17. 1856, 284, § 25. G. S. 118, § 122. P. S. 157, § 136. 1890, 321, § 1. 1897, 124. R. L. 163, § 149. 1919, 350, §§ 52, 53. 163 Mass. 171, 252.

SECTION 149. If a corporation described in section one hundred and forty-three whose property has been attached on mesne process in a civil action founded on a contract for the amount of one hundred dollars or more, provable under this chapter, has not within fourteen days from the return day of the writ, dissolved the attachment as provided by law, or if such corporation has removed any part of its property from the commonwealth, with intent to defraud its creditors, or conceals any part of its property to prevent its being attached or taken on legal process, or has procured its property to be attached or taken on legal process, or has made a fraudulent payment, conveyance or transfer of its property or any part thereof, or has stopped or suspended and has not resumed payment of its commercial paper within fourteen days, any of its creditors whose claims provable against its estate amount to one hundred dollars may, within ninety days thereafter, file a petition on oath in the court for the county where the corporation has its principal place of business, stating the facts and the nature of their claims, and praying that its property or, if a foreign corporation, its property in the commonwealth, may be seized and distributed according to this chapter; and thereupon, if after notice to a domestic corporation by serving on its president, treasurer or clerk, or to a foreign corporation by serving upon the commissioner of corporations and taxation, thirty days at least before the return day of the notice a copy of the petition, and a hearing or upon default of the corporation to appear at the time and place appointed in the notice, the court finds the facts stated in the petition to be true, the judge shall forthwith issue a warrant to take possession of the property of the corporation or, if a foreign corporation, of its property in the commonwealth; and thereupon like proceedings shall be had as upon a warrant issued upon the petition of a corporation.

COMPOSITION.

Composition. 1884, 236, § 1. 1897, 247, § 1. R. L. 163, § 150.

SECTION 150. Instead of proceeding as required by the laws relative to insolvency, an insolvent debtor or an insolvent domestic corporation having capital stock may obtain a discharge from his or its debts as hereinafter provided.

Proposal for composition. 1884, 236, § 2. R. L. 163, § 151.

SECTION 151. At any time after the filing of the petition by or against the debtor and the schedules required by law, he may file a written proposal for composition with his creditors, stating the amount of the proposed dividend, which shall be payable only in money, the date when payable and the security to be given for such payments so far as deferred.

6 Such proposal shall not be considered unless it conforms to such require-
 7 ments, nor unless it provides for payment in full of all debts and charges
 8 entitled to priority.

1 SECTION 152. If the allegations of the petition appear to be true or
 2 if a warrant has been issued, the court, upon the filing of the proposal
 3 for composition, may stay or suspend any process or proceeding which
 4 would otherwise be required by law and may make appropriate orders
 5 relative thereto or to the custody of the estate. It shall order a hearing
 6 on such proposal or a modification thereof under section one hundred
 7 and fifty-six, of which the register shall send notice by mail postpaid to
 8 all known creditors not less than seven days before the day appointed
 9 therefor, stating the substance of the proposal or modification thereof.

Stay of pro-
 ceedings by
 court, etc
 1881, 236, § 3
 1885, 353, § 2
 1889, 406, § 3
 R. L. 163,
 § 152
 161 Mass. 554
 165 Mass. 317
 168 Mass. 100,
 103.

1 SECTION 153. Books of account and papers of the debtor relative to
 2 his estate shall until the final hearing on confirmation of the composition
 3 be open at all reasonable times to examination by any creditor or his
 4 agent, and the court may enforce production thereof; and during such
 5 period the debtor or any other person may be examined by the court or
 6 by a creditor as provided by section eighty-two.

Accounts and
 papers open to
 examination
 1884, 236, § 4
 R. L. 163,
 § 153.

1 SECTION 154. The provisions of sections thirty-one, thirty-three,
 2 thirty-four, thirty-six, thirty-nine, forty, forty-one and forty-three to
 3 forty-eight, inclusive, relative to debts and proof of claims, shall apply
 4 to composition proceedings so far as applicable thereto; but the proceed-
 5 ings shall not be stayed or suspended on account of an appeal from the
 6 allowance or rejection of a claim.

Provisions
 applicable.
 1884, 236, § 5.
 1885, 353, § 1.
 R. L. 163,
 § 154
 157 Mass. 175
 163 Mass. 26
 165 Mass. 582

1 SECTION 155. In composition proceedings where no warrant has been
 2 issued the date of the notice by the register to the creditors of the debtor's
 3 proposal of composition shall have the same effect relative to the proof
 4 of claims and the debtor's discharge as the date of the first publication of
 5 the issuing of the warrant in voluntary proceedings in insolvency.

Effect of notice
 of proposal
 1884, 236, § 5
 1889, 406, § 1
 R. L. 163,
 § 155.

1 SECTION 156. The debtor shall be present at the hearing and may
 2 then be examined by the court or by a creditor relative to his estate, and
 3 other evidence may be offered. At any time before the hearing is closed
 4 the debtor may file any modification of his proposal which shall there-
 5 after be considered the proposal. The hearing shall then be adjourned
 6 not less than seven days, and if at or before the day to which such or any
 7 subsequent adjournment is made the debtor files in court the written
 8 assent to the proposal of a majority in number and value of his creditors
 9 who have proved their claims if the same be for the payment of not less
 10 than fifty per cent to the general creditors, or if less than fifty per cent,
 11 of three fourths in number and value of such creditors, the court shall at
 12 the hearing, or at a further adjournment thereof determine whether the
 13 composition shall be confirmed, and any creditor may be heard thereon.
 14 Any matters which would prevent or avoid a discharge in insolvency may
 15 be considered in ascertaining the expediency of confirming the same,
 16 but not as an absolute bar thereto. If the only objection thereto relates
 17 to the security for deferred payments, other security may then be offered.
 18 No claim entitled to priority shall be counted nor shall a creditor whose
 19 claim is less than fifty dollars be counted in the number of creditors.

Hearing and
 assent of
 creditors.
 1884, 236,
 §§ 6-8
 1885, 353,
 §§ 2, 3.
 1889, 406, § 3
 R. L. 163,
 § 156
 161 Mass. 554

Confirmation
of composition.
Effect
1884, 236, § 9.
1890, 387.
R. L. 163,
§ 157.
147 Mass. 192.
150 Mass. 353.
155 Mass. 389.
168 Mass. 100.
171 Mass. 111.

SECTION 157. If the court finds that the composition has been duly assented to and is consistent with justice and for the interests of the creditors, it shall order the same to be confirmed; and by the same order shall limit the time within which money for cash payments and vouchers and securities for deferred payments shall be deposited in court; and upon such deposit within the time so limited therefor, the judge shall grant to the debtor a certificate of discharge from his debts, which shall be substantially in the form and have the same effect as though obtained by the other proceedings in insolvency. It shall not be annulled for a cause which was brought to the notice of the court on the hearing for confirmation, or which was then known to the creditor petitioning to have the same annulled; nor shall it bar the debt of a creditor whose name was fraudulently and wilfully omitted from the debtor's schedule of creditors. But the debt of a creditor omitted therefrom by mistake only or want of knowledge, shall be barred and he shall be entitled to and may recover against the debtor the amount of the dividend to which he would have been entitled in the composition proceedings.

Unproved
claims.
1890, 387.
R. L. 163,
§ 158.
157 Mass. 252.
170 Mass. 466.

SECTION 158. If there are unsecured claims included in the debtor's schedule of creditors not proved at the time of the deposit, the deposit shall include a dividend at the rate proposed on all such claims computed on the amount set forth in the schedule; and after the expiration of five months and within six months from the time of the first hearing on the debtor's proposal for composition, the court shall order a hearing for the proof of such unproved claims, of which notice shall be given in like manner as of the previous hearings; and upon proof and allowance thereof at such hearing, the court shall order dividends paid on all debts so proved at the rate allowed on debts formerly proved, and the money deposited on claims then remaining unproved shall then be refunded to the depositor.

Disposition of
property upon
discharge.
1884, 236, § 10.
R. L. 163,
§ 159.
159 Mass. 190.
170 Mass. 9.
204 Mass. 432.

SECTION 159. Upon the granting of the discharge, the money, vouchers and securities deposited in court shall be paid and delivered by the register upon demand to the persons entitled thereto, and all other property of the debtor shall revert to and revest in him; and the court may order any necessary or proper release or reconveyance thereof by an assignee or trustee to whom the same may have been assigned or conveyed.

Return of
deposits.
1885, 353, § 5.
R. L. 163,
§ 160.

SECTION 160. After the expiration of one year from the deposit in court of the money, vouchers and securities, as provided in section one hundred and fifty-seven, the court may, after notice by mail postpaid, to creditors who have not taken up their dividends, order all such money, vouchers and securities then remaining on deposit in said court, to be paid and transferred to the depositor.

Effect of
failure of
composition.
1884, 236, § 11.
R. L. 163,
§ 161.

SECTION 161. If the money for the cash payments and the vouchers and securities for deferred payments are not deposited in court within the time limited by the order of confirmation, the case shall proceed in insolvency, and the register shall deliver to the assignee all money and securities which are the property of the debtor which shall have been deposited in court; and all other securities and vouchers which shall have been so deposited shall be returned by the register to the persons

8 who furnished or deposited the same or be otherwise disposed of as the
 9 judge may order. In such case the stay or suspension of other proceed-
 10 ings by reason of the attempted composition shall not affect any rights,
 11 and the period of suspension shall be excluded in computing other periods
 12 of time provided by the laws relative to insolvency.

1 SECTION 162. This chapter shall not release an officer or stockholder
 2 of a corporation from any liability under sections thirty-five to thirty-
 3 seven, inclusive, of chapter one hundred and fifty-six, but if such cor-
 4 poration applies for a discharge as hereinbefore provided any creditor
 5 may, at any time after the filing of the offer in composition, file a bill in
 6 equity in behalf of himself and other creditors of the corporation, against
 7 it and all stockholders thereof at the time of the filing of the petition in
 8 insolvency by or against the corporation, or against all the officers liable
 9 for its debts and contracts, for the recovery of the amounts due from the
 10 corporation to himself and the other creditors for which the stockholders
 11 or officers may be personally liable by reason of any act or omission on
 12 its part or on that of its officers, stating the nature of his claim and the
 13 grounds upon which it is expected to charge the stockholders or officers
 14 personally. It shall be unnecessary to allege or prove a judgment against
 15 the corporation or the return of an execution unsatisfied. If the ground
 16 upon which it is expected to charge the officers of the corporation is an
 17 excess of debts above the capital stock, the extent of such excess shall
 18 be taken to be that existing at the time of the filing of the petition in
 19 insolvency by or against said corporation.

Stockholder's
 liability not
 affected
 1897, 247, § 2.
 R. L. 163,
 § 162.

1 SECTION 163. If, at the time of the filing of the offer in composition
 2 by a corporation, an action is pending against it on behalf of a creditor
 3 who would be entitled to enforce a liability against its officers or stock-
 4 holders under chapter one hundred and fifty-six, the plaintiff may change
 5 his action into a suit in equity, making parties thereto the stockholders
 6 and officers who were such at the time of the filing of the petition in
 7 insolvency by or against the corporation, and may proceed thereafter in
 8 like manner as provided in the preceding section. If the ground upon
 9 which it is expected to charge the officers of the corporation is an excess
 10 of debts above the capital stock, the extent of such excess shall be taken
 11 to be that existing at the time of the beginning of said action.

Effect of com-
 position upon
 pending action.
 1897, 247, § 3.
 R. L. 163,
 § 163.

1 SECTION 164. A suit in equity under the two preceding sections shall
 2 be subject to sections fifty to fifty-three, inclusive, of chapter one hun-
 3 dred and fifty-eight.

Proceedings.
 1897, 427, § 5.
 R. L. 163,
 § 164.

1 SECTION 165. A corporation making an offer of composition shall
 2 file, at the time of filing the schedules of assets and liabilities, a schedule
 3 of all its officers and stockholders who were such at the time of the filing
 4 of the petition in insolvency by or against it, with the holdings of stock
 5 at such time.

Schedule of
 officers, etc.
 1897, 427, § 4.
 R. L. 163,
 § 165.

1 SECTION 166. A discharge under section one hundred and fifty-seven
 2 shall dissolve any attachment on mesne process made not more than four
 3 months prior to the time of giving the notice to the creditors of the
 4 debtor's proposal of composition.

Effect of dis-
 charge upon
 attachments.
 1889, 406, § 2.
 R. L. 163,
 § 166.

Amendments and orders 1884, 236, § 12. R. L. 163, § 167. 190 Mass. 507. 216 Mass. 459.

SECTION 167. The court, except as otherwise provided in this chapter, may allow amendments and make appropriate orders, in the course of the proceedings or thereafter, necessary to carry the same into full effect.

Penalty for placing fictitious debt upon schedule. 1884, 236, § 13. R. L. 163, § 168.

SECTION 168. An insolvent debtor who knowingly places upon his schedule of creditors a false or fictitious debt with intent to deceive or defraud his creditors, or who having notice or knowledge that a person has proved or attempted to prove a false or fictitious debt against his estate, fails to disclose the same forthwith to the court or who makes a payment or gives or promises an advantage to a creditor with intent thereby to procure his assent to a composition, shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than two years.

Penalty for proving fictitious debt. 1884, 236, § 14. R. L. 163, § 169.

SECTION 169. A creditor of an insolvent debtor who knowingly proves a false or fictitious debt against the estate, or receives or procures or attempts to procure a payment or advantage in consideration of his assent to a composition, shall be punished by imprisonment for not more than two years or by a fine of not more than one thousand dollars.

FEEES AND COSTS.

Fee for receiving petition, etc. 1838, 163, § 16. 1856, 284, § 24. G. S. 118, § 125. P. S. 157, § 137. 1895, 394, §§ 1, 2. R. L. 163, § 170. 150 Mass. 180.

SECTION 170. A debtor's petition for the institution of voluntary insolvency proceedings shall be received and entered by the register only upon payment to him of twenty-five dollars. A creditor's petition for the institution of proceedings against a debtor shall be received and entered by the register only upon payment to him of the amount necessary to defray the expense of publishing the notice of the filing of such petition, but the warrant shall not issue until twenty-five dollars is paid to the register. A proposal by a debtor for composition with his creditors shall not be received or entered by the register after the filing of a creditor's petition for involuntary proceedings, and before the issuing of a warrant thereon, until twenty-five dollars has been paid to the register.

Accounts of register. 1856, 284, § 24. G. S. 118, § 126. 1862, 137. P. S. 157, § 138. 1895, 394, § 3.

SECTION 171. The register shall, annually on the first days of January, April, July and October, render an account on oath of all fees so received by him during the three months last preceding, and on or before the tenth day of said months pay over the same to the commonwealth.

R. L. 163, § 171.

No fees in composition cases, when. 1885, 353, § 4. 1895, 394, § 4.

SECTION 172. In composition cases no fees or compensation shall be payable to the register for giving notices to creditors or for the custody of money, vouchers or securities, or for the payment of dividends.

R. L. 163, § 172.

Messenger's fees. 1838, 163, § 16. 1856, 284, § 24. G. S. 118, § 125. P. S. 157, § 137. 1895, 394, § 5. R. L. 163, § 173.

SECTION 173. In all cases in a court of insolvency the messenger shall be entitled to the following fees: for service of the warrant, two dollars; for necessary travel, at the rate of four cents a mile; for each written notice to creditors named in the schedule, ten cents; for the custody of property, publication of notices and other services, the amounts actually incurred and paid and returned by him in an itemized account on oath and approved by the court. For cause and upon a hearing the court may make a further allowance.

1 SECTION 174. If an attachment on mesne process has not been dis- Costs if attach-
 2 solved before commencement of proceedings in insolvency, or if such ment dissolved.
 3 attachment has been dissolved by bond and the claim upon which the 1841, 124, § 6.
 4 action was commenced is proved against the estate of the debtor, the G. S. 118, § 127.
 5 plaintiff may also prove the legal fees, costs and expenses of the action 1862, 179, § 5.
 6 and of the custody of the property to the date of the first meeting, and P. S. 157, § 139.
 7 the amount thereof shall be a privileged debt. 1892, 359.
 R. L. 163,
 § 174.
 135 Mass. 588.

147 Mass. 192.

152 Mass. 596.

1 SECTION 175. In matters of insolvency which are contested in a Costs, how
 2 court of insolvency, the superior court or the supreme judicial court, said paid.
 3 courts may award costs to either party to be paid by the other, or to 1856, 284.
 4 either or both parties to be paid out of the estate. If costs are awarded §§ 38, 39.
 5 to be paid by one party to the other, said courts, respectively, may issue G. S. 118,
 6 execution therefor. P. S. 128, 129.
 P. S. 157,
 §§ 140, 141.

R. L. 163, § 175.

VACATING PROCEEDINGS.

1 SECTION 176. Upon petition by a creditor who has proved his claim Vacating
 2 the court may order the proceedings to be stayed and, after notice and a proceedings.
 3 hearing, if no objection is made by the debtor or any such creditor, enter 1848, 304, § 13.
 4 an order vacating all proceedings therein. G. S. 118, § 130.
 P. S. 157, § 142.

R. L. 163, § 176.

3 Gray, 531.

6 Gray, 243.

129 Mass. 129.

RETURNS.

1 SECTION 177. Each register shall on or before the tenth day of each Returns by
 2 month make a return to the state secretary of the name, residence and registers.
 3 occupation of each person by or against whom, as an insolvent debtor, 1846, 168, § 3.
 4 and of the name of each corporation, the kind of business for which it 1851, 327, § 24.
 5 was organized, the place or places where its business was principally done, G. S. 118, § 131.
 6 by or against which, as an insolvent corporation, a petition has been P. S. 157, § 143.
 7 filed in his court during the month last preceding, with the dates of 1897, 89.
 8 such petitions. The secretary shall enter such returns, conveniently for R. L. 163,
 9 reference, in a book open to public inspection. § 177.

CHAPTER 217.

JUDGES AND REGISTERS OF PROBATE AND INSOLVENCY.

SECT.

- 1. Judges.
- 2. Two judges in certain counties.
- 3. Special judges, appointment of and provisions for holding court.
- 4. Registers of probate and insolvency.
- 5. Oaths of judge and register.
- 6. Judge, register, etc., to be disinterested.
- 7. Judge or register may be appointed guardian of his minor child.
- 8. Assistance of other judges.
- 9. Decree out of county.
- 10. Bonds to acting judge.

SECT.

- 11. Inspection of records, etc., by judges and liability on bonds of registers and assistant registers.
- 12. Bond of register.
- 13. Temporary register.
- 14. Registers shall certify amount of assistance.
- 15. Duties of register. Custody of records.
- 16. Register to send notices, copies of inventories, etc., to commissioner of corporations and taxation, except, etc.

<p>SECT.</p> <p>17. Register to report vacancy in office of assistant, and appointment thereto.</p> <p>18. Register to furnish copies.</p> <p>19. Register to send notice of charitable, etc., trusts to public welfare department.</p> <p>20. Register to account.</p> <p>21. Register may receive petitions and issue citations.</p> <p>22. Register may issue attachments, appoint appraisers, etc.</p> <p>23. Assistant registers.</p> <p>24. Second assistant registers.</p> <p>24A. Third assistant register in Suffolk county.</p> <p>25. Third and fourth assistant registers in Middlesex county.</p> <p>26. Official signature of assistant register.</p> <p>27. Duties of assistant register.</p> <p>27A. Appointment of permanent officer to act as guardian ad litem in Suffolk county.</p>	<p>SECT.</p> <p>28. Deputy assistant registers and clerk in Suffolk county.</p> <p>29. Clerk in Middlesex county.</p> <p>30. Court officers for Middlesex, Plymouth and Suffolk counties.</p> <p>31. Messengers in Middlesex county.</p> <p>32. Messenger for Suffolk county.</p> <p>32A. Messenger for Hampden county.</p> <p>33. Allowance to registers for assistance.</p> <p>34. Salaries of judges.</p> <p>35. Salaries of registers and assistant registers.</p> <p>36. [Repealed.]</p> <p>37. [Repealed.]</p> <p>38. Salaries of judges in Suffolk county.</p> <p>39. Compensation of court officers and messengers.</p> <p>40. Compensation of judges for certain duties.</p> <p>41. Compensation of special judges.</p> <p>42. Traveling expenses.</p> <p>43. Compensation of temporary register. Certain fees, etc., forbidden.</p>
--	---

Judges.
 1858, 93, § 1.
 G. S. 119, § 1.
 P. S. 158, § 1.
 R. L. 164, § 1.

SECTION 1. In each county except Suffolk, Middlesex, Essex and Worcester, there shall be one judge of probate and insolvency, in this chapter called the judge of probate. 1 2 3

1907, 442, § 1.

1908, 541, § 1.

Two judges in certain counties.
 1859, 110, § 1.
 G. S. 119, § 3.
 P. S. 158, § 3.
 1893, 379.
 1894, 527, § 1.
 R. L. 164, §§ 2, 4.
 1907, 442, § 2.
 1908, 541, § 2.
 15 Gray, 459.

SECTION 2. There shall be two judges of probate in each of the counties of Suffolk, Middlesex, Essex and Worcester. The senior judge shall be the first judge in each county, to whom, and to his successors, all bonds required by law to be given to the judge of probate for said counties shall be made payable. The probate court and the court of insolvency for said counties may be held by one or both of the judges, and, when so held, shall have and exercise all the powers and jurisdiction committed to the respective courts. The judges shall so arrange the performance of their duties as to insure a prompt and punctual discharge thereof. The judges may perform each other's duties when necessary or convenient. Simultaneous sessions of the courts in said counties may be held if public convenience requires. Citations, orders of notice and all other processes issued by the register of probate and insolvency, in this chapter called the register, for any of said counties, shall bear teste of the first judge of said court. Deposits or investments made in the name of the judge of probate shall be in the name of the first judge of the court, and shall be subject to the order of the court. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17

Special judges, appointment of and provisions for holding court.
 1908, 110.
 1909, 166.
 1913, 211.
 1924, 375.
 1926, 97, § 1.

SECTION 3. There shall be a special judge of probate and insolvency in each of the counties of Berkshire, Dukes, Franklin, Hampshire, Hampden and Middlesex, who may perform the duties of the judge of probate in the county for which he is appointed, in cases of vacancy in office, sickness, disability on account of interest of such judge, or whenever the judge in a writing filed with the register requests the special judge to perform his duties; or, in case of the absence of the judge from the county, whenever the register, in a writing certifying such absence, shall so request. The register shall certify upon the records of the court 1 2 3 4 5 6 7 8 9

10 the number of days, the dates upon which, and the occasions for which,
 11 the duties of the judge are performed by the special judge; and when the
 12 occasion is that of sickness, absence from the county, interest or other
 13 legal disqualification, or vacancy in office, he shall certify the same to the
 14 comptroller.

1 SECTION 4. There shall be in each county a register of probate and
 2 insolvency, who shall hold office for six years beginning with the first
 3 Wednesday in January in the year succeeding his election, and until his
 4 successor is qualified.

Registers of
 probate and
 insolvency.
 1858, 93, § 4.
 G. S. 10, § 4.
 P. S. 10, § 4.

1890, 423, § 191.	1907, 560, §§ 353, 456	1918, 114, § 2.
1893, 417, § 252.	1913, 835, §§ 391, 503.	1919, 269, § 26.
1898, 548, § 316.	1917, 255, § 1.	1931, 426, § 284.
R. L. 11, § 319.		

1 SECTION 5. Each judge of probate and each register, before entering
 2 upon the performance of his official duties, in addition to the oaths pre-
 3 scribed by the constitution, shall take and subscribe an oath that he
 4 will faithfully discharge said duties and that he will not during his con-
 5 tinuance in office, directly or indirectly, be interested in, or benefited by,
 6 the fees or emoluments which may arise in any suit or matter pending in
 7 either of the courts of which he is judge or register, respectively. Such
 8 oath shall be filed in the registry of probate of the county for which he
 9 is appointed or elected.

Oaths of
 judge
 and register.
 Const pt 2,
 c. 6, art. 1.
 Const.
 amend. 6
 (Const. Rev.
 art 149.)
 1817, 190, § 2.
 R. S. 83.
 §§ 21, 26.
 1856, 284.
 §§ 12, 16.

1858, 93, §§ 2, 3, 5.	P. S. 158, §§ 2, 6.
G. S. 119, §§ 2, 7.	R. L. 164, §§ 3, 10.

1 SECTION 6. No judge of probate, register, assistant register or person
 2 employed in any registry of probate and insolvency shall be interested in,
 3 or benefited by, the fees or emoluments which may arise in any matter
 4 pending before the probate court or court of insolvency of his county;
 5 nor shall he act as counsel or attorney, either in or out of court, in any
 6 matter pending before said courts or in an appeal therefrom; nor shall
 7 he, except as otherwise provided, be appointed executor, administrator,
 8 guardian, conservator, commissioner, appraiser or assignee of or upon
 9 an estate within the jurisdiction of his court; nor shall he be interested
 10 in the fees or emoluments arising from any of said trusts; and no judge
 11 shall be retained or employed as counsel or attorney, either in or out of
 12 court, in any suit or matter which may depend on or in any way relate to
 13 a decision, warrant, order or decree made or passed by him; nor for or
 14 against an executor, administrator, guardian or conservator appointed
 15 within his jurisdiction, in any action or suit brought by or against the
 16 executor, administrator, guardian or conservator as such; nor in any
 17 action or suit relating to the official conduct of such party; nor for or
 18 against a creditor, debtor or assignee, in a cause or matter arising out of
 19 or connected with any proceedings before him; nor in an appeal in such
 20 cause or matter.

Judge,
 register, etc.,
 to be dis-
 interested.
 1727, 3.
 1815, 49.
 1817, 190, § 4.
 R. S. 83.
 §§ 26, 27.
 1856, 284.
 §§ 16, 17.
 1858, 93,
 §§ 2, 3, 5.
 G. S. 119,
 §§ 6, 9.
 1879, 292, § 1.
 P. S. 158, § 21.
 R. L. 164, § 25.
 1915, 23.
 5 Pick. 483.
 9 Pick. 287.
 21 Pick. 101.
 22 Pick. 507.
 11 Met 390.
 3 Cush. 352.
 7 Gray. 391
 105 Mass. 219.
 110 Mass. 189.

1 SECTION 7. If a judge or register desires to be appointed guardian of
 2 his minor child, who is an inhabitant of or resides in the same county,
 3 such appointment may be made, and all subsequent proceedings in regard
 4 thereto had, in the probate court of an adjoining county.

Judge or
 register may
 be appointed
 guardian of
 his minor
 child.

1870, 263.	P. S. 158, § 22.	R. L. 164, § 26.
------------	------------------	------------------

1 SECTION 8. If a judge of probate is unable to perform his duties, or
 2 any part of them, from sickness, interest or other legal disqualification,

Assistance of
 other judges.
 1783, 46, § 3.

1810, 36.
 1817, 190, § 5.
 R. S. 83, § 15.
 1856, 284, § 5.
 G. S. 119, § 4.
 P. S. 158, § 4.
 1892, 337, § 1.
 1894, 377, § 1.
 1899, 345, § 1.
 R. L. 164, § 5.
 1904, 401, § 1.
 1905, 92.
 1912, 322.
 1913, 70.
 105 Mass. 219.
 110 Mass. 189.
 246 Mass. 464.
 1 Op. A. G.
 232.

or if, in his opinion, the court requires the assistance of another judge, or if there is a vacancy in the office of judge of probate, or if the judge is absent, his duties, or such of them as he may request, shall, if there is no special judge of probate in said county ready to act, be performed in the same county by the judge of probate of any other county who may be designated by the judge, or, in case of his failure so to designate, who may be designated by the register from time to time as may be necessary; but, unless objection is made by an interested party before the decree is made, any case may be heard and determined out of said county in the performance of such duties by such other judge, who may send his decree to the registry of probate for the county where the case is pending. Two or more simultaneous sessions of the court may be held, the fact being so stated upon the record.

Decree out of county.
 1898, 131.
 R. L. 164, § 9.
 15 Gray, 459.

SECTION 9. A judge of probate may, in any case in which a decree, order or allowance can be made without a hearing, and in any case after a hearing, make such decree, order or allowance, and approve bonds, at any place in the commonwealth, with the same effect as if so made and approved in his county; and if such judge, under the preceding section, acts in a county other than his own, such decree, order or allowance may be signed, and bonds approved, outside the county where he may have been designated to act. This section shall not affect the validity of any decree, order or allowance signed or bond approved prior to March third, eighteen hundred and ninety-eight.

Bonds to acting judge.
 1859, 110, § 3.
 G. S. 119, § 5.
 P. S. 158, § 5.
 R. L. 164, § 8.

SECTION 10. Bonds required to be given to the judge of probate shall be given, in case of vacancy in the office of judge, to the acting judge, and to his successors in office, and all business shall be done in his name or in the name of the probate court or the court of insolvency for the county where the case or matter is pending; but bonds may be approved, and other acts required to be done or certified by the judge may be done or certified, by the acting judge.

Inspection of records, etc., by judges and liability on bonds of registers and assistant registers.
 1861, 95.
 P. S. 158, §§ 15-17.
 R. L. 164, §§ 21-23.

SECTION 11. Judges of probate shall semi-annually inspect the doings of the registers of their courts, and see that the records and files are made up seasonably and kept in good order; and if the records are left incomplete for more than six consecutive months, such neglect, unless caused by illness or casualty, shall be adjudged a forfeiture of the bond of the register. In case of any neglect causing a forfeiture of the bond of the register or assistant register, the judge shall forthwith give written notice thereof to the state treasurer, who shall thereupon cause the bond to be put in suit; and the amount recovered in such suit shall be applied to the expense of making up the deficient records under the direction of the court in whose records the deficiency exists, and the surplus, if any, shall be carried into the account of such treasurer. This section shall not exempt registers or assistant registers from an action for any other breach of their bond, or from other liability for neglect or misconduct in office.

Bond of register.
 1792-3, 24, § 2.
 1786, 57, § 2.
 R. S. 83, § 21.
 1856, 284, § 12.
 1857, 15.

SECTION 12. Each register shall give bond to the state treasurer for the faithful performance of his official duties, in a sum not less than one thousand nor more than ten thousand dollars, as ordered by the judge, with one or more sureties approved by him.

1 SECTION 13. Upon the death, resignation, removal or absence of the
 2 register, if there is no assistant register, or if he also is absent, the judge
 3 shall appoint a temporary register to act until a register is qualified, or
 4 until the disability is removed. Such temporary register shall be sworn
 5 before the judge, and a certificate thereof, with his appointment, shall
 6 be recorded with the proceedings of each court in which he acts.

G. S. 119, §§ 14, 15.

P. S. 158, §§ 19, 20.

R. L. 164, § 24.

Temporary
 register
 1817, 190, § 2.
 R. S. 83,
 §§ 23-25.
 1856, 173, § 8;
 284, §§ 14, 15
 1858, 93,
 §§ 2, 3, 5, 6.

1 SECTION 14. The register shall certify upon his records and to the
 2 comptroller the number of days, the dates upon which, and the occasions
 3 for which, the duties of the judge of probate are performed by a judge
 4 of another county under section eight.

G. S. 119, § 5.
 P. S. 158, § 5.
 1892, 337, § 2.

1894, 377, § 2.
 1899, 345, § 2.

R. L. 164, § 6.
 1931, 394, § 207.

Registers shall
 certify
 amount of
 assistance.
 1859, 110, § 2

1 SECTION 15. The register shall have the care and custody of all
 2 books, documents and papers pertaining to his court, or deposited with
 3 the records of insolvency or filed in the registry of probate, and shall
 4 carefully preserve them and deliver them to his successor. He may,
 5 with the approval of the county commissioners and at the expense of
 6 the county, cause copies of the indexes, or new indexes, to the records
 7 which are in his custody, to be printed and sold at a price not less than
 8 the cost of paper, printing and binding. He shall perform all other duties,
 9 pertaining to his office, required by law or prescribed by the judge. He
 10 may attest the records by the volume, and the attestation shall be suf-
 11 ficient when the volume containing the same bears the attest, with the
 12 written signature of the register or other person lawfully authorized.

Duties of
 register.
 Custody of
 records.
 1817, 190, § 2.
 R. S. 83, § 22
 1856, 284, § 15;
 1858, 93, § 5
 G. S. 119, § 8.
 P. S. 158, § 8.
 1900, 180
 R. L. 164, § 12
 1907, 225, § 1

1 SECTION 16. The register shall, except as herein provided, send by
 2 mail to the commissioner of corporations and taxation a copy of every
 3 inventory and appraisal filed in his court by an executor, administrator
 4 or trustee, within thirty days after the filing of the same. The register
 5 shall also, within the same period, send by mail to said commissioner a
 6 copy of the will of the decedent, if such has been allowed by the probate
 7 court. The register shall also furnish such copies of papers in his office
 8 as the commissioner shall require, and shall furnish information as to
 9 the records and files in his office in such form as the commissioner may
 10 require. A refusal or neglect by the register so to send a copy of such
 11 inventory and appraisal or to furnish such copies or information shall be
 12 a breach of his official bond; but the commissioner may excuse him from
 13 sending copies of inventories and of wills of estates no part of which, in
 14 his judgment, appears to be subject to a tax under chapter sixty-five.
 15 If an executor, administrator or trustee fails to file said inventory and
 16 appraisal within three months from the date of his appointment, the
 17 register shall within thirty days after the expiration thereof notify the
 18 commissioner of such failure.

Register to
 send notices,
 copies of
 inventories,
 etc., to com-
 missioner of
 corporations
 and taxation,
 except, etc.
 1891, 425, § 10.
 1895, 430, § 2.
 R. L. 15,
 §§ 9, 10.
 1907, 563,
 §§ 13, 14, 26
 1908, 268.
 1909, 490, IV,
 §§ 13, 14;
 527, §§ 5, 6.
 1919, 350,
 §§ 52, 53.
 1 Op. A. G.
 40, 52.

1 SECTION 17. The register shall forthwith report to the state secretary
 2 a vacancy in the office of assistant register and the name, residence and
 3 date of appointment of the person appointed to fill such vacancy.

1880, 139, § 4.

P. S. 158, § 13.

R. L. 164, § 19.

Register to
 report vacancy
 in office of
 assistant, and
 appointment
 thereto.

1 SECTION 18. The register shall furnish copies of records or other
 2 papers in his custody and shall collect the legal fees therefor.

R. L. 164, § 15.

Register to
 furnish copies.
 1893, 469, § 2.

Register to send notice of charitable, etc., trusts to public welfare department. 1915, § 1. 1919, 350, § 87.

SECTION 19. Whenever any instrument creating or increasing an estate or fund for benevolent, charitable, humane or philanthropic purposes is filed for record in a registry of probate, the register shall forthwith send to the department of public welfare a statement setting forth the book and page in the registry where the instrument is recorded, with the name, if any, of the estate or fund, and further stating by whom said estate or fund has been created or increased, and by whom it is to be administered.

1
2
3
4
5
6
7
8

Register to account. 1893, 469, § 3. R. L. 164, § 16.

SECTION 20. The register shall annually, on the first Mondays of January, April, July and October, account for and pay over to the state treasurer all fees and compensation which have been received by him otherwise than by salary.

1
2
3
4

Register may receive petitions and issue citations. 1860, 163. 1863, 156, § 1. P. S. 158, § 9. R. L. 164, § 13.

SECTION 21. He may at any time receive and place on file petitions and applications to the probate court or the court of insolvency, and may issue orders of notice and citations in like manner and with like effect as if issued by the judge; but if the judge considers such notice insufficient, he may order further notice.

1
2
3
4
5

Register may issue attachments, appoint appraisers, etc. 1881, 215, § 2. P. S. 158, § 10. 1864, 199. R. L. 164, § 14. 1915, 26.

SECTION 22. The register may issue process of attachment and of execution, and all other processes and all warrants, letters and licenses necessary to carry into effect any order or decree of the courts, and they may run into any county and shall be executed and obeyed throughout the commonwealth. A facsimile of his signature imprinted by him on all such warrants, letters and licenses and all processes except executions shall have the same validity as his written signature. He may appoint appraisers to make any inventory required to be returned to said courts.

1
2
3
4
5
6
7
8
9

Assistant registers. Const. pt. 2, c. 6, art. 1. Const. amend. 6. (Const. Rev. art. 149.) 1858, 93, §§ 6, 8. G. S. 119, § 11. P. S. 158, § 11. 1893, 151, § 1. 1898, 234. 1899, 191, § 1. 1900, 144, § 1.

SECTION 23. The judges of probate for each county except Dukes and Nantucket may appoint an assistant register of probate and insolvency, in this chapter called the assistant register, who shall hold office for three years unless sooner removed by the judge. Before entering upon the performance of his duties, an assistant register shall take the oath prescribed by the constitution, and shall give bond to the state treasurer for the faithful performance of his official duties in a sum not less than five hundred nor more than five thousand dollars, as ordered by the judge, with one or more sureties approved by him.

1
2
3
4
5
6
7
8
9

R. L. 161, § 17. 1907, 207, § 1; 442, §§ 3, 6. 1912, 332. 1904, 286, § 1. 1909, 248. 1923, 164, § 1.

Second assistant registers. 1905, 323. 1908, 231. 1910, 266. 1912, 498. 1916, 264. 1918, 4.

SECTION 24. The judges of probate for the counties of Essex, Norfolk, Hampden, Middlesex, Suffolk and Worcester may appoint a second assistant register for their respective counties, who shall hold office for three years unless sooner removed by the judge. They shall be subject to the laws relative to assistant registers.

1
2
3
4
5

1923, 164, § 2. 1928, 223, § 1. 1930, 371, § 1.

Third assistant register in Suffolk county. 1927, 209, § 1.

SECTION 24A. The judges of probate for the county of Suffolk may appoint a third assistant register for said county, who shall hold office for three years, unless sooner removed by the judges. He shall be subject to the laws relative to assistant registers.

1
2
3
4

1 SECTION 25. The judges of probate for Middlesex county may ap- Third and
 2 point a third and a fourth assistant register for said county, who shall fourth assistant
 3 hold office for three years unless sooner removed by the judges. They registers in
 4 shall be subject to the laws relative to assistant registers. Middlesex
 county.

1909, 494. 1923, 164, § 3. 1927, 198, § 1.

1 SECTION 26. The signing of the name of any second, third or fourth Official
 2 assistant register followed by the designation, "assistant register", signature of
 3 shall be a sufficient official signature. assistant
 register.

1905, 323. 1909, 494. 1912, 498.
 1908, 231. 1910, 266. 1931, 426, § 285.

1 SECTION 27. An assistant register shall perform his duties under the Duties of
 2 direction of the register, and shall pay over to him all fees and amounts assistant
 3 received as such assistant. He may authenticate papers and perform register,
 4 such other duties as are not performed by the register. In case of the §§ 6, 7
 5 absence, neglect, removal, resignation or death of the register, the as- G. S. 119, § 12
 6 sistant may complete and attest any records remaining unfinished and P. S. 158, § 11
 7 may act as register until a new register is qualified or the disability R. L. 164, § 2)
 8 removed. 267 Mass. 350.

1 SECTION 27A. The judges of probate for Suffolk county may appoint Appointment
 2 and at their pleasure remove a permanent officer to perform the duties of permanent
 3 prescribed by section fifty-six A of chapter two hundred and fifteen and officer to act
 4 such other duties as said judges may determine. Such officer shall be as guardian
 5 allowed such sums for necessary traveling and other expenses as may be ad litem in
 6 approved by the judges. The salary and expenses of such officer shall Suffolk county.
 7 be paid by the county of Suffolk. 1924, 194, § 2.
 1930, 400,
 §§ 5, 7-9.
 1931, 301, § 25

1 SECTION 28. The register for Suffolk county may, subject to the Deputy assist-
 2 approval of the judges of probate for said county, appoint a clerk and ant registers
 3 may remove him at pleasure. Said register may, subject to like ap- and clerk in
 4 proval, designate two employees as deputy assistant registers with the Suffolk county
 5 same powers as assistant registers and may revoke any such designation 1878, 119.
 6 at pleasure. P. S. 158, § 12
 R. L. 164, § 18
 1925, 246.

1 SECTION 29. The register for Middlesex county may, with the ap- Clerk in
 2 proval of the judges of probate for said county, appoint a clerk who Middlesex
 3 may administer such oaths required in probate proceedings as are not county.
 4 prescribed by law to be administered by the judge or register, and shall 1915, 41.
 5 perform such clerical and other duties as may be required by the register, 1916, 276, § 1
 6 with the approval of the judges, and he may be removed by the register
 7 with the consent and approval of the judges in the manner provided by
 8 section forty-three of chapter thirty-one.

1 SECTION 30. The judges of probate for Suffolk county shall, and Court officers
 2 the judge of probate for Plymouth county may, appoint an officer to for Middlesex,
 3 attend the sessions of the probate court and court of insolvency of the Plymouth and
 4 county for which he is appointed, and may at their pleasure remove Suffolk
 5 him and fill any vacancy caused by removal or otherwise. The sheriff of counties.
 6 Middlesex county may appoint, subject to the approval of the judges of 1844, 140.
 7 probate for said county, two officers to serve as court officers for at- 1887, 156.
 8 tendance at the sessions of the probate court and court of insolvency in 1894, 66.
 9 said county. Each court officer appointed hereunder for Suffolk and 1898, 146.
 10 Middlesex counties shall give bond with sufficient sureties approved by a 1899, 423.
 R. L. 164,
 §§ 33, 34,
 1904, 272.
 1906, 149.
 1911, 302.
 1912, 658.
 1913, 616.
 1920, 383.

1930, 400,
§§ 5, 7-9.
1931, 301,
§ 25A.

judge of his court for the faithful performance of his duties, in the sum of 11
one thousand dollars payable to the county treasurer in Suffolk county, 12
and in the sum of ten thousand dollars payable to the sheriff in Middle- 13
sex county. The court officer for Plymouth county shall, if required by 14
the court, give a bond payable to said county for the faithful per- 15
formance of his duties with sureties satisfactory to the court. Each 16
officer appointed hereunder shall serve the orders, precepts and proe- 17
cesses issued by the probate court for which he is appointed or by a judge 18
thereof; and, except in Plymouth county, shall at the expense of his 19
county be furnished with a uniform such as the court shall order, which 20
he shall wear while in attendance on said courts. 21

Messengers
in Middlesex
county.
1901, 369.
R. L. 164, § 35.
1917, 253, § 1.
1918, 166.
1919, 228; 372.
1930, 400,
§§ 5, 7-9.
1931, 301, § 26.

SECTION 31. The judges of probate for Middlesex county may ap- 1
point two messengers for the court of probate and insolvency for said 2
county, may remove them at their pleasure, and may fill vacancies caused 3
by removal or otherwise. Said messengers shall wait upon said court 4
and perform such duties as the judges may direct, including duty as 5
court officers of said court. They shall, while in attendance on said 6
court, wear uniforms, such as the court shall order, to be furnished at the 7
expense of said county. 8

Messenger for
Suffolk county.
1919, 42.
1930, 400,
§§ 5, 7-9.
1931, 301, § 27.

SECTION 32. The judges of probate for Suffolk county may appoint a 1
messenger for the court of probate and insolvency for said county, may 2
remove him at their pleasure, and may fill a vacancy caused by removal 3
or otherwise. Said messenger shall wait upon said court and perform 4
such duties as the judges may direct, including duty as court officer. 5
He shall, while in attendance on said court, wear a uniform, such as the 6
court shall order, to be furnished at the expense of said county. 7

Messenger for
Hampden
county.
1931, 354, § 1.

SECTION 32A. The judge of probate for Hampden county may ap- 1
point a messenger for the court of probate and insolvency for said county, 2
with salary payable by the county, may remove him at pleasure, and 3
may fill a vacancy caused by removal or otherwise. Said messenger 4
shall wait upon said court and perform such duties as the judge may 5
direct, including duty as court officer. He shall, while in attendance on 6
said court, wear a uniform, such as the court shall order. 7

Allowance to
registers for
assistance.
1878, 119.
1879, 202, § 2.
1881, 215, § 1.
P. S. 158,
§§ 23, 24.
1885, 205; 304.
1886, 114.
1887, 39.

SECTION 33. The registers for the several counties shall annually be 1
allowed for assistance in their several counties, to be paid by the 2
commonwealth, such sums as shall annually be appropriated by the general 3
court. All employees in the various registries of probate shall be sub- 4
ject to the provisions of sections forty-five to fifty, inclusive, of chapter 5
thirty. 6

1888, 280.	R. L. 164, §§ 27-29.	1914, 359; 446;
1889, 136, 209; 418.	1902, 412.	483, 559, 663.
1890, 192.	1904, 219; 281;	1915, 41, § 1; 262.
1892, 230.	286, § 3, 387.	1916, 125; 169;
1893, 151, § 1; 344; 431.	1905, 183.	276, § 1
1894, 259; 322.	1907, 206; 207, § 2.	1917, 95; 123.
1895, 174; 364; 459.	1908, 319; 326-328;	1918, 140; 161.
1896, 219.	374; 396.	1919, 59; 236;
1897, 317.	1909, 331; 353; 384.	310; 354
1898, 117; 332.	1910, 329; 335.	1920, 477; 594; 602.
1899, 191, § 2.	1911, 452.	1921, 42, § 1.
1900, 144, § 2.	1912, 160; 353.	1923, 362, § 90.
1901, 302.	1913, 227; 386.	1931, 301, § 104.

Salaries
of judges.
1823, 141.

SECTION 34. The salaries of all judges of probate shall be paid by the 1
commonwealth, and, except in Suffolk county, shall be based upon 2

3 population as determined by the state census of nineteen hundred and
 4 twenty-five, as follows:

Population of County.	<i>Judges.</i>	Salary.
Under 25,000		\$3,000
25,000 to 100,000		4,500
100,000 to 200,000		5,000
200,000 to 300,000		6,000
300,000 to 400,000		6,500
400,000 to 600,000		7,000
600,000 to 900,000		8,000
1886, 183; 184; 189.	1900, 408.	1917, 336.
1887, 72; 166.	1901, 485.	1919, 353, §§ 1, 2, 7-9
1888, 112.	R. L. 164, § 27.	G. L. (ed. of 1920) 217,
1889, 211; 251.	1904, 286, § 2;	§§ 36, 37.
1890, 115.	455, §§ 1-4	1921, 364.
1893, 469, § 1	1907, 442, §§ 4, 6.	1922, 333, § 4
1894, 352; 527, § 3.	1911, 668.	1923, 362, § 91;
1897, 383.	1912, 378, 584; 585.	383, §§ 1, 2.
1898, 280.	1914, 620.	1926, 380, §§ 1, 3, 4.

1833, 173.
 R. S. 83, § 49.
 1856, 284, § 18.
 1858, 93, § 13.
 1859, 178.
 G. S. 119, § 16.
 1864, 298.
 1867, 357, § 1.
 1874, 242;
 269; 327; 369.
 1881, 253.
 P. S. 158, § 23.
 1882, 129.
 1883, 244.
 1884, 192; 248.
 1885, 165; 275;
 318.

1 SECTION 35. The salaries of registers and all assistant registers shall
 2 be paid by the commonwealth.

1823, 141.	1891, 91; 318.	1913, 791.
1833, 173.	1893, 151, § 2; 469, § 1.	1914, 620.
R. S. 83, § 50.	1898, 234	1915, 280.
1856, 284, § 19.	1899, 191, § 2; 264.	1916, 276, § 2.
1858, 93, § 14.	1900, 144, § 1; 328; 347.	1917, 214; 336.
1859, 178.	1901, 485.	1918, 284.
G. S. 119, § 16.	R. L. 164, § 27.	1919, 353, §§ 3-6,
1864, 298.	1904, 164, §§ 1-3;	8, 10, 12, 13.
1867, 357, § 1.	286, § 2; 455, §§ 1-4.	1920, 626
1871, 360.	1905, 323	G. L. (ed. of 1920) 217,
1874, 242; 269; 327; 369.	1906, 265.	§§ 36-38.
1878, 119.	1907, 207, § 1; 442, § 5.	1921, 364
P. S. 158, § 23.	1908, 231.	1922, 333, § 4
1882, 144.	1909, 431; 494.	1923, 362, § 91; 383, § 2.
1884, 192; 248.	1910, 266.	1926, 380, §§ 2-4.
1887, 259; 273.	1911, 73; 445; 668	1927, 198, § 2.
1888, 152.	1912, 332; 378; 498; 654.	1931, 301, § 106.

Salaries of registers and assistant registers.

1 SECTION 36. [REPEALED, 1926, 380, § 3.]

1 SECTION 37. [REPEALED, 1926, 380, § 4.]

1 SECTION 38. In Suffolk county the salaries of the judges of probate
 2 shall be ninety-five hundred dollars.

1823, 141.	P. S. 158, § 23.	1917, 336.
R. S. 83, § 49.	1885, 203.	1918, 284.
1858, 93, § 13.	1893, 469, § 1.	1919, 353, § 11.
G. S. 119, § 16.	R. L. 164, § 27.	1920, 623.
1864, 298.	1904, 455, §§ 1-3.	1926, 380, § 5.
1867, 357, § 1.	1911, 668.	1927, 209, § 2.
1871, 277.	1912, 585.	1931, 301, § 107.

Salaries of judges in Suffolk county.

1 SECTION 39. The compensation of court officers for attendance at
 2 sessions of the probate courts and of messengers for said courts, whose
 3 appointment is authorized by law, shall be paid by their respective coun-
 4 ties.

1887, 156.	1906, 149; 193.	1919, 42; 228; 276; 372.
1894, 66.	1911, 302.	1920, 383; 491.
1898, 146.	1912, 658.	1921, 42, § 2.
1899, 423.	1913, 616.	1924, 415, § 1.
1901, 369.	1917, 253; 335, § 2.	1930, 400, §§ 5, 7-9.
R. L. 164, §§ 33-35.	1918, 166; 260, § 1.	1931, 301, § 28.
1904, 272.		

Compensation of court officers and messengers. 1884, 140.

1 SECTION 40. A judge performing any duty under section eight shall
 2 receive from the commonwealth, in addition to the amount otherwise
 3 allowed him by law, twenty-five dollars for each day that he performs
 4 such duties, and shall be reimbursed by the commonwealth for his travel-
 5 ing expenses necessarily incurred in the performance of such duties.

1904, 401, § 2.	1923, 384.	1924, 376.	1 Op. A. G. 232.
-----------------	------------	------------	------------------

Compensation of judges for certain duties. 1892, 337, § 3. 1894, 377, § 3. 1899, 345, § 3. R. L. 164, § 7.

Compensation of special judges. 1908, 110, § 2. 1913, 211. 1926, 97, § 2.

SECTION 41. Except as hereinafter provided, whenever a special judge holds a session of the probate court or court of insolvency, he shall receive from the commonwealth the same compensation that a judge of probate for another county would be entitled to receive for the same service. The special judge of probate and insolvency for Dukes county shall be paid his actual traveling expenses necessarily incurred in the performance of his duties, irrespective of the place of holding and attending court, and also ten dollars for each day's service. Compensation for sitting in the place of the judge of probate for said county in excess of thirty days in any one year shall be deducted by the comptroller from the salary of the judge.

Traveling expenses. 1896, 316. R. L. 164, § 30.

SECTION 42. Judges and registers shall receive from their respective counties their actual and proper traveling expenses incurred by them in the performance of their official duties in holding and attending court at a place other than that where the registry of probate is situated, upon an itemized statement of such expenses being certified to, and approved by, the county commissioners of their respective counties.

Compensation of temporary register. Certain fees, etc., forbidden. 1817, 190, § 2. 1823, 141, § 3. R. S. 83, §§ 24, 52. 1856, 284, §§ 14, 21. 1857, 274, § 2. 1858, 93, §§ 2, 3, 5. G. S. 119, §§ 17, 18. P. S. 158, §§ 25, 26. R. L. 164, §§ 31, 32.

SECTION 43. A temporary register shall be entitled to the same compensation as the register, and shall be paid by him if the appointment is caused by his absence; but if the appointment is caused by his death, removal or resignation, the temporary register shall be paid by the commonwealth. No judge or register shall receive any fee or compensation in addition to his salary for holding or attending courts or acting as judge or register in any county, nor for anything done in his official capacity, except as expressly provided by law, but any judge of probate assisting another judge in the performance of his duties may receive compensation from him, if not entitled to receive it from the commonwealth.

1906, 59.

CHAPTER 218.

DISTRICT COURTS.

SECT.

TERRITORIAL JURISDICTION AND POWERS.

1. Territorial jurisdiction and place of holding court.
2. Concurrent jurisdiction of Boston municipal courts over waters, islands, etc.
3. Criminal jurisdiction of certain courts in Boston over waters and islands.
4. Courts of record and superior jurisdiction. Seal.
5. Service of process in contempt cases.

JUSTICES AND SPECIAL JUSTICES.

6. Justices and special justices. Compensation of special justices.
7. Administration of oaths.

SECT.

CLERKS AND ASSISTANT CLERKS, ETC.

8. Clerks.
9. Temporary clerks.
10. Assistant clerks.
11. Temporary assistant clerks.
12. Clerks, etc., to be sworn. Duties and powers.

MISCELLANEOUS PROVISIONS.

13. Destruction of old documents.
14. Facsimile signature permitted in certain cases.
15. Office hours of clerks.
16. Bond of clerk or justice.
17. Justice, clerk, etc., not to act as attorney in his court.

SECT.

18. Justice, clerk, etc., not to receive certain fees.

CIVIL JURISDICTION.

19. Civil jurisdiction in general.
20. Seire facias.

SMALL CLAIMS PROCEDURE.

21. Alternative procedure established by rule for small civil cases.
22. Procedure.
23. Judgment final, when. Removal, when and by whom.
24. Transfer to ordinary docket.
25. Discretion as to costs.

CRIMINAL JURISDICTION.

26. Jurisdiction of offences.
27. Power to impose penalties.
28. Recognizances to keep the peace.
29. Jurisdiction of felonies by juvenile offenders.
30. Binding over to superior court.
31. Delay in executing sentence exceeding six months. Appeal.
32. Complaints and warrants.
33. Clerk, etc., may issue warrants, etc.
34. Warrant dispensed with in certain cases.
35. Justice, etc., may issue warrants, etc., individually.
36. Justice of peace with power to issue warrants and take bail.
37. Process for witnesses and defendants in criminal and juvenile cases, direction and service.

SESSIONS AND PROCEEDINGS.

38. Courts always open, sittings and adjournments. Filing of complaints.
39. Books and supplies.
40. Who may hold court, etc.
41. Powers and duties of special justice.
42. Adjournment when justice absent.
43. Uniform rules of courts.
43A. Administrative committee.
44. Process, formal requisites. To run throughout commonwealth.
45. Commissions to take depositions.
46. Notice of decisions, etc.
47. Payments and accounts by clerks. Penalty.

ADDITIONAL PROVISIONS RELATIVE TO MUNICIPAL COURTS.

48. Sentences to Deer island.
49. Payment of certain fees by clerks, advances and accounting therefor.

ADDITIONAL PROVISIONS RELATIVE TO THE MUNICIPAL COURT OF THE CITY OF BOSTON.

50. Justices. Rules.
51. Allowance of accounts, etc.

SECT.

52. Assignment of justices, additional sessions. Special justices, assignment, compensation, powers and duties.

53. Clerks and assistant clerks.
54. Civil jurisdiction.
55. Stenographic and medical service and equipment.
56. Accounts of clerks.

SPECIAL PROVISIONS RELATIVE TO THE BOSTON JUVENILE COURT.

57. Territorial jurisdiction.
58. Justices and clerk.
59. Powers, duties and procedure.
60. Jurisdiction over offenders, etc. Rules.

COURT OFFICERS.

61. Appointment, tenure, powers and duties.
62. Number.
63. Uniforms in Boston courts.
64. Bonds in Boston courts.
65. Temporary court officers.

MESSENGERS AND INTERPRETERS.

66. Messenger of Boston municipal court.
67. Interpreters in Boston municipal court.
68. Interpreter in East Boston district court.

CLERICAL ASSISTANCE.

69. Clerical assistance to certain clerks.
70. Same subject. Boston municipal and juvenile courts.
71. [Repealed.]
71A. [Repealed.]
71B. [Repealed.]
71C. [Repealed.]
71D. [Repealed.]
72. [Repealed.]
73. [Repealed.]

SALARIES.

74. Monthly payments.
75. Salaries in Boston municipal court.
76. Salaries in certain other courts.
77. Salaries in Dukes and Nantucket.
78. Classified salaries, justices.
79. Same subject, clerks and assistant clerks.
80. Salaries of clerks and assistant clerks in certain courts.
81. Traveling expenses.
82. Periodical readjustment of classified salaries.
83. [Repealed.]
84. Computation of compensation.

TERRITORIAL JURISDICTION AND POWERS.

Territorial jurisdiction and place of holding court. P. S. 154, § 2.	SECTION 1. The judicial districts of the several district courts shall continue to comprise the following cities, towns, wards and territory, in the following counties, respectively:	1 2 3
	1893, 396, § 69.	R. L. 160, § 2.
		1931, 394, § 209.

Barnstable.

First Barnstable. 1890, 177, § 1. 1927, 159, § 1.	The first district court of Barnstable, held at Barnstable and Falmouth; Barnstable, Bourne, Yarmouth, Sandwich, Falmouth and Mashpee.	4 5 6
Second Barnstable. 1890, 177, § 2.	The second district court of Barnstable, held at Harwich and Provincetown; Provincetown, Truro, Wellfleet, Eastham, Orleans, Brewster, Chatham, Harwich and Dennis.	7 8 9

Berkshire.

Central Berkshire. 1850, 310, § 1. G. S. 116, § 1. 1869, 416, § 1. 1881, 105. 1917, 302. 1928, 136.	The district court of central Berkshire, held at Pittsfield; Pittsfield, Hancock, Lanesborough, Peru, Hinsdale, Dalton, Washington, Richmond, Lenox, Becket and Windsor; the district court of Lee exercising concurrent jurisdiction in Lenox and Becket and the fourth district court of Berkshire exercising concurrent jurisdiction in Windsor.	10 11 12 13 14
Northern Berkshire. 1854, 277, § 1.	The district court of northern Berkshire, held at North Adams; North Adams, Clarksburg and Florida.	15 16
	G. S. 116, § 1.	1870, 201, § 1.
		1878, 143, § 6.
Southern Berkshire. 1870, 202, § 1. 1917, 302.	The district court of southern Berkshire, held at Great Barrington; Sheffield, Great Barrington, Egremont, Alford, Mount Washington, Monterey, New Marlborough, West Stockbridge and Sandisfield; the district court of Lee exercising concurrent jurisdiction in Sandisfield.	17 18 19 20
Fourth Berkshire. 1854, 277, § 1. G. S. 116, § 1. 1870, 201, §§ 1, 10.	The fourth district court of Berkshire, held at Adams; Adams, Cheshire, Savoy and Windsor; the district court of central Berkshire exercising concurrent jurisdiction in Windsor.	21 22 23
	1878, 143, § 6.	1895, 176, §§ 1, 4.
		1928, 136.
District court of Lee. 1855, 312, § 1. G. S. 116, § 1. P. S. 154, § 1. R. L. 160, § 1. 1917, 302. 1921, 430, § 1.	The district court of Lee, held at Lee; Lee, Stockbridge, Tyringham, Otis, Sandisfield, Lenox and Becket; the district court of southern Berkshire exercising concurrent jurisdiction in Sandisfield and the district court of central Berkshire exercising concurrent jurisdiction in Lenox and Becket.	24 25 26 27 28
District court of Williamstown.	The district court of Williamstown, held at Williamstown; Williamstown and New Ashford.	29 30
	1855, 83, § 1.	P. S. 154, § 1.
	G. S. 116, § 1.	R. L. 160, § 1.
		1917, 302. 1921, 430, § 1.

Bristol.

First Bristol. 1858, 84, § 1. G. S. 116, § 1.	The first district court of Bristol, held at Taunton; Taunton, Rehoboth, Berkley, Dighton, Seekonk, Easton and Raynham.	31 32
	1874, 293, § 1.	1877, 189.
		1903, 214, § 1.
Second Bristol. 1852, 304, § 1. G. S. 116, § 1. 1874, 293, § 1. 1878, 152.	The second district court of Bristol, held at Fall River; Fall River, Somerset, Swansea, Freetown and Westport; the third district court of Bristol exercising concurrent jurisdiction in Freetown and Westport.	33 34 35

36 The third district court of Bristol, held at New Bedford; New Bed- Third Bristol.
 37 ford, Fairhaven, Acushnet, Dartmouth, Freetown and Westport; the 1834, 33.
 38 second district court of Bristol exercising concurrent jurisdiction in Free- R. S. 87, § 29.
 39 town and Westport. G. S. 116, § 1.
 1874, 293, § 1.

1878, 152.

40 The fourth district court of Bristol, held at Attleboro; Attleboro, Fourth Bristol
 41 North Attleborough, Mansfield and Norton. 1877, 189. 1903, 214, §§ 1, 4.
 1874, 293, § 1.

Dukes County.

42 The district court of Dukes County, held at Oak Bluffs, Edgartown Dukes County.
 43 and Tisbury; Dukes County. 1898, 287, § 1. 1907, 27.

Essex.

44 The first district court of Essex, held at Salem; Salem, Beverly, First Essex.
 45 Danvers, Hamilton, Middleton, Topsfield, Wenham and Manchester. 1831, 70.
 R. S. 87, § 29. 1874, 224, §§ 1, 2.
 G. S. 116, § 1. 1917, 302.

46 The second district court of Essex, held at Amesbury; Amesbury, Second Essex.
 47 Merrimac and Salisbury; the district court of Newburyport exercising 1888, 193, § 1.
 48 concurrent jurisdiction in Salisbury. 1917, 302.

49 The third district court of Essex, held at Ipswich; Ipswich. Third Essex.
 1906, 299, § 1.

50 The central district court of northern Essex, held at Haverhill; Haver- Central
 51 hill, Groveland, Georgetown, Boxford and West Newbury; the district northern
 52 court of Newburyport exercising concurrent jurisdiction in West New- Essex.
 53 bury. 1854, 34, § 1.
 G. S. 116, § 1.

1861, 207, § 1. 1867, 316. 1899, 255.
 1866, 296. 1896, 365. 1917, 302.

54 The district court of eastern Essex, held at Gloucester; Gloucester, Eastern Essex.
 55 Rockport and Essex. 1897, 403.
 1858, 136, § 1. P. S. 154, § 1. 1900, 400.
 G. S. 116, § 1. 1888, 249.

56 The district court of southern Essex, held at Lynn; Lynn, Swampscott, Southern
 57 Saugus, Marblehead and Nahant. Essex.
 1849, 86, § 1. P. S. 154, § 1. 1909, 117. 1917, 302.
 G. S. 116, § 1. R. L. 160, § 1. 1911, 414, § 1.

58 The district court of Lawrence, held at Lawrence and Methuen; District court
 59 Lawrence, Andover, North Andover and Methuen. of Lawrence.
 1848, 260, § 1. P. S. 154, § 1. 1914, 532. 1924, 229, § 1.
 G. S. 116, § 1. R. L. 160, § 1. 1917, 302.

60 The district court of Newburyport, held at Newburyport; Newbury- District court
 61 port, Newbury, Rowley, Salisbury and West Newbury; the second dis- of Newbury-
 62 trict court of Essex exercising concurrent jurisdiction in Salisbury and port.
 63 the central district court of northern Essex exercising concurrent juris- 1833, 192, § 1.
 64 diction in West Newbury. R. S. 87, § 29.
 G. S. 116, § 1.
 1879, 234, § 5.
 1902, 455. 1917, 302. 1921, 430, § 1.

65 The district court of Peabody, held at Peabody; Peabody and Lynn- District court
 66 field. of Peabody.
 1917, 281, §§ 1, 3; 302.

Franklin.

Franklin. 1896, 353, § 1.	The district court of Franklin, held at Greenfield, at Turners Falls 67 in Montague, and at Shelburne Falls in Shelburne and Buckland; Frank- 68 lin county, except Orange, Erving, Warwick, Wendell and New Salem. 69	70
Eastern Franklin. 1899, 391, § 1.	The district court of eastern Franklin, held at Orange; Orange, 70 Erving, Warwick, Wendell and New Salem. 71	71

Hampden.

Eastern Hampden. 1872, 277, § 1.	The district court of eastern Hampden, held at Palmer; Palmer, 72 Brimfield, Monson, Holland, Wales and Wilbraham. 73	1871, 180, § 1.	1907, 110.
Western Hampden. 1886, 190, §§ 1, 3.	The district court of western Hampden, held at Westfield and Chester; 74 Westfield, Chester, Granville, Southwick, Russell, Blandford, Tolland 75 and Montgomery. 76		
District court of Chicopee.	The district court of Chicopee, held at Chicopee; Chicopee. 77	1855, 463, § 1. G. S. 116, § 1.	P. S. 154, § 1. R. L. 160, § 1. 1921, 430, § 1.
District court of Holyoke.	The district court of Holyoke, held at Holyoke; Holyoke. 78	1871, 173, § 1.	P. S. 154, § 1. R. L. 160, § 1. 1921, 430, § 1.
District court of Springfield. 1852, 94, § 22. G. S. 116, § 1. 1874, 180, §§ 1, 2.	The district court of Springfield, held at Springfield; Springfield, West 79 Springfield, Agawam, Longmeadow, East Longmeadow, Hampden and 80 Ludlow. 81	1878, 88, § 7.	1917, 302. 1921, 430, § 1.

Hampshire.

Hampshire. 1882, 227, §§ 1, 3 1903, 412. 1930, 132, § 1.	The district court of Hampshire, held at Northampton, Amherst, 82 Cummington, Belchertown, South Hadley, Huntington and East- 83 hampton; Hampshire county, except Ware, Enfield, Greenwich and 84 Prescott. 85		
Eastern Hampshire. 1882, 227, §§ 1, 3.	The district court of eastern Hampshire, held at Ware; Ware, Enfield, 86 Greenwich and Prescott. 87		1903, 412, §§ 1, 3, 5.

Middlesex.

Central Middlesex. 1874, 315, § 1.	The district court of central Middlesex, held at Concord; Concord, 88 Acton, Bedford, Carlisle, Lincoln, Maynard, Stow and Lexington. 89		
First northern Middlesex. 1872, 269, § 1.	The first district court of northern Middlesex, held at Ayer; Ayer, 90 Groton, Pepperell, Townsend, Ashby, Shirley, Westford, Littleton and 91 Boxborough. 92		
First eastern Middlesex. 1874, 392, § 1.	The first district court of eastern Middlesex, held at Malden; Malden, 93 Wakefield, Melrose, Everett and Medford. 94	1893, 350.	1909, 93.
Second eastern Middlesex. 1881, 128, § 1.	The second district court of eastern Middlesex, held at Waltham; 95 Waltham, Watertown and Weston. 96		
Third eastern Middlesex. 1854, 335, § 1.	The third district court of eastern Middlesex, held at Cambridge; 97 Cambridge, Arlington and Belmont. 98	G. S. 116, § 1.	P. S. 154, § 1. 1882, 233, § 1.

- 99 The fourth district court of eastern Middlesex, held at Woburn; Fourth eastern Middlesex.
 100 Woburn, Winchester, Burlington, Wilmington, Stoneham, Reading and 1874, 592, § 1.
 101 North Reading.
1882, 233, § 2. 1888, 59. 1889, 312. 1898, 250. 1909, 93.
- 102 The first district court of southern Middlesex, held at Framingham; First southern Middlesex.
 103 Framingham, Ashland, Holliston, Sherborn, Sudbury, Wayland and 1874, 35, § 1.
 104 Hopkinton.
1881, 223. 1882, 169. 1917, 302.
- 105 The district court of Lowell, held at Lowell; Lowell, Tewksbury, District court of Lowell.
 106 Billerica, Dracut, Chelmsford, Dunstable and Tyngsborough.
1833, 64, § 1. R. S. 87, § 29. G. S. 116, § 1. P. S. 151, § 1. R. L. 160, § 1. 1904, 261. 1921, 430, § 1.
- 107 The district court of Marlborough, held at Marlborough; Marl- District court of Marlborough.
 108 borough and Hudson.
1882, 233, § 3. R. L. 160, § 1. 1917, 302. 1921, 430, § 1.
- 109 The district court of Natick, held at Natick; Natick. District court of Natick.
1917, 274, §§ 1, 3.
- 110 The district court of Newton, held at Newton; Newton. District court of Newton.
1876, 195, § 1. P. S. 151, § 1. R. L. 160, § 1. 1921, 430, § 1.
- 111 The district court of Somerville, held at Somerville; Somerville. District court of Somerville.
1872, 233, § 1. P. S. 151, § 1. R. L. 160, § 1. 1921, 430, § 1.

Nantucket.

- 112 The district court of Nantucket, held at Nantucket; Nantucket Nantucket.
 113 county.
1913, 598, §§ 1, 3. 1915, 101. 1918, 245.

Norfolk.

- 114 The district court of northern Norfolk, held at Dedham; Dedham, Northern Norfolk.
 115 Dover, Norwood, Westwood, Medfield, Needham and Wellesley.
1898, 478. 1911, 469, § 5.
- 116 The district court of East Norfolk, held at Quincy; Quincy, Ran- East Norfolk.
 117 dolph, Braintree, Cohasset, Weymouth, Holbrook and Milton; and, in 1872, 289, § 1.
 118 criminal cases, concurrently with the second district court of Plymouth, 1875, 6.
 119 that part of Scituate described in chapter three hundred and ninety- 1912, 394, § 1.
 120 four of the acts of nineteen hundred and twelve. Arrests and service of
 121 process in such cases may be made by an officer qualified to serve criminal
 122 process in Cohasset. This provision shall not increase the judicial dis-
 123 trict of said court for the purposes of section seventy-eight.
- 124 The district court of southern Norfolk, held at Stoughton and Canton; Southern Norfolk.
 125 Stoughton, Canton, Avon and Sharon.
1891, 273, §§ 1, 3.
- 126 The district court of western Norfolk, held at Franklin and Walpole; Western Norfolk.
 127 Franklin, Walpole, Bellingham, Foxborough, Medway, Millis, Norfolk, 1898, 497, § 1.
 128 Wrentham and Plainville.
1905, 255, § 7.
- 129 The municipal court of Brookline, held at Brookline; Brookline. Municipal court of Brookline.
1882, 233, § 4. 1898, 214. R. L. 160, § 5.

Plymouth.

Second Plymouth. 1874, 350, § 1. 1875, 36, § 10. 1879, 248, § 3.	The second district court of Plymouth, held at Abington and Hingham; Abington, Hingham, Whitman, Rockland, Hull, Hanover, Scituate, Norwell and Hanson.	130 131 132
Third Plymouth. 1874, 350, § 1.	The third district court of Plymouth, held at Plymouth; Plymouth, Kingston, Plympton, Pembroke, Duxbury and Marshfield.	133 134
	1879, 248, § 3.	1917, 302.
		1923, 243, § 1.
Fourth Plymouth. 1874, 350, § 1. 1880, 80 1917, 302.	The fourth district court of Plymouth, held at Middleborough and Wareham; Middleborough, Wareham, Lakeville, Marion, Mattapoisett, Rochester and Carver.	135 136 137
		1923, 243, § 1.
District court of Brockton. 1874, 316, § 1.	The district court of Brockton, held at Brockton; Brockton, Bridgewater, East Bridgewater, Halifax and West Bridgewater.	138 139
	1875, 23. 1885, 155, § 1.	1887, 322. 1921, 430, § 1.
		1923, 243, § 1.

Suffolk.

Municipal court of Boston. 1821, 109, § 1. R. S. 87, § 1. G. S. 116, § 1. 1866, 279, § 1. 1874, 271, § 1. 1875, 243, § 4. 1876, 240, § 1. P. S. 154, § 42. R. L. 160, § 4. 1909, 524, § 8. 154 Mass. 128.	The municipal court of the city of Boston, held at Boston; wards six, seven, eight, nine, ten, eleven, twelve, sixteen, seventeen and eighteen of Boston as they existed on February first, eighteen hundred and eighty-two; and in criminal cases, concurrently with the municipal courts of the Roxbury and Brighton districts, the second and third district courts of eastern Middlesex, and the district court of Newton, respectively, so much of the Charles river basin, as defined in section two of chapter five hundred and twenty-four of the acts of nineteen hundred and nine, as affected by chapter two hundred and forty-five of the General Acts of nineteen hundred and sixteen, as is within the districts of said courts.	140 141 142 143 144 145 146 147 148 149 150
Municipal court of Brighton district 1874, 271, § 14.	The municipal court of the Brighton district, held at Brighton in Boston; ward twenty-five of Boston as it existed on February first, eighteen hundred and eighty-two.	151 152 153
	1875, 243, § 4.	1876, 240, § 6; 242.
		P. S. 154, § 42.
		R. L. 160, § 4.
Municipal court of Charlestown district. 1862, 107, § 1.	The municipal court of the Charlestown district, held at Charlestown in Boston; wards three, four and five of Boston as they existed on February first, eighteen hundred and eighty-two.	154 155 156
	1873, 286, § 4. 1874, 271, § 4.	1875, 243, § 4. 1876, 240, § 3.
		P. S. 154, § 42. R. L. 160, § 4.
District court of Chelsea.	The district court of Chelsea, held at Chelsea; Chelsea and Revere.	157
	1855, 26, § 1. G. S. 116, § 1.	1874, 201, § 1. R. L. 160, § 2.
		1921, 430, § 1.
Municipal court of Dor- chester district. 1870, 333, § 1. 1874, 271, § 3.	The municipal court of the Dorchester district, held at Dorchester in Boston; ward twenty-four of Boston as it existed on February first, eighteen hundred and eighty-two.	158 159 160
	1875, 243, § 4.	1876, 240, § 7.
		P. S. 154, § 42.
		R. L. 160, § 4.
East Boston district court 1874, 271, § 14. 1875, 243, § 4. 1876, 240, § 2.	The East Boston district court, held at East Boston in Boston; Winthrop and wards one and two of Boston as they existed on March first, eighteen hundred and eighty-six.	161 162 163
	1877, 165. P. S. 154, § 42.	1882, 146. 1886, 15, § 2.
		R. L. 160, § 2.

- 164 The municipal court of the Roxbury district, held at Roxbury in Municipal
 165 Boston; wards nineteen, twenty, twenty-one and twenty-two of Boston court of Rox-
 166 as they existed on February first, eighteen hundred and eighty-two. bury district.
- 1874, 271, § 2. 1876, 210, § 5; 242. R. L. 160, § 4.
 1875, 243, § 4. P. S. 154, § 42.
- 167 The municipal court of the South Boston district, held at South Municipal
 168 Boston in Boston; wards thirteen, fourteen and fifteen of Boston as court of South
 169 they existed on February first, eighteen hundred and eighty-two. Boston district.
- 1874, 271, § 14. 1876, 210, § 4. R. L. 160, § 4.
 1875, 243, § 4. P. S. 154, § 42.
- 170 The municipal court of the West Roxbury district, held at West Municipal
 171 Roxbury in Boston; ward twenty-three of Boston as it existed on court of West
 172 February first, eighteen hundred and eighty-two, and the territory Roxbury
 173 comprised within the limits of the former town of Hyde Park which district.
 174 was annexed to Boston by chapters four hundred and sixty-nine and five
 175 hundred and eighty-three of the acts of nineteen hundred and eleven. R. L. 160, § 4.
- 1874, 271, § 14
 1875, 243, § 4
 1876, 210, § 4
 P. S. 154, § 42
 1876, 210, § 6
 P. S. 153, § 42
 1898, 478
 R. L. 160, § 4.
 1911, 169, § 5.

Worcester.

- 176 The central district court of Worcester, held at Worcester; Worcester, Central
 177 Millbury, Sutton, Auburn, Leicester, Paxton, West Boylston, Holden, Worcester.
 178 Shrewsbury, Rutland, Barre, Princeton and Oakham. 1848, 32, § 21.
- G. S. 116, § 1. 1902, 186. 1910, 258.
 1872, 199, § 1. 1904, 259. 1917, 302.
- 179 The first district court of northern Worcester, held at Athol and First northern
 180 Gardner; Athol, Gardner, Petersham, Phillipston, Royalston, Temple- Worcester.
 181 ton, Hubbardston, Dana and Westminster. 1884, 215, § 1.
- 1907, 98. 1917, 302.
- 182 The first district court of eastern Worcester, held at Westborough and First eastern
 183 Grafton; Westborough, Grafton, Southborough and Northborough. Worcester.
- 1872, 200, § 1. 1897, 401. 1902, 161.
- 184 The second district court of eastern Worcester, held at Clinton; Second eastern
 185 Clinton, Berlin, Bolton, Boylston, Harvard, Lancaster and Sterling. Worcester.
- 1874, 337, § 1. 1896, 210 1897, 401. 1902, 161.
- 186 The first district court of southern Worcester, held at Southbridge First southern
 187 and Webster; Southbridge, Webster, Sturbridge, Charlton, Dudley Worcester.
 188 and Oxford. 1871, 391, § 1
- 189 The second district court of southern Worcester, held at Blackstone Second
 190 and Uxbridge, and at Northbridge in that part thereof called Whitins- southern
 191 ville; Blackstone, Uxbridge, Douglas, Northbridge and Millville. Worcester.
- 1872, 201, § 1. 1916, Sp. 282, § 6. 1927, 262, § 1.
- 192 The third district court of southern Worcester, held at Milford; Mil- Third southern
 193 ford, Mendon, Upton and Hopedale. Worcester.
- 1851, 160, § 1.
- 194 The district court of western Worcester, held at East Brookfield; Western
 195 East Brookfield, Brookfield, Spencer, North Brookfield, West Brook- Worcester.
 196 field, Warren, Hardwick and New Braintree. Said court may adjourn 1902, 416,
 197 to any town within its district other than East Brookfield whenever the §§ 1, 2.
 198 public convenience seems to the presiding justice to render such ad- 1917, 302.
 199 journment expedient. 1920, 527.

District court of Fitchburg. 1868, 124, § 1.	The district court of Fitchburg, held at Fitchburg; Fitchburg, Ashburnham and Lunenburg.	200 201
--	--	------------

P. S. 154, § 1. R. L. 160, § 1.	1904, 259. 1910, 258.	1921, 430, § 1.
------------------------------------	--------------------------	-----------------

District court of Leominster.	The district court of Leominster, held at Leominster; Leominster.	202
-------------------------------	---	-----

1910, 207, §§ 1, 3.

District court of Winchendon.	The district court of Winchendon, held at Winchendon; Winchendon.	203
-------------------------------	---	-----

1904, 372, §§ 1, 3.

Concurrent jurisdiction of Boston municipal courts over waters, islands, etc. 1874, 271, § 15. P. S. 154, § 44.	SECTION 2. The municipal courts in Boston shall have concurrent jurisdiction over all waters, islands and places not included in the district of any one of said courts or of the district court of Chelsea, and within the jurisdiction of the superior court for Suffolk county, except as provided in the preceding and following sections.	1 2 3 4 5
---	--	-----------------------

R. L. 160, § 51.	1921, 430, § 1.	1931, 394, § 210.
------------------	-----------------	-------------------

Criminal jurisdiction of certain courts in Boston over waters and islands. 1878, 53. P. S. 154, § 45. 1886, 15, § 3. R. L. 160, § 52. 1909, 524, § 8.	SECTION 3. The municipal court of the city of Boston, the municipal court of the Charlestown district and the municipal court of the South Boston district, and the East Boston district court, shall have and exercise, concurrently with each other, the same criminal jurisdiction as said courts have within their respective districts over all islands, except East Boston, and waters, except so much of the Charles river basin as is described in section one, within the criminal jurisdiction of the superior court for Suffolk county.	1 2 3 4 5 6 7 8
---	--	--------------------------------------

Courts of record and superior jurisdiction. Seal. 1853, 179, § 3. 1855, 270, § 5. G. S. 116, § 26. P. S. 154, § 30. 1893, 396, § 58. 1894, 431. R. L. 160, § 6. 1909, 219, § 1. 1911, 473, § 1. 1916, 174, § 2. 13 Met. 251. 3 Cush. 584. 246 Mass. 464. 250 Mass. 493. 257 Mass. 465.	SECTION 4. District courts shall be courts of record. They shall be courts of superior and general jurisdiction with reference to all cases and matters in which they have jurisdiction, and no order, decree, judgment, sentence, warrant, writ or process made, issued or pronounced by them need set out any adjudication or circumstances with greater particularity than would be required in other courts of superior and general jurisdiction, and the like presumption shall be made in favor of proceedings of such courts as would be made in favor of proceedings of other courts of superior and general jurisdiction. Each district court shall have a seal, which shall be in the custody of its clerk, and shall be affixed to all processes issued by such court requiring a seal.	1 2 3 4 5 6 7 8 9 10 11
--	--	---

268 Mass. 403.

Service of process in contempt cases.	SECTION 5. Processes issued in contempt cases may be served by any officer qualified to serve criminal process.	1 2
---------------------------------------	---	--------

R. S. 85, § 33. G. S. 120, § 50.	P. S. 154, § 11, 155, § 68. 1893, 396, § 61.	R. L. 160, § 8. 2 Gray, 120, 410.
-------------------------------------	---	--------------------------------------

JUSTICES AND SPECIAL JUSTICES.

Justices and special justices. Compensation of special justices. R. S. 87, §§ 30, 16. G. S. 116, § 3. 1868, 124, § 3. 1869, 416, § 6. 1870, 201, § 16; 202, § 2; 333, § 4. 1871, 173, § 3; 391, § 5. 1872, 152, § 5; 199, § 5, 200, § 5; 201, § 5; 233, § 4.	SECTION 6. The district court of Nantucket shall consist of one justice and one special justice. The central district court of Worcester, the district court of southern Essex, the district court of Lawrence and the district court of Springfield shall consist of one justice and three special justices. Each of the other district courts, except the municipal court of the city of Boston, shall consist of one justice and two special justices; provided, that the governor may appoint a third special justice for any such other district court the judicial district of which has, according to the national or state census last preceding, a population of one hundred thousand or more.	1 2 3 4 5 6 7 8 9 10
--	---	---

11 In the district court of Duker County, special justices shall be paid by
 12 the county five dollars for each day's service, except that compensation
 13 for sitting in the place of the justice in excess of thirty days in any one
 14 year shall be computed as hereinafter provided. Except as hereinbefore
 15 provided, and except in the municipal court of the city of Boston, special
 16 justices of district courts, and of the Boston juvenile court, shall be paid
 17 by the county for each day's service at the rate by the day of the salary
 18 of the justice of the same court. Compensation so paid for service in
 19 excess of thirty days in any one year, except for services in holding a
 20 simultaneous session, shall be deducted by the county treasurer from
 21 the salary of the justice.

1874, 85, § 2.
 271, § 17; 316,
 § 6; 337, § 6
 1876, 195, § 4
 1877, 189,
 210, §§ 2, 7.
 1879, 267,
 1881, 256,
 P. S. 154,
 §§ 4, 26.
 1884, 220,
 1893, 396,
 §§ 2, 66.
 1891, 173, § 2;
 431, § 1
 R. L. 160,
 §§ 6, 69.

1902, 309; 416, § 3.	1909, 219.	1918, 245, § 1.
1903, 412, § 2.	1910, 207, § 2.	1924, 229, § 2.
1904, 372, § 2.	1911, 473	1925, 88, § 1.
1905, 339, § 2.	1917, 274, § 2;	1930, 144.
1906, 299, § 2.	281, § 2.	

1 SECTION 7. Justices and special justices of district courts may, in or
 2 out of court, administer oaths in all cases in which an oath is required,
 3 unless otherwise expressly provided.

Administration
 of oaths
 R. S. 83, § 36.

G. S. 120, § 49	1893, 396, § 60.	145 Mass. 225.
P. S. 154, § 11, 155, § 2.	R. L. 160, § 7.	

CLERKS AND ASSISTANT CLERKS, ETC.

1 SECTION 8. Each district court shall have a clerk, who shall be ap-
 2 pointed by the governor, with the advice and consent of the council, for
 3 five years.

Clerks.
 1821, 109, § 5.
 R. S. 87, § 18.

1838, 147, § 2	1893, 396, §§ 3, 4, 8.	1910, 207, § 2.
1854, 335, § 12.	R. L. 160, §§ 9, 10.	1912, 412
G. S. 116, §§ 4, 5, 23.	1902, 416, § 3.	1917, 102; 124.
1866, 169	1903, 412, § 2.	1927, 227, § 1.
1877, 210, § 1.	1905, 133; 192.	9 Gray, 3.
P. S. 154, §§ 5, 6, 27, 58.	1906, 194; 240; 248; 351.	4 Op. A. G. 638.

1 SECTION 9. In case of the absence, death or removal of a clerk of a
 2 district court, the court may appoint a temporary clerk, to act until the
 3 clerk resumes his duties or until the vacancy is filled. A temporary clerk
 4 shall be paid by the county for each day's service an amount equal to the
 5 rate by the day of the salary of the clerk; but compensation so paid to
 6 a temporary clerk for service, in excess of thirty days in any one year,
 7 shall be deducted by the county treasurer from the salary of the clerk.

Temporary
 clerks.
 R. S. 87, § 18.
 G. S. 116, § 7.
 P. S. 154, § 8.
 1888, 352, § 1.
 1893, 396,
 §§ 6, 67.
 1895, 245.
 R. L. 160,
 §§ 12, 70
 16 Gray, 88.

9 Allen, 488. 153 Mass 211.

1 SECTION 10. The clerk of a district court may, subject to the ap-
 2 proval of the justice, appoint one or more assistant clerks, who shall be
 3 removable at his pleasure or at the pleasure of the court, for whose official
 4 acts the clerk shall be responsible and who shall be paid by him unless
 5 salaries payable by the county are authorized in this section or in section
 6 fifty-three. Assistant clerks with salaries payable by the county may
 7 be appointed in the central district court of northern Essex, the mu-
 8 nicipal court of the Charlestown district, the municipal court of the
 9 Brighton district, the district court of western Hampden, the district
 10 court of Newton, the district court of northern Norfolk and in courts
 11 the judicial districts of which have, according to the national or state
 12 census last preceding, a population of sixty thousand or more. Second
 13 assistant clerks with salaries payable by the county may be appointed
 14 in the municipal court of the Roxbury district, the East Boston district
 15 court, the municipal court of the Charlestown district, the municipal
 16 court of the Dorchester district, the municipal court of the West Rox-

Assistant
 clerks.
 1821, 109, § 5.
 R. S. 87,
 §§ 23, 24.
 G. S. 116, § 6
 1874, 36, §§ 11,
 12; 154.
 1876, 227, § 3.
 P. S. 154, § 7.
 1893, 396, § 5.
 R. L. 160, § 11.
 1904, 453, § 1.
 1908, 289.
 1909, 357.
 1912, 672.
 1913, 332, § 1.
 1914, 604
 1916, 195; 261.
 1917, 154; 252.
 1921, 287, § 1.
 1922, 63, § 1.
 1923, 164, § 4;
 314, § 1;
 379, § 1
 1925, 257, § 1.
 1926, 69, § 1;
 366, § 1.
 389, § 1

1928, 162.
 1929, 95, § 1;
 254, § 1.
 1930, 152, § 1.
 111 Mass. 420.
 422.
 153 Mass. 159.
 224 Mass. 597.
 4 Op. A. G.
 294.

bury district, and, subject to the approval of the county commissioners, 17
 in the first district court of eastern Middlesex, the third district court 18
 of eastern Middlesex, the district court of southern Essex, the third 19
 district court of Bristol and the district court of East Norfolk. 20
 Third assistant clerks with salaries payable by the county may be 21
 appointed in the municipal court of the Roxbury district and, subject 22
 to the approval of the county commissioners, in the first district court 23
 of eastern Middlesex and the third district court of eastern Middlesex. 24

Temporary
 assistant clerks.
 1906, 256.
 1922, 156.

SECTION 11. In case of the absence, death or removal of a salaried 1
 assistant clerk of a district court, other than the municipal court of the 2
 city of Boston, the clerk, subject to the approval of the justice, may 3
 appoint a temporary assistant clerk, to act until such assistant clerk 4
 resumes his duties or until the vacancy is filled. A temporary assistant 5
 clerk shall be paid by the county for each day's service an amount equal 6
 to the rate by the day of the salary of such assistant clerk; but com- 7
 pensation so paid to a temporary assistant clerk for service, in excess of 8
 thirty days in any one year, shall be deducted by the county treasurer 9
 from the salary of such assistant clerk. 10

Clerks, etc., to
 be sworn.
 Duties and
 powers.
 1821, 109, § 5.
 1822, 12.
 R. S. 87, §§ 19,
 21, 37.
 1850, 310, § 7.
 1855, 270, § 4;
 321, §§ 4, 5.
 1856, 172, § 3.
 1857, 264, § 3.
 G. S. 116, §§ S,
 23, 28.
 P. S. 154,
 §§ 9, 33.
 1893, 396, § 8.
 R. L. 160, § 13.
 1918, 257,
 § 407.
 1919, 5.
 1920, 2.
 1927, 52.
 153 Mass. 211.

SECTION 12. The clerks, assistant clerks, temporary clerks and tem- 1
 porary assistant clerks of said courts shall be sworn, and in the case of 2
 any such assistant clerk, temporary clerk or temporary assistant clerk 3
 the oath of office may be administered by the justice or a special or 4
 associate justice of his court, who shall, upon administering the same, 5
 forthwith make return of such act with the date thereof to the state 6
 secretary. They or one of them shall attend all sessions of the court and 7
 shall keep a record of all its proceedings. The clerks shall have the 8
 care and custody of all the records, books and papers appertaining to, 9
 or filed or deposited in, their respective offices. A clerk paid by the 10
 county may make and issue writs and processes, shall make returns of the 11
 court, tax bills of costs and receive fines, forfeitures, fees and costs ac- 12
 cruing from the civil and criminal business of the court, including fees 13
 for blanks and copies. 14

MISCELLANEOUS PROVISIONS.

Destruction of
 old documents.
 1910, 287.
 1919, 350, § 24.

SECTION 13. District courts may destroy complaints, warrants, docu- 1
 ments and other papers in criminal cases filed in said courts as completed 2
 business for not less than twenty years, except docketts and record books, 3
 and shall enter the fact of such destruction upon the records of the court. 4
 Thereafter the docketts and record books and the minutes and entries 5
 therein shall be admissible as evidence of the facts stated therein. The 6
 records, papers and documents of district courts relating to causes com- 7
 pleted more than twenty years may, subject to the approval of the 8
 supervisor of public records, be stored and kept in fireproof rooms, 9
 vaults and safes, provided by the county commissioners in the towns 10
 where the courts are respectively situated, or in the county court houses. 11

Facsimile
 signature
 permitted in
 certain cases.
 1917, 66.
 1918, 45.

SECTION 14. Clerks and assistant clerks of district courts may sign 1
 process issued by the said courts, and court records, documents or other 2
 legal papers or copies thereof, relating to criminal, delinquent, wayward 3
 and neglected cases made or issued by such clerks or assistant clerks in 4
 conformity with law, except search warrants and process authorizing 5
 arrests or commitments, by imprinting thereon a facsimile of the signa- 6

7 ture of the clerk or assistant clerk; and such facsimile signatures shall
8 have the same validity as their written signatures.

1 SECTION 15. Justices of district courts shall prescribe reasonable
2 daily office hours for the clerks of their respective courts during which
3 the offices of the clerks shall be open. Such hours shall be fixed with
4 reference to the business of said courts and the convenience of the public
5 and of attorneys, and notice thereof shall be posted in a conspicuous place
6 in each of said offices. Clerks shall also keep their offices open whenever
7 the court so orders.

Office hours
of clerks.
1893, 396, § 8.
1900, 281.
R. L. 160, § 14
1918, 257,
§ 408.
1919, 5.
1920, 2.

1 SECTION 16. The clerk of a district court before entering upon the
2 performance of his official duties, shall give to the county treasurer a
3 bond, with a surety company authorized to transact business in the
4 commonwealth, as surety, in a sum approved by the justice of such court,
5 but in no event less than one thousand dollars, conditioned to account
6 for and pay over as and when required by law all fines, forfeitures, fees
7 and other money received by him in the exercise of his office. Failure
8 to give such bond shall be sufficient cause for his removal.

Bond of clerk
or justice.
1821, 109, § 5.
1822, 12.
R. S. 87, § 19.
1855, 321, § 4.
G. S. 116, § 8.
1874, 394, § 3.
P. S. 154, § 38.
1893, 396, § 7.
R. L. 160, § 15.
1926, 191, § 1.

1931, 426, § 286.

153 Mass. 211.

1 SECTION 17. A justice, clerk or assistant clerk of a district court shall
2 not be retained or employed as attorney in an action, complaint or pro-
3 ceeding pending in his court, or which has been examined or tried therein;
4 and a special justice shall not be so retained or employed in any case in
5 which he acts or has acted as justice.

Justice, clerk,
etc., not to act
as attorney in
his court.
1815, 49.
1821, 109, § 5.
R. S. 87,
§§ 25, 44.

1855, 321, § 11.
1857, 264, § 4.
G. S. 116, § 9.

P. S. 154, § 10.
1893, 396, § 10.

R. L. 160, § 16.
1931, 426, § 287.

1 SECTION 18. A justice, special justice acting in the place of the justice,
2 clerk or assistant clerk of a district court shall not receive any fee or com-
3 pensation to his own use, other than his regular salary or allowance, for
4 making complaints or issuing in any capacity warrants, subpoenas or
5 other criminal processes which he is authorized to issue, or for any official
6 services performed by him in court. A clerk or assistant clerk shall not
7 receive, in addition to his salary, any fee or compensation for making out
8 bail papers, or for admitting a prisoner to bail while the court is in session
9 or during the hours when his office is required to be open.

Justice, clerk,
etc., not to
receive certain
fees.
1852, 159.
1858, 103, § 3.
G. S. 116, § 34.
1877, 210,
§§ 2, 7.
1879, 264.
P. S. 154,
§§ 65, 66.
1893, 396, § 11.
R. L. 160, § 17.

CIVIL JURISDICTION.

1 SECTION 19. District courts shall have original jurisdiction concur-
2 rent with the superior court of actions of contract, tort and replevin, and
3 also of actions in summary process under chapter two hundred and
4 thirty-nine and proceedings under section forty-one of chapter two
5 hundred and thirty-one.

Civil juris-
diction in
general.
1821, 109.
R. S. 87,
§§ 11, 34.
1852, 46.

1857, 51.
1887, 57.
G. S. 116, §§ 10, 18.
1871, 144.
1877, 210, § 4.
P. S. 154, § 11;
155, §§ 12, 13.

1893, 396, § 12.
1894, 431.
R. L. 160, §§ 18, 19.
1918, 257, §§ 409, 410.
1919, 5.
1920, 2.
1922, 532, § 12A.

1924, 57, § 1.
1929, 316, § 1.
1 Met 148.
164 Mass. 144.
255 Mass. 132.
268 Mass. 403.

1 SECTION 20. District courts may issue writs of seire facias against
2 executors and administrators upon a suggestion of waste after a judg-
3 ment against them and also against bail taken in a civil action before
4 them, and proceed to judgment and execution as the superior court

Seire facias.
1753-4, 18, § 3.
1783, 32, § 9.
42, § 4.
1803, 132, § 1.
R. S. 85,
§§ 16-18.

G. S. 120, §§ 3-5	might do in like cases. Such writs shall be served not less than seven	5
P. S. 154, § 11; 155, §§ 14-16.	days before the return day, which shall be not more than sixty days after the date thereof.	6 7
	1893, 396, §§ 11-16. 1894, 431.	
	R. L. 160, §§ 21-23. 1924, 57, § 2.	
	1929, 316, § 2.	

SMALL CLAIMS PROCEDURE.

Alternative procedure established by rule for small civil cases. 1920, 553, § 1. 1922, 99, § 1. 1928, 144, § 1. 248 Mass. 170.

SECTION 21. The justices or a majority of them of all the district courts, except the municipal court of the city of Boston, shall make uniform rules applicable to said courts, and the justices of the municipal court of the city of Boston shall make rules applicable to that court, providing for a simple, informal and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than fifty dollars, and for a review of judgments upon such claims when justice so requires. The procedure shall not be exclusive, but shall be alternative to the formal procedure for causes begun by writ. Actions under this and the four following sections shall be brought in the judicial district where the defendant lives or has his usual place of business.

Procedure. 1920, 553, § 1. 248 Mass. 170.

SECTION 22. The procedure shall include the beginning of actions with an entry fee of one dollar but without writ, and without requirement, except by special order of court, of other pleading than a statement to the clerk or an assistant clerk, who shall reduce the same to concise written form in a docket kept for the purpose. The procedure shall include notice by registered mail instead of the mode of service heretofore required, and shall include provisions for early hearing. The procedure may include the modification of any or all rules of pleading and practice, anything contained in other chapters, sections or acts notwithstanding, and may include a stay of the entry of judgment or of the issue of execution. The rules for the procedure may provide for the elimination of any or all fees and costs, and that costs shall be in the discretion of the court. In causes begun under the procedure, the court may on application for cause shown issue writs of attachment of property or person as in causes begun by writ.

Judgment final when removed, when and by whom. 1920, 553, §§ 2, 3. 1925, 132, § 1. 248 Mass. 170.

SECTION 23. A plaintiff beginning a cause under the procedure shall be deemed to have waived a trial by jury and any right of appeal to the superior court and any right to a report to an appellate division; but if said cause shall be removed to the superior court as hereinafter provided, the plaintiff shall have the same right to claim a trial by jury as if the cause had been begun in the superior court. No other party to a cause under the procedure shall be entitled to an appeal or report. In lieu thereof, any such party may, prior to the day upon which he is notified to appear, file in the court where the cause is pending a claim of trial by jury, and his affidavit that there are questions of fact in the cause requiring trial, with specifications thereof, and that such trial is intended in good faith, together with the sum of three dollars for the entry of the cause in the superior court and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of the district court, payable to the other party or parties to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the su-

18 perior court in said cause within thirty days after the entry thereof;
 19 and thereupon the clerk shall forthwith transmit such original papers
 20 or attested copies thereof as the rules for the procedure may provide,
 21 and the superior court may try the cause as transmitted or may require
 22 pleadings as in a cause begun by writ, but the cause may be marked for
 23 trial on the list of causes advanced for speedy trial by jury. Sections
 24 one hundred and five and one hundred and seven of chapter two hundred
 25 and thirty-one shall apply in all district courts in causes begun under
 26 the procedure. Any party, in lieu of filing the bond required by this
 27 section, may deposit with the clerk the sum of one hundred dollars and
 28 the provisions of section one hundred and six of said chapter two hundred
 29 and thirty-one shall apply.

1 SECTION 24. The court may, in its discretion, transfer a cause begun
 2 under the procedure to the regular civil docket for formal hearing and
 3 determination as though it had been begun by writ, and may impose
 4 terms upon such transfer.

Transfer to
 ordinary
 docket
 1920, 553, § 4
 248 Mass. 170

1 SECTION 25. In any cause begun by writ which might have been
 2 begun under the procedure, the rules for the procedure may provide, or
 3 the court may by special order direct, that the costs to be recovered by
 4 the plaintiff, if he prevails, shall be eliminated in whole or in part.

Discretion as
 to costs.
 1920, 553, § 5.
 247 Mass. 543.
 248 Mass. 170.

CRIMINAL JURISDICTION.

1 SECTION 26. District courts shall have original jurisdiction, concur-
 2 rent with the superior court, of the following offences committed within
 3 their respective districts or otherwise made punishable therein: all vio-
 4 lations of by-laws, orders, ordinances, rules and regulations, made by
 5 cities, towns and public officers, all misdemeanors, except conspiracies and
 6 libels, all felonies punishable by imprisonment in the state prison for not
 7 more than five years, the crimes mentioned in sections eighteen and nine-
 8 teen of chapter two hundred and sixty-six, and the crimes of forgery of
 9 a promissory note, or of an order for money or other property, and of ut-
 10 tering as true such a forged note or order, knowing the same to be forged,
 11 if in either case the sum of money or the value of the property named in
 12 such note or order does not exceed fifty dollars.

Jurisdiction
 of offences.
 1692-3, 18, § 6.
 1783, 51, § 1.
 1794, 26, § 2.
 1801, 62.
 1821, 109.
 R. S. 15, § 13;
 85, § 24.
 87, §§ 3, 32;
 126, § 23.
 1846, 52
 1848, 331, § 1.
 1849, 211, § 7.
 1853, 196, § 1
 1854, 277, § 2.
 1855, 135, § 2;
 448, §§ 1, 2.
 1857, 80;
 157, § 1.
 1858, 45, § 1.

G. S. 116, §§ 12-11;	1894, 431.	150 Mass. 63, 502.
120, §§ 38, 40, 161, § 85.	1897, 180; 349.	151 Mass. 60.
1866, 279, § 8.	R. L. 160, §§ 24, 26-31.	152 Mass. 1.
1874, 271, § 5	1904, 282, § 3.	156 Mass. 487.
1876, 174; 227, § 1.	1909, 442.	203 Mass. 598.
1881, 189	1911, 176, § 1.	206 Mass. 417.
P. S. 154, §§ 11, 17-20,	1916, 174, § 2.	210 Mass. 445.
50; 155, §§ 46, 48;	11 Gray, 463.	215 Mass. 209, 525.
203, § 103	13 Allen, 552.	216 Mass. 480.
1885, 149, 322	111 Mass. 427.	239 Mass. 458.
1887, 293.	116 Mass. 349.	246 Mass. 464.
1893, 396, §§ 24, 34,	138 Mass. 489.	252 Mass. 545.
36, 40.		

1 SECTION 27. They may impose the same penalties as the superior
 2 court for all crimes of which they have jurisdiction, except that they
 3 may not impose a sentence to the state prison.

Power to im-
 pose penalties.
 1692-3, 18, § 6.

1783, 51, § 1.	1871, 115.	1897, 180.
1794, 26, § 2.	1874, 271, § 5.	R. L. 160, §§ 24,
1821, 109.	1876, 174.	26-30.
R. S. 85, § 24;	1881, 189.	1909, 442.
87, §§ 3, 32; 126, § 23.	P. S. 154, §§ 11, 18,	1911, 176, § 1.
1853, 196, § 1.	19, 50; 156, § 46.	1918, 257, § 420.
1854, 277, § 2; 328	1885, 149; 322.	1919, 5.
1855, 135, § 2; 448, §§ 1, 2.	1887, 293, § 2; 349	1920, 2.
1857, 80, 157, § 1	1893, 396, §§ 34, 36-39.	1921, 149.
G. S. 116, §§ 12-14;	1894, 431, 432.	246 Mass. 464.
120, § 38		

Recognizances
to keep the
peace.
R. S. 85, § 25.
G. S. 120, § 39.
P. S. 154, § 11;
155, § 47.
1893, 396, § 41.
1894, 431.
R. L. 160, § 32.

SECTION 28. District courts may require persons found guilty of any crime within their final jurisdiction, except a violation of by-laws, orders, ordinances, rules and regulations, made by cities, towns and public officers, or of the laws and regulations relative to the public health or relative to defective highways, in addition to the punishment prescribed by law, to recognize with sureties, in a reasonable sum, to keep the peace or be of good behavior, or both, for not more than one year, and to stand committed until they so recognize. Sections thirteen, sixteen and seventeen of chapter two hundred and seventy-five shall apply to recognizances so taken.

Jurisdiction of
felonies by
juvenile
offenders.
1872, 358.
1877, 211, § 6.
1880, 183.
P. S. 154, § 11;
155, § 49.
1893, 369, § 35.
1894, 431.
R. L. 160, § 25.
127 Mass. 450.

SECTION 29. Except as provided in section sixty, they shall have jurisdiction, as provided in section twenty-six, of felonies not punishable by death or imprisonment for life committed by juvenile offenders under seventeen; and, upon their conviction, may sentence them to any punishment authorized for such crime, except imprisonment in the state prison, or may commit them to any institution established by law for the reformation of juvenile offenders, or may bind them over for trial in the superior court.

Binding over
to superior
court.
1853, 196, § 2.
1855, 448, § 2.
1857, 157, § 2.
G. S. 116, § 15.
P. S. 154, § 21.
1893, 396, § 42.
R. L. 160,
§§ 33, 34.
1918, 257,
§ 411.
1919, 5.
1920, 2.
1929, 216, § 1.
206 Mass. 417.
216 Mass. 480.
251 Mass. 292.
252 Mass. 545.

SECTION 30. They shall commit or bind over for trial in the superior court persons brought before them who appear to be guilty of crimes not within their final jurisdiction, and may so commit or bind over persons brought before them who appear to be guilty of crimes within their final jurisdiction. In such cases the clerk of the district court shall forthwith transmit to the clerk of the superior court a copy of the complaint and of the record, the original recognizances, a list of the witnesses, a statement of the expenses and the appearance of the attorney for the defendant, if any is entered, and the report of the department of mental diseases as to the mental condition of the defendant, if such report has been filed under the provisions of section one hundred A of chapter one hundred and twenty-three, and no other papers need be transmitted. If such a person is committed for failure to recognize as ordered, the superior court shall thereupon have jurisdiction of the case against such person for the purpose of revising the amount of bail theretofore fixed.

Delay in
executing
sentence
exceeding
six months.
Appeal.
1911, 176, § 2;
461.
243 Mass. 90.

SECTION 31. No order shall be made for the commitment of a person to a jail or house of correction upon a sentence of more than six months, imposed by a district court, until at least one day after the imposition of such sentence. Before such order is made, he shall be notified of his right of appeal to the superior court, and he may exercise such right, as provided by law, until such order is made. This section shall not apply to sentences the execution of which is suspended.

Complaints
and warrants.
R. S. 87, § 33.
1858, 138, § 3.
G. S. 120,
§§ 32, 36.
1877, 211, § 4.
P. S. 154, § 11;
155, §§ 43, 44.
1893, 396, § 42.
1894, 431.

SECTION 32. District courts may receive complaints and issue warrants and other processes for the apprehension of persons charged with crime and found within their county, or who after committing crime therein escape therefrom, returnable before a court or trial justice of the county having jurisdiction of the trial or examination of the person charged with the crime.

R. L. 160, § 33.

1918, 257, § 411.

1919, 5.

1920, 2.

Clerk, etc.,
may issue
warrants, etc.

SECTION 33. A clerk, assistant clerk, temporary clerk or temporary assistant clerk, paid by the county, may receive complaints, administer

3 to complainants the oath required thereto, and issue warrants, search
 4 warrants and summonses, returnable as required when such processes
 5 are issued by said courts.

P. S. 155, § 6. 1894, 431. 153 Mass. 159. 224 Mass. 597.
 1893, 396, § 44. R. L. 160, § 36. 182 Mass. 339.

1 SECTION 34. Said courts may dispense with the issuing of a warrant if
 2 the person charged with a crime has been arrested without a warrant
 3 and brought before the court or admitted to bail; but in such case the
 4 officer making the arrest shall endorse upon the complaint a statement
 5 of his doings.

Warrant dis-
 pensed with
 in certain
 cases.
 1893, 396, § 45.
 1894, 431.
 R. L. 160, § 37.

1 SECTION 35. A justice or special justice of a district court, or a justice
 2 of the peace who is also a clerk or assistant clerk of such a court, may at
 3 any time receive complaints and issue warrants and summonses, under
 4 his own hand and seal, and such justice or special justice may likewise
 5 issue search warrants, returnable before a court or trial justice having
 6 jurisdiction of the trial or examination of the person charged with the
 7 crime.

Justice, etc.,
 may issue
 warrants, etc.,
 individually.
 1852, 94, § 25.
 1855, 312, § 5.
 1858, 138, § 1.
 G. S. 116, § 16;
 120, § 36.
 1877, 211, § 1.

P. S. 154, § 22; R. L. 160, § 35; 119 Mass. 167.
 155, § 2. 161, § 5. 126 Mass. 235.
 1893, 396, § 43. 3 Allen, 479. 145 Mass. 117.

1 SECTION 36. The governor, with the advice and consent of the coun-
 2 cil, may from time to time, upon the petition of the aldermen or the
 3 selectmen of any town within the judicial district of a district court,
 4 except a town in which the clerk of such court resides, designate and
 5 commission a justice of the peace residing in such town to exercise the
 6 powers given to certain justices of the peace by the preceding section in
 7 cases to be brought before said court, and to take bail in criminal cases
 8 arising within said judicial district.

Justice of
 peace with
 power to issue
 warrants and
 take bail.
 1879, 254.
 P. S. 155, § 4.
 1884, 286.
 1897, 461.
 1898, 381.
 R. L. 161,
 § 3, 4.

1924, 58. 136 Mass. 155. 155 Mass. 5. 1 Op. A. G. 318.

1 SECTION 37. District courts, justices, special justices, clerks, assistant
 2 clerks, temporary clerks and temporary assistant clerks thereof, trial
 3 justices, and justices of the peace designated and commissioned under
 4 the preceding section, may issue summonses and other processes for
 5 witnesses in criminal cases, and such processes and likewise warrants and
 6 other processes in such cases, issued by said courts or persons, may be
 7 directed to a court officer or probation officer of the court issuing the
 8 process, or either specifically or in general terms to any person in the
 9 commonwealth qualified to serve criminal process, and any such process
 10 may be served and executed in any part of the commonwealth by the
 11 person to whom it is delivered for that purpose. This section shall apply
 12 to summonses, warrants and other processes for parties and witnesses in
 13 cases of wayward, delinquent or neglected children.

Process for
 witnesses and
 defendants in
 criminal and
 juvenile cases,
 direction and
 service.
 1838, 147, § 1.
 G. S. 116, § 24.
 1876, 94.
 P. S. 154,
 §§ 28, 31.
 1885, 141.
 1886, 247.
 1886, 247.
 1893, 396, § 46.
 1894, 431.
 R. L. 160, § 38.
 1918, 257,
 §§ 42, 43.
 1919, 5.
 1920, 2.

137 Mass. 233. 164 Mass. 209.

SESSIONS AND PROCEEDINGS.

1 SECTION 38. District courts shall always be open and business may
 2 be transacted at any time, except as provided in section six of chapter
 3 two hundred and twenty. Sittings of the courts shall be held in the court
 4 houses or other places provided therefor by the county, at the times and
 5 in the towns fixed by law; but if the times are not established by law
 6 they shall be fixed by the courts by general rule. Sittings may be ad-

Courts always
 open, sittings
 and adjourn-
 ments.
 Filing of
 complaints.
 R. S. 87,
 §§ 42, 43.
 G. S. 116, § 29
 1861, 115

1869, 385. journed from time to time as occasion requires, and cases, civil or criminal, 7
P. S. 154, § 23. may be continued to any future day fixed for the sitting of the court. 8
1893, 396, § 54. Subject to any other provisions of law relative to the filing of complaints 9
1897, 431. for particular crimes, district courts may place on file any complaint in 10
1898, 488. a criminal case other than a complaint for the commission of a felony 11
R. L. 160, § 39. issued against a person who appears previously to have been convicted of 12
1926, 271, § 4; a felony or previously to have had a complaint for felony placed on file. 13
296.

Books and supplies.

G. S. 116, § 21. SECTION 39. Justices and clerks of district courts, except the municipal 1
1861, 172. court of the city of Boston, may procure all law books relating 2
P. S. 154, § 24. to the laws of the commonwealth, including the reports of the supreme 3
1888, 285. judicial court, the Massachusetts digests, all blank books, blanks, 4
1890, 440, § 11. stationery and other incidentals required by said courts and approved 5
1891, 70. by the justices. The justice of a district court in any county other than 6
1893, 396, § 1. Suffolk, the judicial district of which has a population exceeding one 7
1897, 245. hundred and twenty thousand as ascertained by the last preceding 8
R. L. 160, § 40. national or state census and in which there is no county law library, may, 9
1913, 471, § 3. with the approval of the county commissioners, procure other law books 10
1927, 245. required by said court. The expenses thereof shall be certified by the 11
 justices monthly, and shall be transmitted to the county commissioners 12
 who shall audit the bills therefor and order payment thereof by the 13
 county. 14

Who may hold court, etc.

R. S. 87, § 31. SECTION 40. District courts, except the municipal court of the city 1
1848, 331, § 3. of Boston, shall be held by the respective justices thereof; and, upon 2
1849, 86, § 10; request of the justice, either special justice may hold the court and have 3
127, § 8. and exercise all the powers and duties of the justice, or hold a second or 4
1854, 34, § 8. third session thereof, and two or more simultaneous sessions may be held. 5
1856, 4. In case of a vacancy in the office of justice, or his illness, absence or other 6
1857, 26, § 2; disability, the special justice holding the senior commission shall, if no 7
294, § 2. request has been made as aforesaid, have and exercise all the powers and 8
G. S. 116, § 22. duties of the justice. Upon the death, resignation, absence or disability 9
P. S. 154, § 25. of the justice and special justices of a district court, except the municipal 10
1882, 43. court of the city of Boston, a justice or special justice of any other dis- 11
1885, 132. trict court, at the request of the clerk, may for the time being have and 12
1892, 268. exercise all the powers and duties of the justice. Justices and special 13
1893, 396. justices of district courts, except the municipal court of the city of Boston, 14
§§ 55, 63. may perform each other's duties when necessary or convenient. When a 15
R. L. 160, special justice holds the court or a session thereof or an inquest, or 16
§§ 41, 44, 50. certifies a bill of costs to a county, city or town treasurer, that fact, 17
1906, 166. and the fact which gave him jurisdiction, shall be entered upon the 18
1918, 257, general records of the court, but need not be stated in the record of 19
§ 415. any case heard by him. 20
1919, 5.
1920, 2.
6 Cush. 333.
14 Gray. 14.
18, 19.
7 Allen. 349.
123 Mass. 525.
143 Mass. 187.
151 Mass. 380.
155 Mass. 134.
158 Mass. 168.
184 Mass. 92.
246 Mass. 464.

Powers and duties of special justice.

1913, 289. SECTION 41. A special justice of a district court shall at all times 1
 have and exercise all the powers and duties of a justice of such court, so 2
 far as to render decisions, make orders, and perform such other acts as 3
 he may deem necessary or proper in connection with or relating to matters 4
 which have been heard before him. 5

Adjournment when justice absent.

1884, 188. SECTION 42. If no justice or special justice is present at the time and 1
1893, 396, § 56. place appointed for holding a session of a district court, the sheriff or any 2
R. L. 160, § 43. of his deputies or the clerk may adjourn the court from day to day or from 3
 time to time, giving notice thereof as circumstances may require. 4

1 SECTION 43. The justices, or a majority of them, of all the district
 2 courts, except the municipal court of the city of Boston, shall from time
 3 to time make and promulgate uniform rules regulating the time for the
 4 entry of writs, processes and appearances, the filing of answers and for
 5 holding trials in civil actions, the preparation and submission of reports,
 6 the allowance of reports which a justice shall disallow as not conform-
 7 able to the facts, or shall fail to allow by reason of physical or mental
 8 disability, death or resignation, the reporting of cases reserved for re-
 9 port when a justice shall fail to report the same by reason of physical or
 10 mental disability, death or resignation, the granting of new trials, and
 11 the practice and manner of conducting business in cases which are not
 12 expressly provided for by law, including juvenile proceedings and those
 13 relating to wayward, delinquent and neglected children.

Uniform rules
 of courts.
 G. S. 116, § 23.
 P. S. 154, § 27.
 1890, 359.
 1893, 396, § 59
 R. L. 160, § 45.
 1918, 257,
 § 414
 1919, 5.
 1920, 2.
 1922, 532, § 9.
 1931, 325, § 3.
 246 Mass. 464.
 256 Mass. 535.

1 SECTION 43A. There shall be an administrative committee of dis-
 2 trict courts, which shall consist of the three presiding justices for the
 3 time being designated by the chief justice of the supreme judicial court
 4 under section one hundred and eight of chapter two hundred and thirty-
 5 one to act in the appellate districts of district courts, other than the mu-
 6 nicipal court of the city of Boston. The committee shall be authorized
 7 to visit any district court, other than the municipal court of the city of
 8 Boston, as a committee or by sub-committee, to recommend uniform
 9 practices, forms of blanks and records, and to superintend the keeping
 10 of records by clerks.

Administrative
 committee.
 1922, 532, § 10.
 1931, 426,
 § 122
 246 Mass. 464.

11 The members of the committee shall be allowed the necessary ex-
 12 penses incurred in the performance of their duties, subject to the ap-
 13 proval of the governor and council, and shall receive such compensation
 14 for their services actually performed in the work of such committee as
 15 the governor and council shall approve, to be paid from the treasury of
 16 the commonwealth.

17 To promote co-ordination in the work of the courts, the administrative
 18 committee may call a conference of any or all of the justices of the district
 19 courts, including the municipal court of the city of Boston, or of other
 20 officials connected with such courts, and the traveling expenses of such
 21 justices or officials for attending any such conferences shall be paid as the
 22 other expenses of the respective courts are paid.

1 SECTION 44. Processes issuing from district courts shall be under the
 2 seal of the court, signed by the clerk or an assistant clerk or temporary
 3 clerk or temporary assistant clerk, and shall bear teste of the justice, or,
 4 in the municipal court of the city of Boston, the chief justice, unless he
 5 is a party or unless his office is vacant, and in such cases they shall bear
 6 teste of the special justice who holds the senior commission or the senior
 7 associate justice. The process, civil or criminal, of a district court shall
 8 run throughout the commonwealth for service in any case or proceeding
 9 within its jurisdiction.

Process, formal
 requisites.
 Torun through-
 out common-
 wealth.
 1822, 12.
 R. S. 85, § 17;
 87, § 12.
 1855, 270, § 5;
 428, § 7.
 1857, 264, § 8.
 G. S. 116, § 26;
 120, § 4.
 P. S. 154, § 30;
 155, § 15.

1888, 415.	1912, 649, § 1.	135 Mass. 519
1893, 396, §§ 15, 64.	1916, 174, § 1.	145 Mass. 117
1894, 431	13 Gray, 74	158 Mass. 168.
R. L. 160, §§ 22, 46.	14 Gray, 14, 18, 19.	

1 SECTION 45. District courts have the same authority to issue com-
 2 missions to take depositions in cases pending before them as the superior
 3 court has in cases pending therein.

Commissions
 to take deposi-
 tions.

1877, 211, § 5.	1893, 396, § 65.
P. S. 154, § 11; 155, § 70.	R. L. 160, § 47.

Notice of
decisions, etc.
1918, 89.

SECTION 46. When judgment is entered by a district court upon demurrer, or upon a case stated, or when a decision is rendered in an action, except in open court, the clerk of the court shall forthwith give notice thereof to the parties or to their attorneys.

Payments
and accounts
by clerks.
Penalty.
R. S. 87,
§§ 38, 39,
1853, 57, § 7.
1855, 26, § 1.
1856, 158, § 2.
G. S. 116,
§§ 29-31.
1877, 210, § 3.
1878, 142,
P. S. 154,
§§ 34-36, 53.
1887, 438, § 5.
1888, 180; 419,
§ 13.
1889, 415, § 7.
1890, 201; 216,
§ 2; 440,
§§ 6, 8.
1891, 313; 392.
1893, 396, § 9.
1897, 466, § 2.
1898, 204, § 1.
1901, 126,
R. L. 160, § 48;
168, § 78.
1904, 453, § 5.
1919, 350, § 54.
1926, 191, § 2.
1930, 183, § 1.
2 Op. A. G.
292.

SECTION 47. Clerks of district courts, except the municipal court of the city of Boston, shall, on or before the tenth day of each month, account for and pay over to the county treasurer all money received by them from civil business, including fees for blanks and copies, and to city and town treasurers all fines and forfeitures received by them payable to said cities or towns, and render to said treasurers a detailed account on oath of the same. Such payments shall include the balances due and payable at the end of the month last preceding the day of payment. They shall, at the end of a criminal case, pay the fees and expenses of officers entitled thereto from the funds in their hands payable to the city or town liable for the payment of such fees and expenses, if they have sufficient funds therefor, and all such fees and expenses not so paid shall be certified at the end of each month to the treasurer of the city or town liable therefor, who shall pay them to the parties entitled thereto. They shall, at the end of a criminal case or inquest, pay the fees of witnesses for the commonwealth and the fees and expenses of officers at inquests who are entitled thereto, from the funds furnished them by the county treasurer for that purpose, or out of any funds which may be paid into court and are payable to the county. They shall be allowed for the amounts so paid in their settlement with the county, city and town treasurers. If they do not have in their hands sufficient funds returnable to counties with which to pay such fees, as herein provided, they may make written requisition therefor upon the county treasurer, who shall pay to them not more than two hundred dollars each in any one month; but if it appears necessary to the director of accounts, he may approve in addition thereto a requisition for not more than two hundred dollars in any one month, and, upon receipt of a requisition so approved, the county treasurer may pay to them such amount as may be called for therein. They shall account therefor in their regular settlements with the county treasurer and shall be liable therefor on their official bonds. A clerk violating any provision of this section shall be punished by a fine of not more than one hundred dollars.

ADDITIONAL PROVISIONS RELATIVE TO MUNICIPAL COURTS.

Sentences to
Deer island.
1881, 10
P. S. 154, § 51.
1886, 15,
§§ 3, 5.
1895, 224.
1896, 536, § 9.
R. L. 160, § 53.

SECTION 48. In cases in which municipal courts in Boston or the East Boston district court are authorized to sentence to imprisonment in the house of correction or county jail, or to commit thereto for non-payment of fine, they may sentence to imprisonment in the house of correction at Deer island or commit thereto.

Payment of
certain fees
by clerks,
advances and
accounting
therefor.
1891, 392
1898, 204, § 1.
R. L. 160, § 54.

SECTION 49. In the municipal courts in Boston, except the municipal court of the city of Boston, and in the East Boston district court, witness fees and the fees and expenses of officers named in section fifty of chapter two hundred and sixty-two and of all other persons shall, at the end of a criminal case or inquest in which such fees or expenses accrue, be paid by the clerks to the persons entitled thereto. If they do not have sufficient funds in their hands with which to make such pay-

8 ments, they may make written requisition upon the auditor of Boston,
 9 and thereupon the treasurer of said city shall advance to them not more
 10 than one hundred dollars each in any one month, for which they shall,
 11 before the tenth day of each month, account to said city and for which
 12 they shall be liable on their official bonds.

ADDITIONAL PROVISIONS RELATIVE TO THE MUNICIPAL COURT OF THE
 CITY OF BOSTON.

1 SECTION 50. The municipal court of the city of Boston shall consist
 2 of one chief justice, eight associate justices and six special justices. Said
 3 court may from time to time make rules for regulating the practice and
 4 conducting the business therein in all cases not expressly provided for
 5 by law.

Justices.
 Rules.
 1821, 109
 R. S. 87, § 1
 G. S. 116, § 35.
 1866, 279, § 4
 P. S. 154, § 53

1882, 41 1894, 308 R. L. 160, § 55. 1913, 430
 1888, 419, § 11. 1899, 313. 1912, 649, § 11. 1928, 334, § 1.

1 SECTION 51. The chief justice, or, in case of his death, illness, ab-
 2 sence or incapacity, the senior associate justice, shall allow bills of
 3 costs, accounts, charges and expenses which arise in said court, and
 4 shall certify to the public officer by whom payable such amounts so
 5 allowed.

Allowance of
 accounts, etc.
 1866, 279, § 8.
 P. S. 154, § 56
 R. L. 160, § 56.
 1907, 179.

1 SECTION 52. The chief justice may from time to time make assign-
 2 ments for the attendance of a justice at the several times and places
 3 appointed for holding court. The chief justice, or, in case of his death,
 4 illness, absence or incapacity, the senior associate justice, if in his opinion
 5 the public business so requires, may provide for additional sessions of
 6 the court. A special justice may hold any such additional session at the
 7 request of the chief justice or senior associate as aforesaid, or a regular
 8 session at the request of the justice whose duty it may be to hold it, or,
 9 in case of the illness or absence of any justice, or a vacancy, at the request
 10 of any justice. During the continuance of such requests, or during such
 11 illness, absence or vacancy, a special justice shall have and exercise all
 12 the powers and duties of a justice. The fact of holding court and the
 13 fact which gave him jurisdiction shall be entered upon the general
 14 records of the court, but need not be stated in the record of any case
 15 heard by him. His compensation shall be thirty dollars for each day's
 16 service; and, except when holding an additional session as above pro-
 17 vided, the compensation for service in excess of thirty days in any one
 18 year which may be rendered to or for any one justice shall be deducted
 19 by the treasurer of Suffolk county from the salary of such justice.

Assignment
 of justices,
 additional
 sessions.
 Special jus-
 tices, assign-
 ment, com-
 pensation,
 powers and
 duties.
 1870, 330, § 1
 1879, 265, § 9
 1881, 256.
 P. S. 154, § 57
 1885, 42, § 1
 1896, 234
 1897, 360.
 1899, 313.
 R. L. 160, § 57.
 1912, 649, § 12.
 1918, 250.
 1931, 136, § 1.

1 SECTION 53. There shall be a clerk and eight assistant clerks of said
 2 court for criminal business, and a clerk and twelve assistant clerks of
 3 said court for civil business. The assistant clerks shall be appointed by
 4 the clerks, respectively, subject to the approval of the justices or a
 5 majority of them, and the clerks shall be responsible for the doings of
 6 their assistants, and may remove them at pleasure. The salaries of
 7 said assistant clerks shall be payable by the county.

Clerks and
 assistant
 clerks
 1866, 279, § 6.
 1874, 271, § 20.
 1879, 257,
 § 1, 303.
 1881, 62.
 P. S. 154, § 58.
 1885, 42, § 2.
 137, § 2.
 1889, 170.
 1897, 183.
 R. L. 160, § 58
 1906, 468
 1908, 418.
 1912, 649, § 10
 1913, 446
 1916, 69, § 1
 1922, 309, § 1.

8 The clerk of said court for civil business may designate such employees
 9 in his office, as in his judgment may be necessary for the convenience of
 10 the public, as deputy assistant clerks of said court, who shall have the
 11 same authority to administer oaths as the assistant clerks of said court.

1923, 323, § 1. 1928, 334, § 2
 1924, 36 1931, 210, §§ 1, 2

Civil juris- SECTION 54. In addition to the jurisdiction otherwise conferred, 1
 diction. 1866, 279, § 9. said court shall have jurisdiction of actions of contract, tort or replevin, 2
 1871, 144. 1874, 271, § 6. if one or more of the defendants, or, in actions by trustee process, if one 3
 1874, 271, § 6. or more of the persons named in the writ as trustees, live or have their 4
 1875, 106, § 1. usual place of business in Suffolk county, or, in actions brought under 5
 1877, 187. chapter two hundred and twenty-seven, if an attachment of property or 6
 P. S. 154, § 59. personal service of the writ is made in said county. 7
 1891, 431, § 2. 1912, 649, § 1. 1931, 426, § 99. 271 Mass. 186.

Stenographic SECTION 55. The justices of said court may employ stenographic 1
 and medical service for the court to an amount not exceeding three thousand dollars 2
 service and equipment. yearly. Said court may secure for its criminal business medical service, 3
 1915, 166. and the equipment necessary therefor, and for this purpose may expend 4
 1920, 508. annually such sum, not exceeding ten thousand dollars, as the justices 5
 1921, 486, § 33. of said court may from time to time determine, subject to the approval 6
 1930, 400, of the mayor of Boston. Sums so expended shall be paid by Suffolk 7
 §§ 5, 7-9. county upon vouchers approved by the chief justice of said court. 8

Accounts SECTION 56. The clerks shall, on or before the tenth day of each 1
 of clerks. month, account for and pay over to the collector of Boston, or to any 2
 1887, 438, other officer authorized by law to receive the same, the balance due and 3
 1888, 419, § 5. 1889, 415, § 7. payable at the end of the preceding month of all money received by 4
 1890, 216. them payable by law to Suffolk county, and shall render to said collector 5
 1891, 313. or other officer a detailed account thereof under oath. Whoever violates 6
 1897, 466, § 2. R. L. 160, § 61; this section shall be punished by a fine of not more than one hundred 7
 168, § 78. dollars. 8

SPECIAL PROVISIONS RELATIVE TO THE BOSTON JUVENILE COURT.

Territorial SECTION 57. The Boston juvenile court, established by section one of 1
 jurisdiction. 1906, 489, chapter four hundred and eighty-nine of the acts of nineteen hundred 2
 §§ 1, 4. and six, shall continue to have and exercise jurisdiction within the same 3
 territorial limits as are prescribed for the criminal jurisdiction of the mu- 4
 nicipal court of the city of Boston. 5

Justices and SECTION 58. Said court shall consist of one justice and two special 1
 clerk. justices. It shall have a clerk, who shall be appointed by the governor, 2
 1906, 489, § 2. with the advice and consent of the council, for five years. 3

Powers, SECTION 59. Except as otherwise provided by law, said court shall 1
 duties and have and exercise, within its jurisdiction, the same powers, duties and 2
 procedure. 1906, 489, procedure as district courts; and all laws relating to district courts or 3
 §§ 2-4. municipal courts in the county of Suffolk or officials thereof or proceedings 4
 therein, shall, so far as the same are applicable, apply to said court. 5

Jurisdiction SECTION 60. Within the territorial limits prescribed in section fifty- 1
 over offenders, seven, said court shall have and exercise jurisdiction, exclusive of the mu- 2
 etc. Rules. nicipal court of the city of Boston, over cases of juvenile offenders under 3
 1906, 489, § 4. seventeen and cases of neglected, wayward or delinquent children. Said 4
 1907, 137. court may from time to time make general rules in reference to, and pro- 5
 vide forms of, procedure. 6

COURT OFFICERS.

1 SECTION 61. Court officers in district courts shall be appointed by the
 2 justice of the court, or, in the case of the municipal court of the city of
 3 Boston, by a majority of the justices, and may likewise be removed for
 4 any cause considered by such justice or majority to be sufficient, and
 5 any vacancy caused by removal or otherwise may likewise be filled.
 6 Such officers shall attend the sessions of the court, shall preserve order,
 7 and may serve warrants, mittimuscs, precepts, orders and processes of
 8 the court.

Appointment,
 tenure, powers
 and duties.
 1873, 310.
 1874, 169.
 1879, 257, § 3;
 265, § 8.
 1881, 261.
 P. S. 154,
 §§ 54, 63.
 1886, 15, § 5.
 1893, 396, § 62.

1895, 457, §§ 1, 2, 5.	1909, 386	1918, 257, § 417.
1898, 254	1912, 253; 497.	1919, 5.
1900, 433, § 1	1914, 700	1920, 2.
R. L. 160, §§ 62-64.	1916, 69, § 2.	

1 SECTION 62. In the municipal court of the city of Boston the court
 2 officers appointed shall not exceed ten for criminal business and five for
 3 civil business and one of such court officers for criminal business shall be
 4 designated by the chief justice as chief court officer of said court for
 5 criminal business, and one of such court officers for criminal business
 6 shall be designated as an assistant chief court officer; in the municipal
 7 court of the Roxbury district four court officers may be appointed; in
 8 the municipal court of the South Boston district, of the Charlestown
 9 district, of the Dorchester district and of the West Roxbury district, the
 10 East Boston district court, the district court of Chelsea, the third dis-
 11 trict court of eastern Middlesex and the district court of East Norfolk
 12 two court officers for each court may be appointed; and in each of the
 13 other district courts in the commonwealth one court officer may be ap-
 14 pointed.

Number
 1873, 310.
 1874, 169.
 1879, 257, § 3;
 265, § 8.
 1881, 261.
 P. S. 154,
 §§ 54, 63.
 1886, 15, § 5.
 1893, 396, § 62
 1895, 457, § 1
 1898, 254
 1900, 433, § 2.
 R. L. 160,
 §§ 62-64
 1909, 386.
 1912, 253, § 1;
 497, § 1.
 1914, 700.
 1916, 69, § 2.
 1918, 257,
 § 417.
 1919, 5.

1920, 2.	1923, 448, § 1.	1929, 208, § 1.
1921, 284, § 1.	1924, 86, § 1.	1931, 285.
1922, 299, § 1.	1928, 198, § 1.	

1 SECTION 63. Court officers in district courts in Boston shall, while
 2 on duty in said courts, wear uniforms to be approved by the justices of
 3 said courts, which shall be furnished at the expense of Suffolk county.

Uniforms in
 Boston courts.
 1902, 368.
 1906, 355, § 2.
 1914, 736.

1930, 400, §§ 5, 7-9.	1931, 301, § 29.
-----------------------	------------------

1 SECTION 64. Each court officer in a district court in Boston shall
 2 give bond for the faithful performance of his duties in the sum of one
 3 thousand dollars payable to the treasurer of Suffolk county, with suf-
 4 ficient sureties, approved by the chief justice or the justice of the court,
 5 as the case may be.

Bonds in
 Boston courts.
 1895, 457, § 1
 1900, 433, § 1
 R. L. 160, § 65

1 SECTION 65. In the absence of a court officer, or, in the municipal
 2 court of the city of Boston, whenever a majority of the justices think the
 3 business requires, a temporary court officer may be appointed in the
 4 manner provided in section sixty-one, who shall have all the powers and
 5 duties of a court officer. The justice of the third district court of eastern
 6 Middlesex may appoint for service during such time as three simultaneous
 7 sessions of said court are being held, and may remove as provided in
 8 section sixty-one, a part time court officer, who shall have all the powers
 9 and duties of a court officer. Any compensation for service performed
 10 for an absent court officer as aforesaid in excess of fifteen days in any one
 11 year shall be deducted by the county treasurer from the salary of such
 12 court officer.

Temporary
 court officers.
 1900, 179
 R. L. 160, § 66
 1908, 191.
 1912, 462
 1924, 86, § 2.
 1930, 400,
 §§ 5, 7-9
 1931, 301, § 30.

MESSENGERS AND INTERPRETERS.

Messenger of Boston municipal court.

SECTION 66. There shall be a messenger of the municipal court of the city of Boston, appointed by a majority of the justices.

1906, 192.

Interpreters in Boston municipal court. 1912, 648, § 1. 1916, 109. 1930, 400, §§ 5, 7-9. 1931, 301, § 31.

SECTION 67. The justices of the municipal court of the city of Boston may appoint such official interpreters as they may deem necessary for the criminal and for the civil sessions of the court. The interpreters shall hold their positions at the pleasure of the court and shall render such additional service as the chief justice of said court may require. Said justices shall forthwith discharge any such interpreter who shall be found by them to have requested or received, directly or indirectly, any gratuity, bonus or fee in connection with any criminal or civil case pending or in course of preparation for presentation to any court. Other interpreters may be employed when the services of the official interpreter are not available.

Interpreter in East Boston district court. 1920, 534. 1925, 255, § 1.

SECTION 68. The justice of the East Boston district court may appoint an Italian interpreter for that court. Said interpreter shall be entitled to an annual vacation period of fifteen working days with pay.

1930, 400, §§ 5, 7-9.

1931, 301, § 32.

CLERICAL ASSISTANCE.

Clerical assistance to certain clerks. 1879, 257, §§ 1, 2. P. S. 154, § 58. 1883, 47. 1888, 184; 246; 419, § 13.

SECTION 69. The clerk of each district court, except the clerks of the municipal court of the city of Boston for civil and criminal business, shall be allowed annually for clerical assistance such amount as the mayor of the city of Boston, if the district court is in Suffolk county, or as the county commissioners, if it is in any other county, may approve.

1889, 62; 206.
1893, 371.
1895, 125; 260.
1897, 263;
397, § 1.
1898, 286; 331.
1899, 353.
1900, 419, § 2.
1901, 295; 336.
R. L. 160, § 67.
1903, 179.
1904, 258; 331.

1906, 195-197; 228;
289; 449, §§ 2, 3.
1907, 323.
1908, 348; 351; 395;
458; 475.
1909, 217; 364-366;
368; 434.
1910, 224; 253; 279.
1911, 451.
1912, 315; 336.
1913, 339; 526.
1914, 690.

1919, 127; 219.
1920, 282.
G. L. (ed of 1920) 218, §§ 71-73.
1921, 334, §§ 1, 2 [G. L. 218, §§ 71A, 71B]; 430, § 1; 464, § 1 [G. L. 218, § 71C]; 465, § 1; 465, § 2 [G. L. 218, § 71D].
1922, 399, § 1.
1930, 400, §§ 5, 7-9.
1931, 301, § 33.

Same subject. Boston municipal and juvenile courts. 1916, 71. G. L. (ed of 1920) 218, § 72. 1921, 430, § 1. 1922, 399, § 2. 1931, 301, § 34.

SECTION 70. The clerks of the municipal court of the city of Boston for civil business and for criminal business and the clerk of the Boston juvenile court shall each be annually allowed for clerical assistance such amounts as the majority of the justices of said municipal court and the justice of said Boston juvenile court, respectively, may recommend, subject, however, to the approval of the officers having in Suffolk county the powers of county commissioners.

SECTION 71. [REPEALED, 1922, 399, § 3.]

SECTION 71A. [INSERTED, 1921, 334, § 1; REPEALED, 1922, 399, § 3.]

SECTION 71B. [INSERTED, 1921, 334, § 2; REPEALED, 1922, 399, § 3.]

- 1 SECTION 71C. [INSERTED, 1921, 464, § 1; REPEALED, 1922, 399, § 3.]
- 1 SECTION 71D. [INSERTED, 1921, 465, § 2; REPEALED, 1922, 399, § 3.]
- 1 SECTION 72. [REPEALED, 1922, 399, § 3.]
- 1 SECTION 73. [REPEALED, 1922, 399, § 3.]

SALARIES.

1 SECTION 74. Salaries in district courts shall be paid in monthly
 2 instalments by the respective counties where such courts are established,
 3 but advances on account of such salaries may be made in any county
 4 under such regulations as the county treasurer thereof may prescribe,
 5 not exceeding the proportion of salary then due, nor oftener than once
 6 in seven days, nor before the sixth nor after the twenty-first day of the
 7 month.

Monthly
 payments.
 1877, 210, § 2
 P. S. 154, § 64
 R. L. 160, § 67
 1902, 416, § 3
 1905, 452
 1906, 335, § 1.
 1913, 488
 1918, 227,
 §§ 3, 4

1919, 362, § 6. 1928, 140.

1 SECTION 75. The salary of the chief justice of the municipal court of
 2 the city of Boston shall be ten thousand dollars, and the salary of each
 3 of the associate justices shall be nine thousand dollars.

Salaries in
 Boston munic-
 ipal court.
 1821, 109,
 §§ 4, 5.

R. S. 78, §§ 26-28.	1892, 58	1917, 262
G. S. 116, § 33	1893, 479	1918, 195; 227; 260, § 1;
1866, 279, § 6	1895, 457, § 3.	287, § 1
1867, 355, § 6; 356.	1897, 183	1919, 264, 276; 328; 329.
1872, 43	1898, 254	1920, 473; 491; 492;
1874, 271, § 20	R. L. 160, § 67.	496; 614.
1879, 257; 265.	1904, 454	1921, 284, § 2.
1881, 62	1905, 452	1922, 309, § 2
P. S. 154, § 64	1906, 192; 355, §§ 1, 3;	1923, 323, § 2; 448, § 2.
1882, 41, § 2; 245, § 1	449, § 1, 450; 468.	1924, 506, § 1
1885, 42, § 2; 137, §§ 1, 2.	1908, 418	1928, 233, § 1; 334, § 3.
1886, 130.	1912, 649, § 10	1930, 400, §§ 5, 7-9;
1887, 163	1913, 446; 488; 726; 736.	415, § 1
1888, 195; 419, § 11	1914, 666	1931, 301, § 35.
1889, 39; 143; 170.	1916, 69, § 1.	

1 SECTION 76. The salary of the justice of the Boston juvenile court
 2 shall be five thousand dollars, and that of the clerk of said court an
 3 amount equal to seventy-five per cent of the salary of the justice. The
 4 salary of the justice of the municipal court of the Charlestown district
 5 shall be forty-five hundred dollars. The salary of the justice of the
 6 municipal court of the South Boston district shall be forty-five hundred
 7 dollars. The salaries of the justices of the following district courts
 8 shall severally be as follows: First district court of Barnstable, twenty-
 9 two hundred dollars; second district court of Essex, twenty-four hundred
 10 dollars; second district court of Plymouth, thirty-two hundred dollars;
 11 third district court of Plymouth, twenty-five hundred dollars; fourth
 12 district court of Plymouth, twenty-five hundred dollars.

Salaries in
 certain other
 courts.
 1906, 489, § 3.
 1918, 178.
 1919, 255
 1921, 355, § 1
 1924, 484, § 1.
 505, § 1.
 1927, 294, § 1
 1928, 236, § 1

1 SECTION 77. The salaries of the justice of the district court of Dukes
 2 county and of Nantucket shall be fifteen hundred dollars each. The
 3 salary of the clerk of the district court of Dukes county shall be equal to
 4 seventy-five per cent of the salary of the justice of said court and the
 5 salary of the clerk of the district court of Nantucket shall be five hundred
 6 dollars.

Salaries in
 Dukes and
 Nantucket.
 1898, 287, § 2
 R. L. 160, § 67
 1904, 453, § 1
 1918, 245, § 1;
 260, § 2.

1919, 362, § 5. 1923, 326, § 1. 1927, 227, § 2. 1931, 152.

1 SECTION 78. The annual salaries of the justices of district courts,
 2 except as provided in the three preceding sections, shall be determined

Classified
 salaries,
 justices.

G S 116, § 33. by the population of their respective judicial districts as ascertained by 3
 1861, 141. the last preceding national or state census, as follows: 4
 1862, 92.
 1864, 127; 256.
 1866, 298, § 9.
 1867, 316, § 6.
 1868, 124, § 3;
 330.

Population of District.	Salary.	
Under 5,000	\$1,200	
5,000 to 6,000	1,300	
6,000 to 7,000	1,400	
7,000 to 8,000	1,500	
8,000 to 9,000	1,600	
9,000 to 11,000	1,700	
11,000 to 13,000	1,800	
13,000 to 15,000	1,900	
15,000 to 17,000	2,000	
17,000 to 18,000	2,100	
18,000 to 19,000	2,200	
19,000 to 22,000	2,300	
22,000 to 25,000	2,400	
25,000 to 27,000	2,500	
27,000 to 29,000	2,600	
29,000 to 31,000	2,700	
31,000 to 34,000	2,800	
34,000 to 37,000	2,900	
37,000 to 40,000	3,000	
40,000 to 43,000	3,100	
43,000 to 46,000	3,200	
46,000 to 49,000	3,300	
49,000 to 52,000	3,400	
52,000 to 55,000	3,500	
55,000 to 58,000	3,600	
58,000 to 61,000	3,700	
61,000 to 65,000	3,800	
65,000 to 70,000	3,900	
70,000 to 75,000	4,000	
75,000 to 80,000	4,100	
80,000 to 85,000	4,200	
85,000 to 90,000	4,300	
90,000 to 95,000	4,400	
95,000 to 100,000	4,500	
100,000 to 105,000	4,600	
105,000 to 110,000	4,700	
110,000 to 115,000	4,800	
115,000 to 120,000	4,900	
120,000 to 125,000	5,000	
125,000 to 130,000	5,100	
130,000 to 135,000	5,200	
135,000 to 139,000	5,300	
139,000 to 143,000	5,400	
143,000 to 146,000	5,500	
146,000 to 149,000	5,600	
149,000 to 152,000	5,700	
152,000 to 155,000	5,800	
155,000 to 158,000	5,900	
158,000 and over	6,000	
1895, 176, § 2.	R L. 160, § 67.	1912, 563; 604; 660; 672.
1896, 353, § 2.	1902, 320, 360, § 1; 378;	1913, 414, 748
1897, 318; 324; 325;	416, § 3.	1914, 509, § 1; 532, § 2;
356; 358; 359; 390.	1903, 214, § 2; 412, § 2.	547; 686.
1898, 216; 358; 362; 372;	1904, 372; 453, §§ 1, 2, 4.	1915, 286.
388; 429; 460; 478, § 2.	1905, 165; 339; 443	1916, 261; 263.
1899, 314; 315; 339;	1906, 299, § 2, 325.	1917, 203; 319; 328;
391, § 2.	1907, 128.	330, § 1; 333.
1900, 229; 265; 268;	1908, 323.	1918, 173; 208; 260, § 1.
384, 400, § 6.	1910, 501	1919, 362, §§ 1, 5, 6.
1901, 457.	1911, 414, § 2.	1923, 479, § 1.

Same subject, clerks and assistant clerks. G S. 116, § 33. 1862, 92.

SECTION 79. In courts in which the salaries of justices are fixed by the preceding section, the salaries of clerks shall be equal to seventy-five per cent of the salaries established for the justices of their respective

4 courts; and the salaries of assistant clerks, other than second and third
 5 assistant clerks, shall be equal to seventy-five per cent, and the salaries
 6 of second assistant clerks shall be equal to sixty per cent, and the salaries
 7 of third assistant clerks shall be equal to forty-five per cent, of the salaries
 8 of the clerks of their respective courts.

1866, 298, § 9.
 1867, 316, § 6.
 1869, 359;
 416, § 6.
 1870, 201, § 6.
 1871, 86, § 2;
 314; 326;
 349; 376.

1872, 141; 159; 163, § 3;
 199, § 7; 233, § 4;
 289, § 4.
 1873, 18; 363, § 3.
 1874, 35, § 2; 75, 123; 126;
 154, § 2; 180, § 4; 201, § 5;
 207, § 2; 235, § 2; 271,
 §§ 18, 19; 281, § 1, 293,
 § 20; 316, § 3; 337, § 6; 338;
 350, § 18; 364; 392, § 6.
 1875, 182.
 1876, 195, § 4; 198, § 1
 1877, 148; 210, § 2; 212, § 2.
 1879, 201; 219, § 2; 232,
 § 1; 233; 234, §§ 1-4; 247;
 248, § 2; 257; 265, §§ 3-5.
 1880, 226.
 1881, 148, § 3; 247-251;
 290.
 P. S. 154, § 64
 1882, 63; 87; 176, § 3; 233,
 § 6; 245, § 2.
 1883, 53; 57; 97, § 3.
 1884, 65; 197; 215,
 § 4; 231.
 1885, 79, § 3; 155, § 3;
 180; 286.

1886, 15, § 6; 106; 124;
 155, 156, 158, 165; 167;
 190, § 2; 307, § 2; 333, § 2.
 1887, 61, 117, 174; 175;
 208, 227; 265, § 2; 274,
 § 2; 318; 327
 1888, 55, 60, § 2; 88; 89;
 214; 235.
 1889, 19; 28; 39; 41; 83;
 92; 137; 152, § 2; 218;
 239; 261; 277; 289
 1891, 71; 78, 107; 190;
 273, § 2.
 1892, 93.
 1893, 179
 1894, 65, § 2; 336; 363,
 § 2; 374; 379; 470.
 1895, 176, § 2; 500.
 1896, 337; 353, § 2.
 1897, 260, § 2; 322;
 422.
 1898, 369, 382; 460;
 478, § 2
 1899, 154; 204, § 2; 217;
 234, 297, 315; 391, § 2
 1900, 138, § 1; 326, 330;
 332; 400, § 6; 419, § 1.

1901, 362; 372; 392;
 415; 418.
 R. L. 160, § 67.
 1902, 299; 356; 360, § 2;
 378; 416, § 3
 1903, 214, § 2; 412, § 2.
 1904, 453, §§ 1, 2, 4
 1905, 165; 192; 339; 443.
 1906, 228; 240, 248;
 325; 351
 1907, 128.
 1908, 323.
 1909, 357.
 1910, 501.
 1911, 414, § 2.
 1912, 563; 660; 672.
 1913, 332, § 2, 414;
 483, 748.
 1914, 509, § 2, 532, § 2; 604.
 1916, 261, 262
 1917, 102; 124, 154; 252;
 291; 319, 340.
 1918, 173; 178; 211; 260, § 1.
 1919, 362, § 2
 1923, 379, § 2
 1926, 366, § 2.
 230 Mass 236.

1 SECTION 80. The salary of the clerk of the municipal court of the
 2 Charlestown district shall be equal to seventy-five per cent of the salary
 3 established for the justice of said court, and the salary of the first assist-
 4 ant clerk shall be equal to seventy-five per cent, and the salary of the
 5 second assistant clerk shall be equal to sixty-six and two thirds per cent,
 6 of the salary of said clerk. The salary of the clerk of the municipal court
 7 of the South Boston district shall be equal to seventy-five per cent of the
 8 salary established for the justice of said court, and the salary of the as-
 9 sistant clerk shall be equal to seventy-five per cent of the salary of said
 10 clerk. The salaries of the clerks of the first district court of Barnstable,
 11 the second district court of Essex and the second, third and fourth district
 12 courts of Plymouth shall be equal to seventy-five per cent of the salaries
 13 established for the justices of their respective courts.

Salaries of
 clerks and as-
 sistant clerks
 in certain
 courts.
 1912, 672
 1916, 195.
 1917, 330, § 2.
 1919, 362, § 2.
 1920, 615.
 1921, 355, § 2.
 1924, 484, § 2.
 503, § 1.
 1927, 294, § 2.

1 SECTION 81. If sessions of a district court are held in more than one
 2 town in its district, the county commissioners of the county in which such
 3 district lies shall designate in which town the clerk's main office shall be
 4 established, and the justice, special justices, clerk and assistant clerks of
 5 such court shall each be allowed by the county his traveling expenses
 6 necessarily incurred in connection with holding sessions of said court at
 7 any town in the county other than the town of his residence. All ex-
 8 penses allowed under this section shall be subject to the approval of
 9 said county commissioners.

Traveling
 expenses.
 1884, 204, 205.
 1888, 256.
 1896, 353, § 2.
 1898, 256
 1899, 110.
 R. L. 160,
 §§ 67, 68.
 1904, 453,
 §§ 3, 4.
 1919, 362, § 3.
 1925, 38.
 1931, 148.

1 SECTION 82. The salaries of the justices, clerks and assistant clerks
 2 of district courts, except the courts mentioned in sections seventy-five to
 3 seventy-seven, inclusive, whenever the population of their respective
 4 judicial districts, as ascertained by the last preceding national or state
 5 census, permits it, shall so be readjusted in the year following such census
 6 by the officer paying the salary as to apply the population according to
 7 such census to the schedule and computation of salaries contained in sec-
 8 tions seventy-eight and seventy-nine, and salaries so readjusted shall be

Periodical
 readjustment
 of classified
 salaries.
 1905, 339
 1910, 501.
 1919, 362, § 4.

allowed and paid from the first day of January in the year in which the readjustment is made; but such readjustment shall not reduce the salary of any official aforesaid while the incumbent then in office continues to hold office.

SECTION 83. [REPEALED, 1931, 301, § 36.] 1

Computation of compensation 1872, 199, § 5; 289, § 2. 1874, 35, § 2. 1879, 219; 220; 247. 1881, 128, § 4.

SECTION 84. Justices and clerks whose salaries are fixed in this chapter shall be paid at the same rate for any part of a year, and in computing the rate by the day of the compensation of justices and clerks of district courts, Sundays and legal holidays shall not be included in the days on which the courts are open for business. 1 2 3 4 5

P. S. 154, § 64. 1894, 142.

R. L. 160, §§ 67, 71. 1931, 301, § 37.

CHAPTER 219.

TRIAL JUSTICES.

SECT.

- 1. Designation and commission.
- 2. Location.
- 3. Jurisdiction.
- 4. Term of office. Bond.
- 5. Sittings and adjournments.
- 6. Warrants, etc., returnable to district courts.
- 7. Bail fees.
- 8. Cases may be filed.
- 9. Contempt.
- 10. Failure of justice to attend.
- 11. Making, preservation and deposit of records. Penalties.
- 12. Powers when commissioned anew.
- 13. Completion of unfinished business.
- 14. Not to act as attorney on appeal.
- 15. Accounts, etc.
- 16. Annual returns.

SECT.

- 17. Salaries.
- 17A. Clerical assistance in Ludlow.
- 18. General jurisdiction.
- 19. Breaches of the peace.
- 20. Trial or binding over.
- 21. Larcenies, etc.
- 22. Trespasses.
- 23. Taking of vehicles, etc.
- 24. Fish and game laws.
- 25. By-laws, etc.
- 26. Common nuisances.
- 27. Disorderly houses.
- 28. Drunkenness, intoxicating liquor, etc.
- 29. Dairy products.
- 30. Hawkers and peddlers.
- 31. Felonies by juvenile offenders.
- 32. Penalties.

Designation and commission 1858, 138, § 1. 1859, 193 1860, 187, § 1. G. S. 120, §§ 33, 36 1877, 211, § 1. P. S. 155, §§ 6, 7. R. L. 161, § 5, 6.

SECTION 1. The governor, with the advice and consent of the council, may designate and commission justices of the peace as trial justices in the towns named in the following section, and may revoke such designation. A justice of the peace not so designated and commissioned shall not have or exercise any judicial power, and shall not receive complaints or issue warrants, except as provided in section thirty-six of chapter two hundred and eighteen and in chapter two hundred and thirty-three.

1917, 326, § 1.

126 Mass. 235.

134 Mass. 226.

Location 1858, 138, § 2. G. S. 120, § 31. 1869, 254. P. S. 155, § 10. 1892, 408. R. L. 161, § 9.

SECTION 2. One such trial justice may be designated and commissioned in each of the following places: Ludlow, Hardwick, Barre, Hudson, Hopkinton, Saugus, Nahant, Marblehead, North Andover and Andover.

1917, 326, § 1.

1918, 245

1924, 229, § 3.

1 SECTION 3. A trial justice may receive complaints and issue war- Jurisdiction.
 2 rants and summonses against persons charged with crime and try crimi- 1858, 138.
 3 nal cases arising within the town where he resides at the time when he §§ 1, 2.
 4 is designated and commissioned, and may interchange services with and G. S. 120, §§ 32,
 5 act for any other trial justice within the county in which he resides. The 35, 36.
 6 trial justices residing in Barre and Hardwick shall have concurrent juris- 1877, 211, § 2.
 7 diction of offences committed in the towns of New Braintree and Oakham. P. S. 155,
 §§ 14, 43.
 1917, 326,
 §§ 1, 4.

1918, 97.

1 SECTION 4. A trial justice shall hold his office for three years from Term of office
 2 the time of his designation, unless during that period he ceases to hold a Bond.
 3 commission as justice of the peace or unless such designation and com- 1860, 187, § 2.
 4 mission as trial justice is revoked. A trial justice, before entering upon 1874, 304, § 3.
 5 the duties of his office, shall give a bond similar to that required from 1877, 211, § 7.
 6 the clerk of a district court under section sixteen of chapter two hundred P. S. 155,
 7 and eighteen, and failure to give such bond shall have like effect as in §§ 9, 76.
 8 the case of such clerk. R. L. 161,
 §§ 7, 8.
 134 Mass. 226

1 SECTION 5. Cases before trial justices may be heard and determined Sittings and
 2 at any convenient and suitable place. The reasonable and necessary ex- adjournments.
 3 penses, not exceeding ten dollars a month, actually incurred by a trial 1783, 42, § 2.
 4 justice for the rent of an office used by him for court purposes, shall be 1828, 64.
 5 paid by the county where the office is located, in the same manner as the R. S. 85,
 6 expenses for rent of district courts. Trial justices may adjourn their §§ 31, 32.
 7 courts in all cases to any other time or place, but not exceeding ten days G. S. 120,
 8 at any one time against the objection of the defendant. §§ 9, 52.
 P. S. 155,
 §§ 20, 71
 1898, 555
 1901, 246

R. L. 161, §§ 16, 1917, 326, §§ 3, 6. 145 Mass. 205.
 17, 51 4 Cush. 455. 166 Mass. 303.

1 SECTION 6. A trial justice may receive complaints and issue war- Warrants, etc.
 2 rants and summonses in cases, arising within his town, outside his returnable to
 3 jurisdiction but within the jurisdiction of a district court within the district courts
 4 county, making the warrant or summons returnable to a court having 1858, 138, § 1
 5 jurisdiction. G. S. 120,
 §§ 32, 36.
 1877, 211, § 4

P. S. 155, § 43. R. L. 161, § 28. 1917, 326, § 4.

1 SECTION 7. A trial justice, taking bail between nine o'clock in the Bail fees
 2 forenoon and six o'clock in the afternoon in a case within his jurisdiction, 1917, 326, § 4
 3 shall receive no fee therefor.

1 SECTION 8. Trial justices shall have like power with district courts Cases may
 2 to file criminal cases. be filed.
 1915, 101. 1917, 326, § 9.

1 SECTION 9. Trial justices may punish disorderly conduct interrupt- Contempt.
 2 ing any judicial proceedings before them, or which is a contempt of their 1784, 28, § 6
 3 authority, by a fine of not more than ten dollars or by imprisonment for R. S. 85, § 33
 4 not more than fifteen days. G. S. 120, § 50
 P. S. 155, § 68

R. L. 161, § 48. 12 Cush. 320 2 Gray, 120 120 Mass. 118.

1 SECTION 10. If a trial justice fails to attend at the time and place to Failure of
 2 which an examination or trial has been adjourned by him, any other justice to
 3 trial justice within the same county may attend and hear or try said case, attend.
 4 and may further adjourn such examination or trial in the same manner 1883, 175
 5 as the justice before whom the case was first pending. The justice who R. L. 161, § 46
 156 Mass. 270.

so takes cognizance of the case shall make a minute of the proceedings 6
before himself on the complaint and certify the same, and it shall be 7
entered on the records of the justice who makes the final order, sentence 8
or decree in the case. Any recognizance taken by the justice before whom 9
the case was originally pending shall continue in full force and effect. 10

Making, pres-
ervation and
deposit of
records.
Penalties.
1783, 42, § 3.
R. S. 85, § 35.
G. S. 120, § 51.
P. S. 155, § 69.
1888, 211,
§§ 1-5.
R. L. 161,
§§ 49, 61-63.
1917, 326, § 5.
12 Met. 9.
2 Gray, 115.
3 Gray, 574.
4 Gray, 29.
168 Mass. 234.

SECTION 11. Trial justices shall keep a record of all their judicial 1
proceedings. They shall safely preserve all dockets and records thereof 2
and other official papers in their custody, shall keep them open, under 3
proper regulations, to public inspection and examination, and shall 4
furnish copies thereof upon request and upon payment of such fees as 5
are allowed in similar cases to clerks of courts. Whoever knowingly and 6
wilfully destroys, defaces or conceals the dockets, records or other official 7
papers of a trial justice shall forfeit not more than one thousand dollars, 8
and shall be liable in damages to any person who is injured thereby. 9
Upon the death, resignation or removal from office of a trial justice, all 10
his dockets, records of his judicial proceedings and other official papers 11
in his custody shall be deposited in the office of the clerk of the courts in 12
the county in which he was designated. A trial justice who neglects for 13
three months after his resignation or removal from office so to deposit 14
his dockets, records and other official papers shall forfeit not more than 15
five hundred dollars, and the executor or administrator of a deceased 16
trial justice who neglects for three months after the filing of his bond so 17
to deposit in the clerk's office the dockets, records and other official papers 18
of the deceased which come into his hands shall forfeit a like amount. 19

Powers when
commissioned
anew.
1788, 19, § 2.
R. S. 85, § 23.
1852, 283, § 4.
G. S. 120, § 56.
P. S. 155, § 75.
R. L. 161, § 57.

SECTION 12. If a trial justice is commissioned and qualified anew at 1
or before the expiration of his former commission, his authority shall con- 2
tinue; and all business commenced by or before him under the former 3
commission may be prosecuted and completed in the same manner as if 4
that commission had continued in force. 5

Completion
of unfinished
business.
1860, 187, § 1.
1871, 386.
P. S. 155,
§§ 8, 66.
1890, 202.
R. L. 161,
§§ 47, 56.
1917, 326, § 8.
1918, 257, § 122.
1919, 5.

SECTION 13. If a trial justice ceases to hold office, he may nevertheless 1
finish any case pending before him and certify copies of his records and 2
papers; but, in such case, as well as in case of his death, the district court 3
within whose judicial district such trial justice exercised jurisdiction may 4
cause and allow the papers in the case to be brought and entered in said 5
court, and may thereupon proceed as if the case had been originally 6
begun therein. 7

1920, 2.

Not to act as
attorney on
appeal.
1783, 42, § 2.
1815, 49.

SECTION 14. Trial justices shall not be retained or employed as 1
attorneys before any court, upon appeal or otherwise, in any suit or 2
action previously determined before themselves. 3

R. S. 85, § 34.	1917, 326, § 7.	9 Gray, 366.
G. S. 120, § 54.	6 Cush. 331.	1 Allen, 210.
P. S. 155, § 73.	11 Cush. 315.	102 Mass. 372.
R. L. 161, § 53.		

Accounts, etc.
1700-1, 21, § 2.
1783, 52, § 8.
1791, 53, § 4.
R. S. 85, § 37.
G. S. 120, § 57.
P. S. 155, § 78.

SECTION 15. Trial justices shall be subject to the same duties and 1
liabilities as clerks of district courts under section forty-seven of chapter 2
two hundred and eighteen, and the provisions of said section forty-seven 3
relative to advances on requisition shall apply to such justices. 4

1887, 438, § 5.	1891, 325, § 1.	R. L. 161, §§ 54, 59.
1888, 180.	1898, 204, § 1.	1930, 183, § 2.
1890, 204; 216; 440, §§ 6, 8.	1901, 126.	

1 SECTION 16. They shall annually, on January first, return to the
 2 county treasurers of their respective counties all fees of sheriffs, deputy
 3 sheriffs, constables and witnesses which have been taxed and allowed
 4 during the preceding year and which then remain in their hands, and a
 5 schedule thereof.

Annual returns—
 1847, 274, § 1.
 G. S. 120, § 58.
 1876, 4.
 P. S. 155, § 79.
 R. L. 161, § 60.
 14 Allen, 217.

1 SECTION 17. The several trial justices in the places herein named
 2 shall receive a salary, to be paid by the county in which the respective
 3 places are situated, on the basis of the following named sums for each
 4 year or portion thereof of their respective commissions: Ludlow, five
 5 hundred dollars; Hardwick, two hundred and fifty dollars; Barre,
 6 three hundred dollars; Hudson, five hundred dollars; Hopkinton, one
 7 hundred dollars; Saugus, one thousand dollars; Nahant, twelve hun-
 8 dred dollars; Marblehead, one thousand dollars; North Andover, three
 9 hundred dollars; and Andover, five hundred dollars.

Salaries—
 1917, 326, § 10.
 1919, 181.
 1922, 364, § 1.
 1924, 229, § 4.

1 SECTION 17A. The trial justice in the town of Ludlow shall annually
 2 be allowed for clerical assistance in his office a sum not exceeding five
 3 hundred dollars to be paid by the county of Hampden, subject to the
 4 approval of the county commissioners thereof.

Clerical assist-
 ance in
 Ludlow.
 1926, 288.

1 SECTION 18. Trial justices shall have jurisdiction, concurrent with
 2 the superior court and the appropriate district court, of all crimes which
 3 may be subject to the penalties of a fine or forfeiture of not more than
 4 fifty dollars or of imprisonment for not more than six months, or both.

General
 jurisdiction—
 1858, 45, § 2.
 G. S. 120, § 37.
 P. S. 155, § 45.
 R. L. 161, § 30.

1917, 265.

11 Gray, 64.

14 Gray, 35, 47.

1 SECTION 19. They shall have jurisdiction, as aforesaid, of the crimes
 2 of assault and battery and of other breaches of the peace not of a high
 3 and aggravated nature; of disturbing the peace to the great damage and
 4 common nuisance of the inhabitants of the place where the disturbance
 5 occurs; of affrays and riots; of going armed offensively to the terror of
 6 the people; of uttering menaces or threatening speeches; and of being
 7 a dangerous and disorderly person; and, upon conviction of the defend-
 8 ant, may punish him by a fine of not more than thirty dollars, or by
 9 imprisonment for not more than ninety days.

Breaches
 of the peace—
 1692-3, 18.
 § 6; 28, § 7.
 1783, 51.
 1793, 25.
 R. S. 85, § 24.
 1854, 328.
 G. S. 120, § 38.
 1871, 115.
 1876, 174.
 P. S. 155, § 46.
 R. L. 161, § 31.
 1915, 101.

1 SECTION 20. Whoever is brought before a trial justice for any of the
 2 crimes named in the preceding section shall be examined by him, and
 3 may be tried before him, and, if convicted, may be required to find sure-
 4 ties to keep the peace for not more than one year and be punished by
 5 fine or imprisonment as before provided; or, if the offence is of a high
 6 and aggravated nature, he may be committed or bound over for trial
 7 before the superior court. If a person is committed under this section
 8 or under section thirty-one for failure to recognize as ordered, the
 9 superior court shall thereupon have jurisdiction of the case against such
 10 person for the purpose of revising the amount of bail theretofore fixed.

Trial or
 binding over—
 R. S. 85, § 25.
 G. S. 120, § 39.
 P. S. 155, § 47.
 R. L. 161, § 32.
 1918, 257,
 § 421.
 1919, 5.
 1920, 2.
 1929, 216, § 2.

1 SECTION 21. They shall have jurisdiction, as aforesaid, of the crime
 2 of larceny; of the crime of buying, receiving or aiding in the concealment
 3 of stolen property, and of the crime of fraudulently obtaining property
 4 by any game, device, sleight of hand, pretended fortune telling, or by
 5 any trick or other means by the use of cards or other implements or in-
 6 struments, if the value of the property in respect of which the crime is

Larcenies, etc.—
 1804, 143, § 2.
 R. S. 126,
 §§ 18, 23.
 1851, 156, § 4.
 1852, 4.
 1855, 135, § 2.
 1857, 80.
 G. S. 120,
 §§ 41, 44.

P. S. 155, §§ 50, 55.
R. L. 161, § 36.
9 Gray, 114
203 Mass. 598.

committed is not alleged to exceed ten dollars. In all such cases the defendant, upon a first conviction, shall be punished by a fine of not more than fifteen dollars, or by imprisonment for not more than six months; and upon a subsequent conviction of the like offence, committed after a former conviction, he shall be punished by a fine of not more than twenty dollars, or by imprisonment for not more than one year; but if the person convicted of buying, receiving or aiding in the concealment of such stolen goods or property makes satisfaction to the person injured to the full value of the property stolen and not restored, the punishment may be mitigated as justice may require.

Trespasses.
1693-4, 20,
§ 15.
1698, 7, § 2.
1785, 28, § 1.
1818, 3, § 1.
R. S. 126, § 46.
1846, 52, § 2.
G. S. 120, § 42.
1868, 321, § 2.
P. S. 155, § 51.
R. L. 161, § 37.
141 Mass. 238.

SECTION 22. They shall have jurisdiction, as aforesaid, of all the crimes mentioned in sections one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, one hundred and seventeen, and one hundred and twenty-seven of chapter two hundred and sixty-six, if the value of the trees, fruit, flowers or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass, is not alleged to exceed one hundred dollars; and may punish the same by a fine of not more than one hundred dollars, or by imprisonment for not more than six months, or both; but if the value of the property so destroyed or injured or the amount of injury done is not alleged to exceed fifteen dollars, the fine imposed for a violation of said section one hundred and twenty-seven shall not exceed fifteen dollars or the imprisonment exceed thirty days.

Taking of
vehicles, etc.
1856, 39, § 2.
G. S. 120, § 43.
P. S. 155, § 52.
R. L. 161, § 38.
1931, 426,
§ 288.

SECTION 23. They shall have jurisdiction, as aforesaid, of violations of the laws relative to the taking or using a boat or vehicle, other than a motor vehicle, or the taking, driving, riding or using a horse, ass, mule, ox or any draft animal; but they shall not impose a fine of more than fifty dollars or imprisonment for more than six months or both.

Fish and
game laws.
R. L. 161, § 39.
1904, 282, § 3.

SECTION 24. They shall have jurisdiction, as aforesaid, of violations of the laws regulating the taking of fish and game, the penalty for which does not exceed a fine of fifty dollars or imprisonment for six months.

By-laws, etc.
1692-3, 2s, § 5.
1801, 62,
R. S. 15, § 13.
1849, 211, § 7.
1852, 299.
1857, 194, § 5.
G. S. 120, § 40.
P. S. 155, § 48.
R. L. 161, § 33.

SECTION 25. They shall have jurisdiction, as aforesaid, of violations of town ordinances, by-laws and orders; of offences of unlawfully keeping billiard tables or bowling alleys; of violations of the laws relative to the public health; and of offences against property in cemeteries; but no single penalty imposed for offences against property in cemeteries shall exceed fifty dollars.

Common
nuisances.
1863, 78.
1865, 281.
1866, 280, § 3.
1878, 155.
P. S. 155, § 53.
R. L. 161, § 40.
1914, 624,
§§ 1, 2.
105 Mass. 185.
111 Mass. 427.
147 Mass. 29.
157 Mass. 14.
232 Mass. 88.

SECTION 26. They shall have jurisdiction, as aforesaid, of the offence of keeping or maintaining a common nuisance, namely, a building, part of a building, place or tenement resorted to for prostitution, assignation, lewdness or illegal gaming, or used for the illegal keeping or sale of intoxicating liquor; and, upon conviction of the defendant, may punish him by a fine of one hundred dollars and by imprisonment for not less than three months nor more than one year, where the nuisance relates to prostitution, assignation or lewdness, and in other cases by a fine of not more than one hundred dollars and by imprisonment for not more than one year.

1 SECTION 27. They shall have jurisdiction, as aforesaid, of the common
 2 law offence of keeping and maintaining a common, ill-governed and dis-
 3 orderly house; and, upon conviction of the defendant, may punish him
 4 by a fine of not more than one hundred dollars or by imprisonment for
 5 not more than one year.

R. L. 161, § 41.

Disorderly
houses.
1863, 78.
1865, 281.
1866, 280, § 3.
1878, 155.
P. S. 155, § 53.

1 SECTION 28. They shall have jurisdiction, as aforesaid, of cases of
 2 drunkenness; of violations of the laws relative to intoxicating liquors;
 3 and of violations of the laws relative to tramps, vagrants, vagabonds,
 4 cruelty to animals, and obscene books, pamphlets, ballads, printed
 5 papers, prints, pictures, figures, descriptions, and other obscene things.

P. S. 155, § 54.
1892, 160.

1894, 433, § 2.
R. L. 161, §§ 42, 43, 45.

Drunkenness,
intoxicating
liquor, etc.
1866, 255, § 4.
1866, 344, § 8.
1875, 394, § 19.
1878, 203, § 3.
1880, 239, § 7;
257, § 4.

1 SECTION 29. They shall have jurisdiction, as aforesaid, of cases aris-
 2 ing under the laws relative to the inspection and sale of dairy products
 3 and imitations thereof, and of milk.

1897, 349.

R. L. 161, § 34.

Dairy
products.
1885, 149.

1 SECTION 30. They may take jurisdiction of violations of law by
 2 hawkers and peddlers in unlawfully selling or exposing for sale, and in
 3 such cases may impose a fine of not more than fifty dollars.

P. S. 155, § 56.

R. L. 161, § 44.

Hawkers and
peddlers.
1868, 12.

1 SECTION 31. They shall have jurisdiction, as aforesaid, of felonies
 2 not punishable by death or imprisonment for life committed by juvenile
 3 offenders under seventeen, and, upon their conviction, may sentence
 4 them to any punishment authorized for such crime, except imprisonment
 5 in the state prison, or they may commit them to any institution estab-
 6 lished by law for the reformation of juvenile offenders, or may bind them
 7 over for trial in the superior court.

Felonies by
juvenile
offenders.
1872, 358.
1877, 211, § 6.
1880, 183.
P. S. 155, § 49.
R. L. 161, § 35.
127 Mass. 450.

1 SECTION 32. For offences within their jurisdiction, if no penalty is
 2 fixed by the section giving them jurisdiction, they may impose the same
 3 penalties as district courts.

Penalties.

CHAPTER 220.

COURTS AND NATURALIZATION.

SECT.

COURTS.

- 1. Courts to display flag.
- 2. General powers of courts.
- 3. Justices to be conservators of the peace.
- 4. First day of sitting, how designated.
- 5. Change of time and place of court.
- 6. Courts not to be open Sundays, etc., unless, etc.
- 7. Sheriffs, etc., to serve process.
- 8. Attorneys, etc., not to buy, etc., demands for collection.
- 9. Criers.
- 10. Judge, etc., not disqualified by interest, when.
- 11. United States judicial officer.

SECT.

- 12. Referee in bankruptcy not to hold certain offices.
- 13. Minors may be excluded from court rooms.
- 14. Commitment for contempt. Service of process.

NATURALIZATION.

- 15. Jurisdiction of naturalization.
- 16. Adjourned and special sessions for naturalization.
- 17. Evening sessions for same.
- 18. Court may fix time and place for reception by clerk of declarations.
- 19. Returns of naturalizations to secretary.

COURTS.

Courts to display flag. 1919, 189.

SECTION 1. The national flag of suitable dimensions shall be displayed in every court of justice of the commonwealth while the court is in session. 1 2 3

General powers of courts. 1782, 9, § 2. 1783, 46, § 1. 1817, 87; 190, § 1. R. S. 81, §§ 6, 9; 82, § 36; 83, § 9; 87, § 29; 87, § 13. 1853, 371, § 3. G. S. 115, § 3; 116, § 11; 117, § 20; 120, § 47.

SECTION 2. The courts of the commonwealth, the justices thereof and trial justices shall have and exercise all the powers necessary for the performance of their duties. They may issue all writs, warrants and processes and make and award judgments, decrees, orders and injunctions necessary or proper to carry into effect the powers granted to them, and, if no form for such writ or process is prescribed by statute, they shall frame one in conformity with the principles of law and the usual course of proceedings in the courts of the commonwealth. 1 2 3 4 5 6 7 8

P. S. 153, § 3; 154, § 12; 155, § 67; 156, § 23. 1893, 396, § 57. R. L. 166, § 1. 155 Mass. 486. 206 Mass. 417. 222 Mass. 131.

Justices to be conservators of the peace. 1692-3, 18, § 6. 1782, 9, § 1. 1783, 51, § 1. 1794, 26. R. S. 81, § 7; 85, § 27; 87, § 7. 1854, 335, § 5. 1858, 138, § 1. G. S. 115, § 2; 120, § 32. P. S. 153, § 2; 154, § 11; 155, § 1. 1893, 396, § 13. R. L. 166, § 2. 11 Gray, 194.

SECTION 3. The justices of the supreme judicial court and of the superior court, justices and special justices of district courts, by virtue of their offices, and justices of the peace shall be conservators of the peace throughout the commonwealth and as such may, upon view of an affray, riot, assault or battery, without a warrant in writing, command the assistance of every sheriff, deputy sheriff, constable and police officer and of all other persons present for its suppression and for the arrest of all persons concerned therein as provided in chapters two hundred and seventy-five and two hundred and seventy-six. Persons so arrested shall be taken before a district court or trial justice for examination. 1 2 3 4 5 6 7 8 9 10 11

First day of sitting, how designated. R. S. 82, § 44. 1859, 196, § 18. G. S. 115, § 15; 122, § 1.

SECTION 4. In writs, processes, records and judicial proceedings, civil or criminal, the day on which any sitting is to commence may be designated as the first, second or other Monday, or other day in the week, as the case may be, of the month in which the sitting commences. 1 2 3 4

P. S. 153, § 21; 160, § 1. R. L. 166, § 3.

1 SECTION 5. If it is unsafe or inexpedient to hold a court at the time
 2 and place appointed, a justice of the court may appoint another time
 3 and place within the same county for holding the same. Such adjourn-
 4 ment shall be made by an order in writing, signed by the justice or
 5 justices, and served by public proclamation by the person to whom it
 6 is directed in the shire town or as near thereto as is safe, and also by
 7 publication in such newspaper or in such other manner as is required in
 8 the order.

Change of
 time and place
 of court
 1730-31, 12
 1797, 16, § 10.
 R. S. 89,
 §§ 2, 3.
 G. S. 122,
 § 2, 3.
 P. S. 160,
 §§ 2, 3.
 R. L. 166, § 4

261 Mass. 294.

1 SECTION 6. Courts shall not be open on Sunday or on a legal holiday,
 2 except as provided in section four of chapter two hundred and thirteen
 3 or except for the purpose of entering or continuing cases, instructing or
 4 discharging a jury, receiving a verdict or adjourning; but this section
 5 shall not prevent the exercise of the jurisdiction of any magistrate in
 6 criminal cases to preserve the peace or arrest offenders.

Courts not to
 be open
 Sundays, etc.,
 unless, etc.,
 R. S. 89, § 4
 1856, 113, § 1
 G. S. 122, § 4
 1881, 71
 P. S. 160, § 4

1894, 130, §§ 3, 4.	13 Mass. 324	117 Mass. 1
1896, 162, § 1	14 Allen, 156.	184 Mass. 575.
R. L. 166, § 5	107 Mass. 209	1 Op. A. G. '66.
1931, 426, § 289.		

1 SECTION 7. Sheriffs, deputy sheriffs, constables and other officers
 2 shall serve all lawful processes issued by a court, judge, judicial officer
 3 or county commissioners legally directed to them.

Sheriffs, etc.,
 to serve
 process.

1783, 44, § 1;	R. S. 14, § 68; 83, § 11;	P. S. 22, § 21; 160, § 5.
46, § 1.	84, § 3; 85, § 30	R. L. 20, § 23; 166, § 6.
1817, 13; 190, § 1.	G. S. 17, § 15; 122, § 5.	

1 SECTION 8. No attorney, justice of the peace, sheriff, deputy sheriff
 2 or constable shall, directly or indirectly, buy or be interested in buying,
 3 or, directly or indirectly, lend or advance or agree to lend or advance
 4 any money or other goods, or give or promise any valuable considera-
 5 tion whatever to any person, as an inducement to place, or in considera-
 6 tion of having placed, in the hands of any person any bond, note, book
 7 debt or right of action for collection, with intent to make for himself
 8 any gain from the fees arising from such collection by legal proceedings.
 9 Violations of this section shall be punished by a fine of not less than
 10 twenty nor more than five hundred dollars.

Attorneys,
 etc., not to buy,
 etc., demands
 for collection
 1811, 62.
 R. S. 89, §§ 5-7
 G. S. 122,
 §§ 6, 7.
 P. S. 160, §§ 6, 7.
 R. L. 166, § 7
 13 Pick. 79.
 109 Mass. 237
 138 Mass. 530.
 148 Mass. 18.

1 SECTION 9. Clerks or assistant clerks of courts, sheriffs or their
 2 deputies, as the court may direct, shall perform the duties of criers,
 3 without additional compensation; and any officer may adjourn the
 4 court by order thereof.

Criers.
 1859, 207
 G. S. 122, § 12.
 P. S. 160, § 12.
 R. L. 166, § 8.

1 SECTION 10. No person shall be disqualified from acting as judge,
 2 magistrate, appraiser or officer of any kind in a suit or proceeding in
 3 which a town is interested by reason of his interest as an inhabitant
 4 thereof. No juror shall be disqualified by reason of being an inhabitant
 5 of Boston.

Judge, etc.,
 not disquali-
 fied by interest,
 when.
 1808, 19, § 2.
 1815, 103, § 2.
 1828, 13, § 3.

R. S. 90, § 124.	R. L. 166, § 9.	2 Allen, 396, 402, 596.
1836, 4, § 13.	13 Mass. 324	139 Mass. 315.
G. S. 122, § 13.	10 Cush. 494.	147 Mass. 585.
P. S. 160, § 13	11 Cush. 496.	137 Mass. 14.

1 SECTION 11. No person who holds a judicial office under the laws
 2 of the United States shall hold any judicial office of this commonwealth,
 3 except that of trial justice or justice of the peace.

United States
 judicial officer.
 1855, 489, § 14.

1858, 175, § 1.	1868, 24, § 1.	R. L. 166, § 10.
G. S. 144, § 67.	P. S. 160, § 11.	

Referee in bankruptcy not to hold certain offices. 1867, 357, § 2. P. S. 160, § 15. R. L. 166, § 11.

SECTION 12. No person who holds the office of referee in bankruptcy shall at the same time hold any judicial office, except that of justice of the peace, nor the office of clerk or assistant clerk of any court, or register or assistant register of probate and insolvency.

Minors may be excluded from court rooms. 1881, 274. P. S. 160, § 16.

SECTION 13. Any court or trial justice may exclude minors as spectators from the court room during the trial of any cause, civil or criminal, if their presence is not necessary as witnesses or parties.

R. L. 166, § 12.

Commitment for contempt. Service of process. 1886, 224. R. L. 166, § 13. 188 Mass. 443.

SECTION 14. Commitments for contempt of court may be made to any jail in the commonwealth; and processes issued in proceedings relative to alleged contempt may be served in any county by any sheriff or deputy sheriff to whom they are directed.

196 Mass. 384.

NATURALIZATION.

Jurisdiction of naturalization. 1855, 28, § 2. 1856, 47, §§ 1, 2. 1858, 44.

SECTION 15. The supreme judicial court and the superior court shall have jurisdiction to naturalize aliens resident within their respective judicial districts in the manner set forth in the federal laws relative to naturalization.

G. S. 122, §§ 8, 9, 11	1886, 45; 203.	R. L. 166, § 14
1879, 300, § 3	1891, 180; 419.	U. S. Comp. Sts. (1918),
P. S. 160, §§ 8, 9, 11;	1897, 505.	§ 4351 <i>et seq.</i>
199, § 4	1900, 374, §§ 1, 3.	222 Mass. 87.
1885, 345, §§ 1, 2, 6, 8.		

Adjourned and special sessions for naturalization. 1911, 68; 483. 1912, 606; 712. 1913, 518. 1916, 84. 1917, 143. 1919, 300. 1920, 232.

SECTION 16. The superior court in the several counties may make the following adjournments from any of its regular sittings for naturalization: in Berkshire, from Pittsfield to North Adams; in Bristol, from New Bedford to Attleboro; in Hampden, from Springfield to Holyoke, Westfield and Chicopee; in Hampshire, from Northampton to Ware. Special sessions for naturalization may be held at Lynn in March and September, and at Quincy in February and July, on such dates as the chief justice may fix, and in such other cities and towns and at such times as he may determine.

Evening sessions for same. 1913, 390.

SECTION 17. Evening sessions of the superior court for naturalization may be held in each county except Suffolk.

Court may fix time and place for reception by clerk of declarations. 1912, 159. 1931, 426, § 290.

SECTION 18. The superior court may authorize the execution and reception by the clerk of the court of declarations of intention in naturalization proceedings at such times as the court by general order may direct.

Returns of naturalizations to secretary. 1885, 345, § 5. 1887, 36. R. L. 166, § 17.

SECTION 19. The clerk of each court shall annually, on or before February first, make to the state secretary a return of the name, age, occupation and residence of every person naturalized prior to the preceding January first, the date of the naturalization and the names and residences of the witnesses. Such returns shall be preserved by the secretary in a form convenient for reference.

CHAPTER 221.

CLERKS, ATTORNEYS AND OTHER OFFICERS OF JUDICIAL COURTS.

SECT.

CLERKS OF COURTS.

1. Clerk of court for commonwealth.
2. His duties.
3. Election of clerks, term.
4. Assistant clerks.
5. Same subject.
6. Same subject. Suffolk county.
7. Deputy assistant clerks.
8. Temporary clerks.
9. Temporary assistant clerks.
10. Appointment by court of temporary clerk.
11. Clerks to be sworn.
12. Bonds of clerks.
13. Notice to secretary of vacancy in office of assistant clerk.
14. General duties of clerks.
15. Duties of clerk and assistant clerk of the supreme judicial court in Suffolk.
16. Duties of clerk of superior court in Suffolk.
17. Facsimile of signature of clerk. Signature of assistant clerk.
18. Affidavits in court proceedings.
19. Forwarding exceptions to attorney general.
20. Notice of rescript.
21. Notice of judgment.
22. Clerks may issue orders of notice.
23. Alphabetical list of parties.
24. Clerks to make annual returns of cases to secretary.
25. Preservation of records of trial justices.
26. Clerks to report convictions of registered physicians or of unregistered practitioners, etc.
27. Extension of papers on records.
28. Clerk to exhibit records.
29. Justices to inspect records.
30. Forfeiture of bond.
31. Liability for other breaches.
32. Clerk to account for fees, etc.
33. Duties of assistant clerk.
34. [Repealed.]

JUDICIAL COUNCIL.

- 34A. Establishment. Purpose.
- 34B. Annual report, etc.
- 34C. Compensation. Expenses. Secretary.

BAR EXAMINERS.

35. Appointment.
36. Admission to the bar of attorneys at law. Expenses, how paid.

SECT.

ATTORNEYS AT LAW.

37. Petition for examination for admission as an attorney, etc.
38. Oath of office.
- 38A. Petitions by certain aliens.
39. Admission of attorneys from other states, etc.
40. Removal.
41. Penalties on disbarred or unauthorized attorneys and for soliciting law business.
42. Records to be kept as to the standing of attorneys at law.
43. Attorneys at law prohibited from soliciting employment in claims for damages.
44. May be disqualified in certain cases for violating § 43.
45. Sheriff, etc., not to act as attorney.
46. Corporations not to practice law.
47. Same subject.
48. Parties may manage their own suits.
49. Persons specially authorized, etc.
50. Attorney's lien for fees, etc.
51. Penalty for not paying over to client.
52. Attorney not to act in suit previously decided by him.

MASTERS, AUDITORS, REFEREES, ASSESSORS, ETC.

53. Masters in chancery.
54. Completion of business if commission expires.
55. Compensation of masters, etc.
56. Auditors. Appointment, findings, etc.
57. Auditors in probate court.
58. Notice to parties.
59. Discharge by court.
60. Hearings before auditors.
61. Compensation of auditors.
62. Reports of auditors, masters, etc.
- 62A. Compensation of auditors and special masters incapacitated, etc.

REPORTER OF DECISIONS.

63. Appointment.
64. Preparation of reports.
65. Style of reports.
66. Preservation of opinions until publication.
67. Deputy reporter.
68. Compensation of reporter.

<p>SECT.</p> <p style="text-align: center;">COURT OFFICERS.</p> <p>69. Number of deputy sheriffs, etc., to serve as court officers.</p> <p>70. Court officers in certain counties, appointment and removal, bonds, powers.</p> <p>71. Chief deputy sheriffs for Suffolk and Middlesex, and chief court officer for Worcester.</p> <p>72. Term of office. Interchange, etc., in Suffolk county.</p> <p>73. Salaries of court officers in supreme judicial court in Suffolk county.</p> <p>74. [Repealed.]</p> <p>75. Compensation for attendance at court.</p> <p>76. Duties and salaries of messengers in Suffolk county.</p> <p>77. Premiums on bonds in Suffolk county to be paid by county.</p> <p>78. Service of venire by officers of the supreme judicial court, county of Suffolk. Bond.</p> <p>79. Summoning of witnesses by officers in Suffolk and Worcester.</p> <p>80. Court officers to wear uniforms.</p> <p>81. Officers not to draw double pay.</p> <p style="text-align: center;">STENOGRAPHERS.</p> <p>82. Appointment in the superior court.</p> <p>83. Temporary stenographers.</p> <p>84. [Repealed.]</p>	<p>SECT.</p> <p>85. [Repealed.]</p> <p>86. Stenographer for grand jury.</p> <p>87. Duties, etc., of stenographers.</p> <p>88. Transcripts of notes.</p> <p>89. Clerical assistants.</p> <p>90. [Repealed.]</p> <p>90A. Expenses, etc., for services rendered in counties other than those for which stenographers appointed.</p> <p>91. Salaries and compensation of stenographers in the superior court.</p> <p style="text-align: center;">INTERPRETERS.</p> <p>92. Interpreters.</p> <p style="text-align: center;">SALARIES AND EXPENSES OF CLERKS AND ASSISTANT CLERKS OF THE SUPREME JUDICIAL AND SUPERIOR COURTS.</p> <p>93. Salaries of clerk and assistant clerk of supreme judicial court for the commonwealth.</p> <p>94. Salaries of clerks and assistant clerks. Adjustments. How paid.</p> <p>95. [Repealed.]</p> <p>96. [Repealed.]</p> <p>97. [Repealed.]</p> <p>98. [Repealed.]</p> <p>99. Traveling expenses.</p> <p>100. Salaries of temporary clerk and assistant clerk.</p> <p>101. Salaries to be in full compensation.</p> <p>102. Clerical assistance.</p>
--	--

CLERKS OF COURTS.

Clerk of court for commonwealth. 1859, 196, § 40. G. S. 121, §§ 1, 2. P. S. 159, §§ 1, 2. R. L. 165, § 1.

SECTION 1. The justices of the supreme judicial court shall appoint the clerk of the supreme judicial court for the commonwealth for a term of five years from the date of his appointment, and may appoint an assistant clerk of said court for a term of three years from the first day of January next after his appointment, and may remove them.

1922, 487, § 1

27 Mass. 598.

His duties. 1859, 196, §§ 42, 43. G. S. 121, §§ 3-5. P. S. 159, §§ 3-5. R. L. 165, § 2.

SECTION 2. The clerk shall attend all sessions of the court, preserve all the files and papers thereof, keep a docket record of all questions transferred, and of all petitions, complaints or other processes presented to the court, and enter thereon the names of the parties in full and of the counsel who appear in their behalf, and a brief description of the nature of the action or proceeding. He shall also record thereon accurate minutes of all orders, decrees or directions of the court in each case, transmit forthwith to the clerks of courts in the several counties all rescripts made or ordered by the court and the papers which belong to the supreme judicial court or the superior court in each case, and receive and keep safely all papers transmitted to him by the clerks of the courts. He shall make copies of all papers on file in said court and of the docket record thereof, if desired, and certify them under the seal of the court. He shall issue such writs or other processes as the court orders, shall charge the fees provided by law for like services for clerks of courts, and, if no express fee is provided, he shall receive a fair compensation for the services required of him in analogy to like services for which a compen-

18 sation is fixed by law. He shall annually, before the last Wednesday
 19 of December, account with and pay over to the state treasurer all fees
 20 received by him.

1 SECTION 3. There shall be a clerk for the supreme judicial court
 2 for the county of Suffolk, and two clerks for the superior court of said
 3 county, one for civil and one for criminal business; and in each of the
 4 other counties a clerk of the courts who shall act as clerk of the supreme
 5 judicial court, of the superior court and of the county commissioners.
 6 All of said officers shall hold office for six years beginning with the first
 7 Wednesday of January following their election and until their succes-
 8 sors are qualified.

Election of
 clerks, term.
 Const.
 amend. 19
 (Const. Rev.
 art. 62)
 1853, 176,
 §§ 2, 6, 7,
 1857, 1
 G. S. 10, § 3;
 121, § 6.
 1860, 11.

P. S. 10, § 3; 159, § 6.	R. L. 11, §§ 318, 325; 165, § 3.	1918, 114, § 2.
1890, 423, §§ 188, 190.	1907, 560, §§ 346, 353, 456.	1919, 269, §§ 19, 26.
1893, 417, §§ 251, 258.	1913, 835, §§ 384, 391, 503.	205 Mass. 189.
1898, 548, §§ 315, 322.	1917, 255, § 1.	2 Op. A. G. 536.

1 SECTION 4. The justices of the supreme judicial court shall appoint
 2 for a term of three years from the date of their appointment, and may
 3 remove, assistant clerks of courts, as follows:

Assistant
 clerks
 1850, 236, § 1.

1851, 38, § 1.	G. S. 121, §§ 6, 8.	P. S. 159, §§ 6, 8, 9.
1855, 419, § 2.	1860, 11.	1897, 220.
1856, 37, § 1.	1867, 295, § 4.	R. L. 165, §§ 3-5, 7.
1857, 1.	1873, 181.	1921, 305.
1859, 196, § 9.	1881, 266.	1923, 164, § 5; 206, § 1.

4 For the county of —
 5 Barnstable, an assistant; 1917, 100.
 6 Bristol, an assistant;
 7 Essex, an assistant, a second assistant, a third assistant and a fourth
 8 assistant; 1907, 253, § 1
 1917, 131,
 §§ 1, 2.
 9 Hampden, an assistant, a second assistant and, subject to the approval
 10 of the county commissioners, a third assistant; 1917, 44, § 1.
 11 Middlesex, an assistant, a second assistant, a third assistant and a
 12 fourth assistant; 1903, 137.
 13 Norfolk, an assistant;
 14 Plymouth, an assistant; 1910, 188, § 1.
 15 Suffolk, an assistant of the supreme judicial court;
 16 Worcester, an assistant, a second assistant, a third assistant and a
 17 fourth assistant. 1904, 287.
 1907, 234.

1912, 547, §§ 1, 2.

18 Assistant clerks of courts except in Suffolk county shall act as assist-
 19 ant clerks of the supreme judicial court, the superior court and the
 20 county commissioners.

1 SECTION 5. In addition to the assistant clerks provided for in the
 2 preceding section, the clerks of the courts for the following counties
 3 may appoint assistant clerks, with the same powers and duties, as
 4 follows:

Same subject.
 1873, 181.
 P. S. 159, § 9.
 R. L. 165, § 7.
 1904, 287.

1912, 547, § 2.	1923, 164, § 6.	1930, 400, §§ 5, 7-9.
-----------------	-----------------	-----------------------

5 For the county of —
 6 Norfolk, a second assistant, subject to removal by the court or by the
 7 clerk. 1907, 234.
 8 Middlesex, subject to approval of a justice of the supreme judicial or
 9 superior court, not more than two assistant clerks. 1919, 265, § 1.
 10 Suffolk, by the clerk of the superior court for criminal business, assist-
 11 ant clerks pro tempore or for the term of one year, subject to removal
 1907, 234
 1919, 356, § 8.

by the court or by the clerk; and by the clerk of the supreme judicial court for said county, a second assistant clerk, designated from his office force.

1907, 234. All other counties having no permanent second assistant clerks, assistant clerks pro tempore or for a term of one year, subject to removal by the court or by the clerk.

1931, 301, § 38. Assistants pro tempore or for the term of one year appointed under this section shall be paid by the county monthly.

SECTION 6. The justices of the superior court may appoint, for a term of three years from the date of their appointment, fourteen assistant clerks of said court for civil business in the county of Suffolk, one of whom shall perform the duties of clerk pertaining to the equity proceedings in said court.

Same subject. Suffolk county. 1888, 153. 1889, 50. 1892, 87. 1895, 251; 393; 480. 1897, 334.

1899, 377. R. L. 165, § 6.

1903, 472, § 3. 1906, 276.

1919, 251. 1921, 236.

SECTION 7. The clerks of the courts of the several counties except Suffolk may designate such employees in their offices, as in their judgment may be necessary for the convenience of the public, as deputy assistant clerks of the courts, who shall have the same authority to administer oaths as the assistant clerks of the courts. Under the direction of the clerk, such of his duties as clerk of the county commissioners as he shall designate shall be performed by a deputy assistant clerk. The clerks of the courts may from time to time, as necessity or the public convenience requires, authorize in writing one or more deputy assistant clerks, designated as aforesaid, to act as assistant clerks of the courts and may in like manner invest them with such powers of assistant clerks as may be necessary for the purpose.

Deputy assistant clerks. 1919, 246. 1922, 423, § 1. 1925, 108.

SECTION 8. If by reason of illness or other cause the clerk of the courts in any county, or of the supreme judicial court in Suffolk county, is unable to perform his duties, and there is no assistant clerk or he also is unable to perform the duties of his office, the justices of the supreme judicial court may appoint a temporary clerk, who shall perform the duties of the office until the clerk or assistant clerk resumes his duties. The justices of the superior court may appoint a temporary clerk if a clerk and assistant clerk of that court in Suffolk county cannot perform the duties of the office. When after any such temporary appointment the clerk or assistant clerk resumes his duties, he shall make a record of that fact, with the date, under his signature, in the latest book of records in each of his courts.

Temporary clerks. 1851, 158, §§ 1, 3. 1859, 196, § 9. G. S. 121, § 9. P. S. 159, § 10. R. L. 165, § 8.

SECTION 9. If an assistant clerk of the courts is unable to perform the duties of his office, a temporary assistant clerk may be appointed in the same manner as an assistant clerk and he shall perform the duties of that office until the assistant clerk resumes his duties.

Temporary assistant clerks. 1863, 64, § 1. P. S. 159, § 11. R. L. 165, § 9.

SECTION 10. If at a sitting of any court neither the clerk nor assistant clerk is present, the court may appoint a temporary clerk, who shall perform the duties of the office during the sitting or until the clerk or assistant clerk resumes his duties, unless an appointment under one of the two preceding sections is sooner made or unless a new clerk has qualified.

Appointment by court of temporary clerk. 1815, 37. R. S. 81, § 11; 88, § 13. G. S. 121, § 10. P. S. 159, § 12.

1 SECTION 11. The clerk, assistant clerk, temporary clerk and tempo-
2 rary assistant clerk of a court shall be sworn before a justice thereof,
3 who shall, upon administering the oaths of office, forthwith make return
4 of such act with the date thereof to the state secretary.

Clerks to be
sworn
1782, 9, § 5
1796, 95, § 2.
1799, 81, § 1.

1811, 8, § 3. 1851, 38, § 1; 158, § 2. 1863, 64, § 2
1815, 37 1856, 37, § 1 P. S. 159, § 13.
R. S. 86, § 8; 88, §§ 4, 14. 1859, 196, §§ 40, 41 1891, 228
1850, 236, § 1. G. S. 121, § 11. R. L. 165, § 11.

1 SECTION 12. The clerk and assistant clerk of the supreme judicial
2 court for the commonwealth shall, before entering upon the performance
3 of his duties, each give bond in the sum of two thousand dollars for the
4 faithful performance of his official duties, payable to the state treasurer,
5 with sufficient surety or sureties approved by the court. Each clerk,
6 assistant clerk, and each temporary assistant clerk appointed under sec-
7 tion nine, shall give bond in like manner to the county treasurer, in a
8 sum not less than five hundred nor more than two thousand dollars, to
9 be determined by the court; and each temporary clerk appointed under
10 section eight shall give bond in like manner, if required by the court.

Bonds of
clerks-
1762, 3;
21, § 1.
1789, 57, § 1.
1811, 8, § 3
1821, 23, § 3.
R. S. 88, § 3
1850, 236, § 1.
1851, 38, § 1.
158, § 2.
1856, 37, § 3
1859, 196, § 41
G. S. 121, § 12
1863, 64, § 2.
P. S. 159, § 14
R. L. 165, § 12

1 SECTION 13. Each clerk shall forthwith report to the state secretary
2 a vacancy in the office of assistant clerk, and shall report the name and
3 residence of the person appointed to fill such vacancy, and the date of the
4 expiration of the term of service.

Notice to secre-
tary of vacancy
in office of
assistant clerk
1880, 139, § 3

P. S. 159, § 15. R. L. 165, § 13.

1 SECTION 14. The clerks shall attend all the courts of which they are
2 clerks when held in their respective counties, and the sessions of the
3 county commissioners, and shall record their proceedings; and shall have
4 the care and custody of all the records, books and papers which pertain
5 to, or are filed or deposited in, their respective offices. The duties of the
6 clerks, so far as they relate to the county commissioners, may be per-
7 formed by deputy assistant clerks designated under section seven.

General duties
of clerks.
1782, 9, § 5.
1789, 57
1811, 8, § 1.
1830, 129, § 2.
R. S. 88, § 5.
G. S. 121, § 13
P. S. 159, § 16
R. L. 165, § 11
1922, 423, § 2

1 SECTION 15. The clerk or the assistant clerk of the supreme judicial
2 court for Suffolk county shall act as clerk of the supreme judicial court
3 when sitting in Boston for the hearing of cases from any other county,
4 except when sitting as a full court, and for such purposes as the court
5 may order; and when the assistant clerk is so acting his attestation as
6 assistant clerk shall be sufficient without further designation.

Duties of clerk
and assistant
clerk of the
supreme judi-
cial court in
Suffolk.
1887, 291, § 2
R. L. 165, § 15
1907, 145, § 1.

1 SECTION 16. The clerk of the superior court for civil business in Suffolk
2 county, or such assistant clerk of said court as the justices thereof desig-
3 nate for such duty, shall act as clerk of said court when sitting in Boston
4 for the hearing of cases from any other county, and for such purposes as
5 the court may order.

Duties of clerk
of superior
court in
Suffolk.
1896, 413.
R. L. 165, § 16
264 Mass. 475

1 SECTION 17. A facsimile of the signature of the clerk of any court
2 in the commonwealth, imprinted by him upon any writ, summons, sub-
3 poena, order of notice or order of attachment, except executions, shall
4 have the same validity as his written signature.

Facsimile of
signature of
clerk.
Signature of
assistant clerk
1885, 321.
1886, 43.
1889, 215
1895, 251
1896, 413

5 The name of an assistant clerk of any court, followed by the designa-
6 tion "assistant clerk" shall be a sufficient official signature.

R. L. 165, §§ 20, 21. 1910, 94.

Affidavits in court proceedings. 1920, 209.	SECTION 18. Any affidavit required in any action or proceeding pending in any court in the commonwealth may be made and sworn to before a clerk or assistant clerk of such court.	1 2 3
Forwarding exceptions to attorney general. 1890, 374. 1895, 372. R. L. 165, § 17.	SECTION 19. The clerks shall cause one or more copies of all appeals, bills of exceptions and reports of cases in which the attorney general appears for the commonwealth to be printed and forwarded to him at Boston as soon as may be after they have been allowed and filed.	1 2 3 4
Notice of rescript. 1869, 74. P. S. 153, § 17. R. L. 165, § 18. 1922, 53. 1924, 392.	SECTION 20. When a rescript is filed in a case or proceeding in any court, the clerk, register or recorder of such court shall forthwith give notice thereof to an attorney of record of each party. The clerk of the supreme judicial court for the commonwealth shall transmit a copy of each rescript to the reporter of decisions.	1 2 3 4 5
Notice of judgment. 1879, 4. P. S. 153, § 9. 1899, 357. R. L. 165, § 19.	SECTION 21. When judgment is entered by the superior court upon a demurrer or upon a case stated, or when a decision is rendered in an action heard without a jury, the clerk shall give notice thereof to the parties or their attorneys.	1 2 3 4
Clerks may issue orders of notice. 1873, 259. P. S. 159, § 17. R. L. 165, § 22.	SECTION 22. A clerk of the courts may issue any order of notice upon any petition or other proceeding at law or in equity which might be issued by the court; but the court or a justice thereof may cause additional notice to be given.	1 2 3 4
Alphabetical list of parties. 1786, 57. §§ 1, 2. R. S. 88, § 7. G. S. 121, § 14. P. S. 159, § 18. R. L. 165, § 23.	SECTION 23. Each clerk shall keep an alphabetical list of the names of all parties to every action or judgment recorded in the records and a reference to the book and page thereof; and, if there are two or more plaintiffs or defendants, the name of each and a like reference shall be inserted in its appropriate place in the alphabetical list.	1 2 3 4 5
Clerks to make annual returns of cases to secretary. 1905, 321, § 1. 1924, 131. 1927, 64. 1928, 163.	SECTION 24. The clerks of the courts for the several counties and the clerks of the superior court for civil and for criminal business in Suffolk county shall annually in July make returns of the civil and criminal business of the superior court for their respective counties for the last preceding year ending June thirtieth to the state secretary upon suitable blank forms to be prepared by him with the approval of the chief justice of the superior court. The state secretary may in his discretion verify such returns in such manner as he deems advisable, and for this purpose may inspect the dockets and records of said officials and shall be furnished by them with such further information as he deems necessary to complete such returns.	1 2 3 4 5 6 7 8 9 10 11
Preservation of records of trial justices. 1888, 211, § 6. R. L. 165, § 24.	SECTION 25. The clerks of the courts and in Suffolk county the clerk of the superior court for civil business shall receive and safely keep the dockets, records and other official papers of trial justices which may be deposited in their offices under section eleven of chapter two hundred and nineteen, and shall make and certify copies thereof which shall have the same effect as if certified by trial justices. They shall be allowed the same fees for making such copies as are allowed to them in similar cases.	1 2 3 4 5 6 7 8
Clerks to report convictions of	SECTION 26. The clerk of any court in which a physician registered in this commonwealth is convicted of a felony or of a crime in connec-	1 2

3 tion with the practice of medicine, or in which an unregistered practi-
 4 tioner is convicted of holding himself out as a practitioner of medicine,
 5 or of practicing medicine, shall within one week thereafter report the
 6 same to the board of registration in medicine together with a copy of
 7 the court proceedings in the case. Failure to comply with this section
 8 shall be punished by a fine of not less than one nor more than ten dollars.

registered
physicians or
of unregistered
practitioners,
etc.
1916, 304,
§§ 1, 2

1 SECTION 27. The supreme judicial court shall by general rule or
 2 special order direct in what manner and to what extent, if any, the papers
 3 in causes which are entered in said court or in the superior court shall
 4 be extended upon the records, after final judgment or otherwise, and
 5 shall be a final record. Such rule or order shall specify whether such
 6 extension shall be in whole or in part, shall be in long hand, typewriting,
 7 print or otherwise, or shall consist of the filing of original papers in such
 8 causes by loose leaf system or otherwise.

Extension of
papers on
records.
1879, 268.
P. S. 159, § 19.
R. L. 165, § 25.
1917, 200.
235 Mass. 587.
236 Mass. 500.

1 SECTION 28. The clerks of the courts in the several counties and of
 2 the supreme judicial and superior courts in Suffolk county shall at the
 3 first sitting in each year of the supreme judicial court in their counties
 4 exhibit their latest books of records to a justice of the court, who shall
 5 cause errors and defects therein to be corrected.

Clerk to
exhibit
records.
R. S. 88, § 11.
G. S. 121, § 15.
P. S. 159, § 20.
R. L. 165, § 26.

1 SECTION 29. The justices of the several courts shall inspect the
 2 doings of the clerks from time to time, and shall see that the records are
 3 made up seasonably and kept in good order; and if the records are left
 4 incomplete for more than six consecutive months, such neglect unless
 5 caused by illness or casualty shall be adjudged a forfeiture of the bond
 6 of the clerk.

Justices to
inspect records.
1762, 3; 24, § 4.
1786, 57, § 4.
R. S. 88, § 8.
G. S. 121, § 16.
P. S. 159, § 21.
R. L. 165, § 27.

1 SECTION 30. If any neglect causes a forfeiture of the bond of a clerk
 2 or assistant clerk, the justices shall forthwith give written notice thereof
 3 to the treasurer having custody thereof, who shall thereupon cause suit
 4 to be brought thereon. The amount recovered in such suit shall be
 5 applied to the expense of making up the deficient records under the direc-
 6 tion of the court in whose records the deficiency exists, and the surplus,
 7 if any, shall be carried into the account of such treasurer.

Forfeiture
of bond.
1762, 3; 24, § 4.
1786, 57, § 4.
R. S. 88,
§§ 9, 10.
G. S. 121,
§§ 17, 18.
P. S. 159,
§§ 22, 23.
R. L. 165, § 28.

1 SECTION 31. The two preceding sections shall not exempt a clerk or
 2 assistant clerk from an action for any other breach of the condition of
 3 his bond or from his liability in any other way or to any party for neg-
 4 lect or misconduct in his office.

Liability for
other breaches.
R. S. 88, § 12.
G. S. 121, § 19.
P. S. 159, § 24.

R. L. 165, § 29.

1 SECTION 32. The clerks of the courts in the several counties, and of
 2 the supreme judicial and superior courts in Suffolk county, shall keep
 3 cash books, which shall be county property and shall be and remain a
 4 part of the records of the courts, in which they shall keep accounts of
 5 all fees received by them for their official acts and services, including
 6 fees for copies which they are not required by law to furnish, fees and
 7 money in proceedings relative to naturalization or for naturalization
 8 certificates, and all fees and money of whatever description or character
 9 received by them, or by any assistant or other person in their offices or
 10 employment, for any acts done or services rendered in connection with
 11 their said offices, and shall on or before the tenth day of each month

Clerk to
account for
fees, etc.
1811, 8, § 2.
1813, 77, § 2.
1820, 84, § 1.
1830, 129, § 3.
1835, 124, § 2.
R. S. 88, § 15.
G. S. 121, § 22.
1879, 300, § 1.
P. S. 159, § 27.
1887, 291, § 1.
1888, 257, § 4.
1891, 236.
R. L. 165, § 31.
1908, 253.
1916, 177.
1930, 331, § 1.
207 Mass. 167.

222 Mass. 87.
231 U. S. 669.

pay over to the treasurers of their respective counties, or to such other officers as are entitled to receive them, all fees received during the preceding calendar month, and shall render therewith a sworn account thereof; provided, that said clerks shall account for and pay over to the United States bureau of naturalization in accordance with the federal laws as to naturalization such part of any moneys received by them under or by authority of such laws as they are required thereby to account for and pay over.

[Note: — This section, as amended, effective January 1, 1935; see 1930, 331, § 2. For existing provisions see G. L. (ed. of 1920) 221, § 32.]

Duties of assistant clerk.
1850, 236, § 2.
1851, 38, § 2.
1856, 37, § 2.
G. S. 121, §§ 20, 21.
1873, 181, § 1.
P. S. 159, §§ 9, 25, 26.
R. L. 165, § 30.
13 Gray, 74.

SECTION 33. Each assistant clerk shall under the direction of the clerk perform any of the duties of the clerk and shall pay over to him all fees and amounts received as such assistant. In the absence or upon the resignation, death or removal of the clerk, the assistant clerk shall perform his duties under the direction of the court until he returns or until a new clerk has qualified, and upon the death, removal or resignation of the clerk, the assistant clerk shall account with, and pay over the money in his hands to, the officer to whom the clerk is by law required to account.

SECTION 34. [REPEALED, 1931, 426, § 291.]

JUDICIAL COUNCIL.

Establishment. Purpose.
1924, 244.
1930, 142.

SECTION 34A. There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Annual report, etc.
1924, 244.

SECTION 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Compensation Expenses. Secretary.
1924, 244.
1927, 293, § 1.

SECTION 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council

6 shall approve. The secretary of said council, whether or not a member
7 thereof, shall receive from the commonwealth a salary of thirty-five
8 hundred dollars.

BAR EXAMINERS.

1 SECTION 35. There shall be a board of bar examiners consisting of
2 five persons, residing in different counties, one of whom shall annually
3 be appointed by the justices of the supreme judicial court for a term of
4 five years from October first in the year of his appointment, and who may
5 be removed by them. Such justices may fill vacancies.

Appointment.
1897, 508, § 1
R. L. 165, § 39.

1 SECTION 36. Said board may, subject to the approval of the supreme
2 judicial court, make rules with reference to examinations for admission
3 to the bar and the qualifications of applicants therefor, and determine
4 the time and place of such examinations, and conduct the same; provided,
5 that any applicant for admission to the bar who is a graduate of a college
6 or who has complied with the entrance requirements of a college, or who
7 has fulfilled for two years the requirements of a day or evening high
8 school or of a school of equal grade, shall not be required to take any
9 examination as to his general education. The expenses of said board, as
10 certified by its chairman and approved by a justice of the supreme
11 judicial court, shall be paid by the commonwealth, together with such
12 compensation to each member as the justices of the supreme judicial
13 court approve, but said expenses and compensation shall not be in
14 excess of the amounts paid to the commonwealth under the following
15 section.

Admission
to the bar of
attorneys
at law
Expenses,
how paid
1897, 508, § 3.
1898, 312
R. L. 165, § 40
1904, 355, § 1
1914, 670
1915, 249
220 Mass. 472.

ATTORNEYS AT LAW.

1 SECTION 37. A citizen of the United States, whether man or woman,
2 may, if over twenty-one, file a petition in the supreme judicial or superior
3 court to be examined for admission as an attorney at law, and, if found
4 qualified, to be admitted as such; whereupon, unless the court other-
5 wise orders, the petition shall be referred to the board of bar examiners
6 to ascertain his acquirements and qualifications. If the board reports
7 that the petitioner is of good moral character and of sufficient acquire-
8 ments and qualifications, and recommends his admission, he shall be
9 admitted unless the court otherwise determines, and thereafter may
10 practice in all the courts of the commonwealth. The petitioner shall
11 pay to the clerk of the court in which his petition is filed a fee of fifteen
12 dollars upon the entry thereof, and a further fee of fifteen dollars upon
13 the entry of any subsequent petition. Such fees shall be paid over to
14 the commonwealth.

Petition for
examination
for admission
as an attorney,
etc.
1785, 23, § 1
1795, 80, § 4.
R. S. 88,
§§ 19, 20, 23.
1852, 154.
G. S. 121,
§§ 28, 29, 32.
1876, 197.
P. S. 159,
§§ 34, 37.
1882, 139.
1888, 257, § 5.
1897, 508, § 2.
1898, 384.
R. L. 165, § 41
1904, 355, § 2.
1921, 290, § 1.
1925, 11.

6 Mass. 382.
10 Met. 239.

121 Mass. 600.
131 Mass. 376.

240 Mass. 611.
268 Mass. 373.

1 SECTION 38. Whoever is admitted as an attorney shall in open court
2 take and subscribe the oaths to support the constitution of the United
3 States and of the commonwealth; and the following oath of office shall
4 be administered to and subscribed by him:

Oath of office.
Const.
amend. 6.
(Const. Rev.
art. 149.)
1701-2, 7, § 2.
1785, 23, § 1.
R. S. 88,
§§ 21, 22.
G. S. 121,
§§ 30, 31.
P. S. 159,
§§ 35, 36.
R. L. 165, § 42
240 Mass. 611.

I (repeat the name) solemnly swear that I will do no falsehood, nor consent
to the doing of any in court; I will not wittingly or willingly promote or sue
any false, groundless or unlawful suit, nor give aid or consent to the same; I
will delay no man for here or malice; but I will conduct myself in the office
of an attorney within the courts according to the best of my knowledge and
discretion, and with all good fidelity as well to the courts as my clients. So
help me God.

Petitions by certain aliens. 1924, 316.

SECTION 38A. Every alien who has made the primary declaration to become a citizen of the United States under the federal naturalization laws shall, upon otherwise complying with section thirty-seven, be permitted to file a petition in the supreme judicial or superior court to be examined for admission as an attorney at law, and to take the examinations held under said section; provided, that upon passing such examinations and otherwise meeting the requirements for admission as set forth in said section, the board of bar examiners shall not recommend his admission until satisfied that the applicant has become a citizen of the United States. No alien who claimed exemption during the world war on the ground of being an alien shall be entitled to the benefits of this section.

1
2
3
4
5
6
7
8
9
10
11
12

Admission of attorneys from other states, etc.
R. S. 88, § 24.
G. S. 121, § 33.
P. S. 159, § 38.
R. L. 165, § 43.
1904, 355, § 3.
1921, 290, § 2.

SECTION 39. A citizen of the United States, whether man or woman, who has been admitted as an attorney or counsellor of the highest judicial court of any state, district, territory or country of which he was an inhabitant may, upon petition to the supreme judicial or the superior court be admitted to practice in all the courts of the commonwealth upon the production of satisfactory evidence of his good moral character and professional qualifications.

1
2
3
4
5
6
7

Removal.
R. S. 88, § 25.
G. S. 121, § 34.
P. S. 159, § 39.
R. L. 165, § 44.
1919, 260
1924, 134
11 Allen, 472, 473
126 Mass. 222.
137 Mass. 424.
168 Mass. 169.
196 Mass. 109.
202 Mass. 185.
210 Mass. 299.

SECTION 40. An attorney may be removed by the supreme judicial or superior court for deceit, malpractice or other gross misconduct, and shall also be liable in damages to the person injured thereby, and to such other punishment as may be provided by law. Whenever a petition is filed for the removal of an attorney, the proceedings thereafter shall be conducted by an attorney to be designated by the court. The expenses of the inquiry and proceedings in either court shall be paid as in criminal prosecutions in the superior court.

1
2
3
4
5
6
7
8

211 Mass. 187. 215 Mass. 234. 240 Mass. 611.
213 Mass. 549. 224 Mass. 169. 268 Mass. 373.

Penalties on disbarred or unauthorized attorneys and for soliciting law business.
1891, 418.
R. L. 165, § 45.
1914, 432
1917, 267
201 Mass. 458.
211 Mass. 376.
214 Mass. 311
227 Mass. 579.
229 Mass. 200.
233 Mass. 168.
240 Mass. 611.

SECTION 41. Whoever has been so removed and continues thereafter to practice law or to receive any fee for his services as an attorney at law rendered after such removal, or who holds himself out, or who represents or advertises himself as an attorney or counsellor at law, or whoever, not having been lawfully admitted to practice as an attorney at law, represents himself to be an attorney or counsellor at law, or to be lawfully qualified to practice in the courts of the commonwealth, by means of a sign, business card, letter head or otherwise, or holds himself out or represents or advertises himself as having authority or power in behalf of persons who have claims for damages to procure settlements of such claims for damages either to person or property, or whoever, not being an attorney at law, solicits or procures from any such person or his representative, either for himself or another, the management or control of any such claim, or authority to adjust or bring suit to recover for the same, or solicits for himself or another from a person accused of crime or his representative the right to defend the accused person, shall be punished for a first offence by a fine of not more than one hundred dollars or by imprisonment for not more than six months, and for a subsequent offence by a fine of not more than five hundred dollars or by imprisonment for not more than one year.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Records to be kept as to the standing of

SECTION 42. The clerk of the supreme judicial court for Suffolk county shall cause to be made, and shall keep, a complete record in situa-

1
2

3 ble form of all persons who are, or ever have been, or hereafter become,
 4 attorneys at law in this commonwealth, and of the suspension, removal
 5 or disbarment of such as have been or hereafter shall be suspended,
 6 removed or disbarred. Clerks of courts and other persons in whose
 7 custody there may be any record of an admission to the bar of an attor-
 8 ney at law, any record of a petition for suspension or removal therefrom,
 9 or of a judgment or decree of suspension or removal from practice of any
 10 attorney at law, shall within one month after the date of such record
 11 report the same to the clerk of the supreme judicial court for Suffolk
 12 county. The record of said clerk relative to an admission to the bar,
 13 or a suspension or removal therefrom, shall be prima facie evidence of
 14 the facts recorded. A certificate thereof signed by the clerk or assistant
 15 clerk shall be admissible as evidence of such record.

attorneys at
 law.
 1919, 71.

1 SECTION 43. No attorney at law shall through any runner, agent or
 2 person who is employed by him solicit a person to employ him to present
 3 a claim for damages, or to prosecute an action to enforce such a claim, and
 4 no attorney at law shall directly or indirectly give or promise any person
 5 any money, fee, commission, profitable employment or other personal
 6 advantage in consideration of his employing such attorney on behalf
 7 of a person having a claim for damages, or soliciting or procuring the
 8 person who has such claim to employ such attorney to present such claim
 9 or to prosecute an action for the enforcement thereof. No attorney
 10 shall appear in any suit for the enforcement of a claim in connection
 11 with which he has violated this section.

Attorneys at
 law prohibited
 from soliciting
 employment
 in claims for
 damages.
 1907, 443, § 1.
 214 Mass. 311

1 SECTION 44. If it appears to the satisfaction of the court that an at-
 2 torney whose appearance has been entered in any suit has in connection
 3 therewith violated the preceding section, such attorney may in the dis-
 4 cretion of the court be disqualified from further acting in said suit, and
 5 the court may make an order for continuance, or for another and speedy
 6 trial, or such other order for the protection of the interests of the parties,
 7 as justice may require, and may deny the right to collect costs wholly or
 8 in part to any party to the suit.

May be dis-
 qualified in
 certain cases
 for violating
 § 43
 1907, 443, § 2.

1 SECTION 45. A sheriff, deputy sheriff or constable who appears in
 2 court as attorney for any party to a suit, or draws, makes or fills up a
 3 writ, declaration, plea or process for such party, or, with intent to pro-
 4 cure himself to be employed in the collection of a demand, or in any
 5 manner to make gain or profit therefrom, advises, counsels or encourages
 6 a person, directly or indirectly, to commence a suit or process shall for-
 7 feit fifty dollars.

Sheriff, etc.,
 not to act as
 attorney
 1736-7, 3
 1742-3, 25
 1758-9, 14
 1783, 41, § 3.
 1822, 20.
 R. S. 14,
 §§ 79, 80, 88.
 §§ 29, 30.

G. S. 17, § 64;
 121, § 30.

P. S. 159, § 15.
 R. L. 165, § 51.

6 Pick. 483.
 10 Pick. 45.

1 SECTION 46. No corporation shall practice or appear as an attorney
 2 for any person other than itself in any court in the commonwealth or
 3 before any judicial body or hold itself out to the public or advertise as
 4 being entitled to practice law, and no corporation shall draw agreements,
 5 or other legal documents not relating to its lawful business, or draw wills,
 6 or practice law, or hold itself out in any manner as being entitled to do
 7 any of the foregoing acts, by or through any person orally or by adver-
 8 tisement, letter or circular; provided, that the foregoing shall not pre-

Corporations
 not to practice
 law.
 1916, 292,
 §§ 1-3.

vent any bank or trust company lawfully doing business in the common- 9
wealth from furnishing to persons with whom it may deal or who may 10
apply for the same, through its officers or agents, legal information or 11
legal advice with respect to investments, taxation, or an issue or offering 12
for sale of stocks, bonds, notes or other securities or property, nor shall 13
anything herein prohibit a corporation from employing an attorney in 14
regard to its own affairs or in any litigation to which it is or may be 15
a party. Any corporation violating this section shall be punished by a 16
fine of not more than one thousand dollars; and every officer, agent or 17
employee of any such corporation who, on behalf of the same, directly or 18
indirectly, engages in any of the acts herein prohibited, or assists such 19
corporation to do such prohibited acts, shall be punished by a fine of not 20
more than five hundred dollars. 21

Same subject.
1916, 292, § 4.
1917, 168.
1925, 346, § 8.

SECTION 47. The preceding section shall not apply to any public 1
service corporation or to any corporation lawfully engaged in the exami- 2
nation and insuring of titles to real property, or lawfully engaged in the 3
business of insurance against liability for damages or compensation on 4
account of injury to persons or property, or lawfully engaged in acting as 5
surety on motor vehicle liability bonds as defined in section thirty-four A 6
of chapter ninety, or lawfully engaged in assisting attorneys to organize 7
corporations, or organized for and lawfully engaged in benevolent or 8
charitable purposes, or organized under the authority of the common- 9
wealth for the purpose of assisting persons without means in the pursuit 10
of any civil remedy, or prohibit a newspaper from answering inquiries 11
through its columns or any corporation from providing legal advice or 12
assistance to its employees, or a corporation lawfully engaged in the busi- 13
ness of conducting a mercantile or collection agency or adjustment bureau 14
from employing an attorney to give legal advice concerning, or to prosec- 15
cute actions in court relating to, the adjustment or collection of debts and 16
accounts only. 17

Parties may
manage their
own suits.
1701-2, 7, § 1.
1708-9, 3, § 2.
1714, 3, § 2.
1785, 23, § 2.

SECTION 48. Parties may manage, prosecute or defend their own 1
suits personally, or by such attorneys as they may engage; but not more 2
than two persons for each party shall, without permission of the court, 3
be allowed to manage any case therein. 4

1789, 58. G. S. 121, § 35. R. L. 165, § 46.
R. S. 88, § 26. P. S. 159, § 40.

Persons spe-
cially autho-
rized, etc.
1780, 58.
R. S. 88, § 27.
G. S. 121, § 36.
1865, 81.

SECTION 49. Any person of good moral character, unless he has been 1
removed from practice as an attorney under section forty, may man- 2
age, prosecute or defend a suit if he is specially authorized by the party 3
for whom he appears, in writing or by personal nomination in open court. 4

P. S. 159, § 41. R. L. 165, § 47.

Attorney's
lien for fees,
etc.
1810, 84.
1830, 124.
R. S. 88, § 28.
G. S. 121, § 37.
P. S. 159, § 42.
R. L. 165, § 48.
5 Mass. 309.
11 Mass. 236.

SECTION 50. An attorney who is lawfully possessed of an execution, 1
or who has prosecuted a suit to final judgment in favor of his client, shall 2
have a lien thereon for the amount of his fees and disbursements in the 3
cause, but this section shall not prevent the payment of the execution or 4
judgment to the judgment creditor by a person who has no notice of the 5
lien. 6

13 Mass. 525. 176 Mass. 161. 211 Mass. 406.
4 Gray, 337. 208 Mass. 195. 213 Mass. 203.
103 Mass. 33.

1 SECTION 51. An attorney at law who unreasonably neglects to pay Penalty for
 2 over money collected by him for and in behalf of a client, when demanded to client.
 3 by the client, shall forfeit to such client five times the lawful interest of 1859, 166, § 1
 4 the money from the time of the demand. G. S. 121, § 38.

P. S. 159, § 43. R. L. 165, § 49. 216 Mass. 169.

1 SECTION 52. No person shall be employed or allowed to appear as Attorney not to
 2 attorney before a court in any proceeding, civil or criminal, which shall act in suit
 3 have been previously determined before him as a judge of any court or previously
 4 as a trial justice. decided by
 him.

1705-6, 7, § 2. R. S. 89, § 8. P. S. 159, § 44. R. L. 165, § 50.
 1815, 49, § 1. G. S. 121, § 39. 1884, 170.

MASTERS, AUDITORS, REFEREES, ASSESSORS, ETC.

1 SECTION 53. The governor, with the advice and consent of the coun- Masters in
 2 cil, shall, as vacancies occur, appoint masters in chancery, who may act chancery.
 3 throughout the commonwealth, so that the number thereof in the several 1826, 109, § 4
 4 counties shall be twelve in Suffolk, eleven in Essex, eleven in Middlesex, R. S. 88, §§ 31,
 5 seven in Worcester, six in Norfolk, and not more than five in any other 32.
 6 county. They shall be sworn, and shall hold their offices for five years. 1838, 162.
 1844, 9, 173.
 1845, 22.
 1848, 277.
 G. S. 121, § 41.
 1868, 185.

1873, 365. 1905, 110. 115 Mass. 170.
 1874, 1. 1906, 187. 131 Mass. 204.
 1879, 112. 1911, 411. 216 Mass. 426.
 P. S. 159, § 46. 1915, 304. 3 Op. A. G. 186.
 R. L. 165, § 52. 1916, 70. 4 Op. A. G. 457.
 1904, 348. 113 Mass. 139.

1 SECTION 54. A master may complete any unfinished proceedings and Completion of
 2 processes pending before him or commenced under his direction not- business if
 3 withstanding the expiration of his commission. expires.

1844, 138. G. S. 121, § 45. P. S. 159, § 50. R. L. 165, § 53.

1 SECTION 55. The supreme judicial court, the superior court or the Compensation
 2 probate court shall award reasonable compensation to commissioners, of masters, etc.
 3 assessors, referees, masters in chancery and special masters, for duties 1883, 216.
 4 performed under the direction of said court, and to arbitrators appointed 1886, 51.
 5 under chapter two hundred and fifty-one upon whose awards judgment is 1887, 289.
 6 entered, which shall be paid by the counties in which they are appointed. 1899, 458.
 7 Reasonable traveling expenses shall also be allowed in the same manner 1901, 366.
 8 as is provided for auditors. R. L. 165, § 54.
 1918, 257.
 § 423.
 1919, 5.
 1920, 2.

1921, 163. 183 Mass. 254. 185 Mass. 535. 216 Mass. 426.

1 SECTION 56. When a civil action is at issue, the supreme judicial or Auditors
 2 superior court, in its discretion, and a district court, if both parties assent Appointment,
 3 thereto in writing, may appoint one or more auditors to hear the parties, findings, etc.
 4 examine their vouchers and evidence, state accounts and report upon such 1817, 142.
 5 matters therein as may be ordered by the court. The auditor's findings R. S. 96,
 6 of fact shall be prima facie evidence upon such matters only as are em- §§ 25, 30.
 7 braced in the order; but the court at the trial shall exclude any finding 1836, 202.
 8 of fact which appears in the report to be based upon an erroneous opinion G. S. 121,
 9 of law, or upon inadmissible evidence. Whenever the auditor makes a § 46.
 10 ruling as to the admissibility of evidence and objection is taken thereto 1863, 197, § 1.
 11 he shall, if requested so to do, make a statement of such ruling in his P. S. 159, § 51.
 12 report. The auditor shall not make any finding of fact which depends R. L. 165, § 55.
 13 upon the decision of a question of law, unless he makes alternative find- 1914, 576, § 2
 14 ings or states in his report the view of the law upon which his finding 11 Pick. 359.
 1 Met. 216.
 11 Met. 297.
 7 Cush. 445.
 9 Cush. 329.
 8 Gray, 545.
 10 Gray, 379.
 13 Gray, 150.
 15 Gray, 351.
 16 Gray, 396.
 1 Allen, 53,
 277.

9 Allen, 181, 502.
10 Allen, 32.

depends, together with such subsidiary facts as will enable the court to pass upon the question. 15
16

14 Allen, 222	141 Mass. 298.	197 Mass. 137.
100 Mass. 153, 191.	143 Mass. 275, 448.	199 Mass. 15.
104 Mass. 521, 593.	150 Mass. 535.	204 Mass. 34.
108 Mass. 570.	161 Mass. 291.	208 Mass. 94.
109 Mass. 464.	162 Mass. 375.	217 Mass. 451.
112 Mass. 320.	170 Mass. 419.	225 Mass. 148.
115 Mass. 44.	171 Mass. 283.	227 Mass. 415.
117 Mass. 167.	172 Mass. 398.	232 Mass. 220.
122 Mass. 505, 522.	173 Mass. 261.	238 Mass. 58, 518.
126 Mass. 21.	174 Mass. 490.	239 Mass. 560.
127 Mass. 530.	175 Mass. 400.	242 Mass. 553.
129 Mass. 299.	176 Mass. 265.	245 Mass. 355.
130 Mass. 424.	179 Mass. 153.	248 Mass. 220.
131 Mass. 80.	276, 439.	249 Mass. 325, 373.
132 Mass. 489.	180 Mass. 562.	256 Mass. 147.
133 Mass. 546.	184 Mass. 98.	257 Mass. 218.
136 Mass. 361.	188 Mass. 558.	269 Mass. 589.

Auditors in probate court. 1889, 311, § 1.
R. L. 165, § 56.
190 Mass. 599.
197 Mass. 137.
248 Mass. 181.

SECTION 57. After any account of an executor, administrator, guardian, conservator, trustee or other person required by law to render an account in the probate court has been filed therein, the judge of said court may, before approving it, appoint one or more auditors to hear the parties, examine vouchers and evidence and report upon the same to the court. The report shall be prima facie evidence upon such matters as are expressly referred to such auditors. 1
2
3
4
5
6
7

Notice to parties. R. S. 96, §§ 26, 27.
G. S. 121, §§ 47, 48.
P. S. 159, §§ 52, 53.
R. L. 165, § 57.
1914, 576, § 3.
15 Gray, 351.

SECTION 58. Auditors shall give notice to the parties of the time and place appointed for their meeting, and may adjourn from time to time as may be necessary. If there is more than one auditor, all shall meet and hear the cause, but a report may be made by a majority. If either party neglects to appear at the time appointed for such hearing, or at any adjournment thereof, without just cause, or if at any such hearing either party refuses to produce in good faith the testimony relied on by him, the auditors may close the hearings and make a report recommending that judgment be entered for the adverse party. Judgment shall be entered accordingly at the first judgment day after the expiration of ten days from the filing of the report, unless the court, for cause shown, otherwise orders. 1
2
3
4
5
6
7
8
9
10
11
12

Discharge by court. R. S. 96, § 29.
G. S. 121, § 49.
P. S. 159, § 54.

SECTION 59. The court may for cause discharge the auditors and appoint others and may recommit the report for revision or further examination to the same or to other auditors. 1
2
3

R. L. 165, § 58. 4 Pick. 283.

Hearings before auditors. 1900, 418, § 1.
R. L. 165, § 59.
1914, 576, § 4.
184 Mass. 98.
186 Mass. 146.
197 Mass. 137.

SECTION 60. The court in which a cause is pending may, upon application of either party, appoint a day certain for the hearing thereof before the auditor. The hearing shall be had upon the day appointed, and shall proceed, unless the parties otherwise agree or the auditor otherwise orders, from day to day until the conclusion thereof. 1
2
3
4
5

Compensation of auditors. 1817, 142.
R. S. 96, § 31.
G. S. 121, § 50.
1867, 67.
1873, 342.
1878, 173.
P. S. 159, § 55.
1889, 311.
R. L. 165, § 60.
1911, 237.
125 Mass. 316.
233 U. S. 300.

SECTION 61. The court shall award reasonable compensation and allow actual expenses of travel in attending hearings, if said expenses be approved by the court as reasonable, to auditors, and the same shall be paid by the county if they are appointed by the supreme judicial court, the superior court or the probate court. If they are appointed by any other court, the compensation awarded and expenses of travel allowed may be paid by either party and taxed in his bill of costs if he prevails; but the plaintiff shall be liable for such payment, and the court may make 1
2
3
4
5
6
7
8

9 all orders and decrees, and issue process to enforce the same. No allow-
10 ance for the expenses of travel shall be allowed by the court, unless the
11 auditor shall file a true and correct account of such expenses, signed and
12 sworn to by him.

1 SECTION 62. Auditors, masters in chancery and special masters shall
2 file their final report in the office of the clerk or register of the court by
3 which they are appointed within ninety days after the hearing before
4 them has been closed or within such time as the court may allow, and,
5 in default thereof, shall not be entitled to any fees, except as provided
6 in section sixty-two A.

Reports of
auditors,
masters, etc.
1888, 282
R. L. 165, § 61.
1914, 576, § 5.
1929, 285, § 1.
1931, 426,
§ 292.

1 SECTION 62A. If an auditor or special master, appointed by the
2 supreme judicial, superior or probate court, becomes incapacitated or
3 dies without having filed his final report, the court may award him or his
4 estate reasonable compensation, payable by the county, upon a finding
5 that he actually performed services which would entitle him to the com-
6 pensation awarded had he filed a report as provided in section sixty-two;
7 provided, that all his records and memoranda, or copies thereof, in the
8 case in which compensation is sought, are filed with the clerk or register
9 of the court.

Compensation
of auditors and
special masters
incapacitated,
etc.
1929, 285, § 2.
1931, 426,
§ 293.

REPORTER OF DECISIONS.

1 SECTION 63. There shall be a reporter of decisions of the supreme
2 judicial court. He shall be appointed by the governor, with the advice
3 and consent of the council, and hold office at their pleasure.

Appointment
1803, 133, § 1.
R. S. 88,
§§ 36, 37.

G. S. 121, § 51. P. S. 159, § 56. R. L. 165, § 62.

1 SECTION 64. He shall attend the law sittings of the court unless ex-
2 cused therefrom by the chief justice, make true reports of decisions upon
3 all questions of law argued by counsel, prepare them for publication with
4 suitable head notes, tables of cases and indexes, furnish them to the
5 publisher, and superintend the correction, proof reading and publication
6 thereof. He shall in his discretion report the several cases more or less
7 at large according to their relative importance, so as not unnecessarily to
8 increase the size or number of the volumes of reports. The reports of
9 all decisions argued and determined before September first in each year
10 shall be published within ninety days thereafter.

Preparation
of reports
1803, 133, § 1.
1826, 51.
R. S. 88,
§§ 38, 39.
1838, 100.
G. S. 121,
§§ 52, 53.
1879, 280.
P. S. 159,
§§ 57, 58.
1889, 471, § 3.
R. L. 165, § 63.
1908, 358, § 1.

1 SECTION 65. The volumes of reports shall be styled "Massachusetts
2 Reports", and the name of the reporter shall not be added thereto.

Style of
reports
1867, 239.

P. S. 159, § 60. R. L. 165, § 64.

1 SECTION 66. The county of Suffolk shall provide a safe and con-
2 venient place in Boston where the reporter shall keep the written opin-
3 ions of the court in all law cases argued in the several counties until their
4 publication in the reports, and his dockets and copies of papers in such
5 cases, and where he shall afford due facilities for their examination.

Preservation of
opinions until
publication
1874, 43.
P. S. 159, § 61.
R. L. 165, § 65.
142 Mass. 29

1 SECTION 67. If the reporter is prevented from attending at a sitting,
2 he shall depute a suitable person to attend for him and take notes of the
3 decisions; or the court may appoint a person to act for him until he
4 resumes the performance of his duties, or until another is appointed.

Deputy
reporter.
R. S. 88, § 41.
G. S. 121, § 55.
P. S. 159, § 62.
R. L. 165, § 66.

Compensation of reporter
 1803, 133, § 2.
 R. S. 88, § 12.
 1843, 49, § 1.
 G. S. 121, § 56.
 1879, 289
 P. S. 159, § 63.
 1889, 471, § 4.
 1892, 380.
 R. L. 165, § 67.
 1908, 358, § 2.
 1909, 230.

SECTION 68. The reporter shall receive from the commonwealth a salary of six thousand dollars, and shall be allowed by the commonwealth for clerical and incidental expenses of his office such sums as shall be appropriated therefor. These amounts shall be in full compensation for his services and said expenses. All fees received by him for copies of opinions, rescripts and other papers shall be paid by him quarterly to the commonwealth, with a detailed statement thereof.

1920, 540.

1930, 89.

COURT OFFICERS.

Number of deputy sheriffs, etc., to serve as court officers.
 1862, 102, §§ 1, 2.
 P. S. 159, §§ 64-66.
 R. L. 165, §§ 68, 70, 71.
 1923, 407, § 1.

SECTION 69. Not more than four deputy sheriffs or court officers shall receive compensation for attendance upon any civil sitting of the supreme judicial court or a sitting of the superior court for civil business or for both civil and criminal business unless in the supreme judicial court the presiding justice and in the superior court the presiding justice or the district attorney in writing requires the sheriff to procure the attendance for the whole or a portion of such sitting of an additional number. Not more than six deputy sheriffs, court officers or constables shall receive compensation for attendance upon any criminal sitting of the superior court for criminal business unless the district attorney in writing requires the sheriff to procure the attendance for the whole or a portion of such sitting of an additional number.

Court officers in certain counties, appointment and removal, bonds, powers.
 1877, 169, § 2.
 P. S. 159, § 67.
 1888, 357, §§ 1-3.
 1892, 107, §§ 1, 2, 4.
 1895, 246, § 1.
 R. L. 165, §§ 72-74.
 1911, 322, §§ 1, 3.
 1920, 213, §§ 1-3, 5.
 1923, 324, § 1.

SECTION 70. The sheriffs of Suffolk, Middlesex and Worcester counties may each appoint, subject to the approval of the justices of the superior court, officers for attendance upon the several sessions of the superior court in their respective counties, as follows:

For Suffolk, not exceeding four for each session for civil business held with juries; three for each session held without juries; and six for the session for criminal business; said officers shall be interchanged between the several sessions so as to secure as nearly as may be equal service by all.

For Middlesex, twelve for civil or criminal business, who shall, when required by the sheriff, attend the sessions of the supreme judicial or probate court when not in attendance on the superior court.

For Worcester, for civil or criminal business, such number as may be necessary, who shall also attend upon the sessions of the supreme judicial, probate and insolvency and land courts.

Each of said officers shall give to the sheriff appointing him a bond with sufficient sureties, in the sum of fifteen hundred dollars, for the faithful performance of his duties. They shall have the authority of constables to serve venirees for jurors and the processes of said courts, and in Worcester county to summon witnesses; and they shall be paid by the county their actual expenses necessarily incurred in making such services.

Chief deputy sheriffs for Suffolk and Middlesex, and chief court officer for Worcester.
 1913, 501.
 1916, 133.
 1917, 320.
 1918, 201;
 260, § 1.
 1919, 276;
 347, § 2.

SECTION 71. The sheriffs of Suffolk and Middlesex counties may each designate one court officer to act as chief deputy sheriff for attendance on the superior court in his county. In Worcester county the sheriff may designate one court officer as chief court officer for attendance on the supreme judicial and superior courts. Such officers, under the orders of the sheriffs of their respective counties, in addition to their regular duties as court officers, shall supervise, direct and assign the officers of their respective courts.

1920, 213, § 4; 494.
1923, 352, § 1

1930, 400, §§ 5, 7-9.
1931, 301, § 39.

1 SECTION 72. Officers appointed as court officers to attend upon the
 2 sessions of the supreme judicial or superior court in any county, including
 3 chief deputies and the chief court officer in Worcester county designated
 4 under the preceding section, shall hold office during good behavior and
 5 until they are removed by the sheriff of the county for which they were
 6 appointed, for cause approved by the justices of the court for attendance
 7 upon which they were appointed. Court officers appointed to attend
 8 upon both of said courts may be removed for cause approved by the
 9 justices of either of said courts. In Suffolk county officers in attendance
 10 upon the supreme judicial court or upon the superior court may be inter-
 11 changed or transferred from either of said courts to the other court by the
 12 sheriff, with the approval, in each instance, of the chief justice of the court
 13 to which the transfer is proposed to be made.

Term of office,
 Interchange,
 etc., in Suffolk
 county.
 1906, 147.
 1912, 134.
 1913, 501.
 1916, 133.
 1917, 320.
 1918, 201.
 1920, 213, § 5.
 1923, 407, § 2.

1 SECTION 73. Each officer in attendance upon the supreme judicial
 2 court in Suffolk county, not exceeding six officers, shall receive in full
 3 for all services performed by him twenty-four hundred and eighty-four
 4 dollars a year, of which nineteen hundred and fifty-six dollars shall be
 5 paid by said county and five hundred and twenty-eight dollars by the
 6 commonwealth.

Salaries of
 court officers
 in supreme
 judicial court
 in Suffolk
 county
 1882, 232, § 1.
 1886, 37, § 2.
 1890, 294.

R. L. 165, § 69.	1918, 260, § 1.	1920, 494.
1917, 335, § 1.	1919, 276.	

1 SECTION 74. [REPEALED, 1931, 301, § 40.]

1 SECTION 75. The compensation of deputy sheriffs not on salary and of
 2 constables for attendance upon the supreme judicial, superior or probate
 3 court, or upon the sessions of the county commissioners, shall be paid by
 4 the respective counties, except that for attendance upon the supreme
 5 judicial court in Suffolk county when said court is sitting for the com-
 6 monwealth it shall be paid by the commonwealth.

Compensation
 for attendance
 at court.
 1795, 41, § 1.
 R. S. 122,
 §§ 5, 8.
 1843, 75, § 2.
 1856, 185.
 G. S. 157,
 §§ 4, 7.

1866, 190	1887, 243.	1921, 423.
1873, 222	1895, 369.	1925, 138.
1879, 227, § 1.	1897, 342.	1930, 400, §§ 5, 7-9.
P. S. 159, § 68.	R. L. 165, § 75.	1931, 301, § 41.
1882, 232, § 2.		

1 SECTION 76. The messenger of the justices of the supreme judicial
 2 court in Suffolk county shall receive an annual salary of three thou-
 3 sand dollars, of which twenty-six hundred dollars shall be paid by said
 4 county and four hundred dollars by the commonwealth. The messenger
 5 of the superior court in said county shall also act as clerical assistant of
 6 the justices of said court. His salary shall be paid by said county and
 7 shall be in full for his services in both capacities.

Duties and
 salaries of
 messengers in
 Suffolk county.
 1877, 169, § 1.
 P. S. 159, § 69.
 1883, 54, § 1.
 1886, 37, § 1.
 R. L. 165, § 76.
 1906, 470.
 1907, 133.

1919, 267.	1920, 494.	1930, 400, §§ 5, 7-9.	1931, 301, § 42.
------------	------------	-----------------------	------------------

1 SECTION 77. Premiums on bonds of court officers and deputy sheriffs
 2 in attendance on the supreme judicial or superior court in Suffolk county
 3 and on the courts in Worcester county shall be paid by their respective
 4 counties.

Premiums on
 bonds in Suf-
 folk county to
 be paid by
 county.

1916, 39.	1917, 71.	1920, 213, § 3.
-----------	-----------	-----------------

1 SECTION 78. Any officer in attendance upon the supreme judicial
 2 court in Suffolk county under section seventy-three, including the mes-
 3 senger of the justices of said court, may be designated by the sheriff of
 4 said county to serve venires for jurors and the processes of said court,
 5 and when so designated shall have the authority of constables for said

Service of
 venires by
 officers of the
 supreme
 judicial court,
 county of
 Suffolk. Bond
 1907, 312.

purposes, and shall be paid by said county his actual expenses necessarily incurred in making such services. He shall first give to the sheriff a bond with sufficient sureties in the sum of fifteen hundred dollars for the faithful performance of his duties.

Summoning of witnesses by officers in Suffolk and Worcester. 1879, 193, P. S. 159, § 70. R. L. 165, § 78. 1911, 322, § 3. 1920, 213, § 3. §§ 2, 5.

SECTION 79. Officers in attendance upon the sessions of the superior court for criminal business in Suffolk county and the officers appointed for attendance on the sessions of the superior court for civil or criminal business in Worcester county shall summon witnesses on behalf of the commonwealth from any part of the commonwealth, but shall receive therefor no compensation in addition to their salaries except for expenses actually incurred and paid.

Court officers to wear uniforms. 1888, 371. 1891, 181. 1892, 107, §§ 3, 5. 1895, 246, § 2, 3. R. L. 165, § 77. 1911, 322, § 3. 1920, 213, § 5. 1930, 400, §§ 5, 7-9. 1931, 301, § 43; 455.

SECTION 80. Court officers receiving stated salaries and deputy sheriffs in attendance upon the supreme judicial or superior court in Suffolk, Middlesex and Worcester counties shall, while on duty in said courts, wear uniforms which shall be designated by the sheriff of the county. Such uniforms for court officers aforesaid in attendance upon either court in Middlesex or Worcester county or upon the superior court in Suffolk county shall be furnished at the expense of their respective counties; and court officers paid under section seventy-three who are appointed to attend upon the supreme judicial court in Suffolk county and any other officer designated as deputy sheriff in attendance upon said court in said county shall each be annually allowed by said county one hundred dollars in addition to the salary allowed by law in order to provide such uniform.

Officers not to draw double pay. 1862, 102, § 4. 1879, 227, § 2. P. S. 159, § 71. R. L. 165, § 79.

SECTION 81. No deputy sheriff or constable receiving a salary from the county shall be designated to attend, for compensation by the day, upon the sessions of the supreme judicial or superior court, and no deputy sheriff or constable shall receive compensation for attendance upon the sessions of more than one court, or upon more than one session of the same court, on the same day.

STENOGRAPHERS.

Appointment in the superior court 1870, 312, §§ 1, 3. P. S. 159, §§ 72, 74. 1885, 291, §§ 1, 3, 4. 1887, 24, §§ 1, 3. 1893, 404. 1894, 424, §§ 1, 5.

SECTION 82. The justices of the superior court shall appoint from time to time such official stenographers and additional stenographers for the several counties as the business of the court may require. Official and additional stenographers shall be sworn officers of the court, removable at the pleasure of the justices, may be appointed for more than one county, and shall perform such services in the county or counties for which they are appointed or in any other county, as may be assigned them by the justices or by their authority.

1896, 459, §§ 1, 8. 1927, 332, § 1. 1 Op. A. G. 87.
 R. L. 165, § 80. 260 Mass. 233. 2 Op. A. G. 112.
 1915, 142, § 1; 295, § 1.

Temporary stenographers. 1870, 312, § 4. P. S. 159, § 75. 1885, 291, § 3. 1894, 242, § 4; 424, § 6. 1896, 459, §§ 4, 5. 1897, 478, § 1. R. L. 165, §§ 81-83.

SECTION 83. The presiding justice at any sitting, trial or hearing in the supreme judicial court or the superior court, in case no stenographer is assigned therefor or in case of the illness or absence of a stenographer assigned, may appoint one or more temporary stenographers, who shall be sworn, and shall during his or their service have the powers and duties of an official stenographer.

1904, 145. 1919, 5. G. L. (ed of 1920) 221, §§ 84, 85.
 1912, 289. 1920, 2. 1927, 332, § 2.
 1918, 257, § 424.

1 SECTION 84. [REPEALED, 1927, 332, § 3.]

1 SECTION 85. [REPEALED, 1927, 332, § 3.]

1 SECTION 86. A justice of the superior court may, upon the request of
 2 the district attorney, appoint a stenographer, who shall be sworn, and
 3 who shall take stenographic notes of such testimony given before the
 4 grand jury as he may direct, and shall provide him with a transcript fully
 5 written out of such part of said notes as he requires. This section shall
 6 not authorize the taking of any statement or testimony of a grand juror.

Stenographer
for grand jury.
1897, 478, § 2.
R. L. 165, § 84.
231 Mass. 584.

1 SECTION 87. The justices of the superior court may make regulations
 2 not inconsistent with law relative to the assignments, duties and service
 3 of stenographers appointed for that court, and any other matters relative
 4 to such stenographers.

Duties, etc., of
stenographers.
1870, 312, § 2.
P. S. 159, § 73.
1885, 291, § 2.

1887, 24, §§ 1, 2;	1896, 459, §§ 2, 3.	G. L. (ed. of 1920) 221,
74, § 2	1897, 478, § 1	§ 88.
1892, 133.	R. L. 165, §§ 85,	1927, 332, § 4.
1894, 424, §§ 2, 3.	86.	188 Mass. 16.

1 SECTION 88. Upon request of the presiding justice or any party, the
 2 stenographer shall furnish a transcript of his notes or any part thereof,
 3 taken at a trial or hearing, for which he shall be paid by the party request-
 4 ing it at the rate of fifteen cents a hundred words for one copy, and eight
 5 cents a hundred words for each additional copy if more than one copy is
 6 ordered at the same time; but if it is requested by the presiding justice
 7 or, in a criminal case, by the district attorney, payment therefor at the
 8 same rate shall be made by the county upon a voucher approved by him,
 9 and, in a criminal case, the expense of transcripts furnished to said justice
 10 and to the district attorney shall be taxed like other expenses.

Transcripts
of notes.
1870, 312, § 2.
P. S. 159, § 73.
1885, 291, § 2.
1887, 24, § 2;
74, § 2.
1892, 133.
1894, 424, § 2.
1896, 459, § 2.
1897, 478, § 2.
R. L. 165, § 85.
G. L. (ed. of
1920) 221, § 87.
1927, 332,
§ 5.

188 Mass. 16.

1 SECTION 89. The justices of the superior court from time to time
 2 may appoint one or more clerical assistants, removable at the pleasure of
 3 the justices, and fix their compensation, which shall be paid by the county,
 4 or the commonwealth, or by both in such proportion as the justices may
 5 determine. The justices may make regulations not inconsistent with
 6 law relative to the assignments, duties and service of such clerical assist-
 7 ants, and any other matters relative to them.

Clerical
assistants.
1927, 332, § 6.

1 SECTION 90. [REPEALED, 1922, 228, § 1.]

1 SECTION 90A. When a salaried official stenographer renders service
 2 in a county other than the one for which he is appointed, the justice shall
 3 allow him his reasonable and actual expenses for transportation, food and
 4 lodging, to be paid by the county in which he renders such service. At
 5 the conclusion of his assignment he shall send a statement of the dates
 6 when he rendered service in such county, attested by the clerk of the
 7 court for such county, to the treasurer of such county and also to the
 8 treasurer of the county for which he is appointed, whereupon the county
 9 in which he rendered such service shall pay to the county for which he is
 10 appointed ten dollars for each day's service so rendered.

Expenses, etc.,
for services
rendered in
counties other
than those for
which stenog-
raphers
appointed.
1927, 332, § 7

1 SECTION 91. In counties having a population of more than two hun-
 2 dred thousand, official stenographers, other than additional stenographers,
 3 appointed by the justices of the superior court shall receive salaries

Salaries and
compensation
of stenog-
raphers in the
superior court.

1870, 312, § 1. established in accordance with sections forty-eight to fifty-six, inclusive, 4
 P. S. 159, § 72. of chapter thirty-five, to be paid by the respective counties. Other official 5
 1885, 291, § 1. stenographers, additional stenographers and temporary stenographers 6
 1887, 24, § 1; shall receive from the county in which they are employed, on the order 7
 74, § 1 of the presiding justice, compensation established as aforesaid for each 8
 1889, 324 day's actual and necessary attendance; and if the service is rendered 9
 1893, 404; 452. outside the county in which the stenographer resides or has his usual 10
 1894, 68; 330; place of business, the justice shall allow him in addition to such compensa- 11
 424, §§ 1, 6. tion his reasonable and actual expenses for transportation, food and 12
 1896, 459, lodging. The stenographer appointed under section eighty-two for the 13
 §§ 1, 5. county of Nantucket shall be allowed in addition thereto the sum of 14
 1897, 478. eighteen dollars for each sitting as compensation for time consumed in 15
 1901, 329. traveling. 16
 R. L. 165, § 88.
 1913, 674.
 1914, 759.
 1915, 142, § 2;
 295, § 2.
 1919, 357.
 1927, 332, § 8.
 1930, 400,
 §§ 5, 7-9.
 1931, 301, § 44.

115 Mass. 310.

INTERPRETERS.

Interpreters. SECTION 92. The justices of the superior court may appoint such 1
 1914, 673. official interpreters as they may deem necessary for the sessions of the 2
 1926, 294. court. Such interpreters shall hold their positions at the pleasure of the 3
 1930, 400, court and render such additional service as any justice of the court re- 4
 §§ 5, 7-9. quires. No official interpreter shall request or receive, directly or indi- 5
 1931, 301, § 45. rectly, any gratuity, bonus or fee, in connection with any case pending, 6
 or in course of preparation for presentation to said court; provided, that 7
 upon request of the district attorney such interpreter may, in the discre- 8
 tion of the court, receive additional compensation for his services as an 9
 interpreter at such hours or times as the courts are not in session, which 10
 shall be paid under section twenty-four of chapter twelve. 11
 This section shall not prevent the justices from employing other inter- 12
 preters when the services of the official interpreters are not available. 13
 The expenses incurred hereunder shall be paid by the county in which the 14
 prosecution, suit or action is pending. 15

SALARIES AND EXPENSES OF CLERKS AND ASSISTANT CLERKS OF THE SUPREME JUDICIAL AND SUPERIOR COURTS.

Salaries of clerk and as- SECTION 93. The clerk of the supreme judicial court for the com- 1
 sistant clerk of supreme 1931, 301, § 45. monwealth shall receive from the commonwealth a salary to be fixed 2
 judicial court for the com- by the chief justice of said court, with the approval of the governor and 3
 monwealth. council, with fifteen hundred dollars a year for clerk hire, together with 4
 1859, 196, an additional sum not to exceed five hundred dollars a year for extra 5
 §§ 40, 43. clerk hire in cases of emergency, subject, however, to the approval of 6
 G. S. 121, the chief justice. 7
 §§ 5, 26.
 P. S. 159,
 §§ 5, 31.

1894, 136. 1909, 165. 1918, 287, § 1. 1930, 275.
 R. L. 165, § 33. 1912, 219. 1922, 487, § 2.

Salaries of clerks and SECTION 94. Except as provided in section ninety-three and except 1
 assistant clerks. Ad- as hereinafter provided, the salaries of clerks of courts and all assistant 2
 justments. 1931, 301, § 45. clerks of courts, other than clerks and assistant clerks of district courts, 3
 How paid. shall be established in accordance with sections forty-eight to fifty-six, 4
 1830, 129, § 4. inclusive, of chapter thirty-five and shall be paid by their respective 5
 1833, 170. counties. The salary of the assistant clerk of the superior court for civil 6
 R. S. 88. business in Suffolk county appointed to perform the duties of clerk 7
 §§ 16, 17. pertaining to equity proceedings in said court and designated to act as 8
 1850, 236. clerk of said court when sitting in Boston for the hearing of causes from 9
 1852, 200; 267. any other county shall be six thousand dollars, of which one thousand 10
 1854, 215.
 1856, 37, § 1.
 1857, 272.
 G. S. 121,
 §§ 24, 26.
 1865, 209.

11 dollars shall be paid by the commonwealth. The salary of the clerk of
 12 the supreme judicial court for Suffolk county shall be sixty-eight hun-
 13 dred dollars plus one hundred dollars additional for each fifty thousand
 14 population of Suffolk county above eight hundred and fifty thousand,
 15 as established by the next preceding state or national census, and fifteen
 16 hundred dollars of said salary shall be paid by the commonwealth. In
 17 the year following each state and national census, the treasurer of
 18 Suffolk county shall adjust the salary of said clerk of the supreme ju-
 19 dicial court in accordance with the foregoing provision, on the basis of
 20 said census, and the salary so adjusted shall be allowed from January
 21 first in the year of adjustment. The assistant clerks of the superior
 22 court for Suffolk county may receive their salary in bi-weekly instal-
 23 ments if they so request in writing.

1867, 295,
 §§ 2, 4, 5,
 1870, 336,
 1871, 203,
 1872, 142; 307;
 332; 333,
 1873, 309,
 1874, 42; 268,
 1877, 17; § 1,
 1881, 252;
 262; § 2; 266,
 P. S. 159,
 §§ 29, 31,
 1885, 250,
 1887, 112; 199;
 291; §§ 1, 2,
 1888, 153;
 257; § 1,
 1889, 11; 50;
 444,
 1890, 201,
 1891, 92.

1892, 87; 95; 187.	1904, 451, §§ 1-3.	1919, 251; 265, § 1;
1893, 153; 190	1905, 179	347, § 1; 356, §§ 1-7.
1895, 251; 393; 480.	1906, 276; 290	G. L. ed. of 1920) 221,
1896, 218	1907, 145, § 2; 253.	§§ 95-98.
1897, 220; 334.	1908, 259, § 1.	1921, 486, § 31.
1898, 376; 518.	1910, 188	1923, 206, 2.
1899, 377	1911, 174; 299, § 1.	1924, 350, 1
1900, 329.	1912, 219; 547.	1927, 235, §§ 1, 2.
1901, 510.	1914, 405.	1930, 400, §§ 5, 7-9.
R. L. 165, §§ 34, 35.	1915, 245.	1931, 301, § 46.
1902, 358; 462; 499; 513.	1917, 41; 100, 134; 273.	3 Op. A. G. 360.
1903, 137; 472; § 3.	1918, 287, §§ 1-5, 7.	4 Op. A. G. 294.

1 SECTION 95. [REPEALED, 1931, 301, § 47.]

1 SECTION 96. [REPEALED, 1931, 301, § 47.]

1 SECTION 97. [REPEALED, 1931, 301, § 47.]

1 SECTION 98. [REPEALED, 1931, 301, § 47.]

1 SECTION 99. Clerks and assistant clerks of courts except in Bristol
 2 county shall be allowed by their respective counties their traveling ex-
 3 penses necessarily incurred when holding sessions of said courts outside of
 4 the cities or towns in which the clerks' offices are established, which shall
 5 be audited by the county commissioners. In Bristol county they shall
 6 receive such traveling expenses when the sessions are held in a city or
 7 town other than where they live, which shall be audited in like manner.

Traveling
 expenses.
 1904, 451, § 6.
 1918, 287, § 6.
 1919, 209,
 §§ 1, 2.
 201 Mass. 257.
 211 Mass. 390.
 2 Op. A. G. 592.

1 SECTION 100. Each temporary clerk shall be paid by the clerk for
 2 whom he is acting such compensation as the court appointing him may
 3 determine. Each temporary assistant clerk appointed under section
 4 nine shall receive from the county the same salary as the assistant clerk
 5 for whom he is acting, and the amount so paid shall be deducted from
 6 the salary of such assistant clerk.

Salaries of
 temporary
 clerk and
 assistant clerk.
 R. S. 88, § 14.
 G. S. 121, § 27.
 1860, 191, § 9.
 1863, 64, § 2.
 P. S. 159, § 32.

R. L. 165, § 36.

1 SECTION 101. Except as otherwise provided, the salaries of clerks
 2 shall be in full compensation for all services rendered by them in the
 3 civil or criminal courts, to the county commissioners, in making any
 4 returns required by law or in the performance of any other official duty.

Salaries to be
 in full com-
 pensation
 1888, 257, § 2
 R. L. 165, § 37.
 201 Mass. 257.

3 Op. A. G. 106, 290.

4 Op. A. G. 195.

1 SECTION 102. The clerks of the courts in the several counties, the
 2 clerk of the supreme judicial court for Suffolk county and the clerks of
 3 the superior court for said county shall each be annually allowed for
 4 clerical assistance, to be paid by their respective counties, such amounts

Clerical
 assistance.
 1873, 181.
 1879, 300, § 4.
 P. S. 159, §§ 9,
 33,
 1898, 238.

1899, 350
R. L. 165, § 38.
1909, 486, § 1.
1930, 400,
§§ 5, 7-9.

as shall be approved by the county commissioners in a writing signed by them or, in Suffolk county, by vote of the officers having in said county the powers of county commissioners. 5
6
7

1931, 301, § 48.

1 Op. A. G. 467.

CHAPTER 222.

JUSTICES OF THE PEACE, NOTARIES PUBLIC AND COMMISSIONERS.

SECT.

JUSTICES OF THE PEACE AND NOTARIES PUBLIC.

1. Justices of the peace and notaries public. Appointment and jurisdiction.

SPECIAL COMMISSIONERS.

2. [Repealed.]

COMMISSIONERS TO QUALIFY PUBLIC OFFICERS.

3. Commissioners to qualify public officers. Appointment and returns. Certain fees prohibited.

SECT.

COMMISSIONERS IN OTHER STATES AND FOREIGN COUNTRIES.

4. Commissioners in other states and countries.

5. Oath, signature, seal, etc.

6. Powers and duties.

7. Instructions, etc.

8. Justices of the peace, etc., to affix date of expiration of commission.

9. Penalty for acting as justice of the peace, etc., after expiration of commission.

10. Penalty for destroying records of notary public.

JUSTICES OF THE PEACE AND NOTARIES PUBLIC.

Justices of the peace and notaries public. Appointment and jurisdiction. Const. amend. 4, 37, 57. (Const. Rev. art. 123.) R. S. 85, § 36. 1851, 29.

SECTION 1. Justices of the peace and notaries public shall be appointed, and their commissions shall be issued, for the commonwealth, and they shall have jurisdiction throughout the commonwealth when acting under the sole authority of such a commission. Unless otherwise expressly provided they may administer oaths or affirmations in all cases in which an oath or affirmation is required, and take acknowledgments of deeds and other instruments. 1
2
3
4
5
6
7

G. S. 14, § 34; 120, § 49.
1863, 157, § 1.
1867, 250.
1870, 120.
1880, 132.

P. S. 18, § 1; 155, §§ 2, 5.
1891, 38, §§ 1, 2.
1899, 178, § 3.
R. L. 17, § 1; 161, §§ 1, 2.
1931, 426, § 294.

131 Mass. 345.
139 Mass. 162.
145 Mass. 224.
150 Mass. 586.
Op. A. G. (1918) 2.

SPECIAL COMMISSIONERS.

SECTION 2. [REPEALED, 1923, 164, § 7.] 1

COMMISSIONERS TO QUALIFY PUBLIC OFFICERS.

Commissioners to qualify public officers. Appointment and returns. Certain fees prohibited. 1780, Res. 58. R. S. 13, § 57. G. S. 14, § 40. 1867, 138, § 4. P. S. 18, §§ 7, 8. R. L. 17, § 8.

SECTION 3. The governor, with the advice and consent of the council, shall appoint commissioners to administer to public officers the oaths of office required by the constitution. Upon administering such oaths, the commissioners shall forthwith make return thereof, with the date of the same, to the state secretary. Neither the state secretary, nor any officer or employee in his department, acting as such a commissioner shall charge any fee for administering such an oath. 1
2
3
4
5
6
7

1929, 318, § 2.

Op. A. G. (1920) 70.

COMMISSIONERS IN OTHER STATES AND FOREIGN COUNTRIES.

Commissioners in other states and countries.

SECTION 4. The governor, with the advice and consent of the council, may appoint commissioners in the states, territories, districts and 1
2

3 dependencies of the United States, and one or more commissioners in 1829, 125, § 1.
4 every foreign country, to hold office for three years from the date of R. S. 13, § 53.
5 their respective appointments. 1854, 17, § 1.

1856, 253, § 1. 1901, 119. 1919, 5.
G. S. 14, §§ 41, 45. R. L. 17, § 9. 1920, 2.
P. S. 18, §§ 9, 13. 1918, 257, § 83.

1 SECTION 5. A person appointed commissioner in a state, territory,
2 district or dependency of the United States shall, within three months
3 after his appointment, take and subscribe an oath before a justice of the
4 peace or other magistrate of the town or county where he resides, or
5 before a clerk of a court of record within the state, territory, district
6 or dependency where he resides, faithfully to perform the duties of his
7 office, and shall cause an official seal to be prepared, upon which shall
8 appear his name, the words "Commissioner for Massachusetts" and
9 the name of the state, territory, district or dependency, and town or
10 county where he resides. A person appointed commissioner in a foreign
11 country shall, before performing any duty of his office, take and sub-
12 scribe an oath before a judge or clerk of a court of record of the coun-
13 try where he resides or before an ambassador, minister or consul of the
14 United States accredited to such country, faithfully to perform the duties
15 of his office. In each case, a certificate of the commissioner's oath
16 of office and his signature and an impression of his official seal shall be
17 forthwith transmitted to and filed in the office of the state secretary.

Oath, signa-
ture, seal, etc.
1829, 125, § 2.
R. S. 13, § 56.
1854, 17, § 2.
1856, 253, § 4.
G. S. 14,
§§ 42, 46.
1875, 11.
P. S. 18,
§§ 10, 14.
1885, 31.
R. L. 17, § 10.
1918, 257, § 84.
1919, 5.
1920, 2.

1 SECTION 6. A commissioner may, in his state, territory, district,
2 dependency or country, administer oaths and take depositions, affida-
3 vits and acknowledgments of deeds and other instruments, to be used
4 or recorded in this commonwealth, and the proof of such deeds, if the
5 grantor refuses to acknowledge the same, all of which shall be certified
6 by him under his official seal.

P. S. 18, §§ 11, 15. R. L. 17, § 11. 1918, 257, § 85. 1919, 5. 1920, 2.

Powers and
duties.
1829, 125, § 1.
R. S. 13,
§§ 53-55.
1854, 17, § 3.
1856, 253,
§§ 1-3.
G. S. 14,
§§ 43, 47.

1 SECTION 7. The state secretary shall prepare and forward to each
2 commissioner appointed under section four, instructions and forms in
3 conformity to law, and a copy of the three preceding sections.

G. S. 14, § 41. P. S. 18, § 12. R. L. 17, § 12.

Instructions,
etc.
1854, 17, § 4.

1 SECTION 8. A justice of the peace or notary public, when taking
2 acknowledgment of any instrument provided by law to be recorded, shall
3 affix thereto the date of the expiration of his commission in the following
4 language: "My commission expires ". Failure to comply
5 with this section shall not affect the validity of any instrument, or the
6 record thereof.

Justices of the
peace, etc., to
affix date of
expiration of
commission.
1917, 42,
§§ 1, 2.
1931, 394,
§ 188.

1 SECTION 9. Whoever presumes to act as a justice of the peace or
2 notary public after the expiration of his commission, and after receiving
3 notice of such expiration, shall be punished by a fine of not less than one
4 hundred nor more than five hundred dollars.

1865, 231, § 2. 1899, 178, § 8. 1931, 394, § 189.
P. S. 205, § 24. R. L. 210, § 34.

Penalty for
acting as
justice of the
peace, etc.,
after expiration
of commission.

1 SECTION 10. Whoever knowingly destroys, defaces or conceals the
2 records or official papers of a notary public shall forfeit not more than
3 one thousand dollars and be liable for damages to any person injured
4 thereby.

R. S. 13, § 50. G. S. 14, § 38. P. S. 18, § 5. R. L. 17, § 4.

Penalty for
destroying
records of
notary public.
1798, 62, § 1.

TITLE II.

ACTIONS AND PROCEEDINGS THEREIN.

- CHAPTER 223. Commencement of Actions, Service of Process.
 CHAPTER 224. Arrest on Mesne Process and Supplementary Proceedings in Civil Actions.
 CHAPTER 225. Process after Judgment for Necessaries or Labor. [REPEALED.]
 CHAPTER 226. Bail.
 CHAPTER 227. Proceedings against Absent Defendants and upon Insufficient Service.
 CHAPTER 228. Survival of Actions and Death and Disabilities of Parties.
 CHAPTER 229. Actions for Death and Injuries resulting in Death.
 CHAPTER 230. Actions by and against Executors and Administrators.
 CHAPTER 231. Pleading and Practice.
 CHAPTER 232. Set-off and Tender.
 CHAPTER 233. Witnesses and Evidence.
 CHAPTER 234. Juries.
 CHAPTER 235. Judgment and Execution.
 CHAPTER 236. Levy of Executions on Land.

CHAPTER 223.

COMMENCEMENT OF ACTIONS, SERVICE OF PROCESS.

SECT.	VENUE OF ACTIONS.	SECT.	SERVICE ON DEFENDANT.
	1. Venue of transitory actions.	19.	Proceedings if defendant's name is unknown.
	2. In district courts.	20.	Writs, how issued.
	3. Certain actions transitory.	21.	Subpoena in equity suit, how issued
	4. Venue of actions of replevin.	22.	Writs, when returnable.
	5. Actions by the commonwealth.	23.	Same in district courts.
	6. Actions by and against counties.	24.	Return days in supreme judicial and superior courts.
	7. Action for defect in way, etc., and for negligence.	25.	Return days in district, etc., courts.
	8. Actions by and against corporations.		
	9. Venue of transitory actions by and against city of Boston.		
	10. Transfer from county of Suffolk.	26.	Directions for attachment or arrest.
	11. Actions by and against executors, etc.	27.	Service of original writs.
	12. Actions relative to land in different counties, etc.	28.	Service on county, etc.
	13. Change of venue.	29.	Service of summons.
	14. Venue for recovery of forfeitures.	30.	Same subject.
	15. Erroneous venue.	31.	Service by leaving, etc.
		32.	Service of summons on absent defendant, if co-defendant here.
		33.	Service in real action against absent tenant.
		34.	Further notice to absent defendant.
		35.	Officer to state in return place of leaving summons, etc.
		36.	Service on corporations, etc., by copy, etc.
	FORMS, ISSUING AND RETURN OF WRITS.		
	16. Civil actions, how commenced.		
	17. Separate summons after attachment.		
	18. When writ and summons may be combined.		

SECT.

- 37. Actions against corporations, person upon whom service shall be made.
- 38. Service on foreign corporations.
- 39. Service on foreign insurance company.
- 39A. Service on certain insurance companies severally, or jointly and severally liable.
- 40. Service on certain voluntary associations.
- 41. Service of summons in suits in equity.

ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.

- 42. Property liable to attachment.
- 43. Attachment of cars and vessels.
- 44. Declaration to be inserted in writ, etc., before attachment of ship or vessel.
- 45. Property of newspaper offices.
- 45A. Attaching officer may require security.
- 46. Successive attachments on the same writ.
- 47. Successive attachments on different writs.
- 48. Keeper.
- 49. Property to remain on premises in certain cases.
- 50. Attachment of bulky goods.
- 51. Same subject.
- 52. Attachment of proceeds of property sold.
- 53. Further attachment of property replevied.
- 54. Plaintiff in replevin liable for value.
- 55. Attachment after death, etc., of first attaching officer.
- 56. Proceedings in such case.
- 57. Mode of attaching replevied property.
- 58. Attachment to continue after death of attaching officer.
- 59. Attachment effective for thirty days after judgment.
- 60. Same in equity for thirty days after right of appeal has expired.
- 61. Final judgment defined.

ATTACHMENT OF REAL ESTATE AND LEASEHOLDS.

- 62. Attachment of land and leaseholds.
- 63. Deposit of copy of writ.
- 64. Duty of officer.
- 65. Duty of register.
- 66. When attachment takes effect.
- 67. Attachment of land fraudulently conveyed, etc.
- 68. Entry of name of holder of legal title, etc.
- 69. Duties of registers as to papers in actions in United States courts.
- 70. Attachment of encumbered land.

SECT.

ATTACHMENT OF SHARES OF STOCK.

- 71. Attachment of shares of stock.
- ATTACHMENT OF PROPERTY IN POSSESSION OF BAILEE.
- 72. No attachment or levy of goods for which a negotiable document of title is outstanding.
 - 73. Attachment of property in possession of carrier or warehouseman.

ATTACHMENT OF ENCUMBERED PERSONALTY.

- 74. Attachment of mortgaged property.
- 75. Mortgagee to state account.
- 76. Penalty for excessive demand.
- 77. Debt to be repaid out of proceeds of sales.
- 78. Defendant to pay attaching plaintiff for redemption of mortgage.
- 79. Attachment of mortgaged personalty in debtor's possession.
- 80. Determination of amount due.
- 81. Determination of validity of mortgage.
- 82. Creditor to retain amount paid by him, etc.
- 83. Creditor not recovering judgment to hold property until repaid.

SUPPLEMENTARY PROCESS.

- 84. Further service after defective service.
- 85. Attachments and arrests during pendency of suit.
- 86. Precepts, form, etc.
- 86A. Equitable attachments after verdict, etc.

SALE OF PERSONAL PROPERTY ATTACHED.

- 87. Sale of personal property attached.
- 88. Appraisal and sale of perishable property.
- 89. Appraisal and sale of perishable property: proceedings.
- 90. Notice to absent defendant.
- 91. Appraisers, how appointed.
- 92. Sale after appraisal.
- 93. Delivered to defendant.
- 94. Bond to be returned with the writ.
- 95. Action on bond by creditors.
- 96. Money recovered to belong to them.
- 97. Distribution by court.
- 98. Prior attachments to be protected.
- 99. Creditor not joining in action on the bond, etc.
- 100. Limitation.
- 101. Creditor may be paid, when.

ATTACHMENT OF SHARE OF JOINT OWNER OF PERSONALTY.

- 102. Appraisal at request of part owner.
- 103. Delivery to part owner.
- 104. Pledge of property.
- 105. Restoration.

<p>SECT.</p> <p style="text-align: center;">FRAUDULENT ATTACHMENTS.</p> <p>106. Fraudulent attachments, how defeated.</p> <p>107. Affidavit and bond.</p> <p>108. Dissolution of prior attachment.</p> <p>109. Effect of pleadings.</p> <p>110. Defences in such case.</p> <p>111. Damages and costs.</p> <p>112. Proceedings upon appeal.</p> <p>113. Effect of judgment.</p> <p style="text-align: center;">REDUCTION OR DISCHARGE OF ATTACHMENT.</p> <p>114. Excessive and unreasonable attachments, how reduced or discharged.</p> <p style="text-align: center;">DISSOLUTION OF ATTACHMENT.</p> <p style="text-align: center;"><i>By Operation of Law.</i></p> <p>115. Dissolution of attachment by judgment.</p> <p>115A. Dissolution of attachment if no service made on defendant.</p> <p>116. Dissolution of attachment by death of defendant.</p> <p>117. Liability of officer for net proceeds.</p> <p>118. Liability of creditor for proceeds paid over to him.</p> <p>119. Set-off not allowed in such case.</p>	<p>SECT.</p> <p style="text-align: center;"><i>By giving Bond.</i></p> <p>120. Attachments dissolved by giving bond.</p> <p>121. Hearing before approval of bond.</p> <p>122. Fees, etc., to be included in defendant's costs.</p> <p>123. Bond to be filed by defendant.</p> <p>124. Release of sureties of insolvent debtor.</p> <p>125. Bond to pay value of property.</p> <p>126. Fees.</p> <p>127. Dissolution of attachment of realty fraudulently conveyed.</p> <p>128. Dissolution by deposit.</p> <p>129. Dissolution of attachment of individual property of one defendant.</p> <p>129A. Officer not liable for release of attached property, when.</p> <p style="text-align: center;"><i>By Appointment of Receiver.</i></p> <p>130. Dissolution of attachment by appointment of receiver.</p> <p>131. Discharge of receiver.</p> <p style="text-align: center;"><i>By Entry or Release in Registry of Deeds.</i></p> <p>132. Dissolution of attachment of real estate by plaintiff.</p> <p style="text-align: center;">EXECUTION OF BONDS.</p> <p>133. Execution of bonds.</p>
---	--

VENUE OF ACTIONS.

Venue of transitory actions.
 C. L. 2, § 2.
 1749-50, 9
 1784, 28, § 13.
 R. S. 90,
 §§ 14, 15.
 1854, 322.
 1855, 12.
 1856, 70.
 G. S. 123, § 1.
 P. S. 161, § 1.
 R. L. 167, § 1.
 1921, 432.
 4 Mass. 591.
 6 Mass. 331.
 3 Met. 209.
 6 Cush. 560.

SECTION 1. A transitory action shall, except as otherwise provided, if any one of the parties thereto lives in the commonwealth, be brought in the county where one of them lives or has his usual place of business; provided, that except in actions upon negotiable instruments if the plaintiff is an assignee of the cause of action, it shall be brought only in a county where it might have been brought by the assignor thereof. If brought in any other county, unless removed under section fifteen, the writ shall abate and the defendant shall be allowed double costs. If neither party lives in the commonwealth, the action may be brought in any county.

10 Cush. 415.	16 Gray, 116	221 Mass. 125.
12 Cush. 284.	1 Allen, 529.	233 Mass. 162.
6 Gray, 122	4 Allen, 17	266 Mass. 64
15 Gray, 50.	156 Mass. 522	

In district courts
 R. S. 87, § 35.
 G. S. 116, § 19.
 1866, 47.
 1869, 17, § 3.
 1874, 271, § 8
 1875, 106, § 2.
 1876, 184.
 1878, 72.
 1879, 154.
 P. S. 154, §§ 14,
 15, 46, 48, 49,
 60; 175, § 3
 1893, 396, § 13.
 1894, 398, § 1;
 431.
 R. L. 167, § 2.

SECTION 2. Except as provided in section twenty-one of chapter two hundred and eighteen, a transitory action in a district court shall be brought in the county where one of the defendants lives or has his usual place of business, or, if commenced by trustee process, in the county where all persons named in the writ as trustees live or have their usual places of business, and, in either case, in a court within whose judicial district one of the parties lives or has his usual place of business, except that an action commenced by trustee process may be brought in the municipal court of the city of Boston if any trustee resides or has his usual place of business in Suffolk county.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

11 Said courts shall have jurisdiction of a transitory action against a
 12 defendant who is not an inhabitant of the commonwealth, if personal
 13 service or an effectual attachment of property is made within the coun-
 14 monwealth; and such action may be brought in any of said courts in the
 15 county where the service or attachment was made.

218 Mass. 333.

271 Mass. 186.

1 SECTION 3. Every action for rent, use and occupation or breach of
 2 covenant shall be considered a transitory action.

1915, 146, § 3.

Certain actions
transitory.

1 SECTION 4. An action of replevin shall be brought in the county
 2 where the goods or beasts are detained.

1789, 26, § 4
R. S. 113, § 28.

G. S. 113, § 11.
P. S. 184, § 11.

R. L. 167, § 3.

Venue of
actions of
replevin.

1 SECTION 5. A civil action in which the commonwealth is plaintiff or
 2 in which money due to the commonwealth is sought to be recovered
 3 may be brought in the county where the defendant lives or has his
 4 usual place of business, or in Suffolk county.

Actions by the
commonwealth
1866, 233, § 1
P. S. 161, § 4
R. L. 167, § 4.

1 SECTION 6. A local or transitory action by a county shall be brought
 2 in the county where the defendant lives or in a county adjoining the
 3 plaintiff county. If the defendant lives in the plaintiff county, it shall
 4 be brought in an adjoining county. Such action against a county shall,
 5 at the election of the plaintiff, be brought in the county where he lives,
 6 in the defendant county or in an adjoining county.

R. L. 167, § 5.

2 Mass. 544.

Actions by
and against
counties.
1809, 128.
R. S. 90.
§§ 19, 20.
G. S. 123.
§§ 3, 4.
P. S. 161.
§§ 5, 6.

1 SECTION 7. An action against a town or person to recover for injury
 2 or damage received by reason of a defect, want of repair or of an insuf-
 3 ficient railing in or upon a public way shall be brought in the county where
 4 said town is situated or in the county where the plaintiff lives, except that
 5 such action against the city of Boston may be brought in Middlesex
 6 county, in Norfolk county or in the county where the plaintiff lives, and
 7 such action against the town of Nantucket or against any town in Dukes
 8 county may be brought in Bristol county. An action against a town or
 9 person to recover for injury or damage received in the commonwealth by
 10 reason of negligence other than that relating to such defect, want of repair
 11 or insufficient railing shall be brought in the county where the plaintiff
 12 lives or has his usual place of business, or in the county where the alleged
 13 injury or damage was received. This section shall not apply to actions
 14 that may be brought in a district court.

Action for
defect in way,
etc., and for
negligence.
1877, 234, § 5.
P. S. 161, § 7.
R. L. 167, § 6.
1904, 320, § 6.
1909, 514,
§ 145.
1910, 63.
1923, 111.
218 Mass. 333.
221 Mass. 125.
237 Mass. 482.

1 SECTION 8. Transitory actions, except those mentioned in the pre-
 2 ceding section, to which a corporation, other than a county or the city
 3 of Boston, is a party, may be brought as follows:

Actions by
and against
corporations.
R. S. 90, § 16.
1836, 4, § 12.
G. S. 123, § 5.
P. S. 161, § 8.
R. L. 167, § 7.
1 Met. 212.
6 Cush. 524.
16 Gray, 116.
98 Mass. 95.
99 Mass. 534.
137 Mass. 252.
138 Mass. 89.
201 Mass. 557.

4 (1) If both parties are cities, towns or parishes, in the county where
 5 either party is situated.

6 (2) If both parties are corporations, other than a city, town or parish,
 7 in any county in which either corporation has a usual place of business,
 8 or in which it held its last annual meeting, or usually holds its meetings.

9 (3) If one party is a city, town or parish, and the other a corporation
 10 named in clause (2), in any county in which either party might sue or
 11 be sued.

(4) If one party is a corporation named in clause (1) or (2), and the other an individual, in any county in which the corporation might sue or be sued, or in the county in which the individual lives or has a usual place of business.

Venue of transitory actions by and against city of Boston. 1808, 19, § 1. 1815, 103, § 1. 1828, 13, § 1. R. S. 90, §§ 120, 121.

SECTION 9. An action by or against the city of Boston, except actions mentioned in section seven and actions by the collector of said city under sections thirty-five and thirty-six of chapter sixty, may be brought in Suffolk, Essex, Middlesex or Norfolk county, or in the county in which the plaintiff lives.

1836, 4, § 13. G. S. 123, § 6.

1878, 225. P. S. 161, § 9.

R. L. 167, § 8. 223 Mass. 367.

Transfer from county of Suffolk. 1828, 13, § 1. R. S. 90, §§ 122, 123. 1836, 4, § 13. G. S. 123, § 7. P. S. 161, § 10. 1885, 384, § 14. R. L. 167, § 9. 1931, 426, § 105.

SECTION 10. The defendant in an action brought in Suffolk county by the city of Boston or by its collector may, if the action is brought in the supreme judicial or superior court, within thirty days after the day for appearance, or if the action is commenced in a district court and removed to the superior court, within thirty days after such removal, file a motion in writing for the removal of the action to Essex, Middlesex or Norfolk county; and the court shall thereupon order it to be removed to the same court in such one of said counties as the attorney of the city of Boston elects.

Actions by and against executors, etc. 1865, 13, § 1. P. S. 161, § 2.

SECTION 11. A transitory action by or against an executor or administrator may be brought in a county in which it might have been brought by or against the testator or intestate at the time of his decease.

R. L. 167, § 10.

Actions relative to land in different counties, etc. 1859, 37. G. S. 123, § 2. P. S. 161, § 3. R. L. 167, § 11. 102 Mass. 458.

SECTION 12. If a tract of land lies in two or more counties, an action relative to it, to which neither a county, the city of Boston nor any corporation named in section eight is a party, may be brought in any of said counties, and the declaration shall be so drawn as to include the whole tract.

Change of venue. 1887, 347. R. L. 167, § 12. 208 Mass. 162.

SECTION 13. If the supreme judicial or superior court finds that a party to an action or proceeding pending therein cannot, by reason of local prejudice or other cause, have an impartial trial in the county where the action or proceeding was commenced, it may, upon the application of either party, order it to be removed for trial to another county. Upon the entry of such order, the clerk of the court in which the action or proceeding is pending shall forthwith transmit all the papers in the case and a certified copy of said order to the clerk of the court for the county to which it has been ordered to be removed. The clerk who receives such papers and order shall forthwith enter them on his docket, and the case shall thereupon proceed as if it had been originally commenced in the county to which it has been removed.

Venue for recovery of forfeitures. R. S. 90, § 17. G. S. 123, § 8. P. S. 161, § 11. R. L. 167, § 13. 216 Mass. 344.

SECTION 14. A civil action for the recovery of a forfeiture, except an action in which the commonwealth is plaintiff, or in which money is sought to be recovered for the commonwealth, shall be brought in the county where the offence was committed, unless the statute imposing the forfeiture otherwise provides.

1 SECTION 15. If a local action commenced in the supreme judicial
 2 or superior court has been brought in the wrong county, the court may,
 3 if the error is discovered at the trial, of its own motion order a non-
 4 suit, unless good cause is shown why the trial should be allowed to pro-
 5 ceed; or, if the error is discovered at any stage of the proceedings of an
 6 action, local or transitory, the court may, upon motion of either party,
 7 order the action, with all papers relating thereto, to be removed to the
 8 proper county upon terms to the defendant; and it shall thereupon
 9 be entered and prosecuted in the same court for that county as if it had
 10 been originally commenced therein, and all prior proceedings otherwise
 11 regularly taken shall thereafter be valid.

Erroneous
venue,
1851, 233,
§ 117.
1852, 312, § 80.
G. S. 129, § 70.
1880, 251.
P. S. 161, § 12;
167, § 73.
R. L. 167, § 14.
130 Mass. 335.
133 Mass. 466.
152 Mass. 268.
233 Mass. 162.

FORMS, ISSUING AND RETURN OF WRITS.

1 SECTION 16. Actions at law, unless founded on scire facias or other
 2 special writs, or unless otherwise authorized by statute or by established
 3 practice, shall be commenced by original writs. Such writs shall be
 4 signed, sealed and bear teste as required by the constitution, and shall
 5 be framed either to summon the defendant, with or without an order
 6 to attach his goods or estate, or to attach his goods or estate and, for
 7 want thereof, to take his body; or, in an action commenced by trustee
 8 process, to attach his goods or estate in his own hands and also in the
 9 hands of the trustee. Original writs shall be in the form heretofore
 10 established by law and by the usage and practice of the courts. If
 11 changes in their form are necessary in order to adapt them to changes
 12 in the law, or for any other sufficient reason, the courts may make such
 13 changes, subject to the final control of the supreme judicial court, which
 14 may by general rule regulate such changes in all the courts.

Civil actions,
how com-
menced.
Const pt 2,
c. 6, art 5.
(Const. Rev.
art. 144)
1784, 28.
1794, 65, § 1.
R. S. 90,
§§ 1, 3, 7-9;
109, §§ 2, 3.
G. S. 123,
§§ 9, 10, 13-15;
142, §§ 2, 3.
P. S. 155, § 17;
161, §§ 13, 14,
17-19; 183, § 2.
R. L. 167, § 15.
3 Mass 193.
224 Mass. 9.

1 SECTION 17. A separate summons shall be served on the defendant
 2 after an attachment of property on the writ, and the service thereof
 3 shall be a sufficient service of the original summons.

Separate sum-
mons after
attachment.
C. L. 7, § 1.

1700-1, 20, § 1.	P. S. 161, § 15.	106 Mass. 217.
1797, 50, § 1.	R. L. 167, § 16.	124 Mass. 468.
R. S. 90, § 4.	13 Met. 471.	145 Mass. 340.
G. S. 123, § 11.		

1 SECTION 18. In actions against corporations, and in other actions
 2 in which property may be attached, but in which the defendant is not
 3 liable to arrest, the writ of attachment and original summons may be
 4 combined in one, requiring the officer to attach the goods and estate and
 5 to summon the defendant.

When writ and
summons may
be combined.
R. S. 90, § 5.
G. S. 123, § 12.
P. S. 161, § 16.
R. L. 167, § 17.

3 Mass. 193. 1 Pick. 497.

1 SECTION 19. If the name of a defendant is not known to the plain-
 2 tiff, the writ may be issued against him by a fictitious name, and, if
 3 duly served, shall not be abated for that cause, but may be amended,
 4 and terms may be imposed.

Proceedings if
defendant's
name is
unknown.
R. S. 90, § 54.

G. S. 123, § 16.	R. L. 167, § 18.	142 Mass. 558.
P. S. 161, § 20.	10 Met. 436.	216 Mass. 459.

1 SECTION 20. Writs and processes in the supreme judicial and the
 2 superior court shall be signed, and may be issued, by the clerk, may
 3 be returnable to the same court in any other county, may run, and shall
 4 be executed and obeyed, throughout the commonwealth.

Writs, how
issued.
Const. pt. 2,
c. 6, art. 5.
1820, 79, § 3.

R. S. 82, § 35; 90, §§ 2, 6. 1836, 4, § 9.	G. S. 123, § 17. P. S. 161, § 21.	R. L. 167, § 19. 224 Mass. 9.
--	--------------------------------------	----------------------------------

Subpoena in equity suit, how issued. R. S. 90, § 118. G. S. 123, § 18.

SECTION 21. Subpoenas on bills in equity shall bear teste of the first justice of the court who is not a party to the suit, and shall be under the seal of the court and signed by the clerk.

P. S. 161, § 22.

R. L. 167, § 20.

Writs, when returnable. R. S. 90, § 116. G. S. 123, § 19. P. S. 161, § 23. 1885, 384, § 1. R. L. 167, § 21. 153 Mass. 104.

SECTION 22. An original writ issued by the supreme judicial or superior court, if required to be served fourteen days before the return day, shall be returnable at the election of the plaintiff at any return day which occurs after the expiration of fourteen days from, and within three months after, the date of the writ; and, if required to be served thirty days before the return day, shall be returnable at the election of the plaintiff at any return day which occurs after the expiration of thirty days from, and within three months after, the date of the writ.

Same in district courts. 1892, 148. 1893, 396, § 17. 1894, 398, § 2; 431.

SECTION 23. Except in actions by trustee process, an original writ issued by a district court shall be returnable not more than sixty days after the date thereof.

R. L. 167, § 22.

Return days in supreme judicial and superior courts. R. S. 90, § 116. G. S. 123, § 19. P. S. 161, § 23. 1885, 384, § 1. R. L. 167, § 24. 1907, 176. 1931, 426, § 106. 153 Mass. 104.

SECTION 24. The first Monday of every month shall be a return day in every county for writs, processes, notices to appear and citations in all actions, suits and other civil proceedings in the supreme judicial court and the superior court, and for the entry in the superior court of actions appealed from district courts. If said first Monday is a legal holiday, such writs, processes, notices and citations shall be returned, and such suits entered, on the day following. Such writs, processes, notices and citations may be made returnable, at the election of the party who takes out the same, at any return day within three months after the date thereof; but said courts may make them returnable at other times. If they issue out of the supreme judicial court for Dukes or Nantucket county, they shall be returnable in Bristol county.

Return days in district, etc., courts. 1893, 396, § 22. R. L. 167, § 25. 1908, 338. 1921, 338.

SECTION 25. Saturday of each week shall be the return day for writs, processes, notices to appear and citations in all civil actions and proceedings in district courts, and if said Saturday is a legal holiday, such writs, processes, notices to appear and citations shall be returned, and such actions entered, on the next business day following; but said courts may make them returnable at other times. When the court is required to be held at two or more places, writs shall be made returnable at the place where the clerk's office is kept, except that when the regular session of the court for the trial of civil cases is held upon the return day at some other place, such writs may be made returnable at the place where such session is held, and notices and citations may be made returnable at any place appointed by law for holding the court.

SERVICE ON DEFENDANT.

Directions for attachment or arrest. R. S. 90, § 56. G. S. 123, § 107. P. S. 161, § 26. R. L. 167, § 26. 4 Mass. 60.

SECTION 26. If the writ requires the officer to attach the goods or estate of the defendant and for want thereof to take his body, the plaintiff or his attorney may by written or verbal directions require the officer to serve the writ by an attachment of goods or estate or by the arrest of the defendant, if such arrest is authorized, and the officer shall serve the writ according to such directions.

1 SECTION 27. An original writ issued by the supreme judicial or the
 2 superior court shall be served fourteen days at least before the return
 3 day. An original writ issued by a district court may be directed to and
 4 served by any officer qualified to serve civil process in actions involving
 5 the amount of damages claimed in the writ, and shall be served not less
 6 than seven nor more than sixty days before the return day; but if such
 7 writ is to be served in a county other than that in which the court issuing
 8 it is held, it shall, except in trustee process, be served at least fourteen
 9 days before the return day.

5 Met. 334.

12 Cush. 78.

Service of
 original writs
 C. L. 330, § 4.
 1699-1700,
 3, § 4.
 1783, 42, § 1.
 R. S. 85, § 8;
 90, § 21.
 G. S. 123, § 21.
 P. S. 154, § 16;
 161, § 27.
 1893, 396, § 17.
 1894, 398, § 2.
 R. L. 167, § 27.

1 SECTION 28. A writ in an action against a county, city, town, parish
 2 or religious society, or against proprietors of wharves, general fields or
 3 real estate lying in common, who are incorporated, or against a foreign
 4 fraternal benefit society, shall be served thirty days at least before the
 5 return day, except that when a county, city, town, parish or religious
 6 society is summoned as a trustee, or the incorporated proprietors of
 7 wharves, general fields or real estate lying in common are summoned
 8 as trustees, by a writ which is issued by a district court, it shall be served
 9 seven days at least before the return day.

Service on
 county, etc.
 1694-5, 15, § 3.
 1726-7, 15, § 3.
 1783, 39, § 6.
 1785, 75, § 8.
 R. S. 90, § 22.
 G. S. 123, § 22.
 P. S. 161, § 28.
 R. L. 167, § 28.
 1906, 201, § 1.
 1911, 628, § 17.
 1920, 530, § 2.
 109 Mass. 313.

1 SECTION 29. A separate summons which is served after an attach-
 2 ment of property shall be served by delivering it to the defendant or
 3 by leaving it for him as hereinafter provided; and an original summons
 4 without an attachment shall be served by reading it to the defendant,
 5 by delivering to him a copy thereof attested by the officer who serves
 6 it or by leaving such copy for him as hereinafter provided.

135 Mass. 411.

145 Mass. 340.

171 Mass. 303.

Service of
 summons.
 1797, 50, § 1.
 R. S. 90, § 30.
 G. S. 123, § 23.
 P. S. 161, § 29.
 R. L. 167, § 29.
 13 Met. 471.
 124 Mass. 468.

1 SECTION 30. The separate summons may be served at any time
 2 after the attachment has been made, if it is served the number of days
 3 before the return day required for the service of the original writ; and
 4 a certificate of the service of the summons shall be endorsed on the
 5 original writ.

Same subject
 R. S. 90, § 40.
 G. S. 123, § 24.
 P. S. 161, § 30.
 R. L. 167, § 30.

1 SECTION 31. If the summons is not served personally on the de-
 2 fendant, the original or a copy, as the case may be, shall be left at his
 3 last and usual place of abode, if he has any within the commonwealth
 4 known to the officer. If he has none, it shall be left with his tenant,
 5 agent or attorney, if he has any within the commonwealth known to
 6 the officer. If he has no such last and usual place of abode and no
 7 tenant, agent or attorney, no service on him shall be required except as
 8 provided in the three following sections.

13 Gray, 270.
 15 Gray, 353.

131 Mass. 359.
 149 Mass. 488.

144 Mass. 10.
 147 Mass. 536.

188 Mass. 80.
 230 Mass. 254.

Service by
 leaving, etc.
 1700-1, 29, § 1
 1736-7, 12.
 1797, 50,
 §§ 1, 3.
 R. S. 90,
 §§ 41, 45.
 G. S. 123,
 P. S. 161, § 31.
 R. L. 167, § 31
 6 Cush. 354

1 SECTION 32. If an absent defendant whose property has been at-
 2 tached is sued with one or more others on a joint contract, and he has
 3 no such last and usual place of abode and no tenant, agent or attorney,
 4 within the commonwealth, the summons for him shall be left with one
 5 of the co-defendants, if there is any within the commonwealth.

G. S. 123, § 26.
 P. S. 161, § 32.

R. L. 167, § 32.
 6 Cush. 354.

3 Gray, 508.

Service of sum-
 mons on absent
 defendant, if
 co-defendant
 here
 1797, 50, § 6.
 R. S. 90, § 46.

1 SECTION 33. If the tenant in a real action is out of the common-
 2 wealth and has no last and usual place of abode here known to the

Service in real
 action against
 absent tenant.

1700-1, 20, § 2. demandant, the summons or an attested copy shall, in addition to any 3
 R. S. 90, § 47. other service required, be left for him with the tenant or occupant, if 4
 G. S. 123, § 27. any, of the land demanded; otherwise, it shall be left in a conspicuous 5
 P. S. 161, § 33. place on the land. 6
 R. L. 167, § 33.
 11 Met. 370.
 2 Cush. 32.

Further notice to absent defendant. SECTION 34. If the defendant is out of the commonwealth, or if his 1
 residence is not known to the officer, and no personal service is made 2
 R. S. 90, § 48. on him or on his agent appointed under section five of chapter two hun- 3
 G. S. 123, § 28. dred and twenty-seven, he shall, in addition to the service herein pre- 4
 P. S. 161, § 34. scribed, be entitled to further notice of the action as provided in said 5
 R. L. 167, § 34. section. 6
 1908, 528, § 1.
 11 Met. 370.
 9 Gray, 311.
 10 Gray, 164.

12 Gray, 198.

4 Allen, 94.

105 Mass. 93.

188 Mass. 80.

Officer to state in return place of leaving summons, etc. SECTION 35. When a writ, bill, petition or complaint in law or 1
 equity, or any order thereon, is served by an officer by leaving the 2
 summons, subpoena or copy thereof at the last and usual place of abode 3
 of any person, the officer serving the same shall state in his return the 4
 place as definitely as is practicable, giving, if possible, the street and 5
 number, where service was made. 6

Service on corporations, etc., by copy, etc. SECTION 36. Process against a county, city, town, corporation, body 1
 corporate, joint stock association, voluntary association described in 2
 chapter one hundred and eighty-two, parish or religious society, pro- 3
 prietors of wharves, general fields or real estate lying in common, who 4
 are incorporated, executor, administrator, guardian, conservator, re- 5
 ceiver, trustee or assignee shall be served by copy or by copy and 6
 summons. 7

Actions against corporations, person upon whom service shall be made. SECTION 37. In an action against a county, city, town, parish or 1
 religious society, or against the proprietors of wharves, general fields or 2
 real estate lying in common, who are incorporated, service shall be made 3
 upon the treasurer thereof, or if no treasurer is found, upon one of the 4
 county commissioners, the city clerk or one of the aldermen, the town 5
 clerk or one of the selectmen, upon one of the assessors or standing com- 6
 mittee of the parish or religious society, or upon one of the proprietors 7
 of such land or other estate, as the case may be. If there are no such 8
 officers as are mentioned in this section, service shall be made upon one 9
 of the inhabitants of the county, city or town, or upon one of the mem- 10
 bers of the corporation. In an action against a domestic corporation 11
 other than those mentioned heretofore in this section, service shall be 12
 made upon the president, treasurer, clerk, cashier, secretary, agent or 13
 other officer in charge of its business, or, if no such officer is found within 14
 the county, upon any member of the corporation. 15

Service on foreign corporations. SECTION 38. In an action against a foreign corporation, except an 1
 insurance company, which has a usual place of business in the common- 2
 wealth, or, with or without such usual place of business, is engaged in or 3
 soliciting business in the commonwealth, permanently or temporarily, 4
 service may be made in accordance with the provisions of the preceding 5
 section relative to service on domestic corporations in general, instead 6
 of upon the commissioner of corporations and taxation under section 7
 three of chapter one hundred and eighty-one. 8

1 SECTION 39. In an action against a foreign insurance company
 2 transacting business in this commonwealth, service may be made upon
 3 an agent of the company, licensed as such in the commonwealth, who,
 4 having authority to issue policies and bind risks for the company, has
 5 issued the policy the liability on which is sought to be enforced, or an
 6 agent who lives or has his usual place of business in the county and has
 7 control over or superintendence of subordinate agents of the company,
 8 instead of on the commissioner of insurance under clause third of section
 9 one hundred and fifty-one of chapter one hundred and seventy-five.

Service on
 foreign insur-
 ance company.
 1914, 626.
 132 Mass. 432.
 144 Mass. 81.
 191 Mass. 115.

1 SECTION 39A. In an action against insurance companies severally
 2 liable upon a policy of insurance issued under section one hundred and
 3 two A, one hundred and eleven A or one hundred and seventeen A of
 4 chapter one hundred and seventy-five, or jointly and severally liable
 5 upon a policy of insurance issued under said section one hundred and
 6 eleven A, or in a suit against insurance companies brought by a judg-
 7 ment creditor under section one hundred and thirteen of said chapter one
 8 hundred and seventy-five and clause ten of section three of chapter two
 9 hundred and fourteen under a policy of liability insurance issued under
 10 said section one hundred and eleven A, service upon any one of said
 11 companies shall be a valid and sufficient service upon all of such com-
 12 panies as are named in the process. Such service, if on a domestic com-
 13 pany, shall be made in the manner provided in this chapter and, if on a
 14 foreign company, in the manner provided in section thirty-nine of
 15 this chapter, or in the third clause of section one hundred and fifty-one
 16 and section one hundred and fifty-four of said chapter one hundred and
 17 seventy-five.

Service on
 certain insur-
 ance com-
 panies sever-
 ally, or jointly
 and severally
 liable
 1924, 285, § 5.
 1925, 164, § 3.
 1928, 80, § 4.

1 SECTION 40. In an action against a voluntary association or trust
 2 described in section one of chapter one hundred and eighty-two, engaged
 3 in business in the commonwealth, service may be made upon any trustee
 4 or like officer thereof.

Service on
 certain volun-
 tary associa-
 tions.
 1916, 184.

1931, 426, § 295.

1 SECTION 41. A writ of original summons or subpoena issued in a suit
 2 in equity shall be served the same number of days before the return day
 3 and in the same manner as an original writ in an action at law in the
 4 same court.

Service of sum-
 mons in suits
 in equity.
 R. S. 90,
 §§ 118, 119.

G. S. 123, § 31.

P. S. 161, § 37.

R. L. 167, § 37.

ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.

1 SECTION 42. All real and personal property liable to be taken on
 2 execution, except such personal property as, from its nature or situa-
 3 tion, has been considered as exempt according to the principles of the
 4 common law as adopted and practiced in the commonwealth, and ex-
 5 cept as provided in the three following sections, may be attached upon
 6 the original writ in any action in which debt or damages are recoverable,
 7 and may be held as security to satisfy such judgment as the plaintiff may
 8 recover; but no attachment of land shall be made on a writ returnable
 9 before a district court unless the debt or damages demanded therein
 10 exceed twenty dollars.

Property liable
 to attachment.
 1735-6, 9, § 1.
 1783, 57, § 4.
 1798, 77, § 3.
 R. S. 90, §§ 23,
 24.
 1853, 269, § 2.
 1859, 183.
 G. S. 123, § 32.
 P. S. 161, § 38.
 R. L. 167, § 38.
 7 Mass. 123.
 11 Mass. 184.
 17 Mass. 405.
 3 Pick. 368.

16 Pick. 144.
 2 Met. 510.
 10 Cush. 269.
 8 Gray, 517.
 14 Gray, 220.
 8 Allen, 583.
 99 Mass. 172.

101 Mass. 105.
 106 Mass. 505.
 119 Mass. 241.
 190 Mass. 522.
 198 Mass. 315.
 214 Mass. 466.
 225 Mass. 217.

230 Mass. 197.
 233 Mass. 481.
 242 Mass. 321.
 256 Mass. 250.
 258 Mass. 402.
 267 Mass. 274.
 272 Mass. 334.

Attachment of cars and vessels. 1875, 144. P. S. 161, § 39. R. L. 167, § 39. 1906, 463, l. § 61. 140 Mass. 131. 187 Mass. 596. 220 Mass. 285.

SECTION 43. Railroad cars and engines and street railway cars, in use and making regular passages on railroads or railways, and steamboats so in use upon water routes, shall not be attached upon mesne process unless the officer who makes the attachment has first demanded of the owners or managers thereof other property, upon which to make it, equal in value to the ad damnum in the writ, and such owners or managers have refused or neglected to comply with said demand; except that a steamboat so in use may be attached, if the attachment is made more than forty-eight hours before its fixed time of departure. Such attachment shall be void unless the officer certifies in his return that he has made such demand and that the owners or managers have refused or neglected to comply therewith.

Declaration to be inserted in writ, etc., before attachment of ship or vessel. 1881, 124. P. S. 161, § 39. R. L. 167, § 39. 1931, 426, § 296.

SECTION 44. No ship or vessel shall be attached on mesne process in an action at law unless a declaration is inserted in the writ before service thereof, nor unless the plaintiff or a person in his behalf makes affidavit and proves to the satisfaction of a justice of a court or a master in chancery that he has a good cause of action and reasonable expectation of recovering an amount, exclusive of all costs, equal to at least one third the damages demanded in such writ, which affidavit and the certificate of the magistrate that he is satisfied that the same is true shall be annexed to the writ.

Property of newspaper offices. 1890, 377. R. L. 167, § 40.

SECTION 45. The press, type, stands, cases, paper and other personal property used in printing and publishing newspapers shall not, within forty-eight hours previous to the issue of any edition of a newspaper, be attached upon mesne process unless the officer who makes the attachment has, at least twenty-four hours previously thereto, demanded of the owners or managers thereof other property, upon which to make it, equal in value to the amount of the ad damnum of the writ and such owners or managers have refused or neglected to comply with such demand. Such attachment shall be void unless the officer certifies in his return that he has made such demand, the time when it was made and that it has not been complied with. Such attachment, made after such demand, shall take effect from the time demand was made, so as to take priority of any mortgage, pledge, conveyance or attachment made subsequent to such demand.

Attaching officer may require security. 1921, 425, § 1.

SECTION 45A. If there is reasonable doubt as to the ownership of personal property or as to its liability to be attached on mesne process, before or after the attachment has been made, the officer may require sufficient security from the plaintiff to indemnify him for attaching or continuing to hold the same. If sufficient security is not furnished within a reasonable time after the officer has made a written demand upon the plaintiff or his attorney, the officer may refuse to attach such property or, if he has attached it, may release it from attachment, without liability to the plaintiff therefor.

Successive attachments on the same writ. R. S. 90, § 55. G. S. 123, § 33.

SECTION 46. Successive attachments may be made upon the same writ by one or more officers and in one or more counties, before, but not after, service of the summons.

1 SECTION 47. Personal property which has been attached or taken on
 2 execution by a constable may be further attached or taken on execution
 3 by a deputy sheriff or other competent officer, upon any writ of attach-
 4 ment or execution which such constable is not qualified to serve; and
 5 thereupon such constable shall make return upon and deliver his writ
 6 or execution, with the possession of the property, to such deputy sheriff
 7 or other officer, who shall complete the service thereof. If such writ of
 8 attachment has been returned into court, the constable shall file in the
 9 case a certificate of the fact of such surrender of possession.

Successive
 attachments on
 different writs.
 1870, 310.
 P. S. 161, § 41.
 R. L. 167, § 42.
 210 Mass. 90.

1 SECTION 48. The officer, if necessary, may appoint a keeper of per-
 2 sonal property which has been attached or taken on execution, and in
 3 such case shall, upon the written request of the defendant, remove such
 4 property or the keeper without unreasonable delay.

Keeper.
 1878, 272,
 §§ 1, 2.
 P. S. 161, § 42.
 R. L. 167, § 43.

16 Pick. 144. 155 Mass. 259. 208 Mass. 579. 258 Mass. 264.
 122 Mass. 541. 194 Mass. 317. 245 Mass. 204.

1 SECTION 49. Personal property which has been attached may, sub-
 2 ject to the preceding section, be kept on the premises where it is found,
 3 unless the owner or occupant of the premises in writing requests the
 4 officer to remove his keeper therefrom; and if the defendant in writing
 5 requests the officer to allow property which has been attached on the
 6 premises of the defendant to remain there until he may give bond to
 7 dissolve the attachment, the property shall not be removed until he has
 8 had reasonable opportunity to give such bond.

Property to
 remain on
 premises in
 certain cases.
 1878, 272, § 3.
 P. S. 161, § 43.
 R. L. 167, § 44.
 12 Gray, 401.
 101 Mass. 467.
 120 Mass. 228.
 136 Mass. 123.
 155 Mass. 259.

208 Mass. 579.

1 SECTION 50. If an attachment is made of articles of personal property
 2 which, by reason of their bulk or for other cause, cannot be immediately
 3 removed, a certified copy of the writ, without the declaration, and of
 4 the return of the attachment, may, within three days after the attach-
 5 ment, be deposited in the office of the clerk of the town where it is made;
 6 and such attachment shall be as valid and effectual as if the articles had
 7 been retained in the possession and custody of the officer.

Attachment of
 bulky goods.
 R. S. 90, §§ 33,
 34.
 G. S. 123, § 57.
 P. S. 161, § 69.
 R. L. 167, § 45.
 8 Pick. 402.
 2 Met. 36.
 4 Cush. 425.
 2 Allen, 185.

4 Allen, 329. 140 Mass. 131. 177 Mass. 526.
 10 Allen, 114. 150 Mass. 158. 191 Mass. 494.
 118 Mass. 592. 157 Mass. 384. 208 Mass. 579.
 119 Mass. 241. 170 Mass. 142. 210 Mass. 90.

1 SECTION 51. The clerk of the town shall receive and file all such
 2 copies, noting thereon the time when received, and keep them safely in
 3 his office, and also enter a memorandum thereof, in the order in which
 4 they are received, in the books kept for recording mortgages of personal
 5 property. Such entry shall contain the names of the parties to the ac-
 6 tion and the date of the entry. The clerk's fee for this service shall be
 7 twenty-five cents, which shall be paid by the officer and included in his
 8 charge for the service of the writ.

Same subject.
 R. S. 90, § 35.
 G. S. 123, § 58.
 P. S. 161, § 70.
 R. L. 167, § 46.

1 SECTION 52. If personal property has been sold or disposed of by
 2 consent of the parties, or after an appraisal as hereinafter provided, the
 3 proceeds, while remaining in the hands of the officer, shall be liable to
 4 be further attached by him as the property of the original defendant, in
 5 the manner in which the property itself might have been attached; and
 6 shall be held and disposed of in the same manner as if the attachment
 7 had been made on the property itself before the sale thereof. The fore-
 8 going provision shall not prevent the officer from paying over to the

Attachment of
 proceeds of
 property sold.
 1822, 93, § 5.
 R. S. 90, §§ 71,
 72.
 G. S. 123, § 34.
 P. S. 161, § 44.
 R. L. 167, § 47.

	defendant the surplus of the proceeds of such sale, after retaining enough to satisfy all the attachments actually existing at the time of such payment.	9 10 11
Further attachment of property replevied. R. S. 90, § 99. G. S. 123, § 35. P. S. 161, § 45.	SECTION 53. Property which has been replevied from an officer who has attached it shall be considered as remaining in his custody and control so as to be liable to further successive attachments, as if it had remained in his possession.	1 2 3 4
	R. L. 167, § 48.	
Plaintiff in replevin liable for value. R. S. 90, § 100. G. S. 123, § 36. P. S. 161, § 46. R. L. 167, § 49.	SECTION 54. If there is judgment for a return of the property so replevied, the plaintiff in replevin and his sureties shall be liable for the whole of the property or the value thereof, although the attachment for which it is finally held was made after the property was replevied.	1 2 3 4
Attachment after death, etc., of first attaching officer. R. S. 90, § 101. G. S. 123, § 37. P. S. 161, § 47. R. L. 167, § 50.	SECTION 55. If an officer dies or is removed from office while an attachment which he has made remains in force, the attached property, whether replevied or remaining in possession of the officer or of his executor or administrator, may be further attached by any other officer so as to bind it or its proceeds, as if the later attachment had been made by the first mentioned officer.	1 2 3 4 5 6
Proceedings in such case. R. S. 90, §§ 102, 103. G. S. 123, § 38. P. S. 161, § 48. R. L. 167, § 51.	SECTION 56. The officer who makes such later attachment shall not take the property itself, but he shall make a return of an attachment in the common form, stating by whom the property was previously attached, and, if it has not been replevied, shall leave a certified copy of the writ, without the declaration, and of the return of that attachment with the former officer, if living, or, if he is dead, with his executor or administrator or whoever then has possession of the property. If the property has been replevied, and the officer who made the original attachment is dead, such copy shall be left with his executor or administrator or with the plaintiff in replevin. The attachment shall be considered as made when such copy is delivered in any of the modes provided in this section.	1 2 3 4 5 6 7 8 9 10 11 12
Mode of attaching replevied property. R. S. 90, § 104. G. S. 123, § 39. P. S. 161, § 49. R. L. 167, § 52.	SECTION 57. Property which has been replevied from an attaching officer shall not be further attached as the property of the original defendant in any manner other than is provided in the four preceding sections and in section forty-seven, so long as it is held by the plaintiff in replevin or by any person holding under him, unless the original defendant has acquired a new title thereto.	1 2 3 4 5 6
Attachment to continue after death of attaching officer. R. S. 90, § 95. G. S. 123, § 40. P. S. 161, § 50. R. L. 167, § 53.	SECTION 58. Property which has been attached by an officer, whether in his custody at his death or taken from him by replevin or otherwise, and also all claims for damages to property so taken from him, shall remain subject to the attachment as if the officer had lived, and shall not be considered as assets in the hands of his executor or administrator.	1 2 3 4 5
Attachment effective for thirty days after judgment. C. L. 144, § 1. 1701-2, 5, § 11. 1784, 28, § 11.	SECTION 59. Property which has been attached shall be held for thirty days after final judgment for the plaintiff or claimant so that it may be taken on execution, unless the attachment is sooner dissolved; but if attached in Nantucket county and judgment is rendered in an-	1 2 3 4

5 other county, or if judgment is rendered in Nantucket county and it was 1806, 107.
 6 attached in another county, it shall be held in like manner, subject to R. S. 90, § 25.
 7 the same condition, for sixty days after final judgment. G. S. 123, § 42.

P. S. 161, § 52.	106 Mass. 505.	233 Mass. 481.
R. L. 167, § 55.	118 Mass. 514.	240 Mass. 1.
11 Mass. 204.	198 Mass. 37.	

1 SECTION 60. Property which has been attached in suits in equity Same in equity
 2 shall be held for thirty days after the right of appeal from a final decree for thirty days
 3 expires. If an appeal is claimed from a final decree and subsequently after right of
 4 waived or dismissed, property attached in the suit shall be held until appeal has
 5 thirty days after such waiver or dismissal, and the time for doing any expired
 6 act or thing ordered to be done within a specified period from the entry 1877, 178, § 6.
 7 of the final decree shall be computed from the date of such waiver or P. S. 161, § 53.
 8 dismissal. R. L. 167, § 56.
 1967, 546, § 2.
 224 Mass. 501.

1 SECTION 61. "Final judgment", as used in sections fifty-nine, one Final judgment
 2 hundred and fifteen, one hundred and twenty, one hundred and twenty- defined
 3 five to one hundred and twenty-seven, inclusive, shall mean that which R. S. 90, § 27.
 4 is rendered in the original action, whether upon appeal or otherwise, and G. S. 123, § 44.
 5 not such as may be rendered upon a writ of error or writ of review. P. S. 161, § 55.
 R. L. 167, § 57.
 167 Mass. 222.
 174 Mass. 349.

ATTACHMENT OF REAL ESTATE AND LEASEHOLDS.

1 SECTION 62. In attaching land, or a right or interest therein, the Attachment of
 2 officer need not enter upon the land or be within view of it. In attach- land and
 3 ing leasehold estates, the officer shall state in his return in general terms leaseholds.
 4 the leasehold property attached. R. S. 90, § 31.
 1847, 267, § 3.

G. S. 123, § 50.	10 Mass. 421.	2 Met. 510.	13 Met. 200.
P. S. 161, § 61.	13 Mass. 128.	10 Met. 138.	142 Mass. 206.
R. L. 167, § 58.	11 Pick. 341.		

1 SECTION 63. No attachment on mesne process of land or of any Deposit of copy
 2 leasehold estate shall be valid against a subsequent attaching creditor, of writ.
 3 or against a subsequent purchaser in good faith and for value, unless R. S. 90, § 28.
 4 the officer deposits a certified copy of the original writ, without the 1839, 89.
 5 declaration, and so much of his return thereon as relates to the attach- 1847, 267, § 3.
 6 ment of the estate, in the registry of deeds for the county or district G. S. 123, § 51.
 7 where the land lies. 1870, 264, § 1.
 1873, 297, § 1.
 P. S. 161, § 62.
 1889, 401.

R. L. 167, § 59.	10 Met. 138.	129 Mass. 27.	262 Mass. 284.
1 Met. 212.	11 Met. 244.	240 Mass. 225.	

1 SECTION 64. The officer who makes such attachment shall deposit Duty of officer.
 2 such copy in the registry of deeds.

1838, 186.	G. S. 123, § 52.	P. S. 161, § 63.	129 Mass. 27.
1839, 89.	1870, 264, § 1.	R. L. 167, § 60.	240 Mass. 225.
1847, 267, § 3.	1873, 297, § 1.		

1 SECTION 65. The register of deeds shall note on every such copy the Duty of
 2 day, hour and minute of its receipt, and shall file it in his office. He shall register.
 3 also enter in a book which he shall keep for that purpose the name of the R. S. 90, § 30.
 4 plaintiff and the name or names of each defendant whose land is attached 1856, 209.
 5 as the same appear in such copy, the time when the attachment was made G. S. 123, § 53.
 6 and the time when the copy was deposited. His fees may be taxed as 1870, 264, § 2.
 7 part of the plaintiff's costs. If a dissolution of an attachment which has 1873, 297, § 2.
 P. S. 161, § 64.
 R. L. 167,
 § 61.
 1929, 131, § 2.
 10 Allen, 491.

118 Mass. 517.
130 Mass. 16.

been so entered in a registry of deeds appears of record in the court in 8
which the action is pending, the clerk of such court shall forward to such 9
register a certificate of such dissolution, stating how such dissolution was 10
made, and the register shall file the certificate with the copy of the writ 11
and shall make an entry thereof in his docket of attachments. 12

When attach-
ment takes
effect.
R. S. 90, § 29.
G. S. 123, § 54.
1860, 70.
P. S. 161, § 65.
R. L. 167, § 62.
1907, 370.
1929, 131, § 1.
10 Allen, 494.
129 Mass. 27.
158 Mass. 385.
262 Mass. 284.
263 Mass. 371.

SECTION 66. If the copy of the writ is deposited, as aforesaid, within 1
three days after the day when the attachment was made the attachment 2
shall take effect from the time it was made, otherwise, from the time when 3
the copy is so deposited; but attachments of land, and of leasehold 4
estates which have an original term of more than seven years, shall in no 5
case be valid against purchasers in good faith and for value, other than 6
parties defendant, before the time when the copy is deposited as aforesaid, 7
and no attachment shall be valid against such purchasers as to any par- 8
ticular parcel of land, or as to any particular leasehold estate as aforesaid, 9
in any case where the name of the owner thereof under which he acquired 10
title thereto as appears on the public records is not included in the writ 11
unless the writ is seasonably amended to include such name and then 12
only from the time when a correspondingly amended copy is deposited as 13
aforesaid. 14

Attachment of
land fraudu-
lently con-
veyed, etc.
1844, 107, § 2.
1855, 453.
G. S. 123, § 55.
P. S. 161, § 66.
R. L. 167, § 63.
1918, 257,
§ 425.
1919, 5.
1920, 2.
6 Gray, 520.
11 Gray, 217.
9 Allen, 101.
99 Mass. 478.
118 Mass. 517.
128 Mass. 427.
130 Mass. 578.
147 Mass. 23.
189 Mass. 390.
225 Mass. 217.
230 Mass. 197.
233 Mass. 158.
267 Mass. 274.

SECTION 67. If an attachment on mesne process is made of land, or 1
of a right or interest therein, which has been fraudulently conveyed by 2
the debtor to a third person, or which has been purchased by the debtor, 3
or the purchase money of which has been directly or indirectly paid by 4
him, and the title thereto has been retained in the vendor or conveyed 5
to another person, with the intent and for the purpose of fraudulently 6
securing the land from attachment by a creditor of such debtor, or with 7
the intent and for the purpose of delaying, defeating or defrauding 8
creditors, or which is held on a trust for the debtor, express or implied, 9
whereby he is entitled to a present conveyance, it shall not be valid 10
against a subsequent attaching creditor, or against a subsequent pur- 11
chaser in good faith and for value, unless the officer in addition to the 12
return required by sections sixty-two and sixty-three also returns a brief 13
description of the land which has been attached, by its locality, situation, 14
boundaries or otherwise as known to him, and the names of the persons 15
in whom the record or legal title stands. 16

Entry of name
of holder of
legal title, etc.
1844, 107, § 3.
G. S. 123, § 56.
1870, 264, § 1.
1873, 297, § 1.
P. S. 161, § 67.
R. L. 167, § 64.
118 Mass. 517.
189 Mass. 390.

SECTION 68. The register in such case, in addition to the names of 1
the parties to the writ which he is required to enter as provided in 2
section sixty-five, shall also enter in his docket of attachments the 3
names of the persons in whom the record or legal title stands, as re- 4
turned by the officer, in the same manner as if the estate of such persons 5
were attached as defendants in the writ. 6

225 Mass. 217.

Duties of
registers as to
papers in
actions in
United States
courts.
1873, 297, § 3.
P. S. 161, § 68.
R. L. 167, § 65.

SECTION 69. Registers of deeds shall perform the same duties rela- 1
tive to the filing and entering of copies of writs and other papers in 2
actions commenced in the courts of the United States which affect the 3
title to land by attachment or otherwise as are required relative to the 4
filing and entering of such papers in such actions commenced in the 5
courts of the commonwealth. 6

1 SECTION 70. An attachment of land which is subject to a mortgage
 2 or other encumbrance shall, if the mortgage is redeemed or the encum-
 3 brance is removed before the levy of the execution, hold the land dis-
 4 charged of the mortgage or encumbrance, and execution may be levied
 5 in the same manner and with the same effect as if it had never existed.

Attachment of
 encumbered
 land.
 1815, 137, § 3.
 R. S. 90, § 32.
 G. S. 123, § 41.
 P. S. 161, § 51.
 R. L. 167, § 54.
 106 Mass. 505.

ATTACHMENT OF SHARES OF STOCK.

1 SECTION 71. Shares of stock shall not be attached in an action at
 2 law.

Attachment of
 shares of stock.

1910, 171, § 13.

222 Mass. 27.

234 Mass. 279.

ATTACHMENT OF PROPERTY IN POSSESSION OF BAILEE.

1 SECTION 72. If goods are delivered to a carrier or other bailee by
 2 the owner or by a person whose act in conveying title to a purchaser in
 3 good faith for value would bind the owner and a negotiable document
 4 of title is issued for them, they cannot thereafter, while in the possession
 5 of such bailee, be attached by trustee process or otherwise, or be levied
 6 upon, unless the document be first surrendered to the bailee or its negotia-
 7 tion enjoined. The bailee shall not be compelled to deliver up the actual
 8 possession of the goods until the document is surrendered to him or im-
 9 pounded by the court.

No attachment
 or levy of goods
 for which a
 negotiable
 document of
 title is out-
 standing.
 1907, 582, § 26.
 1908, 237, § 39.
 1910, 214, § 24.
 211 Mass. 146.
 214 Mass. 466.
 230 Mass. 285.
 234 Mass. 477.

244 Mass. 425.

1 SECTION 73. Except as provided in the preceding section, property
 2 in the possession of a carrier or warehouseman may be attached by
 3 trustee process or otherwise; but if the bill of lading or receipt, though
 4 non-negotiable, has been transferred, and the carrier or warehouseman
 5 notified of the transfer, the title of the transferee shall not be defeated
 6 by an attachment in a suit against a prior owner of the goods.

Attachment of
 property in
 possession of
 carrier or
 warehouseman.
 1907, 582, § 43.
 1910, 214, § 33.
 211 Mass. 146.
 214 Mass. 466.

234 Mass. 477.

ATTACHMENT OF ENCUMBERED PERSONALTY.

1 SECTION 74. Personal property of a debtor which is subject to a
 2 mortgage, pledge or lien, and of which he has the right of redemption,
 3 may be attached and held as if it were unencumbered, if the attach-
 4 ing creditor pays or tenders to the mortgagee, pledgee or holder of the
 5 property the amount for which it is so liable within ten days after de-
 6 mand as hereinafter provided.

Attachment of
 mortgaged
 property.
 1829, 124, § 2.
 R. S. 90, § 78.
 1844, 148, § 1.
 G. S. 123, § 62.
 P. S. 161, § 74.
 R. L. 167, § 69.

3 Met. 268.
 11 Met. 226.
 13 Met. 204.
 1 Cush. 278.
 3 Cush. 306.
 10 Gray, 334.
 14 Gray, 566.
 1 Allen, 29.
 6 Allen, 89, 295.

106 Mass. 114.
 110 Mass. 28, 167, 365.
 119 Mass. 535.
 122 Mass. 303.
 137 Mass. 132.
 142 Mass. 15.
 143 Mass. 123.
 145 Mass. 277.
 159 Mass. 203.

188 Mass. 70.
 203 Mass. 480.
 205 Mass. 576.
 217 Mass. 555.
 232 Mass. 428.
 253 Mass. 383, 472.
 258 Mass. 264.
 264 Mass. 519.
 269 Mass. 303.

1 SECTION 75. The mortgagee, pledgee or holder shall, when demand-
 2 ing payment of the money due to him, state in writing a just and true
 3 account of the debt or demand for which the property is liable to him
 4 and deliver it to the attaching creditor or officer. If the same is not
 5 paid or tendered to him within ten days thereafter, the attachment shall
 6 be dissolved, the property shall be restored to him and the attaching

Mortgagee to
 state account.
 1829, 124, § 3.
 R. S. 90, § 79.
 1844, 148, § 1.
 G. S. 123, § 63.
 P. S. 161, § 75.
 R. L. 167, § 70.
 23 Pick. 321.
 1 Met. 172, 294,
 323, 515.

3 Met. 144, 268. creditor shall be liable to him for any damages he has sustained by the 7
 10 Met. 7. attachment. 8
 11 Met. 226.

- | | | |
|--------------------|---------------------|---------------------|
| 12 Met. 308, 333. | 98 Mass. 510. | 170 Mass. 517, 523. |
| 13 Met. 204 | 100 Mass. 323. | 184 Mass. 547. |
| 3 Cush. 306, 575. | 103 Mass. 335. | 188 Mass. 146. |
| 11 Cush. 348. | 105 Mass. 49. | 203 Mass. 480. |
| 1 Gray, 254 | 106 Mass. 114. | 205 Mass. 576. |
| 3 Gray, 490. | 110 Mass. 28, 365. | 216 Mass. 197. |
| 4 Gray, 550. | 111 Mass. 273. | 217 Mass. 555. |
| 8 Gray, 218. | 125 Mass. 164, 582. | 232 Mass. 428. |
| 10 Gray, 37. | 136 Mass. 515. | 244 Mass. 447. |
| 14 Gray, 123, 566. | 140 Mass. 134 | 253 Mass. 472. |
| 1 Allen, 29. | 145 Mass. 270, 571. | 255 Mass. 270. |
| 3 Allen, 211, 427. | 151 Mass. 497. | 258 Mass. 264. |
| 6 Allen, 80, 295. | 157 Mass. 228. | 264 Mass. 519. |
| 14 Allen, 222. | 166 Mass. 1. | 269 Mass. 303. |

Penalty for excessive demand. SECTION 76. If he demands and receives more than the amount due 1
 1829, 124, § 3. to him, he shall be liable to the attaching creditor for money had and 2
 R. S. 90, § 80. received for the excess, with interest thereon at the rate of twelve per 3
 G. S. 123, § 64. cent a year. 4
 P. S. 161, § 76.
 R. L. 167, § 71.

11 Cush. 348.

Debt to be repaid out of proceeds of sales. SECTION 77. If property which has been attached and redeemed by 1
 R. S. 90, § 81. the attaching creditor, as aforesaid, is sold on mesne process or on execu- 2
 G. S. 123, § 65. tion, the proceeds thereof, after deducting the charges of the sale, shall 3
 P. S. 161, § 77. be first applied to repay to the attaching creditor the amount so paid 4
 R. L. 167, § 72. by him, with interest. 5

Defendant to pay attaching plaintiff for redemption of mortgage. SECTION 78. If the attaching creditor, after having redeemed the 1
 R. S. 90, § 82. property, does not recover judgment, he may nevertheless hold the 2
 G. S. 123, § 66. property until the debtor repays to him the amount which he paid for 3
 P. S. 161, § 78. the redemption, or as much thereof as the debtor would have been 4
 R. L. 167, § 73. obliged to pay to the mortgagee, pledgee or holder of the property, if 5
 it had not been attached, with interest from the time when it was de- 6
 manded of the debtor. 7

Attachment of mortgaged personally in debtor's possession. SECTION 79. Personal property subject to a mortgage and in the 1
 1844, 148, § 2. possession of the mortgagor may be attached as if unencumbered; and 2
 G. S. 123, § 67. the mortgagee or his assigns may be summoned in the same action in 3
 P. S. 161, § 79. which the property is attached as the trustee of the mortgagor or his 4
 R. L. 167, § 74. assigns to answer such questions as may be put to him or them by the 5
 6 Cush. 105. court or by its order relative to the consideration of the mortgage and 6
 9 Gray, 45. the amount due thereon. 7
 1 Allen, 381.
 8 Allen, 273.

- | | | |
|--------------------|----------------|---------------------|
| 13 Allen, 66 | 134 Mass. 347. | 188 Mass. 70. |
| 99 Mass. 172. | 136 Mass. 193. | 225 Mass. 451. |
| 102 Mass. 414. | 140 Mass. 208. | 232 Mass. 424, 428. |
| 107 Mass. 122. | 144 Mass. 385. | 253 Mass. 383. |
| 114 Mass. 60 | 148 Mass. 566. | 255 Mass. 255. |
| 119 Mass. 535. | 154 Mass. 34. | 258 Mass. 402. |
| 121 Mass. 96, 204. | 170 Mass. 469. | 268 Mass. 305. |
| 133 Mass. 78. | 175 Mass. 144. | 273 Mass. 45. |

Determination of amount due. SECTION 80. If upon such examination, or upon the verdict of a 1
 1844, 148, § 3. jury as provided in the following section, it appears that the mortgage 2
 G. S. 123, § 68. is valid, the court, having first ascertained the amount justly due upon 3
 P. S. 161, § 80. it, may direct the attaching creditor to pay the same to the mortgagee 4
 R. L. 167, § 75. or his assigns within such time as it orders; and if he does not pay or 5
 128 Mass. 102. tender the amount within the time prescribed, the attachment shall be 6
 133 Mass. 78. void and the property shall be restored. 7
 140 Mass. 208.
 154 Mass. 34.
 170 Mass. 469.
 253 Mass. 383.
 255 Mass. 255.

268 Mass. 305.

1 SECTION 81. If the attaching creditor denies the validity of the mortgage and moves that its validity be tried by jury, the court shall order such trial upon an issue which shall be framed under its direction. If, upon such examination or verdict, the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs.

Determination of validity of mortgage. 1844, 148, § 4. G. S. 123, § 69. P. S. 161, § 81. R. L. 167, § 76.

175 Mass. 144. 253 Mass. 383. 255 Mass. 255. 268 Mass. 305.

1 SECTION 82. When the creditor has paid to the mortgagee or his assigns the amount ordered by the court, he may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt.

Creditor to retain amount paid by him, etc. 1844, 148, § 5.

G. S. 123, § 70. P. S. 161, § 82. R. L. 167, § 77. 268 Mass. 305.

1 SECTION 83. If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

Creditor not recovering judgment to hold property until repaid.

1844, 148, § 6. P. S. 161, § 83. 268 Mass. 305.
G. S. 123, § 71. R. L. 167, § 78.

SUPPLEMENTARY PROCESS.

1 SECTION 84. If the service of a writ, process or order is defective or insufficient, the court or tribunal to which it is returnable may, upon motion of the plaintiff or petitioner, issue further writs, processes and orders, which shall be served in such manner as may be therein directed; and upon due service thereof, the court or tribunal shall thereby acquire the same jurisdiction of the subject and of the parties as it would have obtained if such service had been made in pursuance of the original writ, process or order. The action, suit or proceeding shall be continued from time to time until such service is made.

Further service after defective service. 1874, 187. P. S. 161, § 84. R. L. 167, § 79. 140 Mass. 342. 215 Mass. 341. 242 Mass. 255. 246 Mass. 190.

1 SECTION 85. At any time during the pendency of an action, suit, libel, petition or other proceeding at law or in equity, upon the commencement of which an arrest or attachment is authorized by law, the court for cause may, on motion ex parte, order such arrest of the defendant or such attachment of his property by trustee process or otherwise to secure the judgment or decree which the plaintiff may obtain in said cause; but no arrest of the defendant shall be authorized unless the same facts as are required to be proved to authorize an arrest on mesne process are proved to the satisfaction of the court by affidavit as provided in section two of chapter two hundred and twenty-four. Except in Suffolk county, a clerk of such court may, under the same conditions, order such attachment of the property of the defendant. Such arrest or attachment shall be subject to all the provisions of law relative to arrest and attachment upon mesne process, so far as applicable.

Attachments and arrests during pendency of suit. 1876, 167, §§ 1, 4. 1877, 18. 1879, 53. P. S. 161, §§ 85, 88. R. L. 167, § 80. 1907, 453. 193 Mass. 84. 209 Mass. 370. 212 Mass. 486. 215 Mass. 341. 217 Mass. 213.

1 SECTION 86. A precept for such arrest or attachment shall be in the same form, so far as practicable, as an original writ of capias and attachment; but the supreme judicial court may by general rules establish forms therefor. Such precept may be served by an officer authorized to serve the original process in the cause, and shall be returnable as may be ordered by the court which issues it.

Precepts, form, etc. 1876, 167, §§ 2, 3. P. S. 161, §§ 86, 87. R. L. 167, § 81. 215 Mass. 341.

Equitable attachments after verdict, etc. 1925, 170, § 1. 271 Mass. 258.

SECTION 86A. Upon motion of the plaintiff at any time after a verdict has been rendered or a finding of liability or otherwise made in his favor in any action at law in the superior court, or after a finding in his favor fixing the amount of an unliquidated claim has been made in a suit in equity in the supreme judicial or superior court, and before final judgment or decree therein, such court shall thereupon have jurisdiction in equity by appropriate procedure and process to cause to be reached, held and thereafter applied in payment of any judgment or decree in his favor in such action or suit the same kind of property, right, title or interest, legal or equitable, of a defendant, within or without the commonwealth, which may be reached and applied under clauses (7) and (8) of section three of chapter two hundred and fourteen, and any property, right, title or interest, legal or equitable, real or personal, including any shares or interests in corporations organized under the laws of the commonwealth or of the United States, and located or having a general office in the commonwealth, fraudulently conveyed by the defendant with intent to defeat delay or defraud his creditors or to defeat or delay the plaintiff in the satisfaction of his claim, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the defendant or to defeat or delay the plaintiff in the satisfaction of his claim: provided, that, in reaching and applying hereunder the interest of a partner in partnership property, the business of the partnership shall not be enjoined or otherwise interrupted further than to restrain the withdrawal of any portion of the defendant's share or interest therein until final judgment or decree in such action or suit. If such equitable relief is granted, the defendant may give to the plaintiff a sufficient bond payable to him with sureties approved by the court conditioned to pay him the amount of his judgment or decree within thirty days after it is rendered or made and, upon the filing of such bond with the clerk, the court shall proceed no further in the proceedings to reach and apply and any injunction previously issued in the course of such proceedings shall be dissolved.

SALE OF PERSONAL PROPERTY ATTACHED.

Sale of personal property attached. 1822, 93, § 1. R. S. 90, § 57. G. S. 123, § 72. P. S. 161, § 89. R. L. 167, § 82. 17 Pick. 429. 18 Pick. 407. 1 Met. 34. 4 Met. 137, 504. 6 Met. 94. 10 Met. 231.

SECTION 87. Personal property which has been attached on one or more writs may, if the debtor and all the attaching creditors consent in writing, subject to sections seventy-four to eighty-three, inclusive, be sold by the attaching officer in the manner provided by law for selling like property on execution; and the proceeds of the sale, after deducting the necessary charges, shall be held by the officer subject to the attachments and be disposed of as the property would have been held and disposed of had it remained unsold.

4 Cush. 393. 154 Mass. 34. 270 Mass. 49. 125 Mass. 278. 187 Mass. 421.

Appraisal and sale of perishable property. 1822, 93, § 2. R. S. 90, § 58. G. S. 123, § 73. P. S. 161, § 90. R. L. 167, § 83. 18 Pick. 407. 3 Allen. 297. 97 Mass. 67. 101 Mass. 259. 114 Mass. 60. 154 Mass. 34.

SECTION 88. If an attachment is made of animals or of goods which are liable to perish, waste or greatly decrease in value by keeping, or which cannot be kept without great and disproportionate expense, and the parties do not consent to a sale thereof as before provided, the property so attached shall, subject to sections seventy-four to eighty-three, inclusive, upon the application of either of the parties interested to the attaching officer, be examined, appraised and sold or otherwise disposed of in the manner following.

1 SECTION 89. Upon such application, the attaching officer shall give
 2 notice to all the other parties or their attorneys, prepare a schedule of
 3 the goods and cause three disinterested persons acquainted with the
 4 nature and value of such goods to be appointed and sworn before a
 5 magistrate or the attaching officer to the faithful performance of their
 6 duty as appraisers.

G. S. 123, § 74.
 P. S. 161, § 91.

R. L. 167, § 84.
 G. Allen, 505.

130 Mass. 247.

Appraisal and
 sale of perish-
 able property;
 proceedings;
 1822, 93, § 2.
 R. S. 90, § 59.
 1851, 1, § 3;
 58: 257.

1 SECTION 90. If the defendant is not within the commonwealth and
 2 has no attorney therein, the notice in writing shall be left at his last and
 3 usual place of abode, if any, in the commonwealth; otherwise, it shall be
 4 delivered to, or left at the dwelling house or place of business of, the per-
 5 son who had possession of the property at the time of the attachment.

Notice to ab-
 sent defendant.
 1837, 185
 G. S. 123, § 75.
 P. S. 161, § 92;
 R. L. 167, § 85.

1 SECTION 91. One appraiser shall be appointed by the creditor or
 2 creditors in the several actions, one by the debtor or debtors, and one
 3 by the officer; and if the debtors or creditors, respectively, neglect to
 4 appoint such appraiser, or do not agree in the nomination, the officer
 5 shall appoint one in their behalf.

Appraisers,
 how appointed.
 R. S. 90, § 60.
 1851, 257
 G. S. 123, § 76.
 P. S. 161, § 93.
 R. L. 167, § 86.

1 SECTION 92. The appraisers shall examine the attached property
 2 and, if in their opinion it, or a part thereof, is liable to perish or waste
 3 or to greatly decrease in value by keeping or cannot be kept without
 4 great and disproportionate expense, they shall appraise the value thereof
 5 and the property shall thereupon be sold by the officer and the pro-
 6 ceeds held and disposed of as provided in section eighty-seven, unless
 7 the goods are taken by the debtor as provided in the following section.

Sale after
 appraisal.
 R. S. 90, § 61.
 G. S. 123, § 77.
 P. S. 161, § 94.
 R. L. 167, § 87.
 18 Pick. 407.
 4 Cush. 393.
 130 Mass. 247.
 270 Mass. 49.

1 SECTION 93. The property so appraised shall, if he requires it, be
 2 delivered to the debtor upon his depositing with the attaching officer
 3 the appraised value thereof in money, or upon giving bond to the officer
 4 in a sufficient sum, with two sufficient sureties, conditioned to pay to
 5 him the appraised value of the property or to satisfy all such judgments
 6 as may be recovered in the actions in which the property was attached,
 7 if demanded within the time during which the property would have
 8 been held by the respective attachments or within thirty days after the
 9 time when the creditors, respectively, would have been entitled to
 10 demand payment out of the proceeds of the property if it had been
 11 sold as before provided.

Delivered to
 defendant.
 1822, 93, § 3.
 R. S. 90, § 62.
 G. S. 123, § 78.
 P. S. 161, § 95.
 R. L. 167, § 88.
 130 Mass. 247.

1 SECTION 94. The officer who takes such bond shall return it with
 2 the writ on which the first attachment is made in like manner as bail
 3 bonds are returned, with a certificate of his doings therein; and if the
 4 bond is forfeited, any of the attaching creditors may bring an action of
 5 contract thereon in the name of the officer.

Bond to be
 returned with
 the writ.
 1822, 93, § 4.
 R. S. 90, § 63.
 G. S. 123, § 79.
 P. S. 161, § 96.

R. L. 167, § 89.

1 SECTION 95. The writ in an action on such bond shall, in addition to
 2 the usual endorsement, have the names of the creditors by whom the
 3 action is brought endorsed upon it; and if judgment is rendered for the
 4 defendants, executions for the costs shall be issued against all the creditors
 5 whose names are so endorsed.

Action on bond
 by creditors.
 1822, 93, § 4.
 R. S. 90, § 64.
 G. S. 123, § 80.
 P. S. 161, § 97.
 R. L. 167, § 90.

Money recovered to belong to them. R. S. 90, § 65. G. S. 123, § 81. P. S. 161, § 98. R. L. 167, § 91.

SECTION 96. If judgment is rendered for the plaintiff, the money recovered shall be first applied, under the order of the court, to pay the reasonable expenses of prosecuting the action, so far as they are not reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors according to their respective rights.

Distribution by court. R. S. 90, § 66. G. S. 123, § 82. P. S. 161, § 99. R. L. 167, § 92.

SECTION 97. The court may, upon a hearing in equity, determine the rights of the several attaching creditors and award a separate execution for the amount due or payable to each, to be served and levied to his own use in the manner provided when a judgment is rendered on an administration bond; or it may award one execution for the whole amount due on the bond and cause the money received to be distributed among the creditors according to their respective rights.

Prior attachments to be protected. R. S. 90, § 67. G. S. 123, § 83. P. S. 161, § 100. R. L. 167, § 93.

SECTION 98. No judgment or execution shall be awarded for the use of a creditor without reserving as much as may be due upon any prior attachment, whether the creditor in such prior action is or is not one of those by whom the action on the bond is brought.

Creditor not joining in action on the bond, etc. R. S. 90, § 68. G. S. 123, § 84. P. S. 161, § 101. R. L. 167, § 94.

SECTION 99. A creditor who is entitled to the benefit of the bond, and who has not joined in bringing the action thereon may bring a writ of scire facias upon the judgment and recover any amount due to him upon the bond; or he may, upon motion at any time before final judgment, become a party to the action upon terms.

Limitation. R. S. 90, § 69. G. S. 123, § 85. P. S. 161, § 102. R. L. 167, § 95.

SECTION 100. No creditor whose cause of action on such bond accrued more than one year before the commencement of the action shall have judgment or execution, and no creditor shall bring a writ of scire facias upon the judgment, unless within one year after his cause of action accrues.

Creditor may be paid, when. R. S. 90, § 70. G. S. 123, § 86. P. S. 161, § 103. R. L. 167, § 96.

SECTION 101. If property which has been sold, or appraised and delivered to the debtor, in the manner before provided is attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding a prior attachment, if he is otherwise entitled to demand the money, and if a sufficient amount of the proceeds of the property, or of its appraised value, remains to satisfy all prior attachments.

ATTACHMENT OF SHARE OF JOINT OWNER OF PERSONALTY.

Appraisal at request of part owner. 1835, 143, § 1. R. S. 90, § 73. G. S. 123, § 87. P. S. 161, § 105. R. L. 167, § 97. 2 Met 36. 129 Mass. 127.

SECTION 102. If personal property of two or more part owners is attached in an action against one or more of them, it shall, upon the request of any other part owner, be examined and appraised in the manner provided in sections eighty-eight to ninety-two, inclusive, except that the part owner who makes the application shall, and the debtor shall not, appoint one of the appraisers. This section shall not apply to partnership property.

Delivery to part owner. 1835, 143, § 2, 3. R. S. 90, §§ 74, 77.

SECTION 103. The property so appraised shall be delivered to the part owner at whose request it was appraised, upon his giving bond to the attaching officer in a sufficient sum, with two sufficient sureties,

4 conditioned to restore such property in like good order or to pay to the
 5 officer the appraised value of the defendant's share or interest therein,
 6 or to satisfy all such judgments as may be recovered in the action in
 7 which it is attached, if demanded within the time during which the
 8 property would have been held by the respective attachments. Sections
 9 ninety-four to one hundred, inclusive, shall apply to such bond and to
 10 an action thereon.

G. S. 123,
 §§ 88, 91,
 P. S. 161,
 §§ 106, 109,
 R. L. 167, § 98,
 2 Met. 36,
 108 Mass. 565,
 129 Mass. 127.

1 SECTION 104. If such appraised value or any part thereof is so paid,
 2 the defendant's share of the property shall thereby become pledged to
 3 the party to whom it was delivered, and he may sell it, if not redeemed,
 4 and shall account to the defendant for the remaining proceeds of the
 5 sale.

Pledge of
 property.
 1855, 143, § 2.
 R. S. 90, § 75.
 G. S. 123, § 89.
 P. S. 161, § 107.
 R. L. 167, § 99.

1 SECTION 105. If the attachment is dissolved, the party to whom
 2 the defendant's share was delivered shall restore it to the defendant, or
 3 to the officer, to be by him delivered to the defendant.

Restoration.
 R. S. 90, § 76.
 G. S. 123, § 90.

P. S. 161, § 108.

R. L. 167, § 100.

FRAUDULENT ATTACHMENTS.

1 SECTION 106. If real or personal property has been attached in an
 2 action, any person, other than the parties, who claims title or interest
 3 therein by a subsequent attachment, purchase, mortgage or other title,
 4 may dispute the validity and effect of such prior attachment on the
 5 ground that the amount demanded in the first action was not justly
 6 due or was not payable when it was commenced, by filing a petition in
 7 the court in which the first action is pending, at any time before final
 8 judgment therein, stating the facts and circumstances on which his
 9 petition is founded, and the grounds of his own claim, and praying that
 10 the prior attachment may be dissolved.

Fraudulent at-
 tachments, how
 defeated.
 1823, 142,
 §§ 1, 2.
 1832, 159.
 R. S. 90, §§ 83,
 84.
 G. S. 123,
 §§ 92, 93.
 P. S. 161,
 §§ 110, 111.
 R. L. 167,
 § 101.
 19 Pick. 381.
 9 Met. 69.

178 Mass. 272.

1 SECTION 107. The petitioner, or a person in his behalf, shall make
 2 oath that his claim is just and legal and that all the other facts stated
 3 in the petition are true or are believed by the deponent to be true; and,
 4 upon filing the petition, the petitioner, or a person in his behalf, shall
 5 give a bond or recognizance with sufficient surety, conditioned to pay
 6 to the adverse party such damages and costs as may be awarded to him
 7 upon the petition.

Affidavit
 and bond.
 1823, 142, § 3.
 R. S. 90, §§ 85,
 91.
 G. S. 123,
 §§ 94, 99.
 P. S. 161,
 §§ 112, 117.
 R. L. 167,
 § 102.

1 SECTION 108. If the court finds that a part of the amount demanded
 2 in the prior action is not justly due, or was not payable when the action
 3 was commenced, it shall order the attachment dissolved in whole or in
 4 part as justice requires; but such order shall have no other effect on
 5 the prior action. If the hearing is in the supreme judicial or superior
 6 court, the court shall, upon motion, order a jury trial of any question
 7 of fact.

Dissolution of
 prior attach-
 ment.
 R. S. 90, § 86.
 G. S. 123, § 95.
 P. S. 161, § 113.
 1900, 447, § 1.
 R. L. 167,
 § 103.
 5 Pick. 410.
 8 Pick. 165.

1 SECTION 109. The proceedings between the adverse claimants or
 2 plaintiffs shall not be affected by any answer, plea or other act of the
 3 defendant in the prior action nor by the judgment rendered therein.

Effect of
 pleadings.
 R. S. 90, § 88.
 G. S. 123, § 96.

P. S. 161, § 114.

R. L. 167, § 104

Defences in such case. SECTION 110. No attachment shall be dissolved as aforesaid by reason of a defence to the action which is founded on the laws for the limitation of actions or requiring certain contracts to be made in writing, or by reason of any other like defence, if the court finds that the demand is otherwise well founded and is justly and equitably due.

Damages and costs. SECTION 111. The court may, upon such inquiry, award to either party reasonable costs and, if the prior attachment is maintained, may award to the attaching creditor reasonable damages.

Proceedings upon appeal. SECTION 112. If, during the pendency of the proceedings, the action in which the attachment was made is transferred to another court, the inquiry concerning the attachment shall be transferred to the same court and be there heard and determined.

Effect of judgment. SECTION 113. The judgment of the court upon such an inquiry, whether the attachment is thereby vacated or held to be valid and effectual, shall be a bar to any action which may be brought by the petitioner against the party who made the attachment for any supposed fraud or deceit therein.

REDUCTION OR DISCHARGE OF ATTACHMENT.

Excessive and unreasonable attachments, how reduced or discharged. SECTION 114. If an excessive or unreasonable attachment is made on mesne process, the defendant or person whose property has been attached may apply in writing, in any county, to a justice of the court to which such process is returnable, for a reduction of the amount of the attachment or for its discharge; and such justice shall order a notice to the plaintiff, or, if the plaintiff is a non-resident, to his attorney, which shall be returnable before himself or any other justice of the same court as speedily as circumstances permit. If, upon a summary hearing of the parties, it is found that the attachment is excessive or unreasonable, the justice shall reduce or dissolve the attachment or order a part of the goods or estate to be released.

DISSOLUTION OF ATTACHMENT.

By Operation of Law.

Dissolution of attachment by judgment. SECTION 115. If the final judgment is for the defendant, the attachment, except as provided in section sixty, shall be forthwith dissolved.

Dissolution of attachment if no service made on defendant. SECTION 115A. If real property of the defendant is attached in any action and no service is made upon him, the attachment shall be dissolved unless it appears of record that notice of such action has been given to him, in such manner as the court orders, within one year after the entry of the action.

Dissolution of attachment by death of defendant. SECTION 116. An attachment of real or personal property shall be dissolved if the debtor dies before it is taken or seized on execution and administration of his estate is granted in the commonwealth upon

4 an application therefor made within one year after his decease. The
 5 attaching officer shall also, upon demand, and upon receiving from the
 6 executor or administrator of such debtor so appointed his legal fees and
 7 charges for attaching and keeping the property attached by him, deliver
 8 it to such executor or administrator. But no attachment of property,
 9 real or personal, shall be so dissolved upon that part of the property
 10 which the debtor had alienated before his decease.

6 Gray, 112, 523.	201 Mass. 41.	220 Mass. 1.	226 Mass. 258.
189 Mass. 390.	208 Mass. 458.	222 Mass. 131.	251 Mass. 372.

R. S. 90, §§ 105,
 106.
 G. S. 123, §§ 45,
 46.
 P. S. 161, §§ 56,
 57.
 R. L. 167,
 § 112.
 1913, 305.
 5 Met. 356.
 11 Cush. 463.

1 SECTION 117. If the officer has, before such demand, sold on execu-
 2 tion the personal property attached or a right of redeeming land at-
 3 tached as aforesaid, he shall not be a trespasser, but shall be liable only
 4 for the proceeds of the sale after deducting his legal fees and charges for
 5 attaching, keeping and selling the property attached. Such proceeds may
 6 be recovered by the executor or administrator in contract.

Liability of
 officer for net
 proceeds.
 R. S. 90, § 107.
 G. S. 123, § 47.
 P. S. 161, § 58.
 R. L. 167,
 § 113.

1 SECTION 118. If the officer in such case has, before such demand,
 2 paid over the proceeds of the sale to the judgment creditor, he shall not
 3 be liable therefor, but the executor or administrator, if appointed as
 4 before provided, may recover in contract from the judgment creditor the
 5 amount so paid to him.

Liability of
 creditor for
 proceeds paid
 over to him.
 R. S. 90, § 108.
 G. S. 123, § 48.
 P. S. 161, § 59.

R. L. 167, § 114.

1 SECTION 119. The defendant, in an action founded on either of the
 2 three preceding sections, shall not be allowed in any manner to set off
 3 a demand against the executor or administrator, or against the estate of
 4 the deceased.

Set-off not
 allowed in
 such case.
 R. S. 90, § 109.
 G. S. 123, § 49.

P. S. 161, § 60.

R. L. 167, § 115.

By giving Bond.

1 SECTION 120. A defendant whose property has been attached on
 2 mesne process in a civil action may, at any time before final judgment,
 3 dissolve the attachment by giving a bond with sufficient sureties, who
 4 shall be approved by the plaintiff or by his attorney in writing, by a
 5 master in chancery or by a justice of a court if the attachment is made
 6 within the jurisdiction of such justice, conditioned to pay to the plaintiff,
 7 within thirty days after the final judgment in such action, such amount,
 8 if any, as he may recover; and also to pay to the plaintiff, within thirty
 9 days after the entry of any special judgment in accordance with the pro-
 10 visions of chapter two hundred and thirty-five, the amount, if any, for
 11 which such special judgment shall be entered. Sureties shall not be
 12 sufficient unless they are satisfactory to the plaintiff, or unless the magis-
 13 trate finds that each, if there are only two, is worth, in excess of his in-
 14 debtedness, an amount equal to that for which the attachment is laid;
 15 or, if there are more than two, that they are together worth twice such
 16 amount.

Attachments
 dissolved by
 giving bond
 1838, 163, § 20.
 1850, 27, § 1.
 1851, 327, § 18.
 G. S. 123, § 104.
 1875, 68, § 2.
 1881, 100.
 P. S. 161, § 122.
 1888, 405, § 2.
 R. L. 167,
 § 116.
 1931, 426,
 § 297.
 3 Cush. 188.
 7 Cush. 333.
 10 Gray, 333.
 5 Allen, 322.
 100 Mass. 450.
 104 Mass. 356.
 114 Mass. 101,
 543.
 115 Mass. 27,
 42.
 116 Mass. 527.
 117 Mass. 288,
 343.

121 Mass. 516.	141 Mass. 154.	169 Mass. 61.
122 Mass. 176.	150 Mass. 473.	174 Mass. 349.
123 Mass. 363.	156 Mass. 166.	183 Mass. 290.
130 Mass. 16.	164 Mass. 316.	235 Mass. 471.
133 Mass. 461.	167 Mass. 222.	

1 SECTION 121. Before such bond is approved, the defendant, or a
 2 person in his behalf, shall make application in writing to the magistrate,
 3 specifying therein the names and residences of the proposed sureties and,
 4 except in case the proposed surety is a surety company qualified to do

Hearing before
 approval of
 bond
 1846, 122.
 1850, 27, § 1.
 G. S. 123, § 105.
 1881, 100.

P. S. 161, § 123. business in the commonwealth, therein setting forth the property with 5
 R. L. 167, which each of said sureties proposes to qualify, and in case said property, 6
 § 117. as so set forth, be realty, then giving the name of the town where the 7
 1907, 393. same is located. Notice of the time and place of the hearing, containing 8
 120 Mass. 358. a copy of the application to the magistrate, shall be given to the plaintiff 9
 or his attorney as provided in sections twenty-six to twenty-nine, inclu- 10
 sive, of chapter two hundred and thirty-three; but the plaintiff or his 11
 attorney may in writing waive such notice or may approve the bond at 12
 any time. 13

Fees, etc., to be SECTION 122. If the attachment is dissolved and the defendant pre- 1
 included in vails, his costs shall include the fees of the magistrate and the premium 2
 defendant's costs. or premiums paid for the bond dissolving such attachment, if it be a surety 3
 1850, 27, § 2. company bond. 4
 1867, 137, § 2.
 G. S. 123, § 106.

1881, 100.

P. S. 161, § 124.

R. L. 167, § 118.

1926, 89.

Bond to be filed SECTION 123. Such bond and the bond required by section one 1
 by defendant. hundred and twenty-seven shall be filed by the defendant with the 2
 1870, 291, § 5. clerk of the court to which the writ is returnable, or in which the action 3
 1881, 100. is pending, within ten days after its approval, and the attachment shall 4
 P. S. 161, § 125. § 119. not be dissolved until the bond shall have been so filed. The plaintiff 5
 R. L. 167, may take such bonds from the files upon leaving on file a copy thereof 6
 § 119. attested by the clerk; and the plaintiff may tax the cost of such copy 7
 122 Mass. 6. as part of his costs in an action on such bond. 8
 141 Mass. 154.
 235 Mass. 471.
 263 Mass. 184.

Release of sureties of in- SECTION 124. If, within four months after an attachment of property 1
 solvent debtor. has been made on mesne process in a civil action founded on a claim 2
 1889, 470. which would, if proved, be barred by a discharge in insolvency of the 3
 R. L. 167, defendant and after such attachment has been dissolved as provided 4
 § 120. in the four preceding sections, proceedings in insolvency are instituted 5
 170 Mass. 179. by or against the defendant, the action shall, upon the suggestion of any 6
 249 Mass. 459. party interested, be continued to await the result of such proceedings 7
 in insolvency; and if the debtor receives his discharge in insolvency, the 8
 sureties on the bond given by him to dissolve the attachment shall be 9
 released from all liability thereon. 10

Bond to pay SECTION 125. A defendant may, at any time before final judgment, 1
 value of property. release from attachment the property attached, or such part thereof as 2
 1867, 137. he may elect, by giving bond to the plaintiff with sufficient sureties, who 3
 1870, 291, § 2. shall be approved by the plaintiff or by his attorney in writing, by a 4
 1875, 68, § 2. master in chancery or by a justice of a court of record if the attachment 5
 1881, 100. is made within the jurisdiction of his court, conditioned to pay to the 6
 P. S. 161, § 126. plaintiff within thirty days after final judgment in such action or after 7
 1888, 405, § 2. the entry of a special judgment therein under chapter two hundred and 8
 R. L. 167, § 121. thirty-five the amount fixed as the value of the property so released, or 9
 1916, 148. so much of said amount as may be necessary to satisfy the amount, if 10
 1918, 257, any, which the plaintiff may recover; and the property so released shall 11
 § 426. be described in such bond. The defendant, or a person in his behalf, may 12
 1919, 5. make written application to any magistrate who is authorized to approve 13
 1920, 2. the sureties upon said bond in the county where the property is situated, 14
 120 Mass. 358. stating the names of the parties to the action, the name of the officer who 15
 121 Mass. 276. made the attachment, a description of the property which he desires to 16
 122 Mass. 6. release from attachment, the names and residences of the proposed sure- 17
 179 Mass. 537.
 191 Mass. 236.

18 ties, and, except in case the proposed surety is a surety company qualified
 19 to do business in the commonwealth, setting forth the property with
 20 which each of said sureties proposes to qualify, and in case said property,
 21 as so set forth, be realty, then giving the name of the city or town where
 22 the same is located. The magistrate shall forthwith cause a copy of the
 23 application, with notice of the time and place for the hearing, to be served
 24 upon the plaintiff, if he resides in the county, otherwise upon the officer
 25 who made the attachment; but the plaintiff or his attorney may in writ-
 26 ing waive such notice or may approve the bond or sureties at any time,
 27 or may agree that the amount of the bond is sufficient without approving
 28 the sureties, in which case the appraisal hereinafter provided for need not
 29 be made. The notice shall be served twenty-four hours, at least, before
 30 the time appointed therein for a hearing and as much earlier as the magis-
 31 trate may order. At the time and place appointed, after hearing the
 32 parties, the magistrate shall appoint three disinterested persons to ex-
 33 amine and appraise the attached property described in the application,
 34 who shall be sworn, shall appraise the property at its fair market value and
 35 shall make return of their doings in writing to the magistrate at a time and
 36 place fixed by him to which the hearing shall be adjourned. At such
 37 adjourned hearing the defendant may give bond to the plaintiff, with
 38 sureties, who shall be approved by the magistrate as herein provided.
 39 Upon the filing of such bond, as is required by the provisions of section
 40 one hundred and twenty-three, the attachment upon the property de-
 41 scribed therein shall be dissolved. When successive attachments in favor
 42 of different plaintiffs are made upon personal property the defendant
 43 may release from the attachments the property attached, or such portion
 44 thereof as he may elect, by giving bond with sufficient sureties to be
 45 approved as hereinbefore provided. The sheriff of the county in which
 46 the first attachment was made shall be the obligee on the bond, which
 47 shall be deposited immediately after it is given with the clerk of the
 48 courts for the same county, except that in Suffolk county it shall be
 49 deposited with the clerk of the superior court for civil business. The
 50 bond shall be conditioned on the defendant's paying to such sheriff
 51 within thirty days after final judgment in any such action or after the
 52 entry of a special judgment in any such action under said chapter two
 53 hundred and thirty-five, as the case may be, the amount fixed as the
 54 value of the property so released, and the amount so paid shall be held
 55 by the sheriff, after deducting the necessary charges, subject to the
 56 attachments in the order in which they were made, and shall be disposed
 57 of in the same manner as the proceeds of attached personal property
 58 sold under section eighty-seven.

1 SECTION 126. The magistrate may adjourn such hearing from time
 2 to time. He shall determine the fees of the appraisers. The applicant
 3 shall pay the fees of the magistrate and the appraisers; but if final
 4 judgment is in his favor, they shall be taxed as a part of his costs. The
 5 magistrate's certificate of the amount shall be filed before said fees are
 6 allowed as a part of the taxable costs.

Fees.
 1870, 291, § 4
 1881, 100.
 P. S. 161, § 127.
 R. L. 167,
 § 122.

1 SECTION 127. If an attachment of real property is made under
 2 sections sixty-seven and sixty-eight, the person in whose name the
 3 record title of the property attached stands, or a person in his behalf,
 4 may, before final judgment, dissolve the attachment by giving bond to
 5 the plaintiff, with sufficient sureties, conditioned to pay to him, if he

Dissolution of
 attachment of
 realty fraudu-
 lently con-
 veyed.
 1867, 137.
 1870, 291, § 3.
 1873, 68, § 2.
 1881, 100.

P. S. 161, § 128.
1888, 405, § 2.
R. L. 167,
§ 123.
120 Mass. 358,
179 Mass. 537,
191 Mass. 236.

establishes his title to the land in a writ of entry against the person 6
having the record title thereto at the time of the attachment, the as- 7
certained value of the land, or so much thereof as shall satisfy the 8
amount, if any, which the plaintiff shall recover upon final judgment, 9
or upon a special judgment under chapter two hundred and thirty- 10
five, in the action in which such attachment was made. All proceed- 11
ings required in the two preceding sections shall apply to the dissolution 12
of an attachment under this section. In the trial of such writ of entry, 13
the record of the attachment and of final or special judgment, as the 14
case may be, in the action in which the attachment was made shall be 15
conclusive evidence of a momentary seisin of the land in the plaintiff to 16
enable him to maintain an action therefor upon his own seisin; but no 17
such writ of entry shall be brought after the expiration of one year from 18
the date of such final or special judgment. If the demandant recovers 19
judgment on such writ of entry, he shall not have an execution for 20
possession, but may have an execution for costs. 21

Dissolution
by deposit.
1897, 404.
R. L. 167,
§ 124.
212 Mass. 416.

SECTION 128. A defendant may dissolve an attachment by deposit- 1
ing with the attaching officer an amount of money equal at least to the 2
amount of the ad damnum in the writ, which the officer shall hold in 3
place of the property attached and which shall be subject to be disposed 4
of in the same manner. 5

Dissolution of
attachment of
individual
property of
one defendant.
1871, 114.
1881, 100.
P. S. 161, § 129.
R. L. 167,
§ 125.
164 Mass. 316.

SECTION 129. A defendant whose individual property has been at- 1
tached in an action against several defendants may dissolve such attach- 2
ment, or any part thereof, in any of the modes provided in the nine 3
preceding sections. But the bond to dissolve such attachment shall be 4
so conditioned as to apply only to a judgment recovered against such 5
defendant alone or jointly. 6

Officer not
liable for
release of
attached
property, when.
1921, 425, § 2.

SECTION 129A. The officer shall not be liable for the release of per- 1
sonal property attached by him if he receives a certificate from the clerk 2
of the court to which the writ is returnable, stating that a bond pur- 3
porting to dissolve such attachment has been filed in the office of said 4
clerk. 5

By Appointment of Receiver.

Dissolution of
attachment by
appointment of
receiver
1898, 420, § 1.
R. L. 167,
§ 126.
198 Mass. 159,
590,
238 Mass. 550,
246 Mass. 404.

SECTION 130. An attachment of property on mesne process shall be 1
dissolved by the appointment by any court of competent jurisdiction in 2
the commonwealth of a receiver to take possession of such property, if 3
the bill or petition praying for the appointment of such receiver is filed 4
in said court within four months after such attachment was made, 5
unless the court at any time, in its discretion, continues such attach- 6
ment for the benefit of the estate of the defendant. In such case, the 7
court may authorize the receiver to prosecute the action upon which the 8
attachment was made for the benefit of the estate of the defendant and 9
may make further orders to enable the receiver to recover for its benefit 10
the amount due to the plaintiff in the original action. 11

Discharge of
receiver
1898, 420, § 2.
R. L. 167,
§ 127.

SECTION 131. If an attachment has been dissolved in the manner 1
provided in the preceding section, the proceedings for the appointment 2
of a receiver shall not thereafter be dismissed and the receiver discharged 3

4 until all the assets which have come into his hands as receiver have been
 5 fully distributed or the claim upon which the attachment was made
 6 has been fully paid and discharged, unless the debtor, before such dis-
 7 missal, deposits with the officer who made the attachment such amount
 8 of money as the court before which such receivership proceedings are
 9 pending, after notice to the attaching creditor and a hearing, finds
 10 reasonable for the protection of his claim in the action in which the
 11 attachment was made. Such money shall be held by the officer in place
 12 of the property held under the attachment before its dissolution and
 13 shall be disposed of as such property would have been disposed of had
 14 the attachment not been dissolved.

198 Mass. 159,
 590
 207 Mass. 62.

By Entry or Release in Registry of Deeds.

1 SECTION 132. An attachment of real estate shall be dissolved by an
 2 entry on the margin of the attachment book in the registry of deeds in
 3 which the attachment is entered, signed by the plaintiff in whose behalf
 4 the attachment was made, or by his executor, administrator or attorney
 5 of record, and attested by the register of deeds or by an assistant in his
 6 office thereto duly authorized; or it may be dissolved by a release signed
 7 and acknowledged by the plaintiff, or by his executor, administrator or
 8 attorney of record, and filed in the registry of deeds, or by a certifi-
 9 cate from the clerk of the court in which the action was pending that
 10 the attachment has been dissolved or that the action has finally been
 11 determined.

Dissolution of
 attachment of
 real estate by
 plaintiff
 1907, 334, § 1.
 1912, 459.

12 Such a release describing sufficiently for identification any particular
 13 parcels of real estate shall dissolve an attachment in so far as it may
 14 affect the particular parcels described. The aforesaid releases, certifi-
 15 cates of court and partial releases, shall be filed in the registry of deeds
 16 in the county or district where a certified copy of the original return of
 17 attachment is filed as required by section sixty-three.

EXECUTION OF BONDS.

1 SECTION 133. A bond which is required to be given by a party to a
 2 civil action or proceeding may be executed by any person other than
 3 the party to the action or proceeding, and may be approved in the
 4 same manner as if executed by such party, if it appears to the magis-
 5 trate who approves it that there is good reason why it is not executed
 6 by him.

Execution of
 bonds
 1868, 285.
 1869, 436.
 P. S. 161, § 104.
 R. L. 167,
 § 128.
 156 Mass. 359.
 165 Mass. 415.

CHAPTER 224.

ARREST ON MESNE PROCESS AND SUPPLEMENTARY PROCEEDINGS
IN CIVIL ACTIONS.

SECT.

1. Definitions.
2. Form and requisites of certificate for arrest on mesne process.
3. Women exempt from arrest on mesne process except in tort.
4. No arrest on mesne process for slander or libel.
5. Reduction of ad damnum. Discharge if arrest unjust, etc.
6. Arrest on mesne process and execution regulated. Venue of proceedings, bail, recognizance, examination of debtor, commitment, discharge, liability of officer for escape, arrest on execution after sunset, recognizance on Sunday.
7. Surrender of principal on recognizance. New recognizance.
8. Remedy on recognizances and bonds.
9. Request for examination by defendant arrested on mesne process. Service of notice. Discharge upon non-payment of fees by plaintiff, etc.
10. Examination. Discharge from arrest, when.
11. Delivery, etc., of property of defendant as security for plaintiff, etc. Return of such property.
12. Support in jail.
13. Discharge from arrest before final judgment.
14. Supplementary process and proceedings after judgment.
15. Examination of judgment debtor.

SECT.

16. Dismissal of proceedings if debtor has no property. Orders for payment, etc. Failure to obey orders to constitute contempt of court.
17. Redemption of property transferred. Refusal or acceptance of transfer by creditor.
18. Warrants to secure attendance of parties. Arrest after sunset. Contempt penalized. Supplementary proceedings not affected by sentence for contempt. New applications. Appeals.
19. Charges of fraud and proceedings thereon. Sentence. Appeal. Recognizance. Proceedings in superior court.
20. Commitment as for contempt because of transfer of property pending examination. Exceptions.
21. Dismissal of supplementary proceedings and discharge of debtor from imprisonment, etc.
22. Habeas corpus.
23. Certain officers authorized to serve process.
24. Discharge of debtors of commonwealth.
25. Same subject. Examination of debtor.
26. Same subject. Appointment of special counsel.
27. Insane debtors.
28. Discharge of persons committed to jail for non-payment of tax.
29. Effect of insolvency or bankruptcy.
30. Adjournment, etc. Witnesses summoned to attend.

Definitions.
1888, 419, § 12
1898, 559.
1899, 445, § 2
R. L. 168, § 68.

SECTION 1. The word "court", in this chapter, shall include a justice of such court, and a special justice thereof when exercising the functions of a justice.

1917, 326.

Form and requisites of certificate for arrest on mesne process.
1830, 131, § 1.
1834, 167, § 1.
R. S. 90, § 111;
97, § 44.
1854, 63.
1855, 249, § 1;
444, § 11.
1857, 141, § 17.
1859, 166, § 2.
G. S. 124,
§§ 1, 2.
1873, 353, § 2.
P. S. 162,
§§ 1, 2.
1901, 343.

SECTION 2. No person shall be arrested on mesne process unless the plaintiff, or if the action is brought in behalf of the plaintiff by a guardian, conservator or next friend, or, where there are several plaintiffs, one of the plaintiffs or a guardian, conservator or next friend of one of the plaintiffs acting as such in the action, or, in the case of a corporation, an officer thereof, makes affidavit and proves to the satisfaction of the court to which the writ is returnable —

First, That one of the parties is a resident of or has a usual place of business in the commonwealth, and, except in actions upon negotiable instruments, that the plaintiff is an original party to the cause of action or is his executor or administrator;

12 Second, That he has a good cause of action and reasonable expecta-
13 tion of recovering a sum amounting to twenty dollars exclusive of costs
14 which have accrued in any former action, in an action of contract, or an
15 amount equal at least to one third of the ad damnum in an action of tort;

R. L. 168,
§§ 1, 2.
1910, 480.
1916, 272,
§§ 1, 2.
1918, 257,
§ 427.
1919, 5.
1920, 2.
1927, 334, § 1.
7 Gray, 59.
13 Gray, 575.
2 Allen, 431.
115 Mass. 236.
139 Mass. 461.
167 Mass. 31.
190 Mass. 378.
197 Mass. 22.
200 Mass. 429.
212 Mass. 486.

16 Third, That he believes and has reason to believe that the defendant
17 intends to leave the commonwealth so that supplementary proceedings
18 will not be effective against him;

19 Fourth, That he knows of no property of the defendant within the
20 commonwealth which can be reached by attachment or otherwise, suf-
21 ficient to satisfy any judgment he may recover;

22 Fifth, That he believes and has reason to believe that an examination
23 of the defendant will disclose property of the defendant which ought to
24 be held as security for any judgment the plaintiff may recover;

25 Or, instead of the third, fourth and fifth, that the defendant is an
26 attorney at law or a person, member of a firm, agency or association
27 engaged in the business of collecting money, and that the debt sought
28 to be recovered is for money collected by the defendant for the plaintiff
29 and that the defendant unreasonably neglects to pay.

30 Such affidavit, and the certificate of the court that it is found to be
31 true, shall be annexed to the writ. The court may refuse such certifi-
32 cate if an arrest in the particular case would be unjust or unnecessary.
33 No arrest shall be made after sunset unless expressly authorized in the
34 certificate for cause.

104 Mass. 354.
129 Mass. 156.
134 Mass. 391.

1 SECTION 3. No woman shall be arrested on mesne process except for
2 tort.

Women exempt
from arrest on
mesne process
except in tort.

1831, 131, § 2. 1855, 444, § 15. G. S. 124, § 7. R. L. 168, § 3.
R. S. 97, § 46. 1857, 141, § 30. P. S. 162, § 3. 151 Mass. 363.

1 SECTION 4. No person shall be arrested on mesne process in a civil
2 action for slander or libel.

No arrest on
mesne process
for slander
or libel.

1855, 249, § 2. G. S. 124, § 3. P. S. 162, § 3. R. L. 168, § 3.

1 SECTION 5. The court issuing the process upon which the arrest
2 was made may, on motion, reduce the ad damnum of the writ, or, if the
3 arrest was unjust or unnecessary, discharge the defendant from arrest.

Reduction of
ad damnum.
Discharge if
arrest unjust,
etc.

1898, 397. R. L. 168, § 4. 1916, 272, § 3.

1 SECTION 6. Except as provided in section five, all proceedings for the
2 examination, commitment or discharge of a defendant arrested on mesne
3 process or on execution, and all supplementary proceedings under this
4 chapter as to a judgment debtor, shall be had in the district court within
5 whose judicial district the defendant or debtor was arrested or lives or has
6 a usual place of business or employment; or, if the defendant or debtor
7 does not live or have a usual place of business or employment within the
8 commonwealth, such proceedings may also be had in the district court
9 within whose judicial district the record of the original action is kept.
10 When arrested on mesne process, the defendant shall be allowed a reason-
11 able time to procure bail or sureties for his recognizance, and when
12 arrested on execution the debtor shall be allowed reasonable time to
13 procure sureties for his recognizance. If not released, he shall be taken
14 before a proper court, as provided in this chapter; or if he wishes to
15 recognize he may be taken at his request before a master in chancery. A
16 master in chancery or the court may accept his recognizance to the plain-

Arrest on
mesne process
and execution
regulated.
Venue of
proceedings,
bail, recog-
nizance, exam-
ination of
debtor, com-
mitment,
discharge,
liability of
officer for
escape, arrest
on execution
after sunset,
recognizance
on Sunday.
1787, 29.
§§ 1, 2.
1810, 114.
1816, 111.
1830, 131, § 1.
1833, 134.
R. S. 97, §§ 44,
71, 72, 98,
§§ 1, 4, 37.
1853, 413.

1855, 444.
 §§ 1-4, 9, 12, 15.
 1857, 141.
 §§ 1-4, 10, 18,
 20, 30; 258
 1859, 166, § 2.
 G. S. 124.
 §§ 5, 8-10, 17,
 18, 47.
 1860, 215, § 1.
 1862, 162, § 3.
 1870, 77.
 1873, 352,
 § 1, 3
 1875, 179.
 1877, 250,
 § 1, 5.
 1879, 283, § 2.
 1881, 263, § 3.
 P. S. 162, §§ 8,
 16-18, 25-28,
 36, 37, 66, 67.
 1887, 442,
 § 1-4
 1888, 419,
 § 1, 2, 4-6.
 1889, 415,
 § 1, 4-6.
 1891, 271, 407.
 1897, 466, § 1.
 1901, 343.
 R. L. 168,
 §§ 8, 16-18,
 27, 29, 30,
 38-40, 67, 69,
 70.
 1911, 192,
 § 1, 4.
 1915, 9
 1917, 326.
 1920, 378.
 G. L. (ed. of
 1920) 234,
 §§ 6-8, 17, 19,
 20, 27-29, 53-
 55, 60, 67.
 1921, 425, § 3
 [G. L. 224,
 § 1A].
 1923, 33.
 1927, 334, § 2.
 1931, 137, § 1;
 426, § 298.
 2 Gray, 214
 3 Gray, 496.
 10 Gray, 236,
 365
 11 Gray, 226.
 13 Gray, 396,
 575.
 14 Gray, 324,
 579.
 16 Gray, 169.
 1 Allen, 456,
 463.
 4 Allen, 72, 74.
 5 Allen, 585.
 6 Allen, 260,
 285, 287, 288.
 7 Allen, 266,
 349, 360, 466.
 8 Allen, 148,
 150.
 9 Allen, 379.
 10 Allen, 344.
 11 Allen, 395
 14 Allen, 156,
 511, 514
 2 Mass. 526.
 98 Mass. 31,
 530.
 99 Mass. 36.
 100 Mass. 300.
 103 Mass. 549.
 104 Mass. 221,
 354
 106 Mass. 118,
 501.
 109 Mass. 61,
 503.
 111 Mass. 484.
 113 Mass. 355.
 116 Mass. 487.
 117 Mass. 1
 118 Mass. 135.
 120 Mass. 147,
 240, 594.
 121 Mass. 283,
 316, 415.

tiff or creditor with surety or sureties in a sum not less than the ad dam- 17
 num of the writ, unless the court shall expressly fix a smaller sum, con- 18
 ditioned that he will have a time and place appointed for his examination 19
 before some court having jurisdiction, which time shall be within thirty 20
 days after the time of his arrest and, in case of an arrest on mesne process, 21
 before judgment, giving notice of the time and place thereof as provided 22
 in this chapter, and appear at the time and place appointed for his 23
 examination, and from time to time until the proceedings are concluded, 24
 and not depart without leave of the court, making no default at any time 25
 fixed for his examination, and abide the final order of the court thereon. 26
 If the arrest is made when the court is not sitting and the defendant or 27
 debtor does not recognize or give bail, the officer making the arrest may 28
 deliver him to the keeper of the jail, to be detained therein until the next 29
 sitting of the court, when he shall be delivered to said officer to be taken 30
 before the court. If the defendant, when taken before the court, does not 31
 give bail or recognize to its satisfaction, the court shall cause a certificate 32
 thereof to be attached to the writ, and the defendant shall be committed 33
 to jail until he gives bail or recognizes or until the time appointed for his 34
 examination, or, if no such time be appointed, then until the further order 35
 of the court, when he shall be delivered by the jailer to the officer who 36
 made the arrest, or, in his absence or disability, to any other officer, to be 37
 by him taken before the court. 38

No person shall be arrested on execution in a civil action unless the 39
 creditor or, in case the creditor is a corporation, an officer thereof, after 40
 execution has issued makes application for a certificate authorizing said 41
 arrest and files affidavit with and proves to the satisfaction of a district 42
 court that he believes and has good reason to believe that the debtor 43
 intends to leave the commonwealth so that supplementary proceedings 44
 will not be effective against him. If a debtor, after being arrested on 45
 execution, gives notice that he desires to take an oath that he does not 46
 intend to leave the commonwealth, he shall be examined relative thereto, 47
 and either party may introduce additional evidence. If the court is 48
 satisfied that the debtor did not when arrested, and does not at the time 49
 of examination, intend to leave the commonwealth, it shall make certifi- 50
 cate thereof, and discharge the debtor from arrest; and immediately 51
 upon such discharge, if the creditor so desires, such debtor shall be re- 52
 quired, without further notice, to submit to examination and other 53
 supplementary proceeding under this chapter. If the debtor when taken 54
 before the court does not recognize to its satisfaction he shall be com- 55
 mitted to jail until he recognizes or until the time appointed for his 56
 examination, or, if no such time be appointed, then until the further order 57
 of the court, when he shall be delivered by the jailer to the officer who 58
 made the arrest, or in his absence or disability to any other officer, to be 59
 by him taken before the court. 60

If there is reasonable doubt as to the identity of the defendant or debtor 61
 or as to the lawfulness of his arrest, at the time of the arrest or thereafter, 62
 either in the case of arrest on mesne process or execution, the officer may 63
 require sufficient security from the plaintiff or creditor to indemnify him 64
 for arresting the defendant or debtor or for continuing to retain him in 65
 custody. If sufficient security is not furnished within a reasonable time 66
 after the officer has made a written demand upon the plaintiff or creditor 67
 or his attorney for such security, the officer shall not be obliged to arrest 68
 the defendant or debtor or, if he then has the defendant or debtor under 69
 arrest, he may release him from custody without liability to the plaintiff 70

71 or creditor therefor. If a prisoner, arrested or committed on execution
 72 in a civil action, escapes with the consent or by the negligence of the
 73 officer, the creditor may recover in tort against the officer such damages as
 74 he has suffered by the escape, and may also have against the original
 75 debtor a scire facias or an action on the judgment. No arrest on execution
 76 shall be made after sunset unless expressly authorized in the certificate
 77 for cause.
 78 Any recognizance authorized by this chapter may be accepted on
 79 Sunday.

122 Mass. 412.
 534
 123 Mass. 333
 124 Mass. 92,
 260, 359, 557
 126 Mass. 310.
 127 Mass. 60,
 550
 129 Mass. 156.
 130 Mass. 189,
 298, 557.
 131 Mass. 204
 134 Mass. 391,
 473.

137 Mass. 167.	163 Mass. 20, 79.	196 Mass. 571.
138 Mass. 384	165 Mass. 106	200 Mass. 429.
139 Mass. 158, 461.	166 Mass. 226, 296.	201 Mass. 385.
142 Mass. 107	167 Mass. 327.	211 Mass. 69
143 Mass. 187	168 Mass. 102.	216 Mass. 242.
144 Mass. 14, 79, 151.	169 Mass. 61	220 Mass. 137
145 Mass. 221	174 Mass. 307.	221 Mass. 49.
146 Mass. 89, 439	175 Mass. 451.	226 Mass. 80.
148 Mass. 448	177 Mass. 206.	232 Mass. 44
149 Mass. 96, 221	180 Mass. 99.	233 Mass. 99.
151 Mass. 119.	184 Mass. 92.	236 Mass. 93.
153 Mass. 541	187 Mass. 202.	246 Mass. 190.
157 Mass. 371, 508.	189 Mass. 507.	262 Mass. 372.
160 Mass. 317.	193 Mass. 203	266 Mass. 434
162 Mass. 17, 45, 339.	195 Mass. 440.	136 U. S. 468.

1 SECTION 7. Whoever recognizes as surety for another as provided in
 2 this chapter may at any time before breach of the recognizance surrender
 3 his principal and exonerate himself from further liability, in the manner
 4 provided for surrender by bail, and all proceedings on such surrender shall
 5 be the same as provided in the case of bail. If a debtor arrested on execu-
 6 tion is surrendered by his surety, he may recognize anew for his appear-
 7 ance at the time, place and upon the conditions expressed in the former
 8 recognizance.

Surrender of
 principal on
 recognizance.
 New recog-
 nizance.
 1837, 198, § 5
 1857, 141, § 26.
 G. S. 124,
 §§ 11, 43, 45.
 P. S. 162,
 §§ 29, 61, 63.
 R. L. 168,
 §§ 31, 63, 65.

G. L. (ed. of 1920) 224, §§ 21, 49, 51 1927, 334, § 2.	104 Mass. 433. 121 Mass. 400. 122 Mass. 534.	194 Mass. 24 254 Mass. 356. 269 Mass. 482.
--	--	--

1 SECTION 8. If the condition of a recognizance or bond taken under
 2 this chapter is broken, the creditor may, within one year after such
 3 breach, commence an action thereon; and judgment shall be entered for
 4 the amount of the penalty, but execution shall issue for so much thereof
 5 only as may be justly and equitably due. Such actions in favor of the
 6 commonwealth shall be brought in the court in which the original judg-
 7 ment was rendered.

Remedy on
 recognizances
 and bonds.
 1837, 198, § 2
 1857, 141, § 28.
 G. S. 124, § 46.
 1870, 313, § 1
 P. S. 162,
 §§ 64, 65.
 R. L. 168, § 66.

G. L. (ed. of 1920) 224, § 52. 1927, 334, § 2. 2 Allen, 75.	5 Allen, 393. 98 Mass. 31. 170 Mass. 428. 173 Mass. 475.	191 Mass. 54. 197 Mass. 94 221 Mass. 271. 269 Mass. 482.
--	---	---

1 SECTION 9. At the request of a defendant arrested on mesne process,
 2 whether he has recognized or given bond or not, the court shall appoint
 3 a time and place for the examination of the defendant and shall issue a
 4 notice thereof to the plaintiff. Such notice shall be served by an officer
 5 qualified to serve civil process, by delivering to the plaintiff, or to his
 6 agent or attorney, an attested copy thereof, or by leaving such copy at
 7 the last and usual place of abode of such plaintiff or if such plaintiff is a
 8 corporation then service shall be made upon an officer thereof.

Request for
 examination by
 defendant
 arrested on
 mesne process.
 Service of
 notice.
 Discharge upon
 non-payment
 of fees by
 plaintiff, etc.
 1736-7, 13, § 1.
 1737-8, 17, § 1
 1741-2, 6, § 1.
 1759-60, 12, § 1.
 1762-3, 18, § 1.
 1787, 29, § 1.
 1811, 83, § 2
 1834, 167, § 2
 R. S. 98, §§ 2,
 3, 18, 19
 1842, 56, § 1.
 1844, 154.
 §§ 2, 5, 10,
 1855, 444,
 §§ 4, 5, 12, 14.

9 Service shall be made not less than one hour, or, if service is made at
 10 the last and usual place of abode, not less than one day, before the time
 11 appointed for the examination.
 12 If there is more than one plaintiff, or more than one agent or attorney,
 13 service on one shall be sufficient. If no plaintiff, agent or attorney is
 14 found within the county, the notice may be served on the officer who made

1857, 141.
 §§ 4, 5, 18, 20,
 23, 29, 258.
 G. S. 124,
 §§ 12, 13, 23,
 48.
 1861, 112.
 1873, 352, § 1.
 P. S. 162,
 §§ 30-32.
 1888, 419, § 7.
 R. L. 168,
 §§ 32-34, 42.
 1917, 326.
 G. L. (ed. of
 1920) 224, §§ 9,
 22-24, 31.
 1927, 334, § 2.
 3 Met. 568.
 11 Met. 73.
 7 Cush. 263,
 265.
 8 Cush. 289.
 1 Gray, 167.
 8 Gray, 244.
 10 Gray, 236.

the arrest. The person who made the writ may in all cases be regarded as the attorney of the plaintiff or creditor. If the time and place for examination be appointed when the defendant is brought before the court under section six, an oral notice by the court to the arresting officer shall be sufficient.

If the plaintiff or creditor, after the request of a defendant or debtor in custody, makes default in payment of the fees, the defendant or debtor shall, without examination and without payment of fees, be discharged from arrest and shall be exempt from further arrest upon the same execution or upon any process founded on the judgment, and a certificate of such discharge signed by the court shall be annexed to the writ or execution; but if, after the oath that he does not intend to leave the commonwealth has once been refused, the defendant or debtor again applies for the benefit thereof, the fees for such subsequent application or examination thereon shall be paid by him.

1 Allen, 156, 461, 492, 541	109 Mass. 216, 111 Mass. 76, 288.	133 Mass. 256, 135 Mass. 411.
2 Allen, 73.	112 Mass. 58.	145 Mass. 340, 354.
4 Allen, 70.	113 Mass. 507.	166 Mass. 296.
7 Allen, 346, 354, 466.	114 Mass. 74.	174 Mass. 307.
8 Allen, 148.	115 Mass. 236, 358.	195 Mass. 440.
9 Allen, 376, 378.	119 Mass. 191, 465.	201 Mass. 385.
13 Allen, 398.	121 Mass. 319.	211 Mass. 69.
14 Allen, 29.	123 Mass. 52.	216 Mass. 242.
101 Mass. 313.	124 Mass. 178.	229 Mass. 160.
103 Mass. 354.	181, 397, 399.	243 Mass. 252.
104 Mass. 221.	126 Mass. 186.	246 Mass. 190.
105 Mass. 341.	129 Mass. 451.	255 Mass. 494.
106 Mass. 118.	132 Mass. 214.	264 Mass. 26.

Examination.
 Discharge
 from arrest,
 when.
 1701-2, 5, § 11.
 1784, 28, § 10.
 1787, 29, § 3.
 R. S. 90, § 112;
 98, § 12.
 1855, 444, § 12.
 1857, 141,
 §§ 11, 21, 22.
 G. S. 124,
 §§ 25, 26.
 1877, 250, § 2.
 1879, 283, § 1.
 1881, 263, § 2.
 P. S. 162,
 §§ 20, 43, 44.
 1887, 442,
 §§ 2, 4.
 1889, 415, § 3.
 1890, 128.
 1897, 382.
 R. L. 168,
 §§ 20, 47, 48.
 1906, 203, § 1.
 1914, 429.
 G. L. (ed. of
 1920) 224,
 §§ 10, 36, 37.
 1927, 334, § 2.
 9 Cush. 289.
 2 Gray, 210.
 10 Gray, 491.
 11 Gray, 226.
 8 Allen, 150.
 112 Mass. 394.
 127 Mass. 60.
 137 Mass. 25.
 139 Mass. 38.
 164 Mass. 150.
 166 Mass. 33.
 195 Mass. 440.
 196 Mass. 571.
 224 Mass. 122.
 136 U. S. 468.

SECTION 10. The court may continue the examination from time to time, remanding the defendant to jail if still under arrest. If the plaintiff does not attend the examination, personally or by attorney, the defendant shall be discharged from arrest unless the court extends the time or orders further notice. If the plaintiff does attend, the defendant shall be examined on oath as to his intention to leave the commonwealth and relative to his property, and such examination, if in writing, shall be signed and sworn to by the defendant and filed with the court. Either party may introduce additional evidence. The examination may be oral or in writing, in the discretion of the court. If the court shall be satisfied that the defendant does not, and did not when arrested, intend to leave the commonwealth as alleged, or that he has no property which ought to be held as security for any judgment the plaintiff may recover, or that he has such property but has complied with all orders of the court in relation to said property or with so much of said orders as the plaintiff desires, the court shall order the discharge of the defendant from arrest. If the court shall not be so satisfied, it shall make a certificate that the discharge of the defendant from arrest is refused, and he shall, unless released by the giving of bail or a bond as provided in section thirteen or by the written order of the plaintiff or his attorney, be committed to jail until final judgment, and, if final judgment be for the plaintiff, shall be held in jail thereafter until discharged by order of court in any supplementary proceedings in which service shall be made upon him within ten days after such judgment; or, if no such service shall be made within said ten days, he shall be discharged. After a discharge from arrest is refused, a second examination shall not be given within ten days after such refusal.

Delivery, etc.,
 of property of
 defendant as

SECTION 11. If, upon the examination, it appears that the defendant has property which ought to be held as security for any judgment the

3 plaintiff may recover, the court may order him to deliver the same or so
 4 much thereof as may be necessary to secure the plaintiff, or to execute,
 5 acknowledge if necessary, and deliver, a transfer, assignment or convey-
 6 ance thereof to the court or to a person or persons named by the court,
 7 to be held in trust, in such manner and form as the court may prescribe.
 8 The court may require the plaintiff, from time to time, to advance the
 9 reasonable costs of administering the trust. The court may make such
 10 orders as to the disposition, control and management of such property as
 11 it shall from time to time see fit. If the plaintiff makes application for
 12 supplementary proceedings within thirty days after final judgment in his
 13 favor, the court shall order that such property be delivered, transferred,
 14 assigned or conveyed to the plaintiff, or to a person in his behalf, to be
 15 held, sold or redeemed as provided in sections sixteen and seventeen.
 16 If final judgment is rendered for the defendant, or if the plaintiff fails
 17 to make such application within the time aforesaid, or refuses to receive
 18 the property, or to advance the reasonable costs of administering the
 19 trust, the property shall be returned or reconveyed to the defendant as the
 20 court shall order and the court may enforce such order by process for
 21 contempt.

security for
 plaintiff, etc.
 Return of such
 property.
 1927, 334, § 2.

1 SECTION 12. If the defendant or debtor while confined in jail on
 2 mesne process or on execution claims support as a pauper, the jailer shall
 3 furnish his support at the rate of one dollar and seventy-five cents a week,
 4 to be paid by the plaintiff or creditor, who in such case shall, if required
 5 by the jailer, either from time to time advance the money necessary for
 6 the support of the prisoner or give the jailer satisfactory security therefor.
 7 If the plaintiff or creditor neglects to do so for twenty-four hours after
 8 demand upon him, his attorney or the committing officer, the jailer shall
 9 discharge the prisoner.

Support in
 jail.
 C. L. 6, § 3;
 128, § 2.
 1706-7, 2.
 1819, 94,
 §§ 2, 3.
 1821, 22,
 §§ 1, 2, 4.
 R. S. 90,
 §§ 113, 114;
 97, §§ 48-53,
 58, 59.
 1857, 141, § 25.

G. S. 124, §§ 27-29	1927, 334, § 2.	163 Mass. 214.
P. S. 162, §§ 45-47.	9 Cush. 289	168 Mass. 373.
R. L. 168, §§ 49, 50.	16 Gray, 166.	196 Mass. 284.
G. L. (ed. of 1920) 224, § 38.	105 Mass. 385.	227 Mass. 350.

1 SECTION 13. A defendant may obtain his discharge from arrest at any
 2 time before final judgment, whether an examination has been held or not,
 3 by filing in court a bond payable to the plaintiff, with surety or sureties
 4 approved by the plaintiff or his attorney or by the court and in a sum not
 5 less than the ad damnum of the writ, unless the court shall expressly fix
 6 a smaller sum, conditioned that the defendant shall begin supplementary
 7 proceedings under this chapter and cause due notice thereof to be served
 8 upon the plaintiff or his attorney of record in the action, within thirty
 9 days after final judgment for the plaintiff therein, and shall appear at
 10 the time appointed for his examination and from time to time thereafter
 11 until the proceedings are concluded, not departing without leave of the
 12 court and making no default and abiding all orders of the court relative
 13 to his property. An order for the discharge of the defendant, under sec-
 14 tion ten, shall be a discharge of the surety or sureties on such bond.

Discharge
 from arrest
 before final
 judgment
 1927, 334, § 2.

1 SECTION 14. A judgment creditor or a person in his behalf may file in
 2 court an application for supplementary process under this chapter.
 3 Upon the filing of such application, a summons may issue, requiring the
 4 judgment debtor to appear at a time and place named therein and sub-
 5 mit to an examination relative to his property and ability to pay. Such
 6 summons may be served by an officer qualified to serve civil process, by

Supplementary
 process and
 proceedings
 after judgment.
 1862, 162,
 §§ 1, 2.
 1875, 179.
 P. S. 162,
 §§ 6, 7, 16
 1897, 466, § 1.

1898, 549, § 1, 3
 1899, 445, § 1.
 1901, 176.
 R. L. 168, §§ 6, 7, 16, 80, 82.
 1909, 119.
 1911, 192, § 1.
 1913, 471, § 5.
 1917, 326
 G. L. (ed. of 1920) 224, §§ 59, 67; 225, §§ 1, 5.
 1923, 34.
 1927, 334, §§ 2, 6.
 151 Mass. 363.
 173 Mass. 498.
 198 Mass. 457.
 233 Mass. 39
 248 Mass. 436.
 272 Mass. 417.

delivering to the debtor an attested copy thereof, or by leaving it at his last and usual place of abode, at least seven days before the return day thereof. If due service is not made, the court may order further notice. A judgment debtor who has been arrested on mesne process or on execution, or a person in his behalf, may file such an application and cause service to be made upon the judgment creditor or his attorney of record in the action, in a similar manner, requiring the judgment creditor to appear at such examination; and upon failure of the judgment creditor to appear personally or by attorney the proceedings under this section may be dismissed. The failure of a judgment debtor personally to appear without reasonable excuse upon such summons, or at an examination otherwise appointed, or to submit to the examination as provided in section fifteen, shall constitute a contempt of court. Supplementary proceedings shall be in order for examination at the return day and hour set forth in the summons or further notice, but may by order of court for good cause shown be continued from time to time for examination, and may be brought up for further proceedings at such time or times, and in such manner as the court by general or special rule or order may direct. The death of the judgment creditor shall not affect supplementary proceedings.

Examination of judgment debtor.
 1817, 186, § 1.
 1834, 167, § 2.
 R. S. 98, §§ 6, 7, 20.
 1844, 56, § 3;
 154, § 6.
 1855, 444, § 6.
 1857, 141, §§ 6, 18.
 G. S. 124, § 19.
 1862, 162, § 4.

SECTION 15. The judgment debtor, if he appears, shall be examined on oath as to his property and ability to pay; and such examination, if in writing, shall be signed and sworn to by the debtor and filed with the court. Either party may introduce additional evidence; and if the debtor fails to appear at the examination it may proceed and orders may be made in his absence. The examination may be oral or in writing, in the discretion of the court. The execution, or a certified copy thereof, shall be sufficient proof of the judgment.

1875, 179. P. S. 162, §§ 9, 16, 38. 1897, 466, § 1. 1898, 549, § 1. 1899, 445, § 1. 1901, 176.	R. L. 168, §§ 9, 16, 41, 80. 1906, 203, § 2. 1911, 192, § 2. 1913, 471, § 5. G. L. (ed. of 1920) 224, §§ 30, 61, 67; 225, § 2.	1927, 334, §§ 2, 6. 163 Mass. 404. 196 Mass. 384. 272 Mass. 417.
---	--	---

Dismissal of proceedings if debtor has no property. Orders for payment, etc. Failure to obey orders to constitute contempt of court.
 1862, 162, § 5.
 1877, 250, § 3.
 1881, 263, § 1.
 P. S. 162, §§ 10, 16, 21.
 1897, 466, § 1.
 1898, 549, §§ 1, 2, 5.
 1899, 445, § 1.
 1901, 176.
 R. L. 168, §§ 10, 16, 22, 80, 81, 85.
 1911, 192, § 3.
 1913, 471, §§ 5, 6.
 G. L. (ed. of 1920) 224, §§ 12, 62, 67; 225, §§ 2, 5, 8.
 1927, 334, §§ 2, 6.
 189 Mass. 34.
 191 Mass. 92.
 196 Mass. 384.
 229 Mass. 235.

SECTION 16. If the court finds that the debtor has no property not exempt from being taken on execution, and is unable to pay the judgment, in full or by partial payments, or if the creditor fails to appear at the examination, personally or by attorney, the proceedings may be dismissed. If the court is satisfied that the debtor has property not exempt from being taken on execution, the court may order him to produce it, or so much thereof as may be sufficient to satisfy the judgment and costs of the proceedings, so that it may be taken on the execution; or may order him to execute, acknowledge if necessary, and deliver to the judgment creditor, or to a person in his behalf, a transfer, assignment or conveyance thereof; or if the debtor is able to pay the judgment in full or by partial payments the court may, after allowing the debtor out of his income a reasonable amount for the support of himself and family, which amount need not be stated, order the debtor to pay the judgment and costs of the proceedings in full or by partial payments from time to time; or the court may make an order combining any of the orders above mentioned. The court may prescribe the times, places, amounts of payments, forms of instruments and other details in making any of the orders above mentioned. The court may at any time renew, revise, modify, suspend or revoke any order made in any proceedings under the provisions of this

21 chapter. Failure, without just excuse, to obey any lawful order of the
22 court in supplementary proceedings shall constitute a contempt of court.

251 Mass. 206.
269 Mass. 515.
272 Mass. 417.

1 SECTION 17. The debtor may redeem real property within one year,
2 and personal property within sixty days, after the date of any transfer,
3 assignment or conveyance made under the provisions of section sixteen
4 upon payment of the judgment and costs and the necessary expense
5 actually paid by the creditor for the care or custody of such property.
6 If such property is not redeemed it shall be sold forthwith at public
7 auction, unless in the transfer, conveyance or assignment thereof it was
8 otherwise provided, and the proceeds, after deducting the expenses of
9 such care, custody and sale, shall be applied to the payment of said judg-
10 ment and costs, and the excess, if any, remaining after such payments,
11 shall be paid to the debtor; or the creditor may take said property at a
12 valuation to be fixed by the debtor in the transfer, assignment or convey-
13 ance and apply such amount in payment as aforesaid.

Redemption
of property
transferred.
Refusal or
acceptance of
transfer by
creditor.
1877, 250, § 3.
P. S. 162,
§§ 22, 23.
R. L. 168,
§§ 23, 24.
G. L. (ed. of
1920) 224,
§§ 13, 14.
1927, 334, § 2.

14 The creditor may refuse to accept a transfer, assignment or convey-
15 ance, and his refusal thereof shall not impair his right to have his execu-
16 tion satisfied in whole or in part by a levy on other property in the manner
17 provided by law. If, after such transfer, assignment or conveyance has
18 been made and before the sale of the property conveyed thereby, the
19 execution is satisfied in full by levy or otherwise, the court shall order
20 that the creditor reconvey said property to the debtor upon such terms
21 or conditions as it may determine and may enforce such order by process
22 for contempt.

1 SECTION 18. The court may issue warrants for arrest and other
2 processes to secure the attendance of debtors or creditors to answer for
3 any contempt under this chapter. An arrest shall not be made after
4 sunset unless specially authorized in the warrant for cause. Contempt
5 of court under this chapter shall be punished by a fine of not more than
6 twenty dollars or by imprisonment in the common jail for not more than
7 thirty days. A debtor or creditor in custody, charged with contempt,
8 shall be entitled to a speedy hearing therefor, and the officer having him
9 in custody shall remain in attendance until excused by the court. A
10 debtor or creditor in custody, charged with contempt, may be released
11 by the court and the hearing on the alleged contempt may be continued.
12 A sentence for contempt shall not end the proceedings, nor any order
13 made therein, and future violations of the order upon which the sentence
14 was founded, or any other order, may likewise be dealt with as for con-
15 tempt. The court shall retain jurisdiction of supplementary proceedings
16 until an order shall be made expressly dismissing them. If the proceed-
17 ings are dismissed, the creditor shall not, within one year after the date
18 of such dismissal, file a new application against the same debtor upon the
19 same judgment or a judgment including the same cause of action, unless
20 the court otherwise orders. There shall be no appeal from any judgment,
21 order or sentence under the provisions of this chapter, except as provided
22 in section nineteen.

Warrants to
secure attend-
ance of parties.
Arrest after
sunset.
Contempt
penalized.
Supplementary
proceedings not
affected by
sentence for
contempt.
New applica-
tions.
Appeals.
1855, 444, § 15.
1857, 141, § 30.
G. S. 124, § 8.
1862, 162, § 10.
1875, 179.
1877, 250, § 4.
P. S. 162, §§ 15,
16, 24, 26.
1887, 442, § 2.
1888, 419, § 12.
1897, 466, § 1.
1898, 559.
R. L. 168,
§§ 15, 16, 25,
27, 71.
1909, 119, § 1.
1911, 192,
§§ 4, 5.
G. L. (ed. of
1920) 224,
§§ 15, 56, 63,
66
1927, 334, § 2.

10 Gray, 491.
8 Allen, 150.

104 Mass. 354.
127 Mass. 550.

129 Mass. 156.
134 Mass. 391.

272 Mass. 417.

1 SECTION 19. At any time pending the examination of the defendant
2 or debtor, the plaintiff or creditor or a person in his behalf may allege
3 charges, to wit: —

Charges of
fraud and
proceedings
thereon.

Sentence.
 Appeal.
 Recognizance.
 Proceedings in
 superior court.
 1788, 16, § 3.
 R. S. 98, §§ 23,
 27, 28, 30-36.
 1844, 154, § 11.
 1848, 168.
 1855, 444,
 §§ 2, 8.
 1857, 141,
 §§ 12-16, 18.
 G. S. 124,
 §§ 20, 31-34.
 1872, 281,
 §§ 1, 2.
 P. S. 162,
 §§ 49-52.
 R. L. 168,
 §§ 52-55.
 1917, 326.
 G. L. (ed. of
 1920) 224,
 §§ 6, 40-43.
 1927, 334, § 2.
 9 Met. 447.
 1 Gray, 172.
 3 Gray, 318.
 4 Gray, 533.
 10 Gray, 491.
 1 Allen, 385.
 100 Mass. 287.
 105 Mass. 517.
 110 Mass. 18.
 112 Mass. 394.
 123 Mass. 273.
 124 Mass. 92.
 125 Mass. 47.
 126 Mass. 28.
 127 Mass. 550.
 130 Mass. 189.
 133 Mass. 127,
 256.
 137 Mass. 25,
 467.
 138 Mass. 384.
 140 Mass. 171.
 142 Mass. 96.
 146 Mass. 439.
 150 Mass. 411.
 151 Mass. 419.
 162 Mass. 14,
 339.
 187 Mass. 202.
 247 Mass. 183.

First, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has fraudulently conveyed, concealed or otherwise disposed of the whole or a part of his property, with intent to secure it to his own use or to defraud his creditors; or

Second, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has hazarded his money or other property to the value of one hundred dollars or more in some kind of gaming prohibited by the laws of this commonwealth; or

Third, That, if the action was founded on contract, the defendant or debtor contracted the debt with intent not to pay it.

Such charges shall be in writing, subscribed and sworn to by the plaintiff or creditor or by a person in his behalf, and shall be considered in the nature of an action at law, to which the defendant or debtor may plead that he is guilty or not guilty, and the court may thereupon hear and determine the same. The plaintiff or creditor shall not upon the hearing give evidence of a charge which is not made or filed as herein provided, nor of a fraudulent act of the defendant or debtor which was committed more than three years before the commencement of the original action.

If the court finds that the defendant or debtor is guilty of the charges so alleged, he shall be sentenced to imprisonment in the common jail for not more than one year, and the proceedings for the examination of the defendant or debtor as to his property or ability to pay may be continued by the court to enable the defendant or debtor to appear.

A party aggrieved by a judgment rendered under this section may appeal therefrom to the superior court in the same manner as from a judgment of a district court in civil actions. If the plaintiff or creditor appeals, he shall before allowance thereof recognize with sufficient sureties to enter and prosecute his appeal, to file therewith a copy of all the proceedings on said charges, and to pay all costs if judgment is not reversed. If the defendant or debtor appeals, he shall recognize in like manner, and with the further condition that if final judgment is against him he will, within thirty days thereafter, surrender himself to be taken on execution and abide the order of the court, or pay to the plaintiff or creditor the amount due him upon the claim or execution as the case may be. In the superior court trial shall be by a jury or, with the consent of both parties, by the court.

Commitment
 as for contempt
 because of
 transfer of
 property
 pending ex-
 amination.
 Exceptions.
 1862, 162, § 8.
 1875, 179.
 P. S. 162,
 §§ 13, 16.
 1888, 419, § 3.
 1890, 128.
 1897, 466, § 1.
 R. L. 168,
 §§ 13, 16, 21.
 G. L. (ed. of
 1920) 224,
 §§ 11, 65, 67.

SECTION 20. If at the examination of the debtor it appears that after service of supplementary process, the debtor has made a payment of money or a conveyance, assignment or transfer of property which is not exempt from being taken on execution, with intent to prevent it from being transferred or paid to the creditor or applied to the satisfaction of the judgment, and the court so certifies, the debtor may in the discretion of the court be committed as for a contempt. The payment by the debtor of a debt for necessities, or a debt due on any judgment on which he has previously been summoned to appear in supplementary proceedings, or a reasonable fee for counsel relative to the proceedings, shall not render him liable for contempt.

1927, 334, § 2.

158 Mass. 220.

254 Mass. 103.

Dismissal of
 supplementary
 proceedings
 and discharge
 of debtor from
 imprisonment,
 etc.

SECTION 21. Supplementary proceedings shall be dismissed, and if the debtor has been imprisoned he shall be discharged from custody, on payment in full to the creditor or his attorney of the amount due on the judgment, with all the costs of the proceedings, or, unless the judgment is

5 upon a bond or recognizance given under the provisions of this chapter,
 6 on the giving to the creditor or his attorney of a bond, payable to the
 7 creditor, with sufficient surety or sureties, approved by the creditor, his
 8 attorney or the court, conditioned that the debtor shall pay to the creditor
 9 the amount due on the judgment, with all the costs of the proceedings,
 10 within sixty days after the date of giving such bond or within such longer
 11 time as the court may allow.

R. S. 97, § 60.
 G. S. 124, § 30.
 P. S. 162, § 48.
 R. L. 168, § 51.
 G. L. (ed. of
 1920) 224, § 39.
 1927, 334, § 2.

1 SECTION 22. The court may issue a writ of habeas corpus to bring
 2 before it for examination or disposition or for the purpose of giving bond,
 3 a defendant or debtor who has been imprisoned under the provisions of
 4 this chapter.

Habeas corpus.
 1888, 419, § 12.
 1898, 559.
 R. L. 168, § 72.
 G. L. (ed. of
 1920) 224, § 57.

1927, 334, § 2.

1 SECTION 23. Constables qualified to serve civil process, as well as
 2 sheriffs and their deputies, shall have authority to serve any process under
 3 this chapter.

Certain officers
 authorized to
 serve process.

1896, 247.
 R. L. 108, § 28.
 1913, 471, § 7.

G. L. (ed. of 1920) 224,
 § 18; 225, § 10.

1927, 334, §§ 2, 6.
 272 Mass. 417.

1 SECTION 24. If a debtor committed to prison on a warrant of distress
 2 in favor of the commonwealth is unable to pay the debt for which he is
 3 imprisoned, he shall be entitled to discharge in like manner as a debtor
 4 before a court on supplementary proceedings; and the laws relative to
 5 such proceedings so far as applicable shall apply, except as hereinafter
 6 provided.

Discharge of
 debtors of
 commonwealth.
 1855, 276,
 §§ 1, 2.
 G. S. 124, § 35.
 P. S. 162, § 53.
 R. L. 168, § 56.

G. L. (ed. of 1920) 224, § 44.

1927, 334, § 2.

1 SECTION 25. If he represents to the jailer that he desires to be ex-
 2 amined relative to his property and ability to pay, the jailer shall notify
 3 the proper court. The court shall thereupon appoint a time and place
 4 for the examination of the debtor and notify the district attorney for the
 5 district by a notice, which shall be served by giving to him personally, or
 6 by leaving at his usual place of abode, thirty days at least before the
 7 time appointed for the examination, an attested copy thereof.

Same subject.
 Examination
 of debtor.
 1855, 276,
 §§ 2, 3.
 G. S. 124, § 36.
 P. S. 162, § 54.
 1888, 419, § 10.
 R. L. 168, § 57.
 1917, 326

G. L. (ed. of 1920) 224, § 45.

1927, 334, § 2.

7 Cush. 536.

1 SECTION 26. If the district attorney does not reside in the town
 2 appointed for or is unable to attend the examination, he may appoint
 3 counsel in his stead. For such attendance, suitable allowance shall be
 4 made by the superior court for the county.

Same subject.
 Appointment
 of special
 counsel.
 1855, 276, § 5.

G. S. 124, § 37.
 P. S. 162, § 55.

R. L. 168, § 58.
 G. L. (ed. of 1920) 224, § 46.

1927, 334, § 2.

1 SECTION 27. If a defendant or debtor imprisoned on mesne process or
 2 execution is supposed to be insane, any person may file a petition in any
 3 court named in section fifty of chapter one hundred and twenty-three in
 4 the county where he is imprisoned, stating the facts. The court shall
 5 appoint a time and place for a hearing, and shall order notice thereof to be
 6 given to the plaintiff, creditor or his attorney seven days before the time
 7 so appointed, and in other respects shall proceed under said chapter one
 8 hundred and twenty-three as in cases of insane persons not under arrest.
 9 If satisfied upon the hearing that the person is insane, the court may order
 10 his discharge from arrest and his removal to a state hospital, as defined

Insane
 debtors.
 1848, 320,
 §§ 1, 3.
 G. S. 124,
 §§ 38, 39.
 P. S. 162,
 §§ 56, 57.
 R. L. 168, § 59.
 G. L. (ed. of
 1920) 224, § 47.
 1927, 334, § 2.

in section one of said chapter one hundred and twenty-three. The legal rights of the plaintiff or the creditor shall not be affected by such discharge or removal.

Discharge of persons committed to jail for non-payment of tax. 1927, 334, § 2.

SECTION 28. A person who has been committed to jail for the non-payment of a tax, if since his commitment he has not had any property, real or personal, with which he could have paid the tax, may be discharged at any time in the manner provided by section one hundred and forty-six of chapter one hundred and twenty-seven, for the discharge of poor prisoners who have been confined for three months for a fine.

Effect of insolvency or bankruptcy. 1862, 162, § 6. 1875, 179. P. S. 162, §§ 11, 16. 1897, 466, § 1. R. L. 168, §§ 11, 16.

SECTION 29. If a person arrested on mesne process or on execution becomes an insolvent debtor under the laws of this commonwealth or a bankrupt under the laws of the United States, he shall be discharged upon his application to a district court in the county where the arrest was made, after such notice as the court shall order.

1919, 333, §§ 32, 33. G. L. (ed. of 1920) 224, §§ 67-69. 1927, 334, § 2. 269 Mass. 482.

Adjournment, etc. Witnesses summoned to attend. 1817, 186, § 1. 1826, 9, § 2.

SECTION 30. In any proceeding under this chapter the court may adjourn the case from time to time, and shall have the same powers relative to all other incidents thereto as other courts have in civil actions; and witnesses duly summoned shall attend as required in civil cases.

R. S. 98, § 5. 1857, 141, § 7. G. S. 124, § 16. 1877, 250, § 1. P. S. 162, §§ 18, 35. R. L. 168, §§ 18, 37. G. L. (ed. of 1920) 224, § 70. 1927, 334, § 2. 6 Allen, 287. 7 Allen, 354. 8 Allen, 150. 11 Allen, 29, 395. 14 Allen, 157. 124 Mass. 383. 147 Mass. 69. 164 Mass. 150. 177 Mass. 206. 266 Mass. 434.

CHAPTER 225.

PROCESS AFTER JUDGMENT FOR NECESSARIES OR LABOR.

[NOTE:—This chapter repealed by 1927, 334, § 6, and certain of its provisions incorporated in chapter 224 by 1927, 334, §§ 1, 2.]

CHAPTER 226.

BAIL.

SECT.

TAKING BAIL.

1. Defendant arrested on mesne process may give bail, etc.
2. Manner of taking bail.
3. Officer may require two sureties, etc.
4. Approval of bond.
5. Bond to bind those executing it.
6. Bond, filing, transmission on appeal.
7. Obligation of bail.
8. Suit on bond.

SURRENDER OF PRINCIPAL.

9. Surrender of principal in court, etc.
10. Commitment.
11. Discharge by death of principal.
12. Surrender out of court.
13. Surrender to jailer.

SECT.

14. Proceedings.
15. Same subject.
16. Bail to pay costs on scire facias, when.
17. Surrender on original action.

BAIL IN ACTIONS BEFORE INFERIOR COURTS.

18. Bail before inferior courts.
19. Surrender of principal in such case.
20. Proceedings upon surrender.
21. Same subject.
22. Fees of officer.

SUPPORT OF PRINCIPAL.

23. Liability of plaintiff.
24. Liability of bail.
25. Liability in case of surrender.

TAKING BAIL.

1 SECTION 1. A defendant arrested on mesne process shall be released
 2 upon giving bail. If he has been sentenced to imprisonment on a charge
 3 of fraud under chapter two hundred and twenty-four, the giving of such
 4 bail shall not discharge him from such imprisonment.

Defendant arrested on mesne process may give bail, etc.

1857, 141, § 22.
 G. S. 125, § 1.

P. S. 163, § 1.
 R. L. 169, § 1.

10 Gray, 490.
 206 Mass. 23

1 SECTION 2. Bail in a civil action shall be taken by giving a bond to
 2 the sheriff, if the writ is served by him or his deputy, otherwise to the
 3 officer by whom the writ is served, conditioned that the defendant shall
 4 appear and answer to the plaintiff, abide the final judgment of the court
 5 and shall not avoid.

Manner of taking bail
 R. S. 91, § 1.
 G. S. 125, § 2.
 P. S. 163, § 2.
 R. L. 169, § 2.
 2 Mass. 481.

10 Mass. 20.
 12 Mass. 434
 12 Met. 564.

1 Gray, 300
 103 Mass. 398
 113 Mass. 325.

116 Mass. 133.
 119 Mass. 146.

146 Mass. 58.
 233 Mass. 587.

1 SECTION 3. An officer shall not be required to accept a bail bond
 2 unless with at least two sureties, each of them having sufficient property
 3 within the commonwealth; and he may examine on oath, to be adminis-
 4 tered by him, the persons offered as sureties, as to their sufficiency. If he
 5 takes a bail bond with only one surety, he shall be liable to the plaintiff
 6 for any loss sustained by the insufficiency of the bail, although the surety
 7 was actually sufficient when taken.

Officer may require two sureties, etc.
 R. S. 91, § 2.
 1850, 199, § 1.
 1852, 211
 G. S. 125, § 3.
 P. S. 163, § 3
 R. L. 169, § 3.
 9 Mass. 479

1 SECTION 4. The bond may be approved by a judge of a court of
 2 record or a master in chancery, and, when so approved, the sureties shall
 3 be sufficient.

Approval of bond
 1857, 141, § 22

G. S. 125, § 4.
 1880, 132, § 1.

P. S. 163, § 4
 R. L. 169, § 4

1917, 326, § 2.

1 SECTION 5. A bail bond shall bind the persons executing it, although
 2 taken with one surety only, or with two or more sureties any of whom

Bond to bind those execut- ing it.

R. S. 91, § 3. have not sufficient property within this commonwealth, or although not 3
 G. S. 125, § 5. approved as aforesaid. 4
 P. S. 163, § 5. R. L. 169, § 5. 2 Pick. 284. 2 Met. 490.

Bond, filing, SECTION 6. The bond shall be returned and filed with the writ, and 1
 transmission the clerk shall note on the writ that a bond is so filed. Upon an appeal, 2
 on appeal. the bond shall be sent with the other papers to the court appealed to. 3
 R. S. 91, § 4. P. S. 163, § 6. 17 Mass. 591. 9 Met. 564.
 G. S. 125, § 6. R. L. 169, § 6. 2 Met. 490. 103 Mass. 398.

Obligation SECTION 7. In case of the avoidance of the principal and a return 1
 of bail. on the execution that he has not been found, or a return on the sum- 2
 1693-4, 1. mons or further notice mentioned in section fourteen of chapter two 3
 1784, 10, § 1. hundred and twenty-four that after diligent search by the officer serving 4
 R. S. 91, § 5. the summons or notice the principal has not been found, his bail shall 5
 G. S. 125, § 7. the summons or notice the principal has not been found, his bail shall 5
 1881, 263, § 4. satisfy the judgment, with interest thereon from the time it was rendered, 6
 P. S. 163, § 7. unless he discharges himself by surrendering the principal before 7
 R. L. 169, § 7. final judgment against him on the writ of scire facias, or by other sufficient 8
 1931, 426, defence in that suit. 9
 § 299. 2 Mass. 481. 103 Mass. 398. 146 Mass. 331. 197 Mass. 94. 233 Mass. 587.
 12 Mass. 433. 587, 590. 11 Cush. 15.

Suit on bond. SECTION 8. The bail bond shall be so far a matter of record and of 1
 1693-4, 1. the nature of a recognizance that the court in which the judgment against 2
 1784, 10. the principal was rendered, upon application of the creditor to the clerk 3
 §§ 2, 3. thereof, shall issue a writ of scire facias thereon in the name of the creditor 4
 R. S. 91, against the bail, which, without setting forth the bond, shall allege that 5
 §§ 6-8. the defendants became bail; but no action shall be maintained on the 6
 G. S. 125, writ of scire facias unless it is served on the bail within one year after final 7
 §§ 8-10. judgment against the principal. 8
 P. S. 163, 2 Mass. 481. 13 Pick. 339. 5 Gray, 397. 113 Mass. 325.
 §§ 8-10. 2 Mass. 591. 103 Mass. 398. 197 Mass. 94.
 R. L. 169, § 8. 2 Pick. 281.

SURRENDER OF PRINCIPAL.

Surrender of SECTION 9. The bail may surrender the principal in the court in which 1
 principal in the court, etc. the scire facias is pending at any time before final judgment therein 2
 1693-4, 1. against them; and, upon payment of costs on the scire facias to that time, 3
 1705-6, 7, § 1. they shall be discharged. 4
 1784, 10, § 2. G. S. 125, § 12. 1881, 260. 7 Mass. 169. 161 Mass. 55.
 R. S. 91, § 10. P. S. 163, § 12. R. L. 169, § 9. 117 Mass. 281.

Commitment. SECTION 10. The principal so surrendered shall be committed to the 1
 1705-6, 7, § 1. jail for thirty days so that he may be taken on execution, unless dis- 2
 1784, 10, § 2. charged as provided in chapter two hundred and twenty-four. 3
 R. S. 91, § 11. G. S. 125, § 13. P. S. 163, § 13. R. L. 169, § 10. 197 Mass. 94.

Discharge by SECTION 11. Upon proof of death of the principal before final judg- 1
 death of principal. ment on the scire facias, the bail shall be discharged, upon payment 2
 1884, 260. of costs on the scire facias to the time when such proof is made. 3
 R. L. 169, § 11. 138 Mass. 384.

Surrender out SECTION 12. The bail may, at any time before final judgment against 1
 of court them on a writ of scire facias, exonerate themselves from further re- 2
 1817, 146. sponsibility by surrendering their principal as provided in the four fol- 3
 R. S. 91, § 12. lowing sections. 4
 G. S. 125, § 14. P. S. 163, § 14. R. L. 169, § 12.

1 SECTION 13. Such surrender may be made to the jailer in the county
 2 where the principal was arrested or where the original writ against the
 3 principal was returnable, who shall receive and hold him in like manner
 4 and with the same rights as if he had been committed on the original
 5 writ.

P. S. 163, §§ 15, 20.

R. L. 169, § 13.

Surrender
to jailer.
1817, 146.
R. S. 91,
§§ 13, 18.
G. S. 125,
§§ 15, 20.

1 SECTION 14. The jailer shall not be obliged to receive a person so
 2 surrendered, unless the bail deliver to him a copy of the bail bond, attested
 3 by the officer who took it or by the clerk in whose custody it may be,
 4 which shall be a sufficient warrant for the jailer.

Proceedings.
R. S. 91, § 14.
G. S. 125, § 16.
P. S. 163, § 16.
R. L. 169, § 14.

1 SECTION 15. The bail shall, within fourteen days after such sur-
 2 render, deliver to the jailer a copy of the original writ or process whereby
 3 the prisoner was arrested, with a copy of the return endorsed thereon,
 4 attested by the officer who served the writ or by the clerk into whose
 5 office it is returned, and they shall also within said time give written
 6 notice to the plaintiff or his attorney of the time when and the place
 7 where the prisoner was so committed.

121 Mass. 400.

Same subject.
1817, 146.
R. S. 91, §§ 15,
16.
G. S. 125, §§ 17,
18.
P. S. 163, §§ 17,
18.
R. L. 169, § 15.
8 Cush. 137.
11 Allen, 394.

1 SECTION 16. If the surrender is made after a writ of scire facias is
 2 issued against the bail, they shall, within fourteen days after the sur-
 3 render, pay the costs of suit on the scire facias to the creditor or his
 4 attorney, or to the jailer for the use of the creditor; but if the writ of scire
 5 facias has not been served on the bail, they shall not be required to pay
 6 the costs thereon until twenty-four hours after notice of the issuing of
 7 the writ and demand by the creditor for such payment.

Bail to pay
costs on scire
facias, when.
1817, 146.
R. S. 91, § 17.
G. S. 125, § 19.
P. S. 163, § 19.
R. L. 169, § 16.
11 Cush. 15.

1 SECTION 17. The five preceding sections shall not impair the right
 2 of bail in all cases to surrender their principal in the court in which the
 3 original action is pending, before final judgment; or, after judgment,
 4 to surrender him to the officer holding the execution, at any time before
 5 its return.

Surrender on
original action.
1784, 10, § 1.
R. S. 91, § 19.
G. S. 125, § 21.
P. S. 163, § 21.
R. L. 169, § 17.

BAIL IN ACTIONS BEFORE INFERIOR COURTS.

1 SECTION 18. The rights and obligations of the bail in an action
 2 before a district court and all proceedings as to the surrender of the
 3 principal and the action against the bail shall be substantially the same
 4 as are provided relative to bail when taken in actions in other courts.

R. L. 169, § 18.

1917, 326.

1931, 426, § 100.

Bail before in-
ferior courts.
1803, 132, § 1.
R. S. 91, § 20.
G. S. 125, § 22.
P. S. 163, § 22.

1 SECTION 19. When bail in an action before a district court sur-
 2 render their principal in court, either during the pendency of the original
 3 action or of the scire facias, they shall secure the attendance of an officer
 4 qualified to serve legal process in the case to whom the principal may
 5 be committed. Any such officer seasonably notified and requested to
 6 attend for such purpose shall attend and shall receive and take charge
 7 of the principal, if committed to his custody by the court.

R. L. 169, § 19.

1917, 326.

194 Mass. 24

Surrender of
principal in
such case.
1803, 132,
§§ 2, 4.
R. S. 91,
§§ 21, 22.
G. S. 125,
§§ 23, 24.
P. S. 163,
§§ 23, 24.

1 SECTION 20. If the principal is surrendered in such action, an entry
 2 of such surrender shall be made on the record and he shall be forthwith
 3 committed to the officer in attendance.

R. S. 91, § 23.

G. S. 125, § 25.

P. S. 163, § 25.

R. L. 169, § 20.

Proceedings
upon sur-
render.

Same subject. SECTION 21. If the principal is surrendered before final judgment 1
 R. S. 91, in the original action, the bail shall deliver to the officer a copy of the 2
 §§ 24, 25, original writ, with the return endorsed thereon, attested by the clerk of 3
 G. S. 125, § 26, the court, if any, otherwise by the justice. If the surrender is after final 4
 P. S. 163, § 26, judgment in the original action, the bail shall deliver to the officer a copy 5
 R. L. 169, § 21, of the entry of the surrender, attested in like manner. The officer shall 6
 deliver the copy to the jailer upon committing the prisoner to his custody; 7
 and such copy shall be a sufficient warrant to the officer and to the jailer 8
 for receiving, committing and holding the prisoner. 9

Fees of officer. SECTION 22. The officer shall be allowed the same fees, which shall 1
 1803, 132, § 4. be paid by the bail, as upon the arrest and commitment of a defendant 2
 R. S. 91, § 26. on mesne process. 3
 G. S. 125, § 27.
 P. S. 163, § 27.

R. L. 169, § 22.

SUPPORT OF PRINCIPAL.

Liability of plaintiff. SECTION 23. If a principal, surrendered by his bail and committed to 1
 1824, 124, jail, claims support as a pauper, the jailer may require the plaintiff or 2
 R. S. 97, § 54, his attorney in the action to give security or to advance the money for 3
 G. S. 125, § 28. support of the defendant in like manner as if the commitment had been 4
 R. S. 163, § 28. made by an officer. If the plaintiff fails so to do for twenty-four hours 5
 R. L. 169, § 23. after being so required, the jailer may discharge the defendant. 6

Liability of bail. SECTION 24. The jailer may, at the time of surrender, demand of 1
 1824, 124, the bail the advance of money for support of the principal, or security 2
 R. S. 97, § 55. therefor, instead of demanding the same of the plaintiff; and if the bail, 3
 G. S. 125, § 29. for twenty-four hours after such demand, fail to give such security or 4
 P. S. 163, § 29. to advance the money for such support, the jailer may discharge him; 5
 R. L. 169, § 24. and the bail and the principal shall thereupon continue liable to the 6
 plaintiff in all respects as if the surrender had not been made. 7

Liability in case of surrender. SECTION 25. If such demand is made upon the bail, they shall be 1
 1824, 124, liable for the support of the principal for seven days after they have 2
 R. S. 97, given notice of the surrender to the plaintiff or to his attorney in the 3
 §§ 56, 57, action. The plaintiff shall be liable for the support of the defendant 4
 G. S. 125, §§ 30, 31. after the expiration of said seven days; and if he fails to advance the 5
 P. S. 163, money or to give security therefor as before provided, at or before the 6
 §§ 30, 31. expiration of said time, the jailer may discharge the defendant. 7
 R. L. 169, § 25.

CHAPTER 227.

PROCEEDINGS AGAINST ABSENT DEFENDANTS AND UPON INSUFFICIENT SERVICE.

SECT.

- 1. Actions against absent defendants.
- 2. Cross actions.
- 3. Service of writ.
- 4. Proceedings.
- 5. Certain individuals, etc., to appoint agents for service of process. Penalty.
- 6. Dismissal of action, when.
- 7. Notice.
- 8. Default.

SECT.

- 9. Bond.
- 10. Notice in district courts.
- 11. Execution levied on land.
- 12. Judgment in real action.
- 13. Actions of tort.
- 14. Actions of contract.
- 15. Prosecution against those served. New action.
- 16. Absence of one of several tenants, etc.
- 17. Mixed actions.

1 SECTION 1. A personal action shall not be maintained against a
 2 person not an inhabitant of the commonwealth unless he or his agent
 3 appointed under section five has been served with process in the com-
 4 monwealth, or unless an effectual attachment of his property within the
 5 commonwealth has been made upon the original writ, and in case of such
 6 attachment without such service, the judgment shall be valid only to
 7 secure the application of the property so attached to the satisfaction of
 8 the judgment.

Actions against absent defendants.
 R. S. 90, § 44.
 G. S. 126, § 1.
 P. S. 164, § 1.
 R. L. 170, § 1.
 1908, 528, § 1.
 3 Cush. 578.
 5 Cush. 52.
 10 Cush. 183.
 3 Gray, 508.

- | | | | |
|----------------|----------------|----------------|--------------------|
| 11 Allen, 134. | 147 Mass. 536. | 198 Mass. 82. | 224 Mass. 14, 193. |
| 106 Mass. 217. | 150 Mass. 550. | 206 Mass. 39. | 235 Mass. 471. |
| 131 Mass. 359. | 170 Mass. 538. | 215 Mass. 341. | 244 Mass. 425. |
| 144 Mass. 10. | 176 Mass. 48. | 220 Mass. 285. | 210 U. S. 82. |

1 SECTION 2. If an action is brought by a person not an inhabitant
 2 of the commonwealth or who cannot be found herein to be served with
 3 process, he shall be held to answer to any action brought against him
 4 here by the defendant in the former action, if the demands are of such
 5 a nature that the judgment or execution in the one case may be set off
 6 against the judgment or execution in the other. If there are several
 7 defendants in the original action, each of them may bring such cross
 8 action against the original plaintiff and may be allowed to set off his
 9 judgment against that which may be recovered against him and his
 10 co-defendants in like manner as if the latter judgment had been against
 11 him alone.

Cross actions.
 1823, 118.
 R. S. 90.
 §§ 49, 50.
 G. S. 126,
 §§ 2, 3.
 P. S. 164,
 §§ 2, 3.
 R. L. 170, § 2.
 7 Mass. 140.
 1 Met. 80.
 170 Mass. 538.
 175 Mass. 369.
 185 Mass. 49.
 215 Mass. 403.
 256 Mass. 246.

1 SECTION 3. The writ in such cross action may be served on the at-
 2 torney of record for the plaintiff in the original action, and such service
 3 shall be as valid and effectual as if made on the party himself in the
 4 commonwealth.

Service of writ.
 R. S. 90, § 51.
 G. S. 126, § 4.
 P. S. 164, § 4.

- | | | | |
|-----------------|----------------|----------------|----------------|
| R. L. 170, § 3. | 168 Mass. 105. | 170 Mass. 538. | 256 Mass. 246. |
|-----------------|----------------|----------------|----------------|

1 SECTION 4. The court in which either of the actions is pending may
 2 order continuances to enable the absent party to defend the action
 3 brought against him, and to enable either party to set off his judgment
 4 or execution against that which is recovered against him, but the actions
 5 shall not be unreasonably delayed by the neglect or default of either
 6 party. The provisions of the following sections, relative to actions

Proceedings.
 R. S. 90, § 52;
 92, § 16.
 G. S. 126, § 5.
 P. S. 164, § 5.
 R. L. 170, § 4.
 185 Mass. 49.
 225 Mass. 512.
 256 Mass. 246.

against persons absent from the commonwealth, shall not apply to a cross action brought under the two preceding sections.

Certain individuals, etc., to appoint agents for service of process. Penalty. 1908, 528, §§ 1, 2. 95 U. S. 714.

SECTION 5. Every individual not an inhabitant of the commonwealth and every partnership composed of persons not such inhabitants, having a usual place of business in the commonwealth, temporarily or permanently, or engaged here, temporarily or permanently, and with or without a usual place of business here, in the construction, erection, alteration or repair of a building, bridge, railroad, railway, or structure of any kind, shall, before doing business in the commonwealth, appoint in writing a person who is a citizen and resident thereof to be his or its true and lawful attorney upon whom all lawful processes against such individual or partnership may be served with like effect as if served on such person or partnership; and said writing or power of attorney shall contain an agreement on the part of the maker that the service of any lawful process on said attorney shall be of the same force and validity as service on such individual or partnership. The power of attorney shall be filed in the office of the state secretary, and copies certified by him shall be taken as sufficient evidence thereof. Such agency shall be continued so long as such individual or partnership does business as aforesaid in the commonwealth, and the power of attorney shall not be revoked until a similar power is given to another citizen and resident of the commonwealth and filed as aforesaid. Every such individual or partnership neglecting or refusing to appoint such attorney shall be notified by the state secretary, upon information and request by any citizen of the commonwealth, of the requirements of this section; and every person who acts within the commonwealth as agent of any such individual or partnership continuing to neglect or refuse, after receipt of such notice from the state secretary, to appoint such attorney, shall forfeit ten dollars, to the use of the commonwealth, for each day during which such person has so acted after such neglect or refusal.

Dismissal of action, when. 1884, 268. R. L. 170, § 5. 210 Mass. 1.

SECTION 6. If real property of a non-resident is attached and no personal service is made upon him, the action shall be dismissed unless notice thereof is given, in such manner as the court orders, within one year after the entry of the action.

Notice. 1828, 114. R. S. 90, § 53; 92, § 3. G. S. 126, § 6. P. S. 164, § 6. 1894, 384. R. L. 170, § 6. 1908, 528, §§ 1, 2. 3 Gray, 508. 9 Gray, 311. 10 Gray, 164. 4 Allen, 94. 5 Allen, 45. 11 Allen, 134. 102 Mass. 414. 131 Mass. 359. 144 Mass. 10. 188 Mass. 80. 198 Mass. 82. 210 Mass. 1. 224 Mass. 14. 193. 230 Mass. 176.

SECTION 7. If a defendant in an action in the supreme judicial or superior court is absent from the commonwealth or his residence is unknown to the officer serving the writ, and no personal service has been made on him or his agent appointed under section five, or if the service of a writ is defective or insufficient by reason of a mistake of the plaintiff or officer as to where or with whom the summons or copy ought to have been left, the court, upon suggestion thereof by the plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within the commonwealth, except by publication, the court may order personal service to be made on him in such manner as it may direct and, upon proof that service has been so made, such defendant shall be held to answer to the action. If the defendant does not appear, the court may order the action continued and further notice given to him in such manner as it may direct.

1 SECTION 8. If, after such notice, the defendant does not appear
 2 within twenty-one days after the day specified therefor, a default shall
 3 be entered and judgment rendered against him as provided in section
 4 one.

1885, 384, § 8. R. L. 170, § 7. 144 Mass. 10. 206 Mass. 39.

Default.
 1828, 114
 R. S. 92, § 3
 G. S. 126, § 7.
 P. S. 164, § 7.

1 SECTION 9. If judgment in a personal action is rendered under the
 2 preceding section upon the default of a defendant who is absent from
 3 the commonwealth or whose residence is unknown, the plaintiff shall
 4 not take out execution thereon within one year thereafter, unless he
 5 files with the clerk of the court a bond payable to the defendant with
 6 one or more sureties, approved by the clerk or, upon appeal from his
 7 decision as to the sufficiency of the sureties, by a justice of the court
 8 rendering the judgment, in a sum equal to double the amount recovered,
 9 conditioned to repay the amount so recovered if the judgment is re-
 10 versed, or so much of the amount as shall be recovered upon a review
 11 brought by the original defendant within one year after the original
 12 judgment.

Bond.
 1700-1, 20, § 3.
 1797, 50, § 5.
 R. S. 92.
 §§ 6, 7.
 G. S. 126.
 §§ S. 9.
 P. S. 164.
 §§ S. 9.
 R. L. 170, § 8.
 4 Mass. 483.
 13 Gray, 1.
 131 Mass. 359.
 138 Mass. 72.
 222 Mass. 27.
 261 Mass. 422.

1 SECTION 10. If an attachment has been made upon a writ return-
 2 able to a district court and the defendant is absent from the common-
 3 wealth, so that no service can be made on him and he has no agent or
 4 attorney residing in the commonwealth, the court may order the action
 5 to be continued until notice thereof is given to the defendant in such
 6 manner as it may direct. If, upon proof that such notice has been given,
 7 the defendant fails to appear on the return day of such notice, judgment
 8 may be entered for the plaintiff. Thereupon execution may issue for
 9 the plaintiff, upon his giving bond to the defendant with sufficient surety
 10 in double the sum for which execution is to be issued, conditioned to
 11 repay the amount recovered, if, within one year from the judgment, pro-
 12 ceedings are begun upon which it is reversed.

Notice in
 district courts.
 1838, 121, § 2.
 G. S. 120, § 8.
 P. S. 154, § 11;
 155, § 19.
 1893, 396, § 18.
 1894, 431.
 R. L. 170, § 9.
 1917, 326.
 1918, 257,
 § 429
 1919, 5.
 1920, 2.
 4 Allen, 94.
 224 Mass. 14.

1 SECTION 11. If the execution in an action under this chapter, except
 2 as otherwise provided, is levied on land, no alienation thereof by the
 3 original plaintiff shall prevent the defendant from retaking the same or
 4 as much thereof as may be necessary to satisfy the judgment which he
 5 recovers on review, if the writ of review is sued out within one year after
 6 the original judgment.

Execution
 levied on
 land.
 1700-1, 20, § 3.
 1797, 50, § 5.
 R. S. 92, § 8.
 G. S. 126, § 10.
 P. S. 164, § 10.
 R. L. 170, § 10.

1 SECTION 12. If the original judgment was for seisin of the land de-
 2 manded in a real action, the writ of seisin may be issued in favor of the
 3 demandant without his giving bond; and if the judgment is reversed in
 4 whole or in part upon a review, whether sued out within the year or after-
 5 ward, the original tenant may have restitution of the land as upon a
 6 reversal on a writ of error.

Judgment in
 real action.
 R. S. 92, § 9.
 G. S. 126, § 11.
 P. S. 164, § 11.
 R. L. 170, § 11.

1 SECTION 13. An action of tort against several defendants, any one
 2 of whom is absent from the commonwealth at the time of the service of
 3 the writ, shall be conducted with regard to him relative to the service
 4 of the writ, judgment, review thereof and execution as if he were the
 5 sole defendant.

Actions of tort.
 1797, 50.
 R. S. 92, § 10.
 G. S. 126, § 12.
 P. S. 164, § 12.
 R. L. 170, § 12.

1 SECTION 14. An action of contract against several defendants, any
 2 one of whom is in the commonwealth and any other of whom is absent,

Actions of
 contract.
 1797, 50.

R. S. 92, § 11. in which the plaintiff recovers judgment shall not be subject to the pro- 3
 G. S. 126, § 13. visions of this chapter relative to review, giving bond and alienation of 4
 P. S. 164, § 13. land; but judgment shall not be rendered against any such absent def- 5
 R. L. 170, § 13. endant, unless under such circumstances as would entitle the plaintiff 6
 to judgment if the absent party were the sole defendant. 7

Prosecution against those served. SECTION 15. An action of contract against several defendants in 1
 New action. which legal service is not made upon all, either by attachment or other- 2
 R. S. 92, wise, by reason of their absence from the commonwealth or for other 3
 §§ 12, 13. sufficient cause, may be prosecuted against those who are duly served 4
 G. S. 126, with process, without further proceedings against the others. If judg- 5
 §§ 14, 15. ment so rendered against one or more of several joint contractors re- 6
 P. S. 164, mains unsatisfied, an action on the same contract may be maintained 7
 §§ 14, 15. against any of the other joint contractors in like manner as if the contract 8
 R. L. 170, § 14. had been joint and several. 9
 5 Mass. 193. 10 Allen, 485. 147 Mass. 201. 264 Mass. 414.
 8 Mass. 423.
 13 Mass. 148.
 13 Met. 256.
 16 Gray, 114.

Absence of one of several tenants, etc. SECTION 16. Real actions against several tenants, any one of whom 1
 R. S. 92, § 14. is absent from the commonwealth, shall be conducted relative to him as 2
 G. S. 126, § 16. if he were the sole defendant. 3
 P. S. 164, § 16. R. L. 170, § 15.

Mixed actions. SECTION 17. The provisions of this chapter relative to judgment, 1
 R. S. 92, § 14. bond and review in actions of tort shall apply to a mixed action if the 2
 G. S. 126, § 17. defendant or one of several defendants is absent from the commonwealth, 3
 P. S. 164, § 17. but, as to the service of the writ and notice to the defendant, it shall be 4
 R. L. 170, § 16. conducted as a real action. 5

CHAPTER 228.

SURVIVAL OF ACTIONS AND DEATH AND DISABILITIES OF PARTIES.

<p>SECT.</p> <p style="text-align: center;">SURVIVAL OF ACTIONS.</p> <p>1. Actions which survive.</p> <p style="text-align: center;">PERSONAL ACTIONS.</p> <p>2. Death of party in suit against officer not to abate action.</p> <p>3. Judgment for and against executor, etc., of officer.</p> <p>4. Death of sole plaintiff or defendant.</p> <p>5. Citation.</p> <p>6. Nonsuit or default.</p> <p>7. Death of joint plaintiff, etc.</p> <p style="text-align: center;">REAL AND MIXED ACTIONS.</p> <p>8. Prosecution of real and mixed action by devisee or heir.</p>	<p>SECT.</p> <p>9. Death of one of several demandants.</p> <p>10. Prosecution by survivor.</p> <p>11. Death of tenant.</p> <p style="text-align: center;">SUITS IN EQUITY.</p> <p>12. Death of party to suit in equity.</p> <p style="text-align: center;">INSANITY.</p> <p>13. Insanity.</p> <p style="text-align: center;">REMOVAL, DEATH, ETC., OF PUBLIC OFFICER, ETC.</p> <p>14. Removal, death, etc., of public officer, etc.</p>
--	---

SURVIVAL OF ACTIONS.

Actions which survive. SECTION 1. In addition to the actions which survive by the common 1
 1805, 99, § 2. law, the following shall survive: actions of replevin, tort for assault, 2
 1822, 110, § 1.

3 battery, imprisonment or other damage to the person, for goods taken 1828, 112.
 4 and carried away or converted, or for damage to real or personal prop- R. S. 14, § 66;
 5 erty, and actions against sheriffs for the misconduct or negligence of 93, § 7.
 6 themselves or their deputies. 1842, 89, § 1.

G. S. 17, § 58;	5 Cush. 543, 544	132 Mass. 359.	209 Mass. 278.
127, § 1.	9 Cush. 108, 478.	143 Mass. 280, 301.	215 Mass. 557.
P. S. 25, § 10;	14 Gray, 183.	147 Mass. 471.	216 Mass. 30, 169.
165, § 1.	11 Allen, 34.	153 Mass. 176.	222 Mass. 418.
R. L. 171, § 1.	105 Mass. 143	173 Mass. 212.	225 Mass. 599.
7 Mass. 393.	115 Mass. 346, 552.	179 Mass. 583.	239 Mass. 110.
1 Pick. 71.	121 Mass. 550.	181 Mass. 430.	244 Mass. 83.
19 Pick. 47.	123 Mass. 254.	188 Mass. 371, 515.	271 Mass. 94.
4 Cush. 408.	125 Mass. 106.	197 Mass. 474.	

PERSONAL ACTIONS.

1 SECTION 2. An action of replevin or tort by or against an officer Death of party
 2 for personal property attached by him and claimed or taken by another officer not to
 3 person shall not be abated by the death of any party, but may be pros- abate action.
 4 ecututed by or against his executor or administrator. R. S. 90, § 96.

G. S. 127, § 2. P. S. 165, § 2. R. L. 171, § 3.

1 SECTION 3. If judgment in such case is rendered for the executor or Judgment for
 2 administrator of the officer, the property or money recovered shall be and against
 3 disposed of in the same manner as it ought to have been by the officer executor, etc.,
 4 if he had recovered the same; but if judgment is rendered against such of officer
 5 executor or administrator, the property shall be returned or delivered R. S. 90, §§ 97,
 6 or the damages recovered shall be paid in full by him, if there is sufficient 98.
 7 property therefor, although the estate of the deceased is insolvent. G. S. 127,
 §§ 3, 4.
 P. S. 165,
 §§ 3, 4.
 R. L. 171, § 4.

1 SECTION 4. In a personal action the cause of which survives, if there Death of sole
 2 is only one plaintiff or one defendant and he dies after the commence- plaintiff or
 3 ment of the action and before final judgment, the action may proceed defendant.
 4 and be prosecuted by or against his executor or administrator, and if 1727, 6, §§ 1, 2.
 5 the action, or an appeal therein, has not been entered prior to his death, 1727-8, 12, § 1.
 6 it may be entered thereafter. The death shall be suggested on the 1783, 32, § 10;
 7 record, and the executor or administrator may, within such time as the 59, § 1.
 8 court shall allow, appear and prosecute or defend the action, which 1834, 86.
 9 shall thenceforth be conducted in the same manner as if it had been R. S. 93,
 10 originally commenced by or against the same executor or administrator. §§ 1-3.
 11 If the executor or administrator does not voluntarily appear, the sur- G. S. 127,
 12 viving party may take out a citation from the court requiring the exec- §§ 5-7.
 13 utor or administrator to appear and take upon himself the prosecution P. S. 165,
 14 or defence of the action. §§ 5-7.
 R. L. 171, § 5.
 133 Mass. 409.
 195 Mass. 242.
 225 Mass. 422.
 250 Mass. 546.
 251 Mass. 372.
 265 Mass. 108,
 295
 267 Mass. 350.

1 SECTION 5. Such citation shall be returnable at such time as the Citation.
 2 court may order and shall be served fourteen days at least before the 1783, 59, § 1.
 3 return day; but it shall not issue after the expiration of one year from R. S. 93, § 4.
 4 the time such executor or administrator has given bond, if he has given G. S. 127, § 8.
 5 the notice of his appointment as required by law. 1878, 200.
 P. S. 165,
 §§ 8, 9.

R. L. 171, § 6. 1920, 2. 242 Mass. 65. 265 Mass. 108, 295.
 1919, 333, § 34. 13 Allen, 221. 251 Mass. 372. 267 Mass. 350.

1 SECTION 6. If the executor or administrator does not appear on the Nonsuit or
 2 return of the citation or within such further time as the court allows, he default.
 3 shall be nonsuited or defaulted and judgment rendered against him in 1727, 6, § 3.
 4 like manner as if the action had been commenced by or against him in 1727-8, 12, § 1.
 5 his said capacity, except that he shall not be personally liable for costs; 1783, 59,
 §§ 1, 3.
 R. S. 93, §§ 5, 6.
 G. S. 127,
 §§ 9, 10.

P. S. 165, §§ 10, 11, but the estate of the deceased in his hands shall be liable for the costs, 6
 R. L. 171, § 7. as well as for the debt or damages recovered. 7
 136 Mass. 249.

Death of joint plaintiff, etc. SECTION 7. If any of several plaintiffs or defendants in a personal 1
 R. S. 93, §§ 12, 13, action, the cause of which survives, dies before final judgment, the 2
 G. S. 127, §§ 11, 12, action may be prosecuted by the surviving plaintiff or against the sur- 3
 P. S. 165, §§ 12, 13, viving defendant, as the case may be. If all the plaintiffs or defendants 4
 R. L. 171, § 8. die, the action may be prosecuted or defended by or against the executor 5
 4 Pick. 308. or administrator of the last surviving plaintiff or defendant, respectively. 6
 9 Pick. 528. 119 Mass. 361. 168 Mass. 415. 249 Mass. 397.
 133 Mass. 409. 195 Mass. 242. 251 Mass. 372.
 166 Mass. 466. 243 Mass. 405. 267 Mass. 350.

REAL AND MIXED ACTIONS.

Prosecution of real and mixed action by devisee or heir. SECTION 8. If, in a real or mixed action, the demandant dies before 1
 1826, 70, § 1. final judgment, his heir or devisee of the land demanded or of the right 2
 R. S. 93, § 14; of action may, within such time as the court allows, appear and prose- 3
 101, § 12. cute the action in the same manner as if commenced by him. If the 4
 1851, 233, § 72. first estate in possession under a devise is not a fee simple, the devisee 5
 1852, 312, § 55. of the first freehold estate in possession may appear and prosecute, and 6
 G. S. 127, § 13; 134, § 11. the judgment, if in his favor, shall be conformed to his title. 7
 P. S. 165, § 14; 173, § 11. R. L. 171, § 9; 12 Met. 501. 13 Gray, 272.
 179, § 11. 1 Cush. 395. 136 Mass. 126.
 17 Pick. 103. 8 Gray, 154. 152 Mass. 257.
 10 Met. 294. 12 Gray, 288.

Death of one of several demandants. SECTION 9. If any of several demandants dies before final judgment, 1
 1826, 70, § 1. his heir or devisee shall be admitted, upon motion, to prosecute the 2
 R. S. 93, § 15. action with the survivors, in the same manner as if he had been originally 3
 G. S. 127, § 14. a party thereto. 4
 P. S. 165, § 15. R. L. 171, § 10. 10 Mass. 179. 11 Mass. 56. 155 Mass. 461.

Prosecution by survivor. SECTION 10. If the interest of the deceased party passes to the sur- 1
 1826, 70, § 1. viving demandants, or if there is no motion for the admission of an heir 2
 R. S. 93, § 16. or devisee at the sitting when the death of the deceased party is sug- 3
 G. S. 127, § 15. gested or within such further time as the court allows, the surviving 4
 P. S. 165, § 16. demandants may prosecute the action for so much of the land in question 5
 R. L. 171, § 11. as they may then claim. 6

Death of tenant. SECTION 11. If the tenant dies before final judgment, his heir or 1
 1826, 70, § 2. devisee of the land demanded may, within such time as the court 2
 R. S. 93, § 17; allows, appear and defend the action, which shall be conducted as if 3
 101, § 12. commenced against him. If the heir or devisee does not voluntarily 4
 1855, 364. appear, the court before whom the action is pending shall, upon the 5
 G. S. 127, §§ 16, 17; application of the demandant, summon such heir or devisee to appear 6
 134, § 11. and defend the action. If any of several tenants in such action dies 7
 P. S. 165, §§ 17, 18; 173, § 11. before final judgment, the action may be prosecuted against the sur- 8
 R. L. 171, § 12; viving tenants for so much of the land as they hold or claim. 9
 179, § 11. 2 Mass. 479.
 2 Pick. 23.
 19 Pick. 243.

SUITS IN EQUITY.

Death of party to suit in equity. SECTION 12. If a party to a suit in equity dies and the cause by the 1
 1865, 42. rules of equity may be revived against or in favor of an executor, ad- 2
 P. S. 165, § 19. ministratoor, heir, devisee or other person, such representative may, in 3

4 lieu of proceedings to revive the same, appear or be summoned to prose- R. L. 171, § 17.
 5 cute or defend in like manner as in an action at law. 12 Gray, 288.

125 Mass. 166. 166 Mass. 547. 233 Mass. 62. 242 Mass. 65.

INSANITY.

1 SECTION 13. If, during the pendency of an action or suit, any party Insanity.
 2 becomes insane, it may be prosecuted or defended by his guardian in R. S. 93, § 22.
 3 like manner as if it had been commenced after the appointment of the G. S. 127, § 23.
 4 guardian, or the court may appoint a guardian for the action, as the P. S. 165, § 25.
 5 case may require. R. L. 171, § 18.
 13 Mass. 412.
 5 Pick. 431.

8 Allen, 311.

REMOVAL, DEATH, ETC., OF PUBLIC OFFICER, ETC.

1 SECTION 14. An action on a note, bond, contract or other liability Removal,
 2 made to or with any public officer or trustee appointed under a statute death, etc.,
 3 may, after his removal, resignation or death, be commenced or, if pend- of public
 4 ing, may be prosecuted by his successor, as it might have been by the officer, etc.
 5 person with whom the contract was made. 1797, 14.
 R. S. 13, § 24;
 93, § 23; 100,
 § 25.

G. S. 127, § 24. R. L. 171, § 19. 12 Mass. 575. 6 Cush. 229.
 P. S. 165, § 26. 2 Mass. 440. 2 Met. 47. 236 Mass. 336.

CHAPTER 229.

ACTIONS FOR DEATH AND INJURIES RESULTING IN DEATH.

SECT.

1. Damages for death from a defective way.
2. Damages for death by negligence of common carrier.
3. Penalty on certain corporations for death by negligence, etc.
4. Action against employer for death.
5. Action for death in general.
6. Count for conscious suffering in action for death.

SECT.

7. Action by legal representative of employee for death after conscious suffering, etc.
8. Amendment of actions brought for death or injury of employee.
9. Damages in action for death of employee.
10. Notice and limitation in action against employer for death.
11. Interest.

1 SECTION 1. If the life of a person is lost by reason of a defect or a want Damages for
 2 of repair of or a want of a sufficient railing in or upon a way, causeway or death from a
 3 bridge, the county, city, town or person by law obliged to repair the same defective way.
 4 shall, if it or he had previous reasonable notice of the defect or want of P. L. 1693-4,
 5 repair or want of railing, be liable in damages not exceeding one thousand 6, § 6.
 6 dollars, to be assessed with reference to the degree of culpability of the 1786, 81, § 7.
 7 defendant and recovered in an action of tort commenced within one year R. S. 25, § 21.
 8 after the injury causing the death by the executor or administrator of the G. S. 44, § 21.
 9 deceased person, to the use of the surviving wife or husband and children 1881, 199,
 10 of the deceased in equal moieties, or, if there are no children, to the use §§ 4, 5.
 11 of the surviving wife or husband, or, if there is no surviving wife or hus- P. S. 52, § 17.
 12 band, to the use of the next of kin. R. L. 51, § 17.
 1917, 344, IV,
 § 23, VIII, § 1.
 1929, 119, § 1.
 138 Mass. 14.
 155 Mass. 344.
 185 Mass. 510.
 188 Mass. 53.
 192 Mass. 220.

194 Mass. 183. 219 Mass. 310. 236 Mass. 275. 254 Mass. 110.
 197 Mass. 480. 222 Mass. 591. 240 Mass. 517. 260 Mass. 210.
 211 Mass. 561. 226 Mass. 479. 251 Mass. 255. 268 Mass. 462, 473.
 212 Mass. 243. 227 Mass. 462. 252 Mass. 397. 271 Mass. 94.
 218 Mass. 582. 230 Mass. 370, 536.

Damages for death by negligence of common carrier.
 1840, 80.
 G. S. 160, § 34.
 1881, 199, §§ 3, 5, 6.
 P. S. 73, § 6.
 R. L. 70, § 6.
 1921, 486, § 35.
 132 Mass. 555.
 144 Mass. 425.
 179 Mass. 329.
 200 Mass. 8.
 271 Mass. 94.

SECTION 2. If the proprietor of a common carrier of passengers, except a railroad corporation or street railway or electric railroad company, by reason of his or its negligence, or by reason of the unfitness or gross negligence or carelessness of his or its servants or agents, causes the death of a passenger, he or it shall be liable in damages in the sum of not less than five hundred nor more than five thousand dollars, to be assessed with reference to the degree of culpability of the defendant or of his or its servants or agents, and recovered and distributed as provided in section one, and to the use of the persons and in the proportions, therein specified.

Penalty on certain corporations for death by negligence, etc.
 1840, 80.
 1853, 414, §§ 1-3.
 G. S. 63, §§ 97-99.
 1864, 229, §§ 37, 38.
 1867, 164.
 1871, 381, §§ 49, 50.
 1874, 372, § 163.
 1881, 199, §§ 1, 5, 6.
 P. S. 112, § 212.
 1883, 243.
 1886, 140.
 R. L. 111, § 267.
 1906, 463, I, § 63, II, § 258;
 516, § 13.
 1907, 392;
 428, § 4.
 1912, 354.
 11 Cush. 512.
 5 Gray, 473.
 10 Allen, 189.
 13 Allen, 589.
 101 Mass. 201.
 107 Mass. 236.
 108 Mass. 7.
 120 Mass. 372.
 126 Mass. 61.
 129 Mass. 500.
 133 Mass. 383.
 134 Mass. 211.
 135 Mass. 448.
 139 Mass. 238, 252, 542.
 141 Mass. 463.
 143 Mass. 501.
 144 Mass. 425.
 146 Mass. 379.
 147 Mass. 191.
 148 Mass. 478.

SECTION 3. If a corporation operating a railroad, street railway or electric railroad, by reason of its negligence or of the unfitness or negligence of its agents or servants while engaged in its business, causes the death of a passenger, or of a person in the exercise of due care who is not a passenger or in the employment of such corporation, it shall be punished by a fine of not less than five hundred nor more than ten thousand dollars, to be recovered by an indictment prosecuted within one year after the time of the injury which caused the death, which shall be paid to the executor or administrator, and distributed as provided in section one; but a corporation which operates a railroad shall not be so liable for the death of a person while walking or being upon its railroad contrary to law or to the reasonable rules and regulations of the corporation, and one which operates an electric railroad shall not be so liable for the death of a person while so walking or being on that part of its railroad not within the limits of a highway. Such corporation shall also be liable in damages in the sum of not less than five hundred nor more than ten thousand dollars, to be assessed with reference to the degree of culpability of the corporation or of its servants or agents, which shall be recovered in an action of tort, begun within one year after the injury which caused the death, by the executor or administrator of the deceased, and distributed as provided in section one. If an employee of a railroad corporation, being in the exercise of due care, is killed under such circumstances as would have entitled him to maintain an action for damages against such corporation if death had not resulted, the corporation shall be liable in the same manner and to the same extent as it would have been if the deceased had not been an employee. But no executor or administrator shall, for the same cause, avail himself of more than one of the remedies given by this section.

- | | | |
|-------------------------|---------------------|---------------------|
| 153 Mass. 79, 112, 300. | 180 Mass. 270 | 223 Mass. 29, 184. |
| 154 Mass. 478. | 190 Mass. 527. | 224 Mass. 303, 452. |
| 156 Mass. 316, 320. | 192 Mass. 20. | 225 Mass. 65. |
| 157 Mass. 336. | 194 Mass. 181. | 226 Mass. 262. |
| 159 Mass. 3, 536. | 197 Mass. 32, 391. | 227 Mass. 493. |
| 160 Mass. 39. | 200 Mass. 8, 147. | 228 Mass. 472. |
| 161 Mass. 26, 298. | 201 Mass. 38. | 229 Mass. 506. |
| 162 Mass. 66. | 203 Mass. 453. | 234 Mass. 415. |
| 163 Mass. 132, 330. | 206 Mass. 557. | 237 Mass. 69. |
| 164 Mass. 424. | 209 Mass. 81, 100. | 238 Mass. 564. |
| 165 Mass. 572. | 210 Mass. 553. | 240 Mass. 150. |
| 166 Mass. 492. | 212 Mass. 392. | 251 Mass. 255. |
| 171 Mass. 33, 52, 164. | 214 Mass. 1, 98. | 252 Mass. 397. |
| 172 Mass. 211. | 215 Mass. 50, 467. | 253 Mass. 462. |
| 173 Mass. 136. | 216 Mass. 178, 598. | 258 Mass. 389. |
| 175 Mass. 181. | 217 Mass. 188, 594. | 260 Mass. 344. |
| 182 Mass. 337. | 218 Mass. 397, 582. | 262 Mass. 56, 485. |
| 185 Mass. 510. | 221 Mass. 457. | 269 Mass. 60. |
| 187 Mass. 77. | 222 Mass. 583. | 271 Mass. 94. |
| 188 Mass. 371. | | |

Action against employer for death
 1887, 270, § 2.
 R. L. 106, § 73.

SECTION 4. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under section one of chapter one hundred and fifty-three, an employee is instantly killed,

4 or dies without conscious suffering, the surviving wife or husband of the
 5 deceased or, if there is no wife or husband surviving, the next of kin, who,
 6 at the time of such death, were dependent upon the wages of the deceased
 7 for support, shall have a right of action for damages against the employer.
 8 This section shall not apply to injuries caused to domestic servants or
 9 farm laborers by fellow employees.

167 Mass. 590.	188 Mass. 371.	202 Mass. 254.
168 Mass. 40.	191 Mass. 9.	211 Mass. 446.
174 Mass. 455.	193 Mass. 76.	218 Mass. 582.
175 Mass. 502.	195 Mass. 437.	219 Mass. 351.
176 Mass. 266.	197 Mass. 391.	222 Mass. 538.
183 Mass. 13.	199 Mass. 254.	227 Mass. 123.
185 Mass. 151.	200 Mass. 284.	271 Mass. 94.

1 SECTION 5. Except as provided in sections one, two and three, a
 2 person who by his negligence or by his wilful, wanton or reckless act,
 3 or by the negligence or wilful, wanton or reckless act of his agents or
 4 servants while engaged in his business, causes the death of a person in
 5 the exercise of due care, who is not in his employment or service, shall
 6 be liable in damages in the sum of not less than five hundred nor more
 7 than ten thousand dollars, to be assessed with reference to the degree of
 8 his culpability or of that of his agents or servants, to be recovered in an
 9 action of tort, commenced, except as provided by section four of chapter
 10 two hundred and sixty, within two years after the injury which caused
 11 the death by the executor or administrator of the deceased, to be dis-
 12 tributed as provided in section one.

209 Mass. 529.	226 Mass. 75, 479.	253 Mass. 481.
211 Mass. 54, 561.	230 Mass. 139.	254 Mass. 110.
212 Mass. 243, 392.	231 Mass. 397, 458.	258 Mass. 232.
214 Mass. 426.	519, 538, 550.	262 Mass. 387.
218 Mass. 231, 582.	232 Mass. 183.	263 Mass. 73, 129.
219 Mass. 15, 560, 566.	233 Mass. 392.	264 Mass. 586.
220 Mass. 90, 236.	235 Mass. 66.	267 Mass. 447.
221 Mass. 24, 125, 195.	236 Mass. 387.	268 Mass. 473.
222 Mass. 560.	238 Mass. 239.	271 Mass. 94, 406.
223 Mass. 179.	242 Mass. 8.	272 Mass. 448.
225 Mass. 151, 576.	244 Mass. 83.	

1 SECTION 6. In any civil action brought under section three or five,
 2 damages may be recovered under a separate count at common law for
 3 conscious suffering resulting from the same injury, but any sum so re-
 4 covered shall be held and disposed of by the executors or administrators
 5 as assets of the estate of the deceased.

216 Mass. 586.	229 Mass. 506.	263 Mass. 129.
219 Mass. 566.	232 Mass. 183.	

1 SECTION 7. If a cause of action exists against an employer under
 2 section one of chapter one hundred and fifty-three, or because of the
 3 negligence of the employer himself, for an injury resulting in death which
 4 is not instantaneous or is preceded by conscious suffering, if there is any
 5 person who would have been entitled to bring an action under section
 6 four, the legal representatives of the deceased may, in the action under
 7 said section one, recover damages both for the injury and for the death,
 8 and, if the employer is also liable at common law, may in a separate count
 9 in the same action recover damages for conscious suffering resulting from
 10 the same injury.

188 Mass. 371.	203 Mass. 273.	215 Mass. 199.	227 Mass. 168.
198 Mass. 163.	208 Mass. 296.	218 Mass. 582.	243 Mass. 94.
200 Mass. 284, 432.	210 Mass. 86.	219 Mass. 164.	248 Mass. 559.
201 Mass. 227.	214 Mass. 426.	224 Mass. 452.	253 Mass. 499.

1 SECTION 8. If an action is brought under section four, or if the
 2 action is brought by the legal representatives under the preceding sec-
 3 tion or under section one of chapter one hundred and fifty-three, such

1908, 457.
 1909, 514,
 §§ 129, 142,
 145
 1929, 119, § 2.
 151 Mass. 245.
 155 Mass. 1.
 156 Mass. 86.
 164 Mass. 555.

 Action for
 death in
 general.
 1897, 416.
 1898, 565.
 R. L. 171, § 2.
 1907, 375.
 1922, 439.
 1925, 346, § 9.
 155 Mass. 176.
 185 Mass. 519.
 187 Mass. 376.
 189 Mass. 287.
 192 Mass. 20,
 122
 200 Mass. 8,
 232
 201 Mass. 276.
 203 Mass. 572.
 206 Mass. 308.

 Count for
 conscious
 suffering in
 action for
 death.
 1911, 31; 635.
 214 Mass. 426.

 Action by
 legal repre-
 sentative of
 employee for
 death after
 conscious
 suffering, etc.
 1892, 260, § 1.
 1893, 339.
 1894, 499.
 R. L. 106, § 72.
 1906, 379.
 1909, 514.
 §§ 128, 145.
 1915, 179
 185 Mass. 151,
 510.

 Amendment
 of actions
 brought for
 death or injury
 of employee.

1908, 457.
1909, 514.
§§ 130, 145.
200 Mass. 284.

action shall not fail by reason of the fact that it should have been brought under the other section, but at any time prior to final judgment may be so amended as to provide against such failure.

Damages in action for death of employee.
1887, 270, § 3.
1892, 260, §§ 1, 2.
1893, 359.
1894, 499.
1900, 446.
R. L. 106, § 74.
1909, 514.
§§ 131, 145.
1927, 213, § 1.
185 Mass. 510.
188 Mass. 371.
198 Mass. 163.
203 Mass. 273.
218 Mass. 582.

SECTION 9. If under section four or section seven damages are awarded for death or for injury and death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action brought under section four shall not be less than five hundred nor more than ten thousand dollars.

The amount of damages which may be awarded for injury and death in an action brought under section seven shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled under section four to bring an action for his death.

Notice and limitation in action against employer for death.
1887, 270, § 3.

SECTION 10. An action under section four or section seven shall be subject to all the provisions of section six of chapter one hundred and fifty-three relative to notice to the employer of the time, place and cause of the injury, and the time within which the action shall be commenced.

- | | | |
|----------------------|----------------|---------------------|
| 1888, 155, § 1. | 1911, 178. | 204 Mass. 197. |
| 1892, 260, § 2. | 1912, 251. | 209 Mass. 196. |
| 1894, 389. | 197 Mass. 586. | 210 Mass. 86. |
| 1900, 446. | 198 Mass. 385. | 216 Mass. 512, 552. |
| R. L. 106, § 75. | 199 Mass. 418. | 219 Mass. 164. |
| 1909, 514. | 200 Mass. 284. | 226 Mass. 374. |
| §§ 132, 145. | 201 Mass. 473. | 228 Mass. 361. |
| 1910, 166, § 2; 611. | 202 Mass. 228. | |

Interest.
1913, 290.
1931, 253, § 1.
238 Mass. 221.
272 Mass. 448.

SECTION 11. In any civil action in which a verdict is given or a finding made for pecuniary damages for the death, with or without conscious suffering, of any person, whether or not such person was in the employment of the defendant against whom the verdict is rendered or finding made, there shall be added to the amount of the damages interest thereon from the date of the writ, even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law.

CHAPTER 230.

ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

SECT.

1. What actions may be brought.
2. Damages in tort.
3. Recovery by executor, etc., in right of another.
4. Property returned on replevin by executor, etc.
5. Legatee, etc., may bring suit to enforce claim where executor, etc., refuses, etc.
6. Writs against executors, etc.

SECT.

7. No attachment without permission of probate court.
8. Costs.
9. Separate executions for damages and for costs.
10. Scire facias against executor, etc.
11. Death of executor, etc., pending action.
12. Same, after judgment.
13. Writ of error.

What actions may be brought.
R. S. 93, § 8.
G. S. 128, § 1.

SECTION 1. An action which would have survived if commenced by or against the original party in his lifetime may be commenced and prosecuted by or against his executor or administrator.

- | | | | |
|-----------------|-----------------|----------------|----------------|
| P. S. 166, § 1. | R. L. 172, § 1. | 251 Mass. 198. | 263 Mass. 472. |
|-----------------|-----------------|----------------|----------------|

1 SECTION 2. If an action of tort is commenced or prosecuted against
 2 the executor or administrator of the person originally liable, the plaintiff
 3 shall recover only the value of the goods taken, or the damage actually
 4 sustained, without vindictive or exemplary damages, or damages for any
 5 alleged outrage to the feelings of the injured party.

Damages
in tort
R. S. 93, § 9.
G. S. 128, § 2.
P. S. 166, § 2.
R. L. 172, § 2.
173 Mass. 212.

1 SECTION 3. If the executor or administrator of a trustee, carrier,
 2 depository or other person who claimed only a special property in goods
 3 which he held for the use and benefit of another recovers such goods, or
 4 damages for the taking or detention thereof, in replevin or tort, the goods
 5 or money recovered shall not be assets in his hands, but shall, after the
 6 deduction of the costs and expenses of the action, be delivered or paid
 7 to the person for whose use and benefit they were so held or claimed by
 8 the deceased.

Recovery by
executor, etc.,
in right of
another
1822, 110, § 2.
R. S. 93, § 10.
G. S. 128, § 3.
P. S. 166, § 3.
R. L. 172, § 3.

1 SECTION 4. If judgment for a return in an action of replevin is
 2 rendered against an executor or administrator, the property returned
 3 by him shall not be assets in his hands; and if it has been included in the
 4 inventory, he shall be allowed therefor in his account if he shows that
 5 it has been returned in pursuance of such judgment.

Property re-
turned on
replevin by
executor, etc.
1822, 110, § 3.
R. S. 93, § 11.
G. S. 128, § 4.

P. S. 166, § 4.

R. L. 172, § 4.

1 SECTION 5. It shall be unnecessary to remove an executor or adminis-
 2 trator in order that an action or suit to enforce a claim in favor of the
 3 estate may be brought by an administrator to be appointed in his place,
 4 when he refuses to bring such action or suit at the request of a legatee or
 5 creditor, or is unable to do so by reason of his interest or otherwise, but
 6 a legatee or creditor having an interest in the enforcement of any such
 7 claim may bring a suit in equity to enforce it for the benefit of the estate
 8 in like circumstances and in like manner as a person beneficially interested
 9 in a trust fund may bring a suit to enforce a claim in favor of such fund,
 10 and in case of such a suit in respect to real estate, it shall not be an
 11 obstacle to the suit that a license to sell it has not been obtained by the
 12 executor or administrator.

Legatee, etc.,
may bring
suit to enforce
claim where
executor, etc.,
refuses, etc.
1915, 151, § 7.

1 SECTION 6. Writs of attachment and executions against executors
 2 or administrators for debts due from the testator or intestate shall run
 3 only against the goods and estate of the deceased in their hands, and
 4 not against their bodies, goods or estate.

Writs against
executors, etc.
1703-4, 12, § 4
1783, 32, § 9.
R. S. 110, § 1.

G. S. 128, § 5.
P. S. 166, § 5.
R. L. 172, § 5.
3 Mass. 523.

140 Mass. 66.
151 Mass. 148, 501.
190 Mass. 522.
221 Mass. 587.

244 Mass. 23.
251 Mass. 198.
253 Mass. 499.
268 Mass. 73.

1 SECTION 7. The real and personal property of a deceased person
 2 shall not be attached on mesne process in an action upon a debt due
 3 from, or upon a claim against, the deceased, except upon the permission
 4 of the probate court for the county where the executor or administrator
 5 of the deceased person was appointed. This section shall not apply to
 6 actions brought under section twenty-nine of chapter one hundred and
 7 ninety-seven.

No attachment
without per-
mission of
probate court.
1907, 553.
251 Mass. 198.
268 Mass. 73.

1 SECTION 8. If a judgment for costs is rendered against an executor
 2 or administrator in an action commenced by or against him, or in an action
 3 commenced by or against the testator or intestate, wherein the executor
 4 or administrator has appeared and taken upon himself the prosecution

Costs.
R. S. 110, §§ 2,
3, 5.
G. S. 128, §§ 6,
7, 9.
P. S. 166, §§ 6,
7, 9.

R. L. 172, § 6.
16 Mass. 530.
2 Pick. 68.
11 Pick. 389.
14 Pick. 8, 274.
15 Pick. 385.
220 Mass. 1.

or defence, he shall be personally liable for the costs, and execution shall be awarded against his body, goods and estate, as if it were for his own debt. Costs paid by him shall be allowed in his account unless the probate court determines that the action was prosecuted or defended without reasonable cause.

Separate executions for damages and for costs.
R. S. 110, § 4.
G. S. 128, § 8.
P. S. 166, § 8.
R. L. 172, § 7.
120 Mass. 516.

SECTION 9. If the judgment is for damages and costs, an execution for the damages shall be awarded against the goods and estate of the deceased in the hands of the executor or administrator, and another execution for costs against the goods, estate and body of the executor or administrator, as if for his own debt.

136 Mass. 249, 294. 143 Mass. 187. 216 Mass. 30. 220 Mass. 1.

Seire facias against executor, etc.
1703-4, 12, § 4.
1783, 32, § 9.
1819, 157.
R. S. 110, § 6.
G. S. 128, § 10.
P. S. 166, § 10.
R. L. 172, § 8.
142 Mass. 227.
144 Mass. 238.
202 Mass. 104.
221 Mass. 587.

SECTION 10. Upon the return unsatisfied of an execution against an executor or administrator for a debt due from the estate of the deceased, the court may, upon a suggestion by the creditor of waste, issue a writ of seire facias against the executor or administrator. If the defendant does not appear and show sufficient cause to the contrary, he shall be found guilty of waste and shall be personally liable for the amount thereof, if it can be ascertained, otherwise for the amount due on the original judgment, with interest from the time when it was rendered, and judgment and execution shall be awarded as for his own debt.

Death of executor, etc., pending action.
1812, 105, § 1.
1817, 190, § 18.
R. S. 110, § 7, 8.
G. S. 128, §§ 11, 12.
P. S. 166, §§ 11, 12.
R. L. 172, § 9.

SECTION 11. If an executor or administrator dies or is removed from office during the pendency of an action to which he is a party, it may be prosecuted by or against the administrator de bonis non in like manner as if commenced by or against him; and the provisions of chapter two hundred and twenty-eight relative to the appearance or citation of an administrator and relative to a nonsuit or default shall apply to such administrator de bonis non.

4 Mass. 611. 7 Allen, 427. 251 Mass. 198.

Same, after judgment.
1812, 105, § 2.
1817, 190, § 18.
R. S. 110, § 9.
G. S. 128, § 13.
P. S. 166, § 13.
R. L. 172, § 10.

SECTION 12. If an executor or administrator dies or is removed after judgment has been rendered for or against him, the court may issue a writ of seire facias in favor of or against the administrator de bonis non, and a new execution may be issued in like manner as may be done in favor of or against an original executor or administrator in case of the death of his testator or intestate after a judgment rendered for or against him; except that a judgment against the first executor or administrator for costs for which he was personally liable shall be enforced only against his executor or administrator and not against the administrator de bonis non.

Writ of error.
1812, 105, § 2.
1817, 190, § 18.
R. S. 110, § 10.
G. S. 128, § 14.
P. S. 166, § 14.
R. L. 172, § 11.
4 Mass. 611.
7 Allen, 427.

SECTION 13. If a judgment is rendered for or against an executor or administrator, a writ of error may be brought thereon by or against an administrator de bonis non in like manner as it might have been brought by or against the executor or administrator who was party to the judgment.

CHAPTER 231.

PLEADING AND PRACTICE.

[All sections of this chapter, except as otherwise provided, apply to actions at law in the supreme judicial and superior courts. The following signs against a section number indicate that a section also applies as follows:

- * to civil actions before any district court. See § 141.
- † to real and mixed actions, and to the land court or proceedings begun therein. See § 142.
- ‡ to the municipal court of the city of Boston. See § 143.
- § to suits in equity and probate proceedings. See § 144.
- || to petitions for damages for taking by eminent domain and for abatement of betterment assessments. See § 145.
- ¶ to suits in equity. See § 146.]

SECT.

PLEADING.

Division of Personal Actions.

* 1. Division of actions.

Parties.

* 2. Joinder of plaintiffs in several actions.

* 3. Joinder of co-tenants.

* 4. Joinder of defendants severally liable on written contracts.

* 5. Action by assignee of chose in action.

* § || 6. Same subject.

Declarations.

* 7. Form of declaring at law.

† 8. In real actions on mortgage.

9. Writ and declaration in action of ejectment.

* 10. Description of plaintiff's chose in tort, etc.

* 11. Declaration need not be in writ, unless, etc.

* † ¶ 12. Time of filing declaration.

* † 13. Non-entry and late entry.

* 13A. Judgments on certain written instruments waiving service of process to be annulled unless service made, etc. Stipulations in such instruments confessing judgment void. Stay of execution.

* 14. Bill of particulars.

Demurrers.

* † 15. Demurrers.

* † 16. Demurrer to the declaration.

* † 17. Demurrer to the answer.

* † 18. Causes for demurrer.

* † 19. Pleading after demurrer.

Answers, Replications, etc.

* † 20. Answer in abatement.

* † 21. Answering over.

SECT.

* † 22. Answer or general issue.

* † 23. Joint answer.

24. Pleadings on appeal.

* 25. Answer.

* 26. Answers to separate items, etc.

* 27. General or partial denial.

* 28. Answer in avoidance.

* ¶ 29. Signatures admitted unless genuineness is denied.

* † § | 30. Fiduciary or corporate capacity, or existence of public way admitted, unless, etc.

* † § ¶ 31. Equitable defences.

* 32. Written instruments, how pleaded.

* 33. Conditional obligations, etc., how pleaded.

* 34. Replication.

* † § || 35. Equitable avoidance of defence.

* 36. Supplemental declaration, etc.

* 37. Alternative averments.

* 38. Construction of pleadings.

* † 39. Action, when at issue.

PRACTICE.

Interpleader.

* 40. Interpleader by defendant.

* 41. Interpleader by bailee or pledgee.

Endorsement of Process.

* † ¶ 42. Endorsement of writs, etc., before entry.

* † ¶ 43. Same after entry.

* † ¶ 44. Endorser upon removal of plaintiff.

* † ¶ 45. Endorser removing, etc., another required.

46. Endorser in probate cases, etc.

* † ¶ 47. Dismissal for failure to procure endorser.

* † ¶ 48. Substitute endorser.

SECT.		SECT.	
	<i>Abatement.</i>		<i>Interlocutory Orders.</i>
* † § 49.	No abatement for circumstantial errors.	* 70.	Statement of particulars of action or defence.
* † 50.	Judgment upon issue of fact.	† ‡ § 71.	Orders, etc., preparatory to trial, when made.
	<i>Amendments.</i>		<i>Agreements of Parties.</i>
* † § 51.	Changing parties, form, etc.	* † 72.	Agreements.
* † § 52.	Amendment after demurrer.	* † 73.	Continuances by agreement.
* † 53.	Amendment, etc., after answer in abatement.		<i>Offer of Judgment.</i>
* † 54.	Joinder of new defendants.	* ¶ 74.	Offer of judgment.
¶ 55.	Amendments changing actions at law into suits in equity, and vice versa.	* ¶ 75.	Costs to defendant on non-acceptance.
* † 56.	Amendment after judgment.		<i>Frivolous Demurrer.</i>
	<i>Defaults.</i>	† 76.	Frivolous or immaterial demurrers.
* † 57.	Defaults.		<i>Hearing or Trial.</i>
* † ¶ 58.	Notice of default or decree pro confesso.	† 77.	Jury waived cases and demurrers, how heard.
* 58A.	Requiring notice to insurance company of default before assessing damages in certain motor vehicle cases.	† 78.	Postponement of actions on trial list.
	<i>Advancing Causes for Speedy Trial.</i>	* † 79.	Trials not to be delayed or postponed, etc.
59.	Advancing actions for speedy trial.	† 80.	Trials to proceed after allowance of exceptions.
¶ 59A.	Same subject.	† § 81.	Charges as to facts forbidden.
	<i>Expediting the Collection of Debts.</i>	82.	Place of trial.
* 59B.	Motion for immediate entry of judgment.	† § 83.	Examination of witnesses.
	<i>Claim of Trial by Jury.</i>	84.	Consolidation of actions for libel.
† 60.	Jury trial, how claimed.		<i>Evidence.</i>
	<i>Providing for Prompt Informal Trials in the Superior Court.</i>	* 85.	Contributory negligence an affirmative defence; presumption and burden of proof.
¶ 60A.	Waiver of certain rights to secure prompt trial.	* 85A.	Registration of motor vehicle in defendant's name evidence of his responsibility for conduct of operator.
	<i>Interrogatories.</i>	‡ 86.	Counts not proved may be stricken out.
* † § 61.	Parties may file interrogatories, when.	* † § 87.	Pleadings not evidence.
* † § 62.	Answers.	* ¶ 88.	Unaccepted offer of judgment.
* † § 63.	Same subject. Practice.	* † § 89.	Answers to interrogatories may be read at trial.
* † § 64.	Penalty for failure to answer, etc.	* † ¶ 90.	One matter in answer not evidence of another.
* † § 65.	Answers by corporation, etc.	* 91.	Justification in slander not proof of malice.
* † § 66.	Costs.	* 92.	Truth of libel admissible.
* † § 67.	Right to seal up immaterial parts of book, etc.	* 93.	Retraction of libel.
	<i>Inspection of Documents.</i>	* 94.	Evidence in mitigation of damages.
* † § 68.	Inspection of documents.	* 95.	Evidence of payment, etc., in action on judgment by default.
	<i>Admission of Material Facts and Documents.</i>		
* † ¶ 69.	Demand for admission of fact or of execution of paper.		

SECT.

Appeals.

- † 96. Appeal to full court.
- * 97. Appeal to superior court.
- * 98. Appeal bond.
- * 99. Deposit in lieu of bond
- 100. [Repealed.]
- * 101. Transmission of papers.
- * 102. Records in lower court of cases appealed.
- * 103. Waiver of jury trial by bringing action in district court. Removal by plaintiff.
- * 104. Removal from district court.
- * 105. Partial removal.
- * 106. Deposit in lieu of removal bond.
- * 107. Bond or deposit not required, when.
- * 108. Appellate divisions of district courts.
- * 109. Appeal from appellate division to supreme judicial court.
- * 110. Powers of appellate division.
 - 110A. [Repealed.]
 - 110B. [Repealed.]
 - 110C. [Repealed.]

Report.

- † || 111. Report.
- † § || 112. Report in case of disability, etc., of presiding justice.

Exceptions.

- † § || 113. Exceptions.
- † § || 114. Dismissal of exceptions for failure to present for allowance.
- † § || 115. Allowance of exceptions in case of disability, etc., of presiding justice.
- † 116. Frivolous or immaterial exceptions.
- † § || 117. Establishment of exceptions disallowed.
- † § || 118. Entry of notice of filing of petition to establish exceptions.
- † § || 119. Reservation where exceptions disallowed.
- † § ' 120. Verdict by leave reserved.
- † § || 121. Transcripts of evidence.

Power of Full Court on Exceptions, Appeal or Report.

- † 122. Full court may direct judgment for defendant after sustaining his exceptions, when.
- † 123. Same as to plaintiff.
- * † § || 124. Power of full court on appeal, etc.
- * † § || 125. Same, relative to amendments, etc.

SECT.

- * † § 126. Inferences of fact upon case stated.

New Trials.

- † § ' 127. New trial.
- † § 128. Grounds for new trial to be stated in order, etc.
- † § ' 129. New trial in jury waived cases.
- † § ' 130. Terms on refusal of new trial.
- † § 131. Effect of exceptions on new trial.

Effect of Error not Affecting Whole Case.

- * † § || 132. No new trial to be granted by full court or trial court on errors in evidence or procedure not affecting substantial rights. Judgment as to part of case.

- † § || 133. Affirmance of judgment by court appealed from.

Waiver of Appeal or Exceptions.

- * † § 134. Waiver of appeal or exceptions.

Transmission of Papers.

- * † § || 135. Preparation and transmission of necessary papers to full court of supreme judicial court. Entry of case.

Arrest of Judgment.

- * † 136. Arrest of judgment.

GENERAL PROVISIONS.

- * † § ' 137. Suggestions entered on record.
- * † ' 138. Identification of cause of action, amendment, notice to parties, appeal, etc.
- * † § ' 139. Affidavit when corporation is a party.
- * 140. Action not to be discontinued after being referred to auditor, except, etc.
- 141. Sections applicable to civil actions before district courts.
- 142. Sections applicable to real and mixed actions, except, etc.
- 143. Sections applicable to civil actions before municipal court of Boston.
- 144. Sections applicable to equity and probate cases.
- 145. Sections applicable in eminent domain and betterment cases.
- 146. Sections applicable in equity.

FORMS.

- * 147. Forms.

PLEADING.

Division of Personal Actions.

Division of actions. 1851, 233, § 1. 1852, 312, § 1. G. S. 129, § 1. P. S. 167, § 1. R. L. 173, § 1. 12 Gray, 206. 7 Allen, 466.

* SECTION 1. There shall be three divisions of personal actions — 1
 First, Contract, which shall include actions formerly known as as- 2
 sumpsit, covenant and debt, except actions for penalties. 3
 Second, Tort, which shall include actions formerly known as trespass, 4
 trespass on the case, trover and actions for penalties. 5
 110 Mass. 340. 144 Mass. 64. 195 Mass. 141.
 140 Mass. 508. 177 Mass. 562.

Third, Replevin. 6

Parties.

Joinder of plaintiffs in several actions. 1896, 444. R. L. 173, § 2. 211 Mass. 156. 241 Mass. 155.

* SECTION 2. In actions of contract for the recovery of money due 1
 for manual labor, two or more persons may join in one action against the 2
 same defendant, although the claims are not joint, if the claim of no one 3
 of such plaintiffs exceeds twenty dollars; and each plaintiff so joining may 4
 recover the amount found to be due to him solely. The claim of each 5
 plaintiff shall be stated in a separate count, and the court may make such 6
 order for trial of the issues as may be most convenient, may enter separate 7
 judgments, issue one or more executions and make such order relative to 8
 costs as the case requires. 9

Joinder of co-tenants. 1905, 266. 268 Mass. 497.

* SECTION 3. Joint tenants or tenants in common may join in any 1
 action to recover damages for injury to real or personal property, or any 2
 one or more of them may sue for his or their damages. 3

Joinder of defendants severally liable on written contracts. 1851, 233, § 3. 1852, 312, § 3. G. S. 129, § 4. P. S. 167, § 4. R. L. 173, § 3. 1919, 333, § 35. 1920, 2. 4 Gray, 294.

* SECTION 4. All or any of the persons severally liable upon written 1
 contracts, including bills of exchange and promissory notes, may be 2
 joined in one action. The declaration shall describe the several contracts, 3
 and may contain one count against all the defendants, or several counts 4
 against the several defendants. The court shall make such order for 5
 the separate trial of the issues as may be convenient, and shall enter 6
 several judgments according to the several contracts and issue one or 7
 more executions. 8
 7 Gray, 284. 118 Mass. 380. 166 Mass. 37. 241 Mass. 155.
 16 Gray, 473. 119 Mass. 361. 192 Mass. 428. 246 Mass. 170.
 13 Allen, 19, 217. 133 Mass. 409. 195 Mass. 55. 251 Mass. 372.
 104 Mass. 217. 160 Mass. 418. 211 Mass. 156.

Action by assignee of chose in action. 1897, 402. R. L. 173, § 4. 180 Mass. 319. 191 Mass. 461. 194 Mass. 56, 187.

* SECTION 5. The assignee of a non-negotiable legal chose in action 1
 which has been assigned in writing may maintain an action thereon in his 2
 own name, but subject to all defences and rights of counter-claim, re- 3
 couponment or set-off to which the defendant would have been entitled had 4
 the action been brought in the name of the assignor. 5
 200 Mass. 209, 437. 219 Mass. 23. 238 Mass. 441. 253 Mass. 19.
 201 Mass. 28. 221 Mass. 399. 244 Mass. 578. 264 Mass. 588.
 202 Mass. 263. 226 Mass. 246, 447. 248 Mass. 205. 268 Mass. 28.
 206 Mass. 270. 234 Mass. 13, 526. 250 Mass. 12, 449. 270 Mass. 123,
 216 Mass. 287. 236 Mass. 93. 252 Mass. 258. 381, 565.

Same subject. 1878, 158. P. S. 133, § 5. R. L. 173, § 5.

* § || SECTION 6. An action or proceeding for the recovery of an out- 1
 standing debt or claim sold or assigned by an executor or administrator 2
 under a license of the probate court to sell or assign any outstanding debts 3
 or claims shall be brought in the name of the purchaser or assignee. The 4
 fact of the sale shall be set forth in the writ, declaration, bill or petition, 5

6 and the defendant may avail himself of any defence which would have
 7 been open to him upon an action or proceeding brought by the executor
 8 or administrator. Costs shall be recovered by or against the plaintiff
 9 or petitioner, but not against the executor or administrator. Any such
 10 action brought upon a promissory note signed in the presence of an attest-
 11 ing witness shall not be barred by any provision of chapter two hundred
 12 and sixty, if the action could have been maintained by the executor or
 13 administrator.

Declarations.

1 *SECTION 7. In declaring in personal actions the following require- Form of declar-
 2 ments shall be observed: ing at law.

1851, 233, § 2.	G. S. 129, § 2.	R. L. 173, § 6.	248 Mass. 272.
1852, 312, § 2.	P. S. 167, § 2.	237 Mass. 203.	255 Mass. 45.

3 First, The declaration shall state to which division of actions specified
 4 in section one the action belongs.

5 Second, The declaration shall state concisely and with substantial cer- Substantive
 6 tainty the substantive facts necessary to constitute the cause of action. facts required.

5 Pick. 436.	8 Allen, 309, 324.	153 Mass. 380.
10 Cush. 49.	10 Allen, 299, 326.	154 Mass. 257.
3 Gray, 484.	99 Mass. 198.	161 Mass. 449.
4 Gray, 411.	102 Mass. 58.	174 Mass. 38.
7 Gray, 184.	103 Mass. 21.	197 Mass. 492.
8 Gray, 589.	105 Mass. 533.	200 Mass. 200.
10 Gray, 361.	111 Mass. 29.	207 Mass. 312.
13 Gray, 272, 392.	114 Mass. 1.	224 Mass. 528.
15 Gray, 249, 293.	121 Mass. 346.	248 Mass. 393.
1 Allen, 262, 337, 519.	123 Mass. 583.	252 Mass. 29, 75, 238.
2 Allen, 20, 317.	132 Mass. 489.	254 Mass. 480.
3 Allen, 349.	133 Mass. 309.	263 Mass. 147, 199.
6 Allen, 410, 413.	137 Mass. 119.	272 Mass. 49.

7 Third, It need not aver a fact not required by law to be proved. Unnecessary
averments.

5 Gray, 541.	105 Mass. 71.	117 Mass. 195.
9 Gray, 73.	112 Mass. 237.	257 Mass. 512.

8 Fourth, It need not contain more than one count for each cause of One count for
 9 action; but any number of breaches may be assigned in each count and, each cause, but
 10 if the nature of the case requires it, breaches may be assigned in the any number of
 11 alternative. Two causes of action arising on different contracts shall breaches.
 12 not be embraced in one count except in a count on an account annexed. 9 Allen, 557.
112 Mass. 237.
160 Mass. 201.
207 Mass. 312.
231 Mass. 540.

210 Mass. 264.

13 Fifth, It may contain any number of counts for different causes of Joinder of
 14 action which belong to the same division of actions. counts.

13 Gray, 536.	152 Mass. 133.	231 Mass. 540.
97 Mass. 30.	191 Mass. 38.	243 Mass. 510.

15 Sixth, Actions of contract and actions of tort shall not be joined; but Joinder of
 16 if it is doubtful to which division a cause of action belongs, a count in causes of
 17 contract may be joined with a count in tort, with an averment that both action
 18 are for one and the same cause of action. 7 Gray, 559.
1 Allen, 26.

12 Allen, 482.	125 Mass. 477.	214 Mass. 245.
97 Mass. 29.	128 Mass. 104.	225 Mass. 3.
99 Mass. 535.	134 Mass. 393.	251 Mass. 536.
102 Mass. 139.	142 Mass. 124.	252 Mass. 29.
107 Mass. 369.	145 Mass. 23.	254 Mass. 480.
124 Mass. 50.		

19 Seventh, The common counts shall not be used unitedly, but any one Common
 20 of them may be used if the natural import of its terms correctly describes counts.
 21 the cause of action. 7 Gray, 187.

15 Gray, 293.	185 Mass. 306.	214 Mass. 159.
---------------	----------------	----------------

22 Eighth, In an action for the recovery of rent or of any sum of money Common
 23 payable by virtue of a contract under seal that might have been recovered count for
money payable

under sealed instrument, when. 1915, 146, § 2. 228 Mass. 390. 233 Mass. 514. 267 Mass. 143.

Account annexed. 4 Gray, 292. 7 Gray, 187, 190. 9 Allen, 355. 11 Allen, 123.

Interest. 1890, 398.

Written instruments, how declared on. 1 Gray, 325. 4 Gray, 455. 11 Gray, 10, 179. 14 Gray, 129. 15 Gray, 87. 16 Gray, 386. 8 Allen, 355. 9 Allen, 357. 12 Allen, 396. 103 Mass. 44, 379. 138 Mass. 151. 264 Mass. 530.

Bonds, etc. 171 Mass. 352, 433. 230 Mass. 483. 236 Mass. 93. 266 Mass. 543.

In real actions on mortgage. 1851, 233, § 2.

Writ and declaration in action of ejectment. 1915, 146, § 1. 225 Mass. 510.

upon a common count if the contract had not been under seal, the same may be recovered upon a common count in a form similar to that now used for other common counts. The bill of particulars in such cases shall refer to the document under which the claim arises, by its proper description and date.

Ninth, A count on an account annexed may be used in an action of contract if one or more items are claimed any of which would be correctly described by any one of the common counts according to the natural import of its terms.

99 Mass. 1.	133 Mass. 441.	214 Mass. 159.
106 Mass. 430.	134 Mass. 377, 567.	226 Mass. 499.
111 Mass. 390.	137 Mass. 274.	236 Mass. 105.
115 Mass. 44.	185 Mass. 306.	248 Mass. 126.
127 Mass. 546.	186 Mass. 498.	253 Mass. 321.

Tenth, Interest accruing as damages for the detention of money or otherwise may be declared on, in addition to other forms of pleading authorized by law, by including in any count followed by an account annexed or bill of particulars the words "and interest", and by stating in the account annexed or bill of particulars the time and amount for and upon which interest is claimed and the amount of interest so claimed.

Eleventh, Written instruments shall be declared on by setting out a copy or such part as is relied on, or the legal effect thereof, with proper averments to describe the cause of action. If the whole contract is not set out, a copy or the original, as the court may direct, shall be filed upon motion of the defendant. If it is necessary and the court so orders, the copy so filed shall be part of the record as if oyer had been granted of a deed declared on according to common law. No profert or excuse therefor need be inserted in a declaration. If the instrument relied on is lost or destroyed, or if it is not within the control of the party relying on it, the substance thereof, as nearly as may be, and the reason why a copy is not given, shall be stated.

Twelfth, The condition of a bond or other conditional obligation, contract or grant declared on shall be set forth. The breaches relied on shall be assigned, and the performance of conditions precedent to the right of the plaintiff to maintain his action shall be averred or his reason for the non-performance thereof stated.

† SECTION 8. Declarations in real actions founded on mortgage titles shall allege the seisin to be "in mortgage".

1852, 312, § 2.	P. S. 167, § 3.	14 Gray, 109.	131 Mass. 179.
G. S. 129, § 3.	R. L. 173, § 7.	193 Mass. 475.	

SECTION 9. In an action of ejectment or quare ejectionem for the recovery of the possession of real property for a term of years or other interest for which such an action may be maintained, the action may be described in the writ as an action of ejectment, and a declaration in general terms, substantially in the form set out in the schedule at the end of this chapter, shall be sufficient; and, if the defendant is wrongfully in possession, it shall not be material how he obtained such possession. The plaintiff shall annex to such declaration a statement of the particulars of his title, which shall be deemed part of the declaration, and the court may require him to file a statement of such other particulars, as to damages claimed or otherwise, as it deems proper. The writ need not contain the particulars of title, and if the writ does not contain them, they shall be filed in the same manner and the like provisions of law shall be applicable thereto as in the case of a declaration in a personal action.

1 *SECTION 10. In actions of tort for breaking and entering the plain-
 2 tiff's close, the place of the alleged trespass shall be designated in the
 3 declaration by name, boundaries or other sufficient description.

Description of
 plaintiff's
 close in tort,
 etc.

1839, 151, § 3.	R. L. 173, § 8.	152 Mass. 532.
G. S. 129, § 6.	13 Met. 109, 144.	157 Mass. 474.
P. S. 167, § 6.	97 Mass. 416.	214 Mass. 566.

1 *SECTION 11. In actions of contract or of tort, unless an arrest of
 2 the person is made or except as provided in section forty-four of chap-
 3 ter two hundred and twenty-three, the writ need not contain a declaration
 4 or any description of the cause of action in which it is intended to de-
 5 clare, except the name of the division thereof; but if in such actions in
 6 district courts the declaration is not inserted before the service of the writ,
 7 the defendant shall, upon motion, be entitled as of right to a postpone-
 8 ment for at least seven days after the return day.

Declaration
 need not be
 in writ, un-
 less, etc.

9 Allen, 257.

1 *†SECTION 12. The declaration, unless inserted in the writ, may
 2 be filed in the clerk's office on or before the return day of the writ. In
 3 an action or suit in which there has been an attachment of property or
 4 an injunction restraining the transfer or encumbering thereof, a copy of
 5 the declaration and bill of particulars, when such bill is necessary, or, in
 6 equity, of the bill or petition, shall be furnished to the defendant or his
 7 attorney within three days after a written demand therefor upon the
 8 plaintiff or his attorney, and in case of failure so to do, the cause may,
 9 upon motion, be dismissed with costs.

Time of filing
 declaration.

R. L. 173, §§ 10, 11.	7 Gray, 409.	228 Mass. 429.
1919, 333, § 36.	1 Allen, 273.	266 Mass. 197.
1920, 2.	167 Mass. 472.	

1 *†SECTION 13. If the plaintiff fails to enter his writ, or if he fails
 2 either to insert a declaration in the writ or to file it in the clerk's office
 3 on or before the return day of the writ, the action may at any time, upon
 4 motion of the defendant, be dismissed with costs; but the court may
 5 upon terms allow the plaintiff, at any time before the next regular return
 6 day, to enter his writ and file his declaration.

Non-entry and
 late entry

1854, 440, § 1.	R. L. 173, § 11.	153 Mass. 104.
G. S. 129, § 12;	1917, 326.	160 Mass. 24.
129, § 9.	11 Cush. 315.	167 Mass. 472.
P. S. 155, § 23;	1 Gray, 416.	204 Mass. 55.
167, § 9.	9 Allen, 257.	217 Mass. 213.
1885, 384, § 6.	110 Mass. 56.	228 Mass. 429.
1893, 396, § 19.	123 Mass. 318.	269 Mass. 482.
1894, 405.	136 Mass. 421.	

1 *SECTION 13A. Any judgment entered in an action upon a contract,
 2 promissory note or other instrument in which or in a memorandum or
 3 writing relating to which is contained a stipulation whereby the defendant
 4 in such action waived or agreed to waive or authorized another person to
 5 waive or to agree to waive the issue or service of process in such an action
 6 shall be set aside and annulled on motion of the defendant, unless it
 7 appears that service in the usual manner was had upon him or that the
 8 plaintiff sent to him by registered mail at least seven days before the day
 9 of entry of such action a notice of his intention to enter the same on said
 10 day and at the time of entry filed an affidavit of giving notice as aforesaid,
 11 which affidavit shall be prima facie evidence of the giving thereof. Any
 12 stipulation in a contract, promissory note or other instrument, or in any
 13 memorandum or writing relating thereto, whereby a party thereto agrees
 14 to confess judgment in any action which may be brought thereon or
 15 authorizes or agrees to authorize another person to confess judgment as

Judgments on
 certain written
 instruments
 waiving service
 of process to
 be annulled
 unless service
 made, etc.

Stipulations
 in such in-
 struments
 confessing
 judgment void.

Stay of
 execution.

aforesaid shall be void, and any judgment by confession taken in pursu- 16
 ance of such a stipulation shall be set aside and annulled on motion of the 17
 defendant. Upon the setting aside and annulling of any judgment under 18
 authority hereof, all outstanding executions issued thereon shall be stayed 19
 or superseded without security. 20

Bill of particulars. * SECTION 14. If one of the common counts is used, the plaintiff shall 1
 1851, 233, § 4. file a bill of particulars with his writ when it is entered. The items in such 2
 1852, 312, § 4. bill shall be numbered consecutively, and the bill shall be a part of the 3
 G. S. 129, § 10. declaration and be answered as such. 4
 P. S. 167, § 10.
 R. L. 173, § 12.

3 Gray, 263. 1 Allen, 273. 105 Mass. 21.
 12 Gray, 222. 100 Mass. 152. 225 Mass. 3.

Demurrers.

Demurrers. * † SECTION 15. Either party may demur to the pleadings of the ad- 1
 1851, 233, § 30. verse party, but no mere defects of form in the declaration or in the 2
 1852, 312, § 20. subsequent pleadings shall be assigned as causes for demurrer. If the 3
 G. S. 129, § 24. adverse party does not amend the pleadings demurred to, he shall be 4
 P. S. 167, § 25. held to have joined in demurrer. 5
 R. L. 173, § 13.
 97 Mass. 502.
 138 Mass. 441.

Demurrer to the declaration. * † SECTION 16. The defendant may demur to the declaration or to one 1
 or more counts therein, and shall assign specifically the causes of demurrer. 2

1851, 233, § 26 11 Gray, 170 12 Allen, 98 144 Mass. 523.
 1852, 312, § 17. 15 Gray, 184 97 Mass. 30 151 Mass. 567.
 G. S. 129, § 11. 1 Allen, 569 111 Mass. 213. 156 Mass. 262.
 P. S. 167, § 11 2 Allen, 105 112 Mass. 90 163 Mass. 402
 R. L. 173, § 14. 6 Allen, 417. 119 Mass. 387. 177 Mass. 466
 12 Cush 483. 8 Allen, 355 122 Mass. 163. 223 Mass. 386
 7 Gray, 179 9 Allen, 332 125 Mass. 360. 230 Mass. 483.
 8 Gray, 161. 11 Allen, 283.

Demurrer to the answer. * † SECTION 17. The plaintiff may demur to the answer or to so much 1
 1851, 233, § 30. thereof as applies to one or more counts in the declaration, and shall 2
 1852, 312, § 20. assign specifically the causes of demurrer. 3
 G. S. 129, § 24.

P. S. 167, § 25. 6 Gray, 233. 124 Mass. 364.
 R. L. 173, § 15. 97 Mass. 502.

Causes for demurrer. * † SECTION 18. Demurrers may be for the following as well as other 1
 1851, 233, causes: 2

§§ 31, 40. First, That a count in contract and a count in tort, or that a count 3
 1852, 312, in the plaintiff's own right and a count in some representative capacity, 4
 § 21, 30. are improperly joined in the declaration; or that a declaration in con- 5
 G. S. 129, § 12. tract or in tort is inserted in a writ of replevin. 6
 P. S. 167, § 12.
 R. L. 173, § 16.
 1921, 431, § 2.
 12 Cush 483

13 Gray, 64. 97 Mass. 30. 133 Mass. 298. 209 Mass. 552.

4 Gray, 444. Second, That the matters contained in the declaration or in some count 7
 8 Gray, 161. thereof are insufficient in law to enable the plaintiff to maintain his 8
 12 Gray, 222. action. 9
 13 Gray, 61.
 6 Allen, 236

9 Allen, 332 179 Mass. 169 223 Mass. 159.
 112 Mass. 237. 210 Mass. 214.

6 Gray, 233. Third, That the matters contained in the answer are insufficient in law 10
 6 Allen, 406. to constitute a defence to the action or to some count in the declaration. 11

16 Gray, 125. Fourth, That, in some particular or particulars specifically pointed 12
 1 Allen, 193. out, the declaration or some count thereof does not state a cause of ac- 13
 6 Allen, 417. tion, or the answer does not state a defence to the declaration or some 14
 8 Allen, 355. count thereof, substantially in accordance with the rules contained in 15
 100 Mass. 195. this chapter. 16
 109 Mass. 481.
 114 Mass. 487.
 118 Mass. 380.
 156 Mass. 262

177 Mass. 466 223 Mass. 159 235 Mass. 503.
 179 Mass. 169. 225 Mass. 3

1 * † SECTION 19. If a demurrer has been sustained, overruled or with- Pleading after
 2 drawn, the court shall make an order relative to the filing of an answer demurrer
 3 or replication or a trial of the facts. 1851, 233, § 33.

1852, 312, § 23	R. L. 173, § 17.	163 Mass. 402.
G. S. 129, § 64	7 Gray, 425.	217 Mass. 597.
P. S. 167, § 67.	2 Allen, 130.	235 Mass. 304.

Answers, Replications, etc.

1 * † SECTION 20. A defence to a real, personal or mixed action, which Answer in
 2 formerly might have been made by plea in abatement, may be made by abatement
 3 answer in abatement. 1851, 233, § 37

1852, 312, § 27.	2 Gray, 288.	105 Mass. 208.
G. S. 129, § 13.	4 Gray, 84.	121 Mass. 597.
P. S. 167, § 13.	7 Gray, 38, 338.	128 Mass. 600.
R. L. 173, § 18.	10 Gray, 373.	143 Mass. 413.
12 Pick. 569.	12 Gray, 347.	150 Mass. 550.
12 Met. 266.	1 Allen, 529.	163 Mass. 262.
11 Cush. 89.	12 Allen, 134.	

1 * † SECTION 21. If an answer in abatement is overruled on demurrer, Answering
 2 or if, in consequence of such answer in abatement, the plaintiff amends, or
 3 the defendant, within such time as the court orders, shall in a personal action
 4 answer, and in a real or mixed action plead, to the merits. 1851, 233, § 39.
 1852, 312, § 29.
 G. S. 129, § 14.
 P. S. 167, § 14.
 R. L. 173, § 19.

1 * † SECTION 22. In personal actions, the defendant shall file an Answer or
 2 answer to the declaration. In real and mixed actions, he may plead the general issue.
 3 general issue, and may give in evidence thereunder all matters which he 1836, 273, § 1.
 4 might formerly have pleaded in bar. 1851, 233, § 20.
 1852, 312, § 12.

G. S. 129, § 15.	R. L. 173, § 20.	6 Allen, 28.
P. S. 167, §§ 15, 90.	19 Pick. 455.	123 Mass. 187.
1886, 64.	12 Met. 154.	132 Mass. 105.
1893, 396, § 23.	4 Gray, 53.	203 Mass. 576.
1894, 431.	6 Gray, 107.	

1 * † SECTION 23. Two or more defendants making the same defence Joint answer
 2 may answer or plead jointly. Different consistent defences may be 1851, 233, § 21.
 3 separately stated in the same answer or plea. 1852, 312, § 13.

G. S. 129, § 16	R. L. 173, § 22.	3 Allen, 69.
P. S. 167, § 16.	11 Gray, 15.	

1 SECTION 24. A case taken to the superior court upon appeal from Pleadings on
 2 the judgment of a district court may be there tried upon the issue joined appeal.
 3 below; or the superior court may order the defendant to answer or plead R. S. 85, § 12.
 4 in the usual manner, and the case shall then be tried upon such issue as G. S. 120, § 28
 5 may be joined therein. P. S. 155, § 35.
 1893, 396, § 32.
 R. L. 173, § 23.

1917, 326.	6 Allen, 25.	177 Mass. 397.
1 Met. 309.	126 Mass. 399.	200 Mass. 194.
9 Gray, 361.	128 Mass. 600.	

1 * SECTION 25. The answer shall deny in clear and precise terms every Answer
 2 substantive fact intended to be denied in each count of the declaration 1851, 233, § 22.
 3 separately, or it shall declare the defendant's ignorance of the fact, so 1852, 312, § 14.
 4 that he can neither admit nor deny but leaves the plaintiff to prove it. G. S. 129, § 17.
 P. S. 167, § 17.
 R. L. 173, § 24.
 2 Gray, 521.

3 Gray, 261	5 Allen, 299, 599	123 Mass. 572, 574.
4 Gray, 444.	6 Allen, 10.	124 Mass. 457.
5 Gray, 457, 541.	10 Allen, 18, 460.	125 Mass. 562.
7 Gray, 184, 267.	11 Allen, 523.	126 Mass. 399.
9 Gray, 73, 241.	13 Allen, 521.	129 Mass. 50, 185.
10 Gray, 212.	98 Mass. 222.	132 Mass. 105.
11 Gray, 12, 384.	100 Mass. 216.	137 Mass. 60.
12 Gray, 45.	101 Mass. 352.	145 Mass. 226.
15 Gray, 87.	105 Mass. 212.	199 Mass. 418.
16 Gray, 354.	106 Mass. 559.	209 Mass. 456.
1 Allen, 410, 412	112 Mass. 405.	269 Mass. 482.
4 Allen, 380, 577.	119 Mass. 376.	

Answers to separate items, etc.
 1851, 233, § 24.
 1852, 312, § 15.
 G. S. 129, § 18.
 P. S. 167, § 18.
 R. L. 173, § 25.
 2 Gray, 521.
 16 Gray, 354.
 4 Allen, 380.
 9 Allen, 357.
 101 Mass. 64.
 121 Mass. 89.
 132 Mass. 165.
 269 Mass. 482.

* SECTION 26. In answering the common counts and the count on an account annexed, the defendant shall answer specifically every item contained in the bill of particulars or account annexed, but he may make one and the same allegation or denial relative to any number of items to which such allegation or denial is applicable, specifying the number of the items thus answered together, if less than the whole. If the defendant denies that an item is due or payable, or that he owes the plaintiff as alleged, he shall state all the substantive grounds on which he intends to rest such denial, and shall specify whether the whole or a part of such item or demand is denied, and if a part only is denied, he shall specify such part.

General or partial denial.
 1851, 233, § 25.
 1852, 312, § 16.
 G. S. 129, § 19.
 P. S. 167, § 19.
 R. L. 173, § 26.

* SECTION 27. A denial by answer, affidavit or otherwise of a time, amount, quantity or place alleged shall declare whether it is applicable to every time, amount, quantity or place or not; and if not, what time, amount, quantity or place it admits.

269 Mass. 482.

Answer in avoidance.
 1851, 233, § 27.
 1852, 312, § 18.
 G. S. 129, § 20.
 P. S. 167, § 20.
 R. L. 173, § 27.
 2 Gray, 521.
 4 Gray, 50, 447.

* SECTION 28. An answer shall state clearly and precisely each substantive fact intended to be relied upon in avoidance of the action, and if it sets up the statute of limitations, the statute of frauds or any other legal bar, the defendant shall have the benefit of such defence although the answer does not deny the facts set forth in the declaration.

- | | | |
|---------------------|---------------------|---------------------|
| 5 Gray, 457, 541. | 113 Mass. 250, 531. | 143 Mass. 379. |
| 6 Gray, 288, 494. | 116 Mass. 547, 550. | 145 Mass. 370. |
| 11 Gray, 12, 179. | 117 Mass. 14. | 151 Mass. 5, 275. |
| 12 Gray, 345. | 119 Mass. 187. | 160 Mass. 296. |
| 13 Gray, 157. | 120 Mass. 209. | 162 Mass. 34. |
| 2 Allen, 18. | 121 Mass. 501. | 165 Mass. 501. |
| 3 Allen, 99. | 123 Mass. 572, 574. | 166 Mass. 202. |
| 287, 319, 471. | 124 Mass. 281. | 182 Mass. 360. |
| 5 Allen, 299, 317. | 125 Mass. 417, 562. | 192 Mass. 326, 391. |
| 7 Allen, 61, 141. | 127 Mass. 316. | 199 Mass. 418. |
| 10 Allen, 18, 460. | 128 Mass. 25. | 201 Mass. 469. |
| 11 Allen, 523, 525. | 131 Mass. 283. | 236 Mass. 90. |
| 12 Allen, 419. | 133 Mass. 439. | 237 Mass. 103. |
| 99 Mass. 194. | 134 Mass. 377. | 249 Mass. 585. |
| 106 Mass. 51. | 135 Mass. 99. | 245 Mass. 413. |
| 109 Mass. 397. | 139 Mass. 110. | 266 Mass. 543. |
| 111 Mass. 285. | 141 Mass. 587. | 269 Mass. 482. |
| 112 Mass. 387. | | |

Signatures admitted unless genuineness is denied.
 1877, 163.
 P. S. 167, § 21.
 R. L. 173, § 86.
 5 Cush. 74.
 14 Gray, 109.
 125 Mass. 446.
 129 Mass. 596.

* ¶ SECTION 29. A signature to an instrument declared on or set forth as a cause of action or as a ground of defence or set-off shall be taken as admitted unless the party sought to be charged thereby files in court, within the same length of time after such instrument is pleaded as is allowed for an answer, a specific denial of the genuineness thereof and a demand that it shall be proved at the trial.

- | | | | |
|----------------|---------------------|----------------|----------------|
| 133 Mass. 356. | 196 Mass. 254. | 234 Mass. 13. | 251 Mass. 546. |
| 136 Mass. 248. | 201 Mass. 103, 543. | 241 Mass. 40. | 263 Mass. 295. |
| 138 Mass. 347. | 203 Mass. 526. | 247 Mass. 399. | 272 Mass. 487. |
| 146 Mass. 378. | 233 Mass. 154. | 249 Mass. 585. | |

Fiduciary or corporate capacity, or existence of public way admitted, unless, etc.
 1881, 113.
 P. S. 167, § 87.
 R. L. 173, § 123.
 1927, 164.

* † § SECTION 30. If it is alleged in any civil action or proceeding that a party is an executor, administrator, guardian, trustee, assignee, conservator or receiver or is a corporation, or that a place is a public way, such allegation shall be taken as admitted unless the party controverting it files in court, within the time allowed for the answer thereto, or within ten days after the filing of the paper containing such allegation, a special demand for its proof.

- | | | |
|----------------|----------------|----------------|
| 133 Mass. 358. | 225 Mass. 525. | 266 Mass. 293. |
| 160 Mass. 1. | 250 Mass. 30. | |

Equitable defences
 1883, 223, § 14.

* † § SECTION 31. The defendant may allege in defence any facts which would entitle him in equity to be absolutely and unconditionally

3 relieved against the plaintiff's claim or cause of action or against a judg- R. L. 173, § 28.
4 ment recovered by the plaintiff in such action. 1913, 307.

140 Mass. 63.	179 Mass. 451.	198 Mass. 212.	247 Mass. 127.
141 Mass. 440.	181 Mass. 371.	218 Mass. 321.	540.
149 Mass. 275.	183 Mass. 30.	221 Mass. 317.	248 Mass. 460.
150 Mass. 27.	351, 557.	228 Mass. 556.	252 Mass. 16.
154 Mass. 389.	186 Mass. 214.	233 Mass. 55.	255 Mass. 558.
158 Mass. 313.	187 Mass. 72.	234 Mass. 584.	257 Mass. 263.
170 Mass. 526.	192 Mass. 511.	240 Mass. 192.	271 Mass. 191, 411.
177 Mass. 455.	196 Mass. 319.	245 Mass. 317.	

1 * SECTION 32. Instruments relied on in an answer or in a subsequent Written
2 pleading shall be set out, or copies or the originals filed, in the manner instruments,
3 provided for declaring thereon in the eleventh clause of section seven. how pleaded.
1851, 233, § 2.

1852, 312, § 2.	P. S. 167, § 22.	11 Gray, 179.
G. S. 129, § 21.	R. L. 173, § 29.	171 Mass. 492.

1 * SECTION 33. If a conditional obligation, contract or grant is relied Conditional
2 on in an answer or subsequent pleading, the condition shall be considered obligations,
3 a part of the instrument, and similar averments shall be required in plead- etc., how
4 ing on the same as are required by the twelfth clause of section seven. pleaded.
1851, 233, § 2.
1852, 312, § 2.
G. S. 129, § 22.

P. S. 167, § 23.	R. L. 173, § 30.
------------------	------------------

1 * SECTION 34. The plaintiff may, at any time before trial, file a repli- Replication.
2 cation to the answer, clearly and specifically stating any facts in reply to 1851, 233,
3 new matter therein; but, except as herein provided, no further pleading §§ 28, 29.
4 shall be required after the answer. Any new matter in avoidance of the 1852, 312, § 23.
5 action which the answer contains shall be considered to be denied by G. S. 129, § 19.
6 the plaintiff without a replication, unless the court, upon motion of the P. S. 167, § 24.
7 defendant, requires him to reply thereto, and to state what part, if any, R. L. 173, § 31.
8 he admits or denies. 4 Gray, 114.
7 Allen, 239.
12 Allen, 485.
103 Mass. 21.
116 Mass. 515.
133 Mass. 439.

136 Mass. 386.	192 Mass. 468.	210 Mass. 581.
177 Mass. 455.	208 Mass. 528.	224 Mass. 226.

1 * † § || SECTION 35. The plaintiff may, in reply to a defence alleged by Equitable
2 the defendant, allege any facts which would in equity avoid such defence avoidance
3 or which would entitle the plaintiff to be absolutely and unconditionally of defence.
4 relieved in equity against such defence. 1883, 223, § 14.
R. L. 173, § 32.

1918, 257, § 430.	1920, 2.	186 Mass. 244.	210 Mass. 581.
1919, 5.	161 Mass. 91.	196 Mass. 319.	264 Mass. 102.

1 * SECTION 36. An answer or replication may allege facts occurring Supplemental
2 after the commencement of the action, and the court may allow a sup- declaration,
3 plemental declaration, answer or replication to be filed, alleging material etc.
4 facts which occurred or came to the knowledge of the party after the 1851, 233, § 34.
5 former declaration, answer or replication was filed. 1852, 312, § 24.
G. S. 129, § 25.
P. S. 167, § 26.

R. L. 173, § 33.	106 Mass. 51.	207 Mass. 312.
11 Gray, 14.	162 Mass. 300.	

1 * SECTION 37. A party may allege a fact or title alternatively. Alternative
2 averments.
1851, 233, § 35.
1852, 312, § 25.
G. S. 129, § 26.
P. S. 167, § 27.
R. L. 173, § 34.
125 Mass. 417.
181 Mass. 371.
240 Mass. 264.

1 * SECTION 38. The allegations and denials of each party shall be so Construction
2 construed by the court as to secure as far as possible substantial pre- of pleadings.
3 cision and certainty and to discourage vagueness and loose generalities. 1851, 233, § 36.
4 A substantive fact alleged with substantial precision and certainty and 1852, 312, § 26.
5 not denied in clear and precise terms shall be held to be admitted. No G. S. 129, § 27.
6 party shall be required to state evidence, or to disclose the means by P. S. 167, § 28.
7 which he intends to prove his case. R. L. 173, § 35.
1 Gray, 450.
3 Gray, 261.
312.
4 Gray, 65, 411.

7 Gray, 184, 267.	4 Allen, 380.	116 Mass. 515.
9 Gray, 73.	7 Allen, 361.	131 Mass. 283.
15 Gray, 87.	109 Mass. 216.	155 Mass. 99.

Action,
when at issue.
1851, 233, § 41.

* † SECTION 39. A personal action shall be considered at issue when the pleadings are closed, and a real or mixed action when the plea is filed.

1852, 312, § 31.
G. S. 129, § 28.

P. S. 167, § 29.
R. L. 173, § 36.

122 Mass. 431.

PRACTICE.

Interpleader.

Interpleader
by defendant.
1886, 281.
R. L. 173, § 37.
152 Mass. 407.
168 Mass. 48.
170 Mass. 369.
188 Mass. 299.
211 Mass. 28.
212 Mass. 534.
213 Mass. 531.
223 Mass. 177.
237.
225 Mass. 247.
227 Mass. 41.
232 Mass. 124.
234 Mass. 224.
247 Mass. 387.
273 Mass. 19.

* SECTION 40. If, in an action at law, the defendant admits liability, and the amount thereof is not disputed, but it appears that such amount is claimed by the husband or wife of the plaintiff or by any person other than the plaintiff and that the defendant has no interest in the subject matter of the controversy, the court may, on petition of the defendant, stating the names and residences of all known claimants and the amount actually due from the defendant, and after such notice as the court shall order to the plaintiff and to such claimants, order such claimants to be made defendants, and shall thereupon hear and determine the rights of the respective parties in and to said amount. The defendant may hold such amount until final judgment, and shall then pay it over as the court orders, or he may pay it into court to await final judgment, and thereupon the action shall be discontinued as to him, his liability for said amount shall cease, and his costs shall be in the discretion of the court, and may be charged upon the fund.

Interpleader
by bailee or
pledgee.
1899, 352.
R. L. 173, § 38.
1907, 582, § 18.
1909, 227.
1910, 214, § 20.
1913, 228.
1917, 326.
1918, 257,
§ 409.
1919, 5.
1920, 2.

* SECTION 41. Whenever two or more persons claim any interest in property, or the proceeds or value of, or damages for the taking, detention or conversion of, any property deposited with any public warehouseman, or other depository for hire, or with any pledgee as security for a loan, such bailee or pledgee may, either in any action against him for the recovery of such property, or for such proceeds, value or damages, or as an original suit brought, if in the superior court, in the county, or if in a district court, in the judicial district, where such property is situated or was last held by such bailee or pledgee, file a petition stating the names and residences of all known claimants. After such notice as the court may order upon the petition to all such claimants, and within such time after the return of such order of notice as the court shall allow, such claimants shall file in said court written statements of their several claims, and any claimant failing to file such claim may be defaulted. The court shall hear and determine the rights and interests of the respective parties in and to such property, proceeds, value or damages, and shall enter judgment accordingly, and upon such final judgment may order such return or delivery of the property, and award such execution or executions for damages or costs or both for or against the respective parties as justice requires. Failure to comply with any such order for the return or delivery of such property may be dealt with as the court directs. The goods may remain in the custody of the bailee or pledgee until final judgment, and shall then be delivered as the court orders. If the petition herein provided for be filed in an action of replevin, any order for the return of the property replevied, or any part thereof, may be for its return to such party to the proceedings as is adjudged entitled to possession thereof; and if the order is not complied with, the bond in such case may, by leave of said court, be put in suit, in the name of the obligee therein, but for the benefit of the party entitled to said property, and in such suit the court may award judgment and execution in accordance with the respective interests of the parties thereto.

Endorsement of Process.

1 * † ¶ SECTION 42. Original writs, writs of audita querela, writs of
 2 seire facias by private persons on judgment or recognizance, writs of
 3 error in civil cases, writs of and petitions for review, petitions for certiorari
 4 or mandamus and bills in equity, in which the plaintiff is not an inhab-
 5 itant of the commonwealth, shall, before the entry thereof, be endorsed
 6 by a responsible person who is such inhabitant; but if one of the plain-
 7 tiffs is such an inhabitant, the process need not be so endorsed. Every
 8 endorser, in case of avoidance or inability of the plaintiff, shall be liable
 9 to pay all costs awarded against the plaintiff if an action therefor is
 10 commenced within one year after the original judgment.

G. S. 123, § 20; 136, § 7; 146, § 37; 150, § 42. P. S. 161, § 24; 178, § 6; 187, § 38; 191, § 14. 1895, 234, § 26. R. L. 173, § 39.	6 Mass. 494. 14 Pick. 212. 3 Met. 58. 8 Met. 146. 8 Cush. 98. 11 Cush. 89. 12 Gray, 190. 1 Allen, 276, 402.	5 Allen, 206. 138 Mass. 115. 142 Mass. 141. 183 Mass. 102. 198 Mass. 544. 213 Mass. 601. 230 Mass. 28. 233 Mass. 1.
--	--	--

1 * † ¶ SECTION 43. If a plaintiff, not an inhabitant of the common-
 2 wealth, fails, by accident, mistake or inadvertence, to have his writ, bill
 3 or petition endorsed as required by the preceding section, the court may
 4 at any stage of the case, upon terms, allow him to procure an endorser
 5 with the same effect as if the writ, bill or petition had been endorsed
 6 before the entry thereof.

Same after
 entry.
 1865, 45 § 1.
 P. S. 161, § 25.
 R. L. 173, § 40.

1 * † ¶ SECTION 44. If, after the commencement of a proceeding men-
 2 tioned in section forty-two, the plaintiff removes from the commonwealth,
 3 the court, upon motion of any other party, shall, and of its own motion
 4 may, require the plaintiff to procure a responsible endorser.

Endorser upon
 removal of
 plaintiff
 1833, 50, § 3
 R. S. 90, § 10;
 100, § 28; 112,
 § 24

G. S. 129, § 29. P. S. 167, § 30.	R. L. 173, § 41. 21 Pick. 212.	8 Cush. 98. 1 Gray, 108.	99 Mass. 460. 213 Mass. 601.
--------------------------------------	-----------------------------------	-----------------------------	---------------------------------

1 * † ¶ SECTION 45. If an endorser removes from the commonwealth or
 2 ceases to be responsible, the court may require the plaintiff to procure
 3 a responsible endorser.

Endorser re-
 moving, etc.,
 another
 required.

1784, 28, § 11. 1833, 50, § 3. P. S. 90, § 12.	G. S. 129, § 30. P. S. 167, § 31.	R. L. 173, § 42. 17 Mass. 222.
--	--------------------------------------	-----------------------------------

1 SECTION 46. The supreme judicial court may require an endorser or
 2 security for the payment of costs in a probate or insolvency case or pro-
 3 ceeding pending therein.

Endorser in
 probate cases,
 etc.

1846, 234.	G. S. 129, § 31.	P. S. 167, § 32.	R. L. 173, § 43.
------------	------------------	------------------	------------------

1 * † ¶ SECTION 47. If a plaintiff fails to procure an endorser according
 2 to the order of the court, his action shall be dismissed and the defendant
 3 or other party shall recover his costs.

Dismissal for
 failure to pro-
 cure endorser.

1784, 28, § 11. 1833, 50, § 3.	R. S. 90, § 13. G. S. 129, § 32.	P. S. 167, § 33. R. L. 173, § 44.
-----------------------------------	-------------------------------------	--------------------------------------

1 * † ¶ SECTION 48. The court may permit the name of an endorser to
 2 be stricken out and a new and responsible endorser substituted. Every
 3 endorser shall be liable for costs from the commencement of the action.

Substitute
 endorser
 1784, 28, § 11.
 1833, 50, § 5
 R. S. 90, §§ 11,
 12

G. S. 129, § 33. P. S. 167, § 34.	R. L. 173, § 15. 6 Mass. 494.	7 Mass. 25. 13 Mass. 422.
--------------------------------------	----------------------------------	------------------------------

Abatement.

No abatement for circumstantial errors.
B. L. 25.
C. L. 7, § 2.
1701-2, 5, § 1.
1781, 28, § 14.
R. S. 100, § 21.
G. S. 129, § 34.

* † § SECTION 49. No writ, process, action, declaration or other proceeding in the courts or course of justice shall be abated, arrested, quashed or reversed for any circumstantial errors or mistakes if by it the person and case may be rightly understood by the court; or for defect or want of form only.

P. S. 167, § 35.	4 Cush. 279.	10 Allen, 537.	219 Mass. 597.
R. L. 173, § 46.	5 Cush. 74.	105 Mass. 129.	253 Mass. 464.
2 Cush. 1, 486, 555.	7 Gray, 378.	108 Mass. 338.	

Judgment upon issue of fact.
1851, 233, § 38.
1852, 312, § 28.

* † § SECTION 50. If an issue of fact is found against the defendant upon a plea or answer in abatement, final judgment, subject to section fifty-three, shall be rendered against him.

G. S. 129, § 39.	24 Pick 49.	152 Mass. 116.
P. S. 167, § 40.	125 Mass. 472.	155 Mass. 26.
R. L. 173, § 47.	128 Mass. 600.	

Amendments.

Changing parties, form, etc.
1701-2, 5, § 1.
1784, 28, § 14.
1826, 70, § 2.
1833, 194.
1834, 189.
R. S. 93, § 24.
100, §§ 1, 6, 7, 22.
1836, 273, § 3.
1839, 151, § 1, 2.

* † § || SECTION 51. The court may, at any time before final judgment, except as otherwise provided, allow amendments introducing a necessary party, discontinuing as to a party or changing the form of the action, and may allow any other amendment in matter of form or substance in any process, pleading or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or enable the defendant to make a legal defence.

1851, 233, § 42.	106 Mass. 131, 338.	196 Mass. 584.
1852, 312, § 32.	107 Mass. 64, 82.	200 Mass. 284.
G. S. 129, § 41.	108 Mass. 338, 355.	201 Mass. 10, 248.
P. S. 167, § 42.	112 Mass. 180.	204 Mass. 294.
R. L. 173, § 48.	114 Mass. 481.	208 Mass. 293.
3 Mass. 208.	115 Mass. 326.	211 Mass. 277, 446, 463.
4 Mass. 506.	121 Mass. 562.	212 Mass. 292.
16 Pick 297, 412.	122 Mass. 438.	213 Mass. 585.
1 Met. 553.	124 Mass. 240.	215 Mass. 83, 116, 199.
2 Met. 505.	125 Mass. 72, 560.	216 Mass. 459.
9 Met. 423.	126 Mass. 393.	218 Mass. 231.
10 Met. 291, 525.	127 Mass. 527, 599.	219 Mass. 164.
13 Met. 215, 476.	128 Mass. 235, 466.	221 Mass. 259, 271.
2 Cush. 1.	131 Mass. 328, 397, 560.	223 Mass. 450.
4 Cush. 281.	132 Mass. 193.	225 Mass. 599.
6 Cush. 513.	133 Mass. 421, 536.	226 Mass. 332, 570.
8 Cush. 271, 356.	134 Mass. 280, 308.	229 Mass. 1.
10 Cush. 284.	135 Mass. 189.	231 Mass. 422.
12 Cush. 448.	136 Mass. 335.	236 Mass. 336.
1 Gray, 600.	139 Mass. 110, 280.	242 Mass. 8, 20, 255.
3 Gray, 66.	143 Mass. 45.	244 Mass. 23.
4 Gray, 191, 437.	144 Mass. 383.	246 Mass. 170.
5 Gray, 71.	146 Mass. 378.	250 Mass. 498.
7 Gray, 41, 206, 378, 540.	147 Mass. 101, 342.	251 Mass. 41, 131, 263, 503, 536.
8 Gray, 447.	148 Mass. 504.	253 Mass. 321, 490.
12 Gray, 26, 139, 453.	150 Mass. 564.	254 Mass. 411.
15 Gray, 186.	151 Mass. 454.	255 Mass. 64.
1 Allen, 244, 501, 529.	165 Mass. 481.	259 Mass. 383.
2 Allen, 128, 317.	168 Mass. 223.	260 Mass. 265.
3 Allen, 69, 528, 532.	170 Mass. 260, 262, 560.	262 Mass. 127.
5 Allen, 322.	172 Mass. 401.	263 Mass. 331, 502.
7 Allen, 202, 489.	174 Mass. 45, 586.	265 Mass. 396.
8 Allen, 63.	177 Mass. 397, 404.	266 Mass. 424.
10 Allen, 439.	181 Mass. 445.	267 Mass. 75, 122, 212.
100 Mass. 122, 152.	186 Mass. 150, 365.	268 Mass. 329.
101 Mass. 378.	190 Mass. 378, 554.	272 Mass. 39, 134.
103 Mass. 410.	192 Mass. 122.	
104 Mass. 345.		

Amendment after demurrer.
1851, 233, § 30.
1852, 312, § 20.
G. S. 129, § 24.

* † § || SECTION 52. The court may allow a party to whose pleadings a demurrer has been filed to amend, upon terms, within such time as it orders.

P. S. 167, § 25.	R. L. 173, § 49.
------------------	------------------

Amendment, etc., after answer in abatement.

* † § SECTION 53. If the defect upon which a plea or answer in abatement is founded is capable of amendment, the court may allow the plain-

3 till to amend, upon terms. The court may allow the defendant to
 4 amend an answer in abatement or to answer over by special order of the
 5 court for good cause shown, and not otherwise.

P. S. 167, § 11.	108 Mass. 338.	124 Mass. 81.	155 Mass. 26.
R. L. 173, § 50.	113 Mass. 34.	125 Mass. 472.	253 Mass. 464.
3 Met. 420.			

1 * † SECTION 54. If a new defendant is introduced by amendment, the
 2 plaintiff may take out against him a new writ of capias and attachment
 3 or of summons in such form, and returnable at such time, as the court
 4 orders. Upon service and return of such new writ, like proceedings may
 5 be had as if the person named therein had been originally made a party.

R. L. 173, § 51.	6 Allen, 350.	242 Mass. 255.
------------------	---------------	----------------

Joinder of new
 defendants.
 1843, 194
 R. S. 100,
 §§ 1, 5
 G. S. 129,
 §§ 36, 38
 P. S. 167,
 §§ 37, 39.

1 SECTION 55. The supreme judicial or the superior court may, be-
 2 fore final judgment, and upon terms, allow an amendment changing an
 3 action at law into a suit in equity, or a suit in equity into an action at
 4 law, if it is necessary to enable the plaintiff to sustain the action or suit
 5 for the cause for which it was intended to be brought. The court in
 6 which the amendment is allowed may retain jurisdiction of the cause as
 7 amended.

R. L. 159, § 6; 173, § 52 1911, 275.	133 Mass. 536. 168 Mass. 72 206 Mass. 39	223 Mass. 325. 224 Mass. 120 225 Mass. 599	238 Mass. 356. 242 Mass. 8. 248 Mass. 354.
101 Mass. 378. 125 Mass. 138.	212 Mass. 292. 216 Mass. 459.	233 Mass. 32.	260 Mass. 38.

Amendments
 changing
 actions at law
 into suits in
 equity, and
 vice versa.
 1865, 179,
 §§ 1, 2
 P. S. 167, § 43
 1883, 223, § 17

1 * † SECTION 56. The court in which a judgment has been rendered, or
 2 to which it has been removed by writ of error, may, if justice so requires
 3 and the amendment is in affirmance of the judgment, allow formal de-
 4 fects or imperfections in the record or proceedings to be corrected or
 5 amended.

P. S. 167, § 44. R. L. 173, § 53. 3 Cush. 1, 58.	5 Cush. 74, 446. 10 Allen, 537.	104 Mass. 363. 111 Mass. 160.	246 Mass. 170. 247 Mass. 169.
--	------------------------------------	----------------------------------	----------------------------------

Amendment
 after judg-
 ment.
 1791-2, 5, § 1.
 1784, 28, § 14.
 R. S. 100, § 23.
 G. S. 129, § 42.

Defaults.

1 * † SECTION 57. If the defendant in an action commenced in the
 2 supreme judicial, the superior or the land court, having been duly served
 3 with process, fails to enter an appearance in writing within twenty-one
 4 days after the return or entry day of the writ, his default shall be recorded,
 5 and after the expiration of four days from such default, the plaintiff may
 6 have judgment entered by order of the court or by the clerk as of course
 7 without any further order. Upon a default at any stage of the proceed-
 8 ings in an action pending in any of said courts, the damages shall, upon
 9 motion of either party, be assessed by a jury. If the defendant in an
 10 action commenced in a district court, having been duly served with
 11 process, fails to appear or answer thereto, his default shall be recorded
 12 and judgment shall be rendered for the plaintiff with costs. Courts
 13 may, for good cause shown, extend the time for entering an appearance,
 14 and may, in their discretion and upon terms, take off a default at any
 15 time before judgment.

145 Mass. 18. 157 Mass. 117. 159 Mass. 210. 168 Mass. 297.	182 Mass. 20. 183 Mass. 7. 192 Mass. 226. 198 Mass. 82.	225 Mass. 189. 242 Mass. 20. 253 Mass. 464.
---	--	---

Defaults.
 C. L. 87, § 6
 1701-2, 5, § 2.
 1784, 28,
 §§ 6, 7.
 R. S. 85, § 9;
 92, §§ 1, 2;
 97, § 2.
 1851, 233,
 §§ 14, 17.
 1852, 312,
 §§ 10, 11
 G. S. 120, § 11;
 129, §§ 43-45;
 133, §§ 1, 2
 1870, 68
 P. S. 155, § 22;
 167, §§ 45-47,
 171, §§ 1, 2
 1885, 384, §§ 7,
 10, 11
 1893, 396, § 19
 1894, 431
 R. L. 173, § 54
 1917, 101, 326.

1 * † SECTION 58. Upon entry of a default or nonsuit in an action
 2 at law or of an interlocutory decree in equity taking a bill pro confesso,
 3 the clerk of the court shall forthwith give written notice thereof, in such

Notice of
 default or
 decree pro
 confesso.
 1917, 227.

1931, 81
242 Mass. 20.

manner as the court by rule shall direct, to the attorney of record, if any, of each party against whom such default, nonsuit or decree is entered. If a party has no attorney of record, and if, in case of the entry of a default or interlocutory decree as aforesaid, the officer's return does not show that personal service of the writ, bill, petition, or complaint, or order therein, as the case may be, has been made upon him, the notice shall be given to the party.

Requiring
notice to
insurance
company of
default before
assessing dam-
ages in certain
motor vehicle
cases.
1931, 463, § 1.

* SECTION 58A. Damages shall not be assessed, except by special order of the court, in an action of tort, the payment of the judgment wherein is secured by a motor vehicle liability policy or a motor vehicle liability bond, both as defined in section thirty-four A of chapter ninety, and wherein the defendant has been defaulted for failure to enter an appearance, until the expiration of four days after the plaintiff has given notice of such default to the company issuing or executing such policy or bond, and has filed an affidavit thereof. Such notice may be given by mailing the same, postage prepaid, to the said company or to its agent who issued or executed such policy or bond.

Advancing Causes for Speedy Trial.

Advancing
actions for
speedy trial
1874, 248, § 3.
1875, 212, § 2.
P. S. 167, § 48.
R. L. 173, § 55.
1905, 271.
1910, 538.
1911, 305.
1912, 649, § 3.
1917, 326.
1931, 426,
§ 107.
117 Mass. 334.
120 Mass. 97.
198 Mass. 335.
236 Mass. 90.
249 Mass. 299.

SECTION 59. In any action of contract in which the defendant has appeared, any plaintiff, or if a corporation its treasurer, may at any time before the case is on the short list, so called, file an affidavit verifying the cause of action and stating that in his belief there is no defence thereto; and thereupon the clerk shall issue an order requiring the defendant to show cause in writing and on oath why judgment should not be given for the plaintiff. The plaintiff shall immediately give written notice of such order, in such manner as is prescribed by rule of court, to the defendant or his attorney of record, and unless the defendant, within seven days after such notice, or within such further time as the court allows, consents to a default and to judgment for the amount demanded, if the claim is to recover a debt, or liquidated demand, or unless by affidavit setting out specifically and clearly the substantive facts upon which he relies he discloses such facts as the court finds entitle him to defend, the court shall advance said action for speedy trial; but if, upon a hearing under such order and notice, the court does not so advance the action, it may award the defendant reasonable costs. The court shall require the defendant to disclose specifically and clearly the substantive facts upon which he relies. If, in an action removed by the defendant from a district court, the court is satisfied, upon an inspection of the declaration, that the plaintiff seeks to recover solely for his personal labor, with or without interest, the court shall upon motion advance such action for speedy trial. In any action in which a defendant has appeared and answered, such defendant, or if a corporation its treasurer, may at any time before the case is on the short list, so called, file an affidavit stating that in his belief there is no merit in the action; and thereupon the clerk shall issue an order requiring the plaintiff to show cause why he should not become nonsuit. The defendant shall immediately give written notice of such order, in such manner as is prescribed by rule of court, to the plaintiff or his attorney of record, and unless within seven days after such notice, or within such further time as the court allows, the plaintiff consents to a nonsuit, or unless by affidavit setting forth specifically and clearly the substantive facts upon which he relies he discloses such

34 facts as the court finds entitle him to maintain his action, the court shall
 35 advance said action for speedy trial. In any trial any affidavit filed by
 36 any party, as herein provided, may be given in evidence against him.

1 ¶ SECTION 59A. In any action at law or suit in equity in the su-
 2 preme judicial court or in the superior court, the court may on motion
 3 for cause shown advance said action or suit for speedy trial.

Same subject.
 1922, 509, § 1.

Expediting the Collection of Debts.

1 *SECTION 59B. In any action of contract where the plaintiff seeks
 2 to recover a debt or liquidated demand, he may, at any time after the
 3 defendant has appeared or, in a removed case, after its entry, on affidavit
 4 by himself or by any other person who can swear to the facts of his own
 5 knowledge, verifying the cause of action and stating that in his belief
 6 there is no defence thereto, move for the immediate entry of judgment
 7 for the amount of the debt or demand, together with interest if any is
 8 claimed. The motion may be set down for hearing upon four days'
 9 notice and after hearing the court may, unless the defendant by affidavit,
 10 by his own evidence or otherwise shall disclose such facts as the court
 11 finds entitle him to defend, enter an order for judgment for the amount
 12 of the debt or demand, with interest if any is due, and costs. Judgment
 13 as aforesaid shall be entered at the expiration of seven days from the
 14 order unless the defendant in the meanwhile files a demand for trial;
 15 and if such demand is filed as aforesaid the case shall be advanced for
 16 speedy trial. If the defendant does not appear at said hearing or file
 17 at or before the time set for hearing an affidavit setting forth specifically
 18 and clearly the substantive facts upon which he relies as a defence, the
 19 court may enter judgment by default.

Motion for
 immediate
 entry of
 judgment
 1929, 172, § 1.

Claim of Trial by Jury.

1 †SECTION 60. A separate list of cases to be tried by jury shall be kept
 2 in the supreme judicial and superior courts, and no action shall be en-
 3 tered thereon, except as otherwise expressly provided, unless a party,
 4 before issue joined, or within ten days after the time allowed for filing the
 5 answer or plea, or within ten days after the answer or plea has by consent
 6 of the plaintiff or permission of the court been filed, or within such time
 7 after the parties are at issue as the court may by general or special order
 8 direct, files a notice that he desires a jury trial; but in a case in which
 9 damages are demanded, the court may of its own motion refer the assess-
 10 ment thereof to a jury.

Jury trial,
 how claimed.
 R. S. 97, § 3
 1857, 267, § 1
 G. S. 129, § 66.
 133, § 3
 1874, 248, § 1
 1875, 212, § 1
 P. S. 167, § 69.
 171, § 3
 1894, 357
 R. L. 173, § 56
 132 Mass. 354,
 356
 135 Mass. 28,
 591.

142 Mass. 161	163 Mass. 21	191 Mass. 223.	214 Mass. 335.
156 Mass. 88	170 Mass. 1	195 Mass. 354	223 Mass. 537
160 Mass. 370.	185 Mass. 576.	198 Mass. 388.	269 Mass. 589.

Providing for Prompt Informal Trials in the Superior Court.

1 ¶ SECTION 60A. In any action at law or suit in equity after issue
 2 joined in the superior court, any party to the proceeding may, by a writ-
 3 ing filed in the clerk's office, offer to waive any or all of the following:—
 4 (1) A trial by jury if it has been claimed.
 5 (2) The right to file interrogatories except as allowed by the court.
 6 (3) The rules of evidence to the end that any evidence may be received
 7 which the court considers probative.
 8 (4) The right to appeal from, or take exceptions to, any ruling, order,
 9 judgment or decree except on a question of substantive law.

Waiver of
 certain rights
 to secure
 prompt trial.
 1929, 173, § 1.

A written notice of such offer with a copy thereof shall be served by 10
 registered mail, with return receipt requested, upon the other party or his 11
 attorney not less than ten days before the trial of the action or suit. If 12
 such offer is not rejected by a writing filed in the clerk's office within ten 13
 days after such notice or within such further time as the court may on 14
 motion allow, such offer shall be deemed to have been accepted and the 15
 matters in controversy shall be tried and determined in accordance there- 16
 with; and such action or suit shall be advanced for speedy trial. 17

Interrogatories.

Parties may
 file interroga-
 tories, when,
 1851, 233, § 98;
 325, § 2.
 1852, 312,
 § § 61, 90.
 G. S. 129,
 § § 46, 86
 1862, 40, § 1.
 P. S. 151, § 8;
 167, § § 49, 93.
 1883, 223, § 2.
 R. L. 159, § 15;
 173, § 57.
 1909, 225,
 1913, 815,
 § § 1, 8, 9.
 1929, 303, § 1.
 11 Cush. 158.

* † § || SECTION 61. Any party, after the entry of a writ or the filing 1
 of a bill or petition, may interrogate an adverse party for the discovery 2
 of facts and documents admissible in evidence at the trial of the case. 3
 No party shall file as of right more than thirty interrogatories, including 4
 interrogatories subsidiary or incidental to, or dependent upon, other in- 5
 terrogatories, and however the same may be grouped, combined or ar- 6
 ranged; but for adequate cause shown, the court may allow additional 7
 interrogatories to be filed. The word "party", in this section, in sections 8
 sixty-two to sixty-five, inclusive, and in section sixty-seven, shall be 9
 deemed to include parties intervening or otherwise admitted after the 10
 beginning of the suit. 11

2 Gray, 558.	111 Mass. 154.	206 Mass. 395.
7 Gray, 417.	127 Mass. 226.	212 Mass. 69.
14 Gray, 484.	128 Mass. 293.	214 Mass. 563.
15 Gray, 545.	136 Mass. 291, 386.	217 Mass. 488.
3 Allen, 110.	155 Mass. 433.	227 Mass. 7.
5 Allen, 109.	163 Mass. 481.	234 Mass. 307.
104 Mass. 24.	171 Mass. 417.	266 Mass. 374, 543.
106 Mass. 338.	188 Mass. 30.	269 Mass. 415.
107 Mass. 113.	205 Mass. 431.	

Answers.
 1851, 233,
 § § 103, 104
 1852, 312,
 § § 65, 67.
 G. S. 129,
 § § 49, 51.

* † § || SECTION 62. The answers shall be in writing, on oath, and 1
 signed by the party interrogated, who shall, before making answer, make 2
 such inquiry of his agents, servants and attorneys as will enable him 3
 to make full and true answers to the interrogatories. 4

P. S. 167, § § 52, 54.	13 Allen, 320.	179 Mass. 501.
R. L. 173, § 60.	109 Mass. 209.	202 Mass. 75.
1913, 815, § § 2, 9.	125 Mass. 572.	266 Mass. 374.
3 Gray, 215.	171 Mass. 417.	269 Mass. 415.
8 Gray, 529.		

Same subject.
 Practice.
 1851, 233,
 § § 98, 101,
 106, 107;
 325, § 2.
 1852, 312,
 § § 61, 63, 69,
 70, 90.
 G. S. 129,
 § § 46, 48, 53,
 54, 86.
 P. S. 167,
 § § 49, 51, 56,
 57, 93.
 R. L. 173,
 § § 57, 59, 63,
 64.
 1909, 206; 225
 1911, 593.
 1913, 815,
 § § 3, 9.
 1917, 326
 1922, 314.
 11 Cush.
 26, 158.

* † § || SECTION 63. Interrogatories shall be filed in the clerk's office, 1
 and notice of such filing, with a copy of the interrogatories, shall be sent 2
 by the party interrogating to the party interrogated, or to his attorney 3
 of record, and the party interrogated shall file answers to such interroga- 4
 tories within ten days after such notice, unless the court otherwise orders; 5
 but no party interrogated shall be obliged to answer a question or produce 6
 a document tending to criminate him or to disclose his title to any prop- 7
 erty the title whereof is not material to an issue in the proceeding in the 8
 course of which he is interrogated, nor to disclose the names of witnesses, 9
 except that the court may compel the party interrogated to disclose the 10
 names of witnesses and their addresses if justice seems to require it, upon 11
 such terms and conditions as the court deems expedient. A party shall 12
 not interrogate an adverse party more than once unless the court other- 13
 wise orders. 14

2 Gray, 558.	107 Mass. 113.	171 Mass. 417.	217 Mass. 488.
3 Gray, 215.	111 Mass. 154.	188 Mass. 30.	234 Mass. 307.
15 Gray, 545.	127 Mass. 226.	200 Mass. 527.	237 Mass. 508.
3 Allen, 110.	128 Mass. 293.	205 Mass. 431.	261 Mass. 318.
5 Allen, 109.	136 Mass. 291, 386.	212 Mass. 69.	266 Mass. 374.
104 Mass. 24.	163 Mass. 481.	215 Mass. 391.	269 Mass. 415.

1 * † § || SECTION 64. If a party interrogated fails to answer interroga- Penalty for
 2 tories, or to amend or expunge an answer or part of an answer as ordered, failure to
 3 the court may make and enter such order, judgment or decree as justice answer, etc.
 4 requires. 1851, 233,
 § 109.

1852, 312, § 72.	1913, 815, §§ 4, 9.	136 Mass. 291.
G. S. 129, § 56.	7 Gray, 417.	139 Mass. 98.
1862, 40, § 2.	8 Gray, 529.	171 Mass. 417.
P. S. 151, § 9; 167, § 59.	14 Allen, 9.	266 Mass. 374.
1883, 223, § 2.	125 Mass. 372.	269 Mass. 415.
R. L. 159, § 16; 173, § 66.	128 Mass. 293.	

1 * † § || SECTION 65. If a corporation is a party, the adverse party Answers by
 2 may examine the president, treasurer, clerk or a director, manager or corporation,
 3 superintendent, or other officer thereof, as if he were a party. If a etc.
 4 municipal corporation is a party, the mayor or the chairman of the board 1852, 312, § 68.
 5 of selectmen may be examined as if he were a party, except that no city G. S. 129, § 50
 6 or town official shall be interrogated concerning matters of public record. P. S. 167, § 53
 7 If a minor or person under guardianship is a party, the adverse party R. L. 173, § 61.
 8 may examine as if said party were not a minor or under guardianship; 1912, 276.
 9 provided, that if the minor be not of such age as to appreciate an oath, 1913, 815,
 10 or the person under guardianship be mentally incompetent to answer, § 5, 9.
 11 the person appearing in the suit as the guardian, guardian ad litem or 109 Mass. 320
 12 next friend of such party shall make answer. 109 Mass. 212.
 171 Mass. 417.
 179 Mass. 501.
 198 Mass. 309.
 211 Mass. 561.
 214 Mass. 563.
 266 Mass. 374.
 269 Mass. 415.
 271 Mass. 230.

1 * † § || SECTION 66. Such order may be made respecting costs, in Costs
 2 the action or cause or otherwise, as the court may direct by general rule, 1851, 233,
 3 or by a special order in each case. § 108.

1852, 312, § 71	R. L. 173, § 65.	266 Mass. 374.
G. S. 129, § 55.	1913, 815, §§ 6, 9.	269 Mass. 415.
P. S. 167, § 58.		

1 * † § || SECTION 67. Sections sixty-one to sixty-six, inclusive, shall Right to seal
 2 not affect the right of a party interrogated, under the direction of the up immaterial
 3 court, to seal up or otherwise protect from examination such parts of any parts of book,
 4 document, book, voucher or other writing as contain matters not per- etc.
 5 tinent to the subject of the action, or affect the power of the court to 1851, 233,
 6 protect said right, or any right of the party interrogated, by suitable § 105.
 7 order. 1852, 312, § 68.
 G. S. 129, § 52
 P. S. 167, § 55.
 R. L. 173, § 62.
 1913, 815,
 §§ 7, 9.

8 Gray, 529.	266 Mass. 374.	269 Mass. 415.
--------------	----------------	----------------

Inspection of Documents.

1 * † § || SECTION 68. Every party to any cause or proceeding may in- Inspection of
 2 spect and take copies of any document referred to in the pleading or par- documents
 3 ticulars of any other party and relied on by such other party, unless the 1913, 146, § 4
 4 court is satisfied that the same is not in his possession or control or that
 5 he has some other reasonable excuse for not producing the same for such
 6 inspection, and the court may make orders for production for said pur-
 7 poses, enforceable in like manner as orders to answer interrogatories.

Admission of Material Facts and Documents.

1 * † ¶ SECTION 69. In any action at law or suit in equity a party by Demand
 2 written demand filed in the clerk's office and notice given by copy thereof for admission
 3 to the other party or his attorney, not less than ten days before the trial of fact or of
 4 of the action or suit, may call upon the other party to admit, for the execution of
 5 purposes of the case only, any material fact or facts or the execution of any paper
 6 material paper or document which he intends to use at the trial. The 1917, 194
 7 court may delay the trial until such demand is answered and on motion 1926, 381, § 1.
 1931, 83
 272 Mass. 121,
 487.

before trial may strike out of such demand or any answer filed in response thereto any matter which is irrelevant, immaterial or improperly included therein. If no answer is filed in the clerk's office within ten days after the filing therein of said demand or within such further time as the court may on motion allow, the truth of the fact or facts or the execution of the paper or document shall, for the purposes of the case, be held to be admitted. Such demand, in so far as it relates to a material fact or document, and any answer filed in response thereto shall, if offered by the party who filed such demand, be admitted in evidence. If the party upon whom such demand is made refuses to admit any fact or the execution of any paper or document mentioned in the demand, the reasonable expense of proving such fact or the execution of such paper or document, as determined after summary hearing by the justice presiding at the trial, shall, unless the justice certifies that the refusal to admit was reasonable, be paid by said party to the other party and the amount thereof shall be added to the taxable costs of the party in whose favor such amount is awarded or deducted from the amount of any judgment or decree against him.

Interlocutory Orders.

Statement of particulars of action or defence. 1851, 233, § 4. 1852, 312, § 4. G. S. 129, § 58. * SECTION 70. The court may in all cases order either party to file a statement of all particulars necessary to give to the adverse party and to the court reasonable knowledge of the nature and grounds of the action or defence.

P. S. 167, § 61. 1 Allen, 248. 199 Mass. 457. 220 Mass. 333.
R. L. 173, § 68. 11 Allen, 283. 214 Mass. 159. 229 Mass. 339.
3 Gray, 263. 129 Mass. 364.

Orders, etc., preparatory to trial, when made. 1851, 233, § 45. 1852, 312, § 35. G. S. 129, § 59. 1867, 31. P. S. 167, § 62. R. L. 173, § 69. 128 Mass. 296. 216 Mass. 459. † ‡ § 71. Orders allowing amendments before trial, or allowing a supplemental declaration, answer or replication, or enlarging time, or any other interlocutory order necessary to prepare the case for trial, may be made by the court or by a justice thereof, in any county; but the several courts shall make such rules relative to notice, the times and places for motions at chambers, and other matters, as they shall from time to time find necessary.

Agreements of Parties.

Agreements. 1851, 233, § 46. §§ 36, 88. G. S. 129, § 60, 61. P. S. 167, § 63, 64. R. L. 173, § 70. 8 Allen, 42. 124 Mass. 241. 148 Mass. 348. 156 Mass. 598. * † SECTION 72. Parties may make agreements relative to amendments and the time of filing papers, which shall be equivalent to an order of the court to the same effect. Any order mentioned in the preceding section may be entered by consent signed by the parties or their attorneys; but no agreement of attorneys relative to an action or proceeding shall be valid unless in writing, except as provided in section seventy-eight.

218 Mass. 286. 234 Mass. 345. 256 Mass. 47.

Continuances by agreement. 1852, 312, § 88. G. S. 129, § 61. P. S. 167, § 64. R. L. 173, § 71. * † SECTION 73. If the parties agree to continue a case without costs until the next sitting, it shall be continued accordingly; but the court may by general or special order regulate the order in which the case shall stand for trial at the next sitting.

Offer of Judgment.

1 * § SECTION 74. If the defendant in an action at law or a suit in
 2 equity, wherein damages only are sought to be recovered, offers in court
 3 and by a writing consents to be defaulted, and to have judgment rendered
 4 against him as damages for an amount therein specified, the writing and
 5 the time of its filing shall be entered of record; and if the plaintiff within
 6 ten days, or such further time as the court allows, after receipt of notice
 7 thereof, accepts such offer, the court shall render judgment accordingly,
 8 with costs to the date of the notice.

Offer of judgment.
 1852, 140, § 1.
 G. S. 129, § 62.
 1877, 236, § 2.
 P. S. 155, § 36.
 167, § 65.
 1893, 306, § 20.
 1894, 431.
 R. L. 173, § 72.
 1917, 326.
 1931, 126, § 108.

97 Mass. 148.

148 Mass. 592.

264 Mass. 230.

1 * § SECTION 75. If the plaintiff does not elect to accept such offer,
 2 and does not recover as damages an amount, excluding interest from
 3 the date of the offer, larger than the amount so offered by the defendant,
 4 the plaintiff shall have judgment for his costs only to the date of the
 5 offer, and the defendant shall have judgment for his costs after said date.

Costs to defendant on non-acceptance.
 1852, 140, § 2.
 G. S. 129, § 63.
 P. S. 167, § 66.
 R. L. 173, § 73.
 97 Mass. 148.
 148 Mass. 592.

264 Mass. 230.

Frivolous Demurrer.

1 † SECTION 76. If a demurrer is overruled because it appears to the
 2 justice hearing it to be frivolous, immaterial or intended for delay, the
 3 case shall proceed to judgment as if no demurrer had been filed, and
 4 execution may be awarded or stayed upon terms. If execution is not
 5 awarded, any security taken shall stand as if no judgment had been
 6 entered until an order is made for final judgment.

Frivolous or immaterial demurrers
 1851, 253, § 33.
 1852, 312, § 25.
 G. S. 129, § 65.
 P. S. 167, § 68.
 R. L. 173, § 75.
 4 Gray, 61.

Hearing or Trial.

1 † SECTION 77. Actions in which neither party has filed notice that he
 2 desires a jury trial shall, unless otherwise expressly provided, be heard
 3 and determined by the court. Demurrers may in the first instance be
 4 heard by one justice.

Jury waived cases and demurrers, how heard
 1851, 233, § 33

1852, 312, § 23.
 G. S. 129, § 64.
 1874, 248, § 1.

P. S. 167, §§ 67, 69.
 R. L. 173, § 74.
 10 Gray, 501.

132 Mass. 354, 356.
 135 Mass. 28.
 173 Mass. 382.

1 † SECTION 78. If the parties to an action upon the trial list at a sitting
 2 of the superior court file an agreement that such action shall be marked
 3 for trial not before a certain day in the same or the succeeding sitting,
 4 the action shall, if reached in its order upon said trial list before such
 5 day, be postponed thereto, and placed upon the list of actions in order
 6 for trial on such day next after the cases, if any, which were on the list
 7 for the preceding court day; but, if it is in order for trial and is reached
 8 for trial on the day upon which the agreement is filed, it shall not be
 9 postponed except by order of the court. If two or more actions are so
 10 postponed to the same day, they shall be placed upon the list for that
 11 day in the order in which the agreements for their postponement were
 12 filed. Instead of so postponing a case, the parties may, by a writing filed
 13 with the clerk, or orally in his presence, agree that the action be passed,
 14 and thereupon it may be temporarily stricken from the list, and may be
 15 restored thereto on such day as the parties shall, by a writing filed with
 16 the clerk, agree, or after three days' written notice given by either party
 17 to the other.

Postponement of actions on trial list.
 1884, 304.
 1890, 154.
 R. L. 173, § 77.

Trials not to be delayed or postponed, etc. 1851, 233. §§ 28, 29, 102. 1852, 312. §§ 19, 64, 88. G. S. 129, §§ 68, 69. P. S. 167, §§ 71, 72.

* † SECTION 79. A trial shall not be delayed for want of a reply to the defendant's answer, nor because interrogatories have been filed and the time for answering them has not expired, unless by special order of the court; nor shall an agreement of parties relative to filing amendments or papers operate to postpone the trial of an action beyond the time at which, by the rules of the court, it would be tried.

R. L. 173, § 78.

Trials to proceed after allowance of exceptions. 1804, 105, § 5. 1817, 185, § 5. 1820, 79, § 5. R. S. 81, §§ 29, 33; 82, § 13.

† SECTION 80. The trial of questions of fact shall proceed although exceptions have been filed and allowed therein, and such further proceedings shall be had as the court orders; but judgment shall not be entered unless the exceptions are adjudged immaterial, frivolous or intended for delay, or except as hereinafter provided.

1839, 196, § 28. G. S. 115, § 9. P. S. 153, § 11.

R. L. 173, § 79. 1911, 497. 110 Mass. 491.

186 Mass. 59. 210 Mass. 214. 224 Mass. 9.

Charges as to facts forbidden. G. S. 115, § 5. P. S. 153, § 5.

† § || SECTION 81. The courts shall not charge juries with respect to matters of fact, but they may state the testimony and the law.

R. L. 173, § 80. 16 Gray, 501. 4 Allen, 435. 7 Allen, 207. 9 Allen, 276. 14 Allen, 13. 98 Mass. 161. 99 Mass. 413. 102 Mass. 427. 103 Mass. 425. 107 Mass. 329. 110 Mass. 179. 111 Mass. 63. 117 Mass. 190. 123 Mass. 248.

131 Mass. 467. 139 Mass. 164. 140 Mass. 473. 145 Mass. 97. 148 Mass. 109, 470. 152 Mass. 12. 153 Mass. 176. 162 Mass. 242. 165 Mass. 153. 188 Mass. 382. 194 Mass. 157. 196 Mass. 24. 197 Mass. 495. 198 Mass. 499.

200 Mass. 470. 201 Mass. 86. 203 Mass. 384. 204 Mass. 48. 208 Mass. 359. 213 Mass. 232. 231 Mass. 215. 253 Mass. 509. 256 Mass. 10. 259 Mass. 46. 261 Mass. 26. 263 Mass. 67. 267 Mass. 75. 270 Mass. 213.

Place of trial. 1882, 264, § 2. R. L. 173, § 82.

SECTION 82. In counties containing two or more shire towns, the supreme judicial or the superior court, at the sitting held on or next after the return day on which an action is entered, may designate the shire town where it shall be tried, and it shall not then be put on the trial list for sittings held in any other shire town of that county except by agreement of the parties.

Examination of witnesses. 1885, 291, § 5. R. L. 173, § 83.

† § || SECTION 83. During the trial of a case in which an official stenographer takes stenographic notes of the evidence, no other person shall interrupt the examination of witnesses for the purpose of taking notes of their testimony.

Consolidation of actions for libel. 1897, 525, § 3. R. L. 173, § 94.

SECTION 84. If two or more actions for substantially the same libel, brought by the same plaintiff, are pending in the same court, either in the same or in different counties, any justice thereof may in his discretion make an order that some or all of them be tried together. A separate verdict, or, if the action is tried without a jury, a separate finding, shall be rendered in each action, and judgment shall be rendered in each as if it had been tried separately. If the plaintiff recovers judgment in two or more actions, the court shall make an order for the apportionment of costs between the defendants.

Evidence.

Contributory negligence an affirmative defence; presumption

* SECTION 85. In all actions, civil or criminal, to recover damages for injuries to the person or property or for causing the death of a person, the person injured or killed shall be presumed to have been in

4 the exercise of due care, and contributory negligence on his part shall
5 be an affirmative defence to be set up in the answer and proved by the
6 defendant.

and burden
of proof
194, 553.
221 Mass. 95.

- | | | |
|--------------------------|-----------------------------|--------------------------|
| 223 Mass. 505. | 239 Mass. 232 | 259 Mass. 191, 401. |
| 226 Mass. 110, 262. | 240 Mass. 8, 101, 122, 458. | 260 Mass. 110, 404 |
| 228 Mass. 477. | 241 Mass. 78, 225, 386, | 261 Mass. 142. |
| 229 Mass. 219. | 546, 580. | 262 Mass. 185. |
| 230 Mass. 316, 363, | 242 Mass. 188. | 263 Mass. 139, 487. |
| 370, 392, 397, 419. | 243 Mass. 10 | 265 Mass. 33, 472 |
| 231 Mass. 151, 160, 186, | 244 Mass. 93, 418. | 266 Mass. 214, 424. |
| 215, 313, 339, 438, | 245 Mass. 139. | 267 Mass. 447 |
| 447, 458, 519 | 247 Mass. 235, 270. | 268 Mass. 38, 454, 590. |
| 232 Mass. 138, 165. | 248 Mass. 92. | 269 Mass. 420, 448 |
| 233 Mass. 229, 600. | 249 Mass. 43. | 270 Mass. 418, 432 |
| 234 Mass. 85, 95, 130. | 253 Mass. 594. | 271 Mass. 31, 230, 274, |
| 235 Mass. 150, 190. | 255 Mass. 292. | 390, 394, 421, 477 |
| 236 Mass. 10, 130. | 256 Mass. 27 | 272 Mass. 217, 256, 448. |
| 237 Mass. 455. | 257 Mass. 272, 283 | 273 Mass. 13. |
| 238 Mass. 392. | 258 Mass. 234, 389, 407. | |

1 * SECTION 85A. In all actions to recover damages for injuries to the
2 person or to property or for the death of a person, arising out of an
3 accident or collision in which a motor vehicle was involved, evidence
4 that at the time of such accident or collision it was registered in the
5 name of the defendant as owner shall be prima facie evidence that it
6 was then being operated by and under the control of a person for whose
7 conduct the defendant was legally responsible, and absence of such
8 responsibility shall be an affirmative defence to be set up in the answer
9 and proved by the defendant.

Registration
of motor
vehicle in
defendant's
name evidence
of his responsi-
bility for
conduct of
operator.
1928, 317, § 1.
266 Mass. 446
268 Mass. 38,
582, 587.
273 Mass. 146,
272.

1 † SECTION 86. If the plaintiff fails to introduce evidence at the
2 trial in support of a count in the declaration, it shall, if not wholly or
3 partly admitted by the answer, be stricken out; and the court may,
4 either of its own motion or upon motion of a party, require unnecessary
5 counts and statements to be stricken out of the pleadings, and may
6 impose terms.

Counts not
proved may be
stricken out.
1851, 233, § 5.
1852, 312, § 5.
G. S. 129, § 71
P. S. 167, § 74.
R. L. 173, § 84
3 Gray, 261

8 Gray, 589.

3 Allen, 471.

1 * † § || SECTION 87. Pleadings shall not be evidence on the trial, but
2 the allegations therein shall bind the party making them.

Pleadings not
evidence.

- | | | |
|--------------------|----------------|---------------------|
| R. S. 100, § 18. | 108 Mass. 100. | 176 Mass. 363. |
| 1851, 233, § 112. | 109 Mass. 63. | 223 Mass. 243. |
| 1852, 312, § 75. | 110 Mass. 61. | 226 Mass. 570. |
| G. S. 129, § 72. | 124 Mass. 364. | 235 Mass. 443. |
| P. S. 167, § 75. | 126 Mass. 21. | 259 Mass. 76. |
| R. L. 173, § 85. | 135 Mass. 165. | 264 Mass. 343, 530. |
| 15 Gray, 211. | 140 Mass. 250. | 267 Mass. 279. |
| 12 Allen, 443. | 172 Mass. 303. | 268 Mass. 497. |
| 13 Allen, 72, 460. | 173 Mass. 433. | 269 Mass. 335. |

1 * ¶ SECTION 88. An offer or consent made under section seventy-
2 four and not accepted shall not be evidence against the party making
3 it, either in a subsequent proceeding in the action or suit in which it is
4 made or in another action or suit.

Unaccepted
offer of
judgment.
1852, 140, § 3
G. S. 129, § 74

P. S. 167, § 76.

R. L. 173, § 87.

1 * † § || SECTION 89. The answers of a party to interrogatories filed
2 may be read by the other party as evidence at the trial. The party
3 interrogated may require the whole of the answers upon any one sub-
4 ject matter inquired of to be read, if a part of them is read; but if no
5 part is read, the party interrogated shall in no way avail himself of his
6 examination or of the fact that he has been examined.

Answers to
interrogatories
may be read
at trial.
1851, 233,
§ 110.
1852, 312, § 73
G. S. 129, § 74
P. S. 167, § 77.

- | | | |
|------------------|----------------|----------------|
| R. L. 173, § 88. | 214 Mass. 563 | 258 Mass. 446. |
| 109 Mass. 200 | 223 Mass. 300. | 265 Mass. 408. |
| 176 Mass. 363. | 253 Mass. 37. | 269 Mass. 415. |

One matter in answer not evidence of another. 1826, 107, § 2. R. S. 100, § 18. 1851, 233, § 112. * † ¶ SECTION 90. If a defendant answers two or more matters in his defence, no averment, confession or acknowledgment contained in one of them shall be used or taken as evidence against him on the trial of an issue joined on any other of them. 1 2 3 4

1852, 312, § 75. P. S. 167, § 78. 13 Met. 253.
G. S. 129, § 75. R. L. 173, § 89. 7 Cush. 581.

Justification in slander not proof of malice. 1826, 107, § 2. R. S. 100, § 19. G. S. 129, § 76. * SECTION 91. If the defendant in an action for slander or for publishing a libel justifies that the words spoken or published were true, such allegation, although not maintained by the evidence, shall not of itself be proof of the malice alleged in the declaration. 1 2 3 4

P. S. 167, § 79. R. L. 173, § 90. 226 Mass. 447.

Truth of libel admissible. 1855, 396. G. S. 129, § 77. P. S. 167, § 80. R. L. 173, § 91. 124 Mass. 338. * SECTION 92. The defendant in an action for writing or for publishing a libel may introduce in evidence the truth of the matter contained in the publication charged as libellous; and the truth shall be a justification unless actual malice is proved. 1 2 3 4

127 Mass. 316. 183 Mass. 474. 238 Mass. 345.
133 Mass. 471. 200 Mass. 166. 245 Mass. 520.
151 Mass. 127. 220 Mass. 171. 241 U. S. 257.
176 Mass. 270.

Retraction of libel. 1895, 441. 1897, 525, § 1. R. L. 173, § 92. 198 Mass. 538. * SECTION 93. If, in an action for libel, the defendant, before the answer is required to be filed therein, gives written notice to the plaintiff or to his attorney of his intention to publish a retraction of the libel, accompanied by a copy of the retraction which he intends to publish, he may prove such publication in mitigation of damages. If, upon such notice, the plaintiff does not accept the offer of retraction, the defendant may prove in mitigation of damages his offer to publish such retraction and that the offer was not accepted, and that the alleged libel was published in good faith and without actual malice; and unless the plaintiff proves actual malice or want of good faith, or a failure either to retract or offer to retract as aforesaid, he shall recover damages only for the actual injury sustained; but in no action of libel shall exemplary or punitive damages be allowed. 1 2 3 4 5 6 7 8 9 10 11 12 13

Evidence in mitigation of damages. 1897, 525, § 2. 1901, 322. R. L. 173, § 93. * SECTION 94. In an action for libel, the defendant may allege and prove in mitigation of damages that the plaintiff has already recovered damages for, or has received or has agreed to receive compensation in respect of, substantially the same libel as that for which such action was brought. In an action for libel or slander, he may introduce in evidence, in mitigation of damages and in rebuttal of evidence of actual malice, acts of the plaintiff which create a reasonable suspicion that the matters charged against him by the defendant are true. 1 2 3 4 5 6 7 8

Evidence of payment, etc., in action on judgment by default. 1859, 185. G. S. 129, § 78. P. S. 167, § 81. R. L. 173, § 95. 12 Allen, 97. 100 Mass. 79. * SECTION 95. In an action upon a judgment obtained by default and without the knowledge of the defendant, brought within six years after the rendition thereof, the court may, in its discretion and upon terms, allow the defendant to show in defence any payment, satisfaction or extinguishment of the claim, prior to the obtaining of such judgment, or any matter of fraud, which in either case he might have shown upon a writ of review in the original suit. 1 2 3 4 5 6 7

Appeals.

1 † SECTION 96. A party aggrieved by any order of the superior court
 2 sustaining or overruling a demurrer which alleges that the facts stated in
 3 the pleadings demurred to do not in law support or answer the action, or
 4 a party aggrieved by an order for judgment upon a case stated, or by any
 5 order decisive of the case founded upon matter of law apparent on the
 6 record in any proceeding, may appeal therefrom to the supreme judicial
 7 court; but no appeal or exception shall be entered in the supreme judicial
 8 court until the case is in all other respects ripe for final disposition by the
 9 superior court. An issue of law joined in the superior court shall not be
 10 waived by consent of parties after such appeal has been entered in the
 11 supreme judicial court, but that court may, for good cause, allow the
 12 parties to withdraw or amend their pleadings, and, if they result in an
 13 issue of fact, the case shall be remanded to the superior court for trial.
 14 An appeal from an order of the superior court shall be claimed within
 15 twenty days after it is made, and, except as otherwise herein provided,
 16 no judgment shall be entered while an appeal is pending. If exceptions
 17 are taken upon the trial of an action, any appeal taken in the case shall be
 18 entered at the same time with such exceptions in the supreme judicial
 19 court, and a party failing so to enter his appeal shall be deemed to have
 20 waived it. If an appeal is groundless and intended merely for delay, the
 21 court, on motion and after such notice as its rules require, and upon such
 22 terms, if any, as it deems reasonable, may order judgment to be entered
 23 notwithstanding the appeal, and at the same time may award or stay
 24 execution. If execution is not awarded, any attached property or other
 25 security taken shall stand as if no judgment had been entered, until final
 26 disposition is made of the case.

Appeal to
 full court.
 1820, 79, § 4.
 1835, 101, § 1.
 R. S. 82,
 §§ 6, 10;
 1838, 165, § 1.
 1839, 161-
 1840, 87,
 §§ 4, 5.
 1851, 233, § 33.
 1852, 312, § 23.
 1855, 449,
 §§ 5, 6.
 1859, 196,
 §§ 26, 27.
 G. S. 114, § 10;
 129, § 64.
 P. S. 152, § 10;
 167, § 67.
 1891, 227, § 2.
 1898, 562, § 14.
 1899, 357.
 R. L. 173, § 96.
 1906, 342, § 2.
 1910, 555, § 4.
 1918, 257,
 § 432.
 1919, 5.
 1920, 2.
 1928, 306, § 2.
 22 Pick. 278.
 8 Met. 260.
 7 Cush. 115.
 8 Cush. 374.
 2 Gray, 553.
 4 Gray, 61.
 7 Gray, 425.
 239 Mass. 443.
 240 Mass. 583.
 243 Mass. 133.
 244 Mass. 460.
 246 Mass. 346.
 247 Mass. 183.
 248 Mass. 41.

249 Mass. 349, 388.	258 Mass. 319	265 Mass. 390.
252 Mass. 423.	259 Mass. 181, 341.	268 Mass. 365.
253 Mass. 157.	260 Mass. 184.	269 Mass. 530.
257 Mass. 166.	264 Mass. 475.	273 Mass. 107, 109, 283.

1 * SECTION 97. Unless a written waiver of the right of appeal has been
 2 filed by all the parties, a party aggrieved by the judgment of a district
 3 court in a civil action which could not have been removed to the superior
 4 court may appeal therefrom to said court, in case of a judgment rendered
 5 in accordance with section three of chapter two hundred and thirty-nine,
 6 within twenty-four hours after entry thereof, and, in case of a judgment
 7 rendered in any other such civil action, within six days after the entry
 8 thereof. In such case no execution shall be issued on the judgment
 9 appealed from. The case shall be entered in the superior court for the
 10 same county at the return day next after the appeal has been taken and
 11 shall be there tried and determined as if originally commenced there.

Appeal
 to superior
 court.
 1697, 8, § 1.
 1783, 12, § 6.
 1825, 89, § 2.
 1831, 70, 1.
 R. S. 85, § 13;
 87, § 30;
 104, § 8.
 G. S. 116, § 32;
 120, § 25.
 1876, 196,
 §§ 1, 2.
 P. S. 154, § 39;
 155, § 28.
 1885, 384, § 5.
 1893, 396, § 24.

1894, 173, § 1; 431.	1 Gray, 600.	192 Mass. 34.
1896, 230.	2 Gray, 553.	193 Mass. 203.
R. L. 160, § 42; 173, § 97.	9 Gray, 47.	200 Mass. 194.
1906, 451.	12 Gray, 430.	201 Mass. 451.
1910, 534, § 1	13 Allen, 78.	206 Mass. 408.
1913, 471, § 4.	125 Mass. 47.	221 Mass. 161.
1917, 326.	139 Mass. 126.	235 Mass. 114.
1922, 532, § 12.	165 Mass. 238.	238 Mass. 577.
1931, 426, § 109.	171 Mass. 292, 414.	247 Mass. 543.
11 Cush. 80.	172 Mass. 37.	269 Mass. 325.

1 * SECTION 98. No appeal, other than an appeal by a county, city,
 2 town or other municipal corporation, from a judgment of a district
 3 court in any civil action or proceeding, except an action of summary
 4 process under chapter two hundred and thirty-nine, shall be allowed.

Appeal bond.
 1862, 217, § 6.
 1877, 236, § 1.
 1878, 188, § 2.
 P. S. 154, § 52;
 155, § 29.
 1882, 95.

1893, 396, § 25. except as provided in section ninety-nine, unless the appellant, within 5
 1894, 431. six days after the entry of judgment, or within such further time as the 6
 1896, 355. justice or clerk for cause shown allows, files a bond executed by him or by 7
 R. L. 173, § 98. his attorney of record on his behalf, payable to the appellee in such reason- 8
 1910, 534, § 2. able sum and with such surety or sureties as may be approved by the 9
 1931, 426, appellee or by the justice or clerk, conditioned to enter and prosecute his 10
 § 110. appeal with effect, and to satisfy any judgment for costs which may be 11
 133 Mass. 464. entered against him in the superior court upon said appeal within thirty 12
 136 Mass. 560. days after the entry thereof. 13
 137 Mass. 581.
 140 Mass. 235.
 141 Mass. 154,
 218.
 142 Mass. 186.
 143 Mass. 76.
 146 Mass. 324.

150 Mass. 115, 283.

178 Mass. 393.

238 Mass. 577.

Deposit in lieu of bond.
 1880, 20.
 §§ 1-3.
 P. S. 154, § 39;
 155, §§ 30-32.
 1893, 396,
 §§ 26-28.
 1894, 431.
 R. L. 173,
 § 100.
 1917, 326.
 160 Mass. 415.

* SECTION 99. The appellant or any person in his behalf, instead of 1
 filing a bond as provided in the preceding section, may deposit with the 2
 clerk, within the time required for filing a bond, a reasonable amount, 3
 to be fixed by the clerk or justice, as security for the prosecution of the 4
 appeal and the payment of costs. A certificate of such deposit shall be 5
 issued to the depositor by the clerk or justice, and the deposit shall be 6
 transmitted by him with the papers to the clerk of the superior court, 7
 who shall thereupon deliver a receipt therefor to such clerk or justice 8
 and shall hold such deposit until the final disposition of the case, when 9
 he shall pay it, or any part thereof, to the appellee for his costs, or to the 10
 depositor thereof, as the court may order. The superior court may give 11
 directions as to the manner of keeping such deposit. 12

SECTION 100. [REPEALED, 1931, 426, § 111.] 1

Transmission of papers.
 1862, 217, § 1.
 1876, 60.
 P. S. 154, § 40.
 1893, 396, § 30.
 1894, 431.
 R. L. 173, § 102.
 12 Cush. 133.

* SECTION 101. When an appeal is taken from a judgment of a dis- 1
 trict court, the clerk shall transmit to the clerk of the superior court the 2
 original writ or process, all papers filed in the case, all bonds, and a brief 3
 certificate of the proceedings, which shall be there entered by the appel- 4
 lant. 5

126 Mass. 233, 399.

197 Mass. 416.

Records in lower court of cases appealed.
 1862, 217, § 2.
 1876, 60.
 P. S. 154, § 41.
 1893, 396, § 31.
 1894, 431.

* SECTION 102. When such appeal is taken, the names of all the 1
 parties thereto, the nature of the action or proceeding, the doings of the 2
 court thereon, the final disposition thereof and the amount of costs taxed 3
 shall be entered on the docket; and no other record thereof shall be 4
 required. 5

R. L. 173, § 104.

1917, 326.

Waiver of jury trial by bringing action in district court.
 Removal by plaintiff.
 1912, 649, § 2.
 1914, 35, § 2;
 409.
 1921, 486, § 36.
 1931, 426,
 § 112.
 228 Mass. 84.
 235 Mass. 114.

* SECTION 103. If a party elects to bring in any district court any 1
 action or other civil proceeding which he might have begun in the supe- 2
 rior court, he shall be deemed to have waived a trial by jury and his 3
 right of appeal to the superior court, unless the said action or other civil 4
 proceeding is removed to the superior court as hereinafter provided, in 5
 which case the plaintiff shall have the same right to claim a jury trial as 6
 if the action or proceeding had been originally brought in the superior 7
 court; provided, that if a declaration in set-off is filed in such action, 8
 the plaintiff may of right remove the cause and claim a jury trial in the 9
 manner and upon the terms set out in the following section, within the 10
 time allowed him for filing an answer to such declaration in set-off. 11
 This and the seven following sections shall not apply to actions under 12
 chapter two hundred and thirty-nine. 13

1 *SECTION 104. No other party to such action shall be entitled to an
 2 appeal. In lieu thereof, in case such action is an action of contract, tort
 3 or replevin in which the debt or damages demanded or the value of the
 4 property detained exceeds the jurisdictional limit of said district court
 5 effective immediately prior to September first, nineteen hundred and
 6 twenty-nine, any such other party may, within two days after the time
 7 allowed for entering his appearance, file in said court a claim of trial by
 8 the superior court, with or without jury, and an affidavit by his counsel
 9 of record, if any, and if none, the affidavit of such party, that in his
 10 opinion there is an issue of fact or law requiring trial in the cause, and
 11 that such trial is in good faith intended, together with the sum of three
 12 dollars for the entry of the cause in the superior court, and a bond in the
 13 penal sum of one hundred dollars, with such surety or sureties as may be
 14 approved by the plaintiff or the clerk or an assistant clerk of said district
 15 court, payable to the other party or parties to the cause, conditioned to
 16 satisfy any judgment for costs which may be entered against him in the
 17 superior court in said cause within thirty days after the entry thereof;
 18 and, in lieu of such an appeal in case such action is not an action of con-
 19 tract, tort or replevin as aforesaid, any such other party may, within
 20 two days after the time allowed for entering his appearance, file in said
 21 court a claim of trial by jury, and an affidavit by his counsel of record,
 22 if any, and if none, the affidavit of such party, that in his opinion there
 23 is an issue of fact requiring trial in the cause, and that such trial is in
 24 good faith intended, together with the sum of three dollars for the entry
 25 of the cause in the superior court, and a bond as hereinbefore provided.
 26 The clerk shall forthwith transmit the papers and entry fee in the cause to
 27 the clerk of the superior court, and the same shall proceed as though then
 28 originally entered there, but, if a trial by jury is claimed, may be marked
 29 for trial upon the lists of causes advanced for speedy trial by jury.

Removal from
 district court.
 1912, 649, § 3.
 1921, 486, § 36.
 1929, 316,
 §§ 3, 4.
 1931, 426,
 § 113.
 235 Mass. 114.
 269 Mass. 381.

1 *SECTION 105. In any action brought by or against two or more
 2 persons in which separate judgments are authorized by section two or
 3 four and in which the debt demanded does not exceed the jurisdictional
 4 limit of said district court in effect immediately prior to September first,
 5 nineteen hundred and twenty-nine, the party seeking removal may specify
 6 in his claim of jury trial the parties as to whom such trial is claimed, in
 7 which case the cause shall be removed as to such parties only as are
 8 specified in such claim, and said district court shall retain jurisdiction
 9 as to the remainder. In such case the clerk shall transmit attested copies
 10 of the papers in the cause to the clerk of the superior court, in lieu of the
 11 originals.

Partial
 removal.
 1912, 649, § 4.
 1921, 486, § 36.
 1931, 426,
 § 114.

1 *SECTION 106. Any party, in lieu of filing the bond required in sec-
 2 tion one hundred and four, may deposit with the clerk the sum of one
 3 hundred dollars. A certificate of such deposit shall be issued to the depos-
 4 itor by the clerk, and the deposit shall be transmitted by him, with the
 5 papers, to the clerk of the superior court, who shall receipt therefor and
 6 hold said deposit until the final disposition of the case, when he shall
 7 apply the same to the satisfaction of any costs awarded against the
 8 depositor, and pay the balance, if any, to the depositor or his legal
 9 representatives.

Deposit in lieu
 of removal
 bond.
 1912, 649, § 5.
 1921, 486, § 36.

1 *SECTION 107. No bond or deposit under section one hundred and
 2 four or one hundred and six shall be required of a county, city, town or

Bond or
 deposit not
 required, when.

1912, 649, § 6.
 1921, 486, § 36.
 1931, 426,
 § 115.
 269 Mass. 381.

other municipal corporation or by a party who has given bond according to law to dissolve an attachment; and the court may in any case, for cause shown, after notice to adverse parties, order that no bond be given. Said district court may, upon cause shown and after notice to all adverse parties, permit such removal to the superior court, upon the terms above specified, at any time prior to final judgment.

Appellate divisions of district courts.
 1912, 649, § 8.
 1914, 35, § 3.
 1921, 486, § 36.
 1931, 325, § 1;
 426, § 116
 215 Mass. 68, 89.
 216 Mass. 197.
 217 Mass. 507.
 220 Mass. 146, 514.
 225 Mass. 451.
 228 Mass. 63.
 235 Mass. 114.
 238 Mass. 215.
 241 Mass. 292.
 245 Mass. 286.
 246 Mass. 464.
 249 Mass. 362.
 255 Mass. 465.
 263 Mass. 425.

* SECTION 108. There shall be an appellate division of each district court for the rehearing of matters of law arising in civil causes therein. Said division of the municipal court of the city of Boston shall consist of three justices thereof, to be designated from time to time by the chief justice thereof. The appellate division of each other district court shall be holden by justices of such other district courts, not exceeding three in number out of five justices assigned to the performance of such duty by the chief justice of the supreme judicial court, as follows:— Such last mentioned chief justice shall assign five justices of district courts within the counties of Essex and Middlesex and that part of Suffolk included in the jurisdiction of the East Boston district court, the district court of Chelsea, the municipal court of the Charlestown district, the municipal court of the Brighton district, the municipal court of the Dorchester district, the municipal court of the Roxbury district, and the municipal court of the South Boston district, to act in the appellate divisions of such district courts within those counties and that part of Suffolk county, which shall be known as the northern appellate division district; shall assign five justices of district courts within the counties of Norfolk, Plymouth, Barnstable, Bristol, Dukes and Nantucket and that part of Suffolk included in the jurisdiction of the municipal court of the West Roxbury district, to act in the appellate divisions of such district courts within those counties and that part of Suffolk county, which shall be known as the southern appellate division district; and shall assign five justices of district courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to act in the appellate divisions of district courts within those counties, which shall be known as the western appellate division district. Such assignment may be made for such period of time as such chief justice may deem advisable. In each of the foregoing three districts one of the justices so assigned shall be designated by the chief justice of the supreme judicial court as presiding justice who shall from time to time designate those of the appellate justices who shall act on appeals in each district court in that district and direct the times and places of sittings. Two justices shall constitute a quorum to decide all matters in an appellate division.

A justice acting in the appellate division of a district court other than the court of which he is a justice shall be allowed in addition to his compensation as such justice the sum of fifteen dollars for each day he so acts, and his necessary traveling expenses, incidental expenses and necessary clerical assistance while so acting, to be paid by the county in which he so acts, upon his certificate approved by the county commissioners; provided, that the total sum expended for such incidental expenses and clerical assistance shall not exceed in any year the sum of fifteen hundred dollars in the northern appellate division district or the sum of seven hundred and fifty dollars in either of the other two appellate division districts; and no deduction shall be made from the compensation of such justice under section six of chapter two hundred and eighteen on account of compensation paid to a special justice of his

48 court for service at any session which such justice is unable to hold by
49 reason of so acting.

50 Any party to a cause brought in the municipal court of the city of
51 Boston after August thirty-first, nineteen hundred and twelve, or in
52 any other district court after September thirtieth, nineteen hundred and
53 twenty-two, aggrieved by any ruling on a matter of law by a single
54 justice, may, as of right, have the ruling reported for determination by the
55 appellate division when the cause is otherwise ripe for judgment, or
56 sooner by consent of the justice hearing the same. The request for such
57 a report shall be filed with the clerk, in the municipal court of the city
58 of Boston, within two days after notice of the ruling, and, in any other
59 district court, within five days after such notice, and when the objection
60 is to the admission or exclusion of evidence, the claim for a report shall
61 also be made known at the time of the ruling. The justice whose ruling
62 is complained of shall not sit upon the review thereof. If the appellate
63 division shall decide that there has been prejudicial error in the ruling
64 complained of, it may reverse, vacate or modify the same or order a new
65 trial in whole or part; otherwise it shall dismiss the report, and may
66 impose double costs in the action if it finds the objection to such ruling
67 to be frivolous or intended for delay. If the party claiming such report
68 shall not duly prosecute the same, by preparing the necessary papers or
69 otherwise, the appellate division may order the cause to proceed as though
70 no such claim had been made, and may in like manner impose costs. A
71 single justice may, after decision thereon, report for determination by
72 the appellate division any case in which there is an agreed statement of
73 facts or a finding of the facts or any other case involving questions of
74 law only. If a single justice is of opinion that an interlocutory finding or
75 order made by him ought to be reviewed by the appellate division before
76 any further proceedings in the trial court, he may report the case for
77 that purpose and stay all further proceedings except such as are neces-
78 sary to preserve the rights of the parties. The municipal court of the
79 city of Boston shall make rules regulating the procedure and sittings of
80 the appellate division of said court, for the preparation and submission
81 of reports and the allowance of reports which a single justice shall dis-
82 allow as not conformable to the facts, or shall fail to allow by reason of
83 physical or mental disability, death or resignation, for the reporting of
84 cases reserved for report when a single justice shall fail to report the
85 same by reason of physical or mental disability, death or resignation,
86 and for the granting of new trials.

1 *SECTION 109. An appeal to the supreme judicial court shall lie from
2 the final decision of the appellate division of any district court. Appeals
3 taken hereunder from the appellate division of the municipal court of the
4 city of Boston shall be heard by the supreme judicial court for the com-
5 monwealth, and such appeals from the appellate division of any other
6 district court shall be heard at the same sittings as other questions of law
7 arising in the county in which the judicial district of such district court
8 lies. Claims of appeal shall be filed in the office of the clerk of the district
9 court within five days after notice of the decision of the appellate division.
10 The appeal shall not remove the cause, but only the question or questions
11 to be determined. The completion of such appeal shall be in accordance
12 with section one hundred and thirty-five. The expense of the preparation
13 of the necessary papers and copies of papers and their transmission, and
14 the entry fee in the supreme judicial court, shall be taxed in the bill of

Appeal from
appellate
division to
supreme judi-
cial court
1912, 619, § 9
1914, 35, § 4
1921, 186, § 36
1929, 265, § 2
1931, 426,
§ 117
215 Mass. 89
216 Mass. 197
228 Mass. 84
229 Mass. 68
230 Mass. 526,
534
245 Mass. 286
246 Mass. 104
273 Mass. 128

costs of the prevailing party, if he has paid it. Section twenty-five of 15
 chapter two hundred and sixty-one shall apply to such appealed cases. 16
 If the appellant fails duly to perfect the appeal or to enter the same in 17
 the supreme judicial court, the appellate division may upon application 18
 of an adverse party, and after notice to all persons interested, order the 19
 appeal vacated and the decision appealed from affirmed. 20

Powers of
 appellate
 division.
 1914, 35, § 1.
 1921, 486, § 36.
 1931, 426,
 § 118.
 245 Mass. 286.
 258 Mass. 185.

* SECTION 110. The appellate division of each district court shall 1
 have all the powers relating to civil actions tried without a jury given by 2
 sections one hundred and twenty-four, one hundred and twenty-five, one 3
 hundred and twenty-six and one hundred and thirty-two to the supreme 4
 judicial court. 5

SECTION 110A. [INSERTED, 1922, 532, § 8; REPEALED, 1931, 426, 1
 § 119.] 2

SECTION 110B. [INSERTED, 1922, 532, § 8; REPEALED, 1931, 426, 1
 § 119.] 2

SECTION 110C. [INSERTED, 1922, 532, § 8; REPEALED, 1931, 426, 1
 § 119.] 2

Report.

Report
 1850, 196, § 32.
 G. S. 115, § 6.
 1869, 438, § 1.
 1878, 231, § 1.
 P. S. 453, § 6.
 1887, 332, § 4.
 1891, 227, § 2.
 1899, 131, § 2.
 1900, 311
 R. L. 128, § 13;
 173, § 105.
 1902, 458.
 1904, 118, § 8.
 1910, 555, § 5;
 560, §§ 1, 6.
 1917, 345.
 1 Allen, 18,
 388.
 9 Allen, 539.

† || SECTION 111. A justice of the supreme judicial, the superior or 1
 the land court, after verdict, or after a finding of the facts by the court, 2
 may report the case for determination by the full court. If a justice of the 3
 supreme judicial or the superior court is of opinion that an interlocutory 4
 finding or order made by him ought to be determined by the full court 5
 before any further proceedings in the trial court, he may report the case 6
 for that purpose and stay all further proceedings except such as are 7
 necessary to preserve the rights of the parties. A justice of the supreme 8
 judicial or the superior court may, upon request of the parties, in any case 9
 where there is agreement as to all the material facts, report the case to 10
 the full court for determination without making any decision thereon. 11

- | | | |
|--------------------|---------------------|-------------------|
| 100 Mass. 31. | 201 Mass. 172, 248. | 235 Mass. 304. |
| 106 Mass. 316. | 202 Mass. 209. | 236 Mass. 98. |
| 113 Mass. 290. | 204 Mass. 117, 331. | 238 Mass. 298. |
| 115 Mass. 129. | 207 Mass. 285. | 239 Mass. 334. |
| 133, 310. | 211 Mass. 31, 449. | 242 Mass. 8, 245. |
| 116 Mass. 299. | 212 Mass. 357. | 244 Mass. 128. |
| 125 Mass. 47, 404. | 213 Mass. 191. | 245 Mass. 163. |
| 129 Mass. 535. | 214 Mass. 340, 374. | 249 Mass. 495. |
| 130 Mass. 443. | 215 Mass. 75. | 251 Mass. 95. |
| 141 Mass. 577. | 216 Mass. 545. | 256 Mass. 537. |
| 154 Mass. 31. | 218 Mass. 397. | 259 Mass. 112. |
| 156 Mass. 598. | 222 Mass. 226. | 263 Mass. 145. |
| 167 Mass. 473. | 224 Mass. 421. | 267 Mass. 453. |
| 171 Mass. 201. | 225 Mass. 18, 399. | 268 Mass. 233. |
| 189 Mass. 74. | 228 Mass. 519. | 311, 462. |
| 195 Mass. 55. | 230 Mass. 139, 526. | 271 Mass. 302. |
| 198 Mass. 388. | 233 Mass. 558. | 273 Mass. 364. |

Report in case
 of disability,
 etc., of pres-
 iding justice.
 1912, 317.
 245 Mass. 432.
 231 Mass. 247.

† § || SECTION 112. If a justice presiding at a trial has reserved a case 1
 for report to the supreme judicial court, and fails, by reason of physical 2
 or mental disability, death or resignation, to make such report, any 3
 other justice of the same court may examine and report the same. 4

Exceptions.

Exceptions.
 1803, 94, § 5.
 1894, 105, § 5.
 1817, 185, § 5.
 1820, 79, § 5.

† § || SECTION 113. Exceptions may be alleged by any party ag- 1
 grieved by an opinion, ruling, direction or judgment of the supreme 2
 judicial court, of the superior court, or of the land court, rendered upon 3
 4

4 any matter of law in any civil cause, according to the course of the
 5 common law or otherwise, tried by a jury or heard by the court, or
 6 upon a motion for a new trial. The exceptions shall be reduced to
 7 writing in a summary manner and filed with the clerk, and notice thereof
 8 shall be given to the adverse party, in civil cases tried by a jury, within
 9 twenty days after the verdict is rendered, and in cases tried without a
 10 jury, within twenty days after the notice of the decision has been re-
 11 ceived, unless further time is allowed by the court. The presiding justice
 12 shall thereafter, upon their presentation to him by any party to the
 13 action, examine the exceptions, and after hearing the parties, determine
 14 whether they are conformable to the truth. The excepting party may
 15 be allowed to make such amendments to his bill of exceptions as will make
 16 it a more accurate statement of the exceptions originally filed by him.
 17 If the presiding justice finds that the exceptions, with any amendments
 18 thereof thus allowed, are conformable to the truth, he shall allow them.

1835, 101, § 2.
 R. 8, 81, § 28.
 82, § 12.
 1840, 87,
 §§ 4, 5.
 1857, 267, § 2.
 1859, 196, § 27.
 G. 8, 407, § 13;
 115, §§ 7, 8.
 129, § 67.
 1863, 180, § 2.
 1879, 1
 1880, 118.
 P. S. 116, § 31,
 153, §§ 8, 10,
 167, § 70.
 1887, 332, § 4.
 1891, 227, § 2.
 1895, 153, § 1.
 R. 1, 173,
 §§ 106, 107.
 1906, 342, § 3.
 1911, 212, § 1.
 5 Met. 287.
 4 Cush. 414.
 4 Gray, 39,
 165.

8 Gray, 248.	128 Mass. 319.	206 Mass. 197.
10 Gray, 249, 100.	132 Mass. 536.	208 Mass. 60.
15 Gray, 485.	134 Mass. 189.	209 Mass. 199.
1 Allen, 33, 167, 274, 529.	137 Mass. 92, 98.	210 Mass. 214.
2 Allen, 230, 534.	140 Mass. 454.	212 Mass. 352.
3 Allen, 212.	141 Mass. 181.	213 Mass. 194.
6 Allen, 150.	144 Mass. 429.	214 Mass. 379.
9 Allen, 537.	145 Mass. 254.	215 Mass. 381.
10 Allen, 248, 419.	147 Mass. 159, 164.	216 Mass. 539.
11 Allen, 172.	150 Mass. 530.	217 Mass. 473.
12 Allen, 191.	151 Mass. 158, 275.	220 Mass. 227, 356.
13 Allen, 70, 108.	470, 532.	221 Mass. 136, 378.
99 Mass. 125, 175, 512.	156 Mass. 522.	222 Mass. 179, 226.
100 Mass. 153.	159 Mass. 210.	224 Mass. 169, 310.
101 Mass. 378, 179.	160 Mass. 131, 256.	227 Mass. 29.
103 Mass. 547.	161 Mass. 578.	228 Mass. 368, 569.
104 Mass. 224.	162 Mass. 268, 334, 462.	229 Mass. 421.
107 Mass. 210, 453.	163 Mass. 539.	231 Mass. 7, 404.
110 Mass. 491.	167 Mass. 117.	232 Mass. 509.
111 Mass. 160.	168 Mass. 303.	233 Mass. 420.
112 Mass. 233.	170 Mass. 260, 526, 569.	234 Mass. 148.
113 Mass. 88, 271, 152.	172 Mass. 35, 120, 538.	236 Mass. 330, 422.
114 Mass. 67, 362.	174 Mass. 233, 580.	240 Mass. 583.
115 Mass. 1.	178 Mass. 368.	242 Mass. 251.
116 Mass. 98, 124, 421.	181 Mass. 246.	244 Mass. 460.
117 Mass. 155, 281, 466.	182 Mass. 293, 584.	247 Mass. 483.
119 Mass. 71, 99, 116,	185 Mass. 576.	248 Mass. 421.
188, 375, 476.	187 Mass. 150, 521.	250 Mass. 408.
121 Mass. 163, 505.	190 Mass. 346, 585.	254 Mass. 14, 256.
122 Mass. 701.	191 Mass. 92.	256 Mass. 397.
123 Mass. 579.	193 Mass. 135.	257 Mass. 166.
124 Mass. 21.	194 Mass. 48, 524.	409, 465.
226, 241, 292, 353.	195 Mass. 46.	258 Mass. 190.
125 Mass. 91.	197 Mass. 376.	260 Mass. 184.
203, 367, 587.	200 Mass. 142.	262 Mass. 123.
126 Mass. 222.	201 Mass. 557.	264 Mass. 166, 337, 414.
127 Mass. 158, 152.	204 Mass. 337.	268 Mass. 365, 373.

1 † § || SECTION 114. If an excepting party, in any civil cause in
 2 which exceptions may be alleged, shall not within such time after the
 3 filing of his exceptions as the court may determine to be reasonable
 4 thus present them to the court for allowance, the court in which the
 5 exceptions were taken and filed may, after notice to all parties inter-
 6 ested, order them dismissed, and thereupon proceed to enter judgment
 7 in the same manner as if no exceptions had been filed. No exceptions
 8 shall thus be dismissed within three months after the date of their filing.

Dismissal of
 exceptions for
 failure to
 present for
 allowance.
 1911, 212, § 2.
 213 Mass. 191.
 220 Mass. 356.
 240 Mass. 583.
 254 Mass. 551.
 273 Mass. 462.

1 † § || SECTION 115. If a justice presiding at a trial at which ex-
 2 ceptions have been taken fails, by reason of physical or mental disability,
 3 death, resignation or removal, to sign or return them, or has retired
 4 under section sixty-one or sixty-two of chapter thirty-two or has been
 5 retired under article fifty-eight of the amendments to the constitution
 6 without having signed or returned them, any other justice of the same
 7 court may examine and allow or disallow them.

Allowance of
 exceptions in
 case of dis-
 ability, etc.,
 of presiding
 justice.
 1882, 239.
 1894, 412.
 R. 1, 173,
 § 108.

1912, 317.	195 Mass. 413.	269 Mass. 394.
1923, 5.	249 Mass. 193.	273 Mass. 462.
1931, 426, § 300.	261 Mass. 299.	

Frivolous or immaterial exceptions. 1861, 105, § 5. R. S. 81, § 29. G. S. 115, § 10. P. S. 153, § 12. 1891, 362. R. L. 173, § 109. 145 Mass. 97. 156 Mass. 61. 182 Mass. 316, 320.

† SECTION 116. If a justice presiding at the trial of a civil cause finds that the exceptions taken therein are immaterial, frivolous or intended for delay, judgment may be entered and execution awarded or stayed, upon terms, notwithstanding the allowance of the exceptions. If execution is not awarded, any security taken shall stand as if no judgment had been entered until an order is made for final judgment. In case of the disability or death of the presiding justice, any justice of the same court may exercise the powers herein conferred.

218 Mass. 463.

224 Mass. 9.

254 Mass. 14.

Establishment of exceptions disallowed. R. S. 81, § 28. 1851, 261, §§ 1, 2. 1859, 196, § 29. G. S. 115, § 11. P. S. 153, § 13. 1882, 239. 1894, 412. R. L. 173, § 110. 4 Gray, 568. 15 Gray, 202. 1 Allen, 484. 6 Allen, 557.

† § || SECTION 117. If the presiding justice, or another justice acting under section one hundred and fifteen, disallows or fails to sign and return the exceptions or alters any statement therein, and either party is aggrieved thereby, the truth of the exceptions presented may be established before the full court upon petition stating the grievance, and thereupon, the truth of the exceptions being established, they shall be heard, and the same proceedings taken, as if the exceptions had been duly allowed and entered. The supreme judicial court shall make rules for setting the truth of exceptions alleged and not allowed.

98 Mass. 34.

132 Mass. 183.

208 Mass. 60, 405.

99 Mass. 427.

143 Mass. 27.

215 Mass. 68.

103 Mass. 530.

144 Mass. 71.

219 Mass. 209.

105 Mass. 42, 49.

155 Mass. 233.

222 Mass. 179.

112 Mass. 299.

161 Mass. 558.

223 Mass. 471.

113 Mass. 153.

163 Mass. 536.

225 Mass. 473.

115 Mass. 56.

167 Mass. 254.

234 Mass. 576.

116 Mass. 302, 424.

168 Mass. 304.

240 Mass. 228.

117 Mass. 68.

173 Mass. 286.

244 Mass. 429.

119 Mass. 416.

174 Mass. 253.

246 Mass. 482.

121 Mass. 505.

175 Mass. 56.

250 Mass. 408.

122 Mass. 433.

187 Mass. 542.

254 Mass. 14.

124 Mass. 220.

193 Mass. 21.

256, 520, 551.

127 Mass. 158.

194 Mass. 589.

262 Mass. 534.

130 Mass. 6.

204 Mass. 331.

265 Mass. 456.

131 Mass. 566.

207 Mass. 256.

273 Mass. 240.

Entry of notice of filing of petition to establish exceptions. 1908, 516. 246 Mass. 482.

† § || SECTION 118. Whenever a petition under the preceding section is filed, the clerk of the supreme judicial court for the commonwealth shall, within three days after the filing of the petition, send notice thereof to the clerk of the court in which the exceptions were filed, who shall thereupon enter in the case on the docket of that court notice of the filing of such petition in the supreme judicial court.

Reservation where exceptions disallowed. 1908, 177. 217 Mass. 537. 231 Mass. 247.

† § || SECTION 119. If in any civil action tried before a jury in the supreme judicial or the superior court a bill of exceptions duly filed is not allowed by the presiding justice within three months after the date of the verdict therein, because the same is not found by him to be conformable to the truth, or is not found to state the facts and evidence in the case correctly and fully, the presiding justice may in his discretion reserve the case and send to the supreme judicial court for the commonwealth the whole record of the case, including the pleadings and the evidence taken by the official stenographer and written out from his notes, and certified by him to have been so taken and written out; or so much of said record as is material to the issue. Said record shall be accompanied by the certificate of the presiding justice that the same is a true copy of the record and proceedings in said case, or of the part thereof transmitted, and shall be entered in the supreme judicial court for the commonwealth; and thereupon said record so made and certified shall stand in lieu of a bill of exceptions in all respects, and the questions raised by the exceptions in said cause shall be heard and determined by the full court on such record. In case of the disability

19 or death of the presiding justice, any justice of the same court may
 20 exercise the powers herein conferred. The expense of transcribing the
 21 stenographer's notes and of copying exhibits shall be borne by the
 22 excepting party, and if he prevails the same shall be taxed in his costs.
 23 All provisions of law relating to bills of exceptions, so far as they may
 24 be applicable, shall apply to proceedings under this section.

1 † § || SECTION 120. When exceptions to any ruling or direction of a
 2 judge are alleged, or any question of law reserved, in the course of a trial
 3 by jury, and the circumstances are such that, if the ruling or direction
 4 at the trial was wrong, the verdict or finding ought to have been entered
 5 for a different party or for larger or smaller damages or otherwise than as
 6 was done at the trial, the justice may reserve leave, with the assent of
 7 the jury, so to enter the verdict or finding, if upon the questions of law
 8 so raised the court shall decide that it ought to have been so entered. The
 9 leave reserved, as well as the findings of the jury upon any particular
 10 questions of fact submitted to them, shall be entered in the record of the
 11 proceedings, and if upon the questions of law it shall be decided, either
 12 by the same court or by the appellate court, that the verdict or finding
 13 ought to have been entered in accordance with the leave reserved, it shall
 14 be entered accordingly, unless the supreme judicial court, in accordance
 15 with section one hundred and twenty-two, one hundred and twenty-
 16 three or one hundred and twenty-four, makes a different order. When
 17 so entered, the verdict shall have the same effect as if it had been entered
 18 at the trial.

Verdict by
 leave reserved,
 1874, 248, § 2,
 P. S. 153, § 14,
 R. L. 173,
 § 120,
 1915, 185,
 §§ 1, 2,
 123 Mass. 418,
 198 Mass. 388,
 227 Mass. 71,
 231 Mass. 65,
 235 Mass. 51,
 237 Mass. 29,
 246 Mass. 310,
 256 Mass. 468,
 537,
 259 Mass. 142,
 267 Mass. 365,
 268 Mass. 462,
 271 Mass. 247.

1 † § || SECTION 121. The presiding justice may order the appellant
 2 or the excepting party in civil cases to provide him with a transcript of
 3 the evidence and of the instructions to the jury, or such portion thereof
 4 as he shall designate, written out by the official stenographer from his
 5 notes, within such time, not less than ten days after the date of the order,
 6 as the presiding justice designates.

Transcripts
 of evidence,
 1895, 153, § 2,
 1896, 451,
 R. L. 173,
 § 111,
 1927, 332, § 9.

Power of Full Court on Exceptions, Appeal or Report.

1 † § || SECTION 122. When the justice presiding at a trial is requested
 2 to rule that upon all the evidence the plaintiff cannot recover, and such
 3 request is refused, and exception by the defendant to such refusal is duly
 4 taken, and a finding or verdict returned for the plaintiff, then if the de-
 5 fendant's said exception is sustained in the supreme judicial court, and
 6 exceptions, if any, taken in said trial by the plaintiff are all overruled,
 7 the supreme judicial court may, by rescript, direct the entry in the trial
 8 court of judgment for the defendant, and thereupon judgment shall so
 9 be entered.

Full court
 may direct
 judgment
 for defendant
 after sustain-
 ing his
 exceptions,
 when,
 1909, 236, § 1,
 201 Mass. 122,
 323,
 205 Mass. 286,
 431,
 211 Mass. 156

215 Mass. 467, 588.
 223 Mass. 471.
 236 Mass. 121, 210.
 237 Mass. 27, 127,
 467, 477, 556.
 238 Mass. 68, 183, 206,
 305, 564, 589, 592.
 240 Mass. 104, 517.
 241 Mass. 127, 569.
 242 Mass. 15, 168.
 243 Mass. 384
 245 Mass. 114.
 246 Mass. 159, 518.

247 Mass. 268.
 248 Mass. 432, 494.
 249 Mass. 67,
 140, 155.
 250 Mass. 123.
 251 Mass. 1, 43, 53.
 252 Mass. 65,
 146, 579.
 254 Mass. 387.
 255 Mass. 121, 459.
 256 Mass. 317, 468.
 257 Mass. 285, 518,
 525, 550.

259 Mass. 336,
 394, 415.
 260 Mass. 414,
 417, 527.
 261 Mass. 91,
 114, 397.
 263 Mass. 51, 81,
 244, 435.
 264 Mass. 337.
 265 Mass. 369.
 267 Mass. 166, 212.
 268 Mass. 524.
 271 Mass. 58.

1 † § || SECTION 123. When the justice presiding at a trial is requested
 2 by the plaintiff to rule that upon all the evidence a finding or verdict

Same as to
 plaintiff.
 1909, 236, § 2,
 205 Mass. 585.

255 Mass. 175.
264 Mass. 337.

should be returned for the plaintiff, and such request is refused, and an exception to such refusal is duly taken, and a finding or verdict is returned for the defendant, then if the plaintiff's said exception is sustained in the supreme judicial court, and the exceptions, if any, taken in said trial by the defendant are all overruled, the supreme judicial court may, by rescript, direct the entry in the trial court of judgment for the plaintiff, and thereupon judgment shall so be entered.

Power of full court on appeal, etc.
1913, 716, § 2.
216 Mass. 260.
223 Mass. 39.
228 Mass. 191,
285, 294, 484.
236 Mass. 260.
237 Mass. 306.
238 Mass. 215,
509.
242 Mass. 389.
243 Mass. 69,
405.
245 Mass. I,
166.
249 Mass. 67.
251 Mass. 6,
372, 385.
256 Mass. 537.
257 Mass. 166.
258 Mass. 196.
259 Mass. 259.
260 Mass. 335,
469.
265 Mass. 295,
390.
266 Mass. 370.
268 Mass. 497.
269 Mass. 190.
271 Mass. 101,
433.
272 Mass. 555.

* † § || SECTION 124. Whenever a question in dispute at the trial of an issue of fact in any civil action or proceeding depends upon the decision of a question of law, the full bench of the supreme judicial court, upon appeal, exceptions or report or otherwise, may, if satisfied that it has before it all the facts necessary for determining the question in dispute, direct that such judgment or decree be entered or that such other action be taken as shall accord with the determination of the full court; or, if the full court shall be of the opinion that it has not before it sufficient facts to determine said question, it may direct such issues or questions as it shall think proper to be tried before a jury if the case be a jury case, or otherwise before a judge, and may direct in the alternative the action to be taken upon the verdict or finding. When any such question of law shall arise in a trial, the judge shall, by leaving appropriate questions to the jury, or by his own findings where the trial is without a jury, ascertain so far as is practicable all the facts both as to liability and damages necessary on any theory of the law to enable the court to make the proper final disposition of the case, unless in the opinion of the court such a course is inexpedient under the circumstances of the case. When special questions are submitted to a jury, the judge may or may not take a general verdict, and may report the case on the answers of the jury, or make such other order thereon as he deems proper. A judge reporting to the full court for its determination a question as to the correctness of any rulings of law made by him at a trial, or on a motion for a new trial, may make in any proper case a provision in the report that, if his rulings were correct, a judgment or decree shall be entered for the party in whose favor the rulings were made, and that, if his rulings were wrong, the judgment or decree shall be entered in accordance with such rulings as he ought to have made.

Same, relative to amendments, etc.
1859, 237,
§ § 2, 6
G. S. 113,
§ § 8, 21
P. S. 151,
§ § 13, 26.
1883, 223, § 2.
R. L. 159,
§ § 19, 24
1911, 284, § 1.
1913, 716, § 3.
216 Mass. 197,
459.
217 Mass. 392.
219 Mass. 594.
220 Mass. 79.
222 Mass. 382.
223 Mass. 471.
224 Mass. 288.
226 Mass. 401.

* † § || SECTION 125. The supreme judicial court, upon any appeal, bill of exceptions, report, or other proceeding in the nature of an appeal in any civil action, suit or proceeding, shall have all the powers of amendment of the court below; and whenever exceptions have been taken to the exclusion of evidence, or where the alleged error arises from the omission at the trial of some fact which, under the circumstances of the case, may subsequently be proved without involving any question for a jury, and without substantial injustice to either party, the supreme judicial court shall have full discretionary authority to cause such further testimony to be taken as it deems necessary, either by oral examination in court, by reference, by affidavit or by deposition, and the court shall have power to render any judgment and to make any order that ought to have been made upon the whole case.

227 Mass. 589. 244 Mass. 286, 528. 255 Mass. 64. 267 Mass. 450.
228 Mass. 390. 246 Mass. 170, 572. 258 Mass. 370, 581. 268 Mass. 373.
232 Mass. 402. 248 Mass. 354. 259 Mass. 259. 269 Mass. 341.
233 Mass. 162. 249 Mass. 1, 281, 261 Mass. 426. 270 Mass. 185.
236 Mass. 104. 516. 262 Mass. 127, 214. 273 Mass. 128.
238 Mass. 356. 251 Mass. 401, 555. 263 Mass. 521.

1 * † § || SECTION 126. Upon a case stated by agreement of the parties
 2 for the decision of the court in any action, suit or proceeding, any court
 3 before which such case shall come, either in the first instance or upon
 4 appeal, exceptions, report or other proceedings in the nature of an appeal,
 5 shall be at liberty to draw from the facts and documents stated in the
 6 case any inferences of fact that might have been drawn therefrom at a
 7 trial, unless the parties expressly agree that no inferences shall be drawn.

270 Mass. 249.

Inferences
 of fact upon
 case stated
 1913, 716, § 5.
 217 Mass. 176.
 218 Mass. 425.
 221 Mass. 237.
 225 Mass. 425.
 226 Mass. 430.
 242 Mass. 197.
 258 Mass. 232.
 268 Mass. 373.

New Trials.

1 † § || SECTION 127. The court may, at any time before judgment,
 2 set aside the verdict in a civil action and order a new trial for any
 3 cause for which a new trial may by law be granted; but a verdict shall
 4 not be set aside except on written motion by a party to the cause, stating
 5 the reasons relied upon in its support, filed and heard after notice to the
 6 adverse party according to the rules of the court. A verdict shall not be
 7 set aside as excessive until the prevailing party has first been given an
 8 opportunity to remit so much thereof as the court adjudges is excessive.

New trial.
 1820, 79, § 7.
 R. S. 82, § 19.
 1855, 185.
 1859, 196, § 32.
 G. S. 115, § 6.
 P. S. 153, § 6.
 1897, 472.
 R. L. 173,
 § 112.
 98 Mass. 34.
 134 Mass. 189.
 157 Mass. 315.
 188 Mass. 146.

147 Mass. 572.	193 Mass. 412.	221 Mass. 8, 378.
148 Mass. 53, 429.	197 Mass. 252.	422.
160 Mass. 256.	198 Mass. 388, 575.	224 Mass. 117.
162 Mass. 397.	200 Mass. 142, 409.	225 Mass. 31.
163 Mass. 143.	207 Mass. 606.	227 Mass. 486.
169 Mass. 459.	208 Mass. 513.	246 Mass. 310.
172 Mass. 262.	210 Mass. 563.	247 Mass. 1.
178 Mass. 139.	213 Mass. 424.	250 Mass. 471.
180 Mass. 8.	218 Mass. 310.	267 Mass. 49.
183 Mass. 125.	363, 397.	268 Mass. 373.
191 Mass. 223, 402.	220 Mass. 227.	270 Mass. 302.

1 † § || SECTION 128. Whenever a verdict is set aside and a new trial
 2 granted under the preceding section, the justice granting the motion
 3 for the new trial shall file a statement setting forth fully the grounds
 4 upon which the motion is granted, which statement shall be a part of
 5 the record of the case. If it appears from the statement that the sole
 6 ground for granting the motion was that the damages awarded were
 7 either inadequate or excessive, then the new trial shall be limited to
 8 the question of the amount of damages.

Grounds for
 new trial to
 be stated in
 order, etc.
 1911, 501.
 210 Mass. 563.
 218 Mass. 363.
 221 Mass. 8,
 422.
 224 Mass. 117.
 225 Mass. 31.
 227 Mass. 486.
 235 Mass. 482.

246 Mass. 310.	249 Mass. 257.	267 Mass. 49.	270 Mass. 302.
247 Mass. 1.	251 Mass. 536.	268 Mass. 373.	

1 † § || SECTION 129. A new trial may be granted, upon motion, for
 2 a mistake of law or for newly discovered evidence in a case heard by the
 3 court. When a decision has been rendered in such a case, the clerk
 4 shall notify the parties, and a motion for a new trial may be filed within
 5 three days after receipt of such notice or within such further time as the
 6 court allows.

New trial in
 jury waived
 cases.
 1857, 267, § 2.
 G. S. 129, § 67.
 1879, 1.
 P. S. 153, § 9;
 167, § 70.
 R. L. 173,
 § 113.

148 Mass. 522.	218 Mass. 310.	246 Mass. 310.
----------------	----------------	----------------

1 † § || SECTION 130. If a new trial is refused, the court may impose
 2 terms upon the moving party, to be taxed as costs.

1876, 74.	R. L. 173, § 114.	246 Mass. 310.
P. S. 153, § 7.	178 Mass. 403.	

Terms on
 refusal of
 new trial.

1 † § || SECTION 131. Sections one hundred and twenty-two and one
 2 hundred and twenty-three shall not limit or affect the power of a trial
 3 court to grant a new trial.

Effect of
 exceptions on
 new trial.

1909, 236, § 3.	246 Mass. 310.
-----------------	----------------

Effect of Error not Affecting Whole Case.

No new trial to be granted by full court or trial court on errors in evidence or procedure not affecting substantial rights. Judgment as to part of case. 1913, 716, § 1. 1914, 35, § 1. 217 Mass. 148. 218 Mass. 420. 219 Mass. 539. 220 Mass. 20, 364, 422. 221 Mass. 20, 136.

* † § || SECTION 132. No new trial shall be granted in any civil action or proceeding on the ground of improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure, if the judge who presided at the trial when application is made by motion for a new trial, or the supreme judicial court when application is made by exceptions or otherwise, deems that the error complained of has not injuriously affected the substantial rights of the parties; and, if it appears to such court that said error affects part only of the matter in controversy or some or one only of the parties, the court may direct final judgment as to part thereof, or some or one only of the parties, and may direct a new trial as to the other part only or as to the other parties.

- | | | |
|--------------------------|---------------------|--------------------------|
| 222 Mass. 355, 456. | 232 Mass. 368, 560. | 249 Mass. 135, 194, 246. |
| 223 Mass. 471. | 234 Mass. 174. | 254 Mass. 118, 132. |
| 224 Mass. 125, 310, 531. | 237 Mass. 245. | 259 Mass. 46, 365. |
| 225 Mass. 580. | 239 Mass. 290. | 262 Mass. 104, 555. |
| 227 Mass. 146, 253. | 240 Mass. 240. | 265 Mass. 295. |
| 228 Mass. 318, 584, 594. | 246 Mass. 170. | 266 Mass. 219. |
| 229 Mass. 316, 348. | 386, 453. | 272 Mass. 487. |
| 230 Mass. 370. | 247 Mass. 459. | 273 Mass. 578. |

Affirmance of judgment by court appealed from. 1820, 79, §§ 4, 5. R. S. 82, § 10. G. S. 112, § 16. P. S. 150, § 16. 1888, 94. 1895, 153, § 2. 1896, 451. 1900, 372, § 1. R. L. 173, § 115. 1915, 111. 1918, 257, § 433. 1919, 5. 1920, 2. 1927, 332, § 10. 3 Cush. 25. 150 Mass. 56, 57. 161 Mass. 593. 213 Mass. 194. 230 Mass. 500. 236 Mass. 326. 243 Mass. 510. 254 Mass. 137. 268 Mass. 99.

† § || SECTION 133. If, at law, in equity or in probate proceedings, an appellant or an excepting party, or, in a case reported after a verdict, finding or decision, the party at whose request it is reported, or, in a case reported without decision under section one hundred and eleven, the plaintiff neglects to enter the appeal, exceptions or report in the supreme judicial court or to take the necessary measures by ordering proper copies to be prepared or otherwise for the hearing of the case, or if an appellant or an excepting party neglects to provide a transcript of the evidence or of the instructions to the jury within the time ordered by the justice under section one hundred and twenty-one, the court in which the appeal was taken or by which the exceptions were allowed or the case reported may, upon the application of the adverse party and after notice to all parties interested, order the appeal dismissed, the exceptions overruled or the report discharged, and thereupon, in the case of appeal or exceptions, the decision, ruling, order or decree appealed from, or excepted to, shall be in full force and effect. Whenever after the entry in the supreme judicial, superior or probate court of a decree after rescript from the full bench of the supreme judicial court in a suit in equity or in probate proceedings, an appeal is claimed from the decree, the justice by whom or by whose order the decree was entered may inquire into any reasons assigned for the appeal, and if he deems that the decree conforms to the terms of the rescript and the appeal is claimed merely for the purpose of delay, he may order the appeal dismissed, and such proceedings may forthwith be had and such processes may forthwith issue as are necessary to carry out the provisions of the decree. And if a further appeal is claimed from an order so dismissing an appeal it shall not operate to suspend or supersede the carrying into effect of the terms of the decree, and the full bench of the supreme judicial court may order such dismissal of appeal affirmed and the imposition of reasonable terms and double costs to the appellee.

Waiver of Appeal or Exceptions.

Waiver of appeal or exceptions. 1900, 372, § 2. R. L. 173, § 116.

* † § || SECTION 134. A written waiver of an appeal or of exceptions in any civil proceeding may be filed and acted upon in the court in which they were taken at any time before the entry thereof in the appellate

4 court; but in any case where an attachment of property has been made,
 5 no appeal shall be waived except by leave of court after notice to the
 6 adverse party.

1907, 546, § 1.
 258 Mass. 185.

Transmission of Papers.

1 * † § || SECTION 135. In all cases to be brought before the full court
 2 of the supreme judicial court, including cases from the supreme judicial
 3 court when held by a single justice, the superior court, the land court,
 4 the probate court, the appellate division of any district court, the clerk,
 5 recorder, register or other appropriate official of the court below, at the
 6 expense of the appellant or excepting party, or, upon a case reserved or
 7 reported, at the expense of the plaintiff or of the party at whose request
 8 it is reserved or reported, shall prepare and transmit to the supreme
 9 judicial court for the commonwealth, or for the proper county, one copy
 10 of every paper on file in the case necessary to a full presentation of all
 11 questions of law intended to be raised before the full court, except papers
 12 used in evidence only, and of all papers made part of the case by reference
 13 in the record, for the use of the chief justice, and a like copy for the clerk
 14 of the supreme judicial court which shall be kept on file in said court;
 15 five typewritten copies of any opinion or statement of reasons for decision
 16 filed by the court below, for the use of the full court; one copy of the
 17 record of the court below which transmits the questions of law, for the use
 18 of each associate justice, each party and the reporter of decisions. In
 19 appeals from the appellate division of the municipal court of the city of
 20 Boston under section one hundred and nine, the court may order the
 21 expense of the necessary papers to be borne by some party other than
 22 the appealing party, or may in its discretion provide the required type-
 23 written copies of the opinion or statement aforesaid without charge.
 24 Original papers used in the trial in the court below which are needed before
 25 the full court of the supreme judicial court shall be transmitted to its
 26 clerk to be kept on file by him until the rescript in such case is sent. The
 27 expense of such copies and transmission shall be taxed in the bill of costs
 28 of the prevailing party, if he has paid it.

Preparation
 and transmis-
 sion of neces-
 sary papers to
 full court of
 supreme
 judicial court.
 Entry of case.
 1859, 196,
 §§ 26, 27, 34,
 44
 G. S. 112, § 33;
 115, § 12
 1864, 111.
 P. S. 153, § 15.
 1883, 223, § 2.
 R. L. 159, § 19;
 173, § 117.
 1911, 284, § 1.
 1929, 265, § 1.
 1931, 219,
 426, § 301.
 6 Allen, 240.
 99 Mass. 530
 103 Mass. 530.
 114 Mass. 96,
 514
 116 Mass. 333.
 154 Mass. 107.
 161 Mass. 593.
 208 Mass. 528.
 222 Mass. 218.
 226 Mass. 143.
 233 Mass. 420.
 236 Mass. 500.
 254 Mass. 137,
 161, 163, 471.
 258 Mass. 185.
 259 Mass. 36,
 74, 463, 595
 261 Mass. 18.
 262 Mass. 270.
 265 Mass. 358.
 267 Mass. 422,
 444.
 268 Mass. 99.
 269 Mass. 228.
 273 Mass. 122.

29 In order to carry any question of law from the supreme judicial court
 30 when held by a single justice or from any other court to the full court of
 31 the supreme judicial court upon appeal, exception, reservation, report or
 32 otherwise as authorized by law, the party having the obligation to cause
 33 the necessary papers hereinbefore specified to be prepared shall give to the
 34 clerk, recorder, register or other appropriate official of the court in which
 35 the case is pending, within ten days after the case becomes ripe for final
 36 preparation and printing of the record for the full court, an order in
 37 writing for the preparation of such papers and copies of papers for trans-
 38 mission to the full court of the supreme judicial court. As soon as may be
 39 after receiving such written order, the clerk or other official shall make
 40 an estimate of the expense of the preparation and transmission of the
 41 necessary papers and copies of papers aforesaid and shall give such party
 42 notice in writing of the amount of such estimate. Such party, within
 43 twenty days after the date of such notice from the clerk or other official,
 44 shall pay to him the amount of such estimate and such further amount
 45 beyond such estimate as the clerk or other official may find to be then
 46 due for such preparation. The clerk or other official then without delay
 47 shall prepare the papers and copies of papers aforesaid for transmission
 48 and when they are ready shall give notice in writing of such fact to the
 49 party ordering them, who, within five days after the date of such notice,

shall pay to the clerk or other official any balance then due therefor and shall enter the case in the supreme judicial court for the commonwealth, or for the proper county. The court in which the case is pending, or any justice or judge thereof, may, for cause shown after hearing, extend the time for doing any of the acts required by this paragraph. The entry of the case shall not, except as otherwise provided by law, transfer the case, but only the question to be determined.

Arrest of Judgment.

Arrest of judgment. 1851, 233, § 32. 1852, 312, § 22. G. S. 129, § 79. P. S. 167, § 82. R. L. 173, § 118. 1 Gray, 172. 4 Grav, 201. 7 Gray, 543.

* † SECTION 136. A judgment shall not be arrested for a cause existing before the verdict or finding, unless such cause affects the jurisdiction of the court. After the defendant has appeared and answered to the merits of the action, no defect in the writ or other process by which he has been brought before the court, or in the service thereof, shall be considered to affect the jurisdiction of the court.

- | | | |
|----------------|---------------------|--------------------|
| 13 Gray, 392. | 127 Mass. 316. | 204 Mass. 34. |
| 14 Gray, 521. | 144 Mass. 470. | 208 Mass. 55. |
| 15 Gray, 52. | 150 Mass. 292, 451. | 224 Mass. 14, 169. |
| 1 Allen, 244. | 162 Mass. 339. | 227 Mass. 46, 336. |
| 104 Mass. 373. | 178 Mass. 397. | 244 Mass. 310. |
| 110 Mass. 317. | 182 Mass. 360. | 250 Mass. 30. |
| 118 Mass. 569. | 202 Mass. 480. | 264 Mass. 337. |

GENERAL PROVISIONS.

Suggestions entered on record. 1826, 70. R. S. 93, § 24.

* † § SECTION 137. The court may allow suggestions as to changes occurring in an action after its commencement to be entered on the record in such form as it approves.

- | | | |
|------------------|------------------|-------------------|
| G. S. 129, § 80. | P. S. 167, § 83. | R. L. 173, § 119. |
|------------------|------------------|-------------------|

Identification of cause of action, amendment, notice to parties, appeal, etc. 1851, 233, § 43. 1852, 312, § 33. G. S. 129, § 82. P. S. 167, § 85. R. L. 173, § 121. 6 Cush. 513. 7 Gray, 540. 3 Allen, 528. 5 Allen, 322. 7 Allen, 202. 112 Mass. 180. 122 Mass. 438. 125 Mass. 72. 127 Mass. 599.

* † ¶ SECTION 138. The cause of action shall be considered to be the same for which the action was brought, if the court finds it to be the cause of action relied on by the plaintiff when the action was commenced, however the same may be misdescribed; and the allowance by the court of an amendment shall be conclusive evidence of the identity of the cause of action. But no subsequent attaching creditor or purchaser of property attached or bail or any person other than the parties to the record shall be bound by such allowance unless he has had due notice of the application for leave to amend and opportunity to be heard thereon, according to an order of notice to that effect to be issued by the court upon application of the plaintiff, and such third parties shall have the right of exception or appeal.

- | | | |
|----------------|---------------------|--------------------|
| 133 Mass. 121. | 200 Mass. 284. | 230 Mass. 278. |
| 134 Mass. 280. | 201 Mass. 248. | 231 Mass. 422. |
| 136 Mass. 335. | 204 Mass. 13. | 242 Mass. 255. |
| 139 Mass. 280. | 211 Mass. 446. | 244 Mass. 23, 265. |
| 142 Mass. 124. | 214 Mass. 239. | 246 Mass. 170. |
| 147 Mass. 342. | 215 Mass. 83, 199. | 247 Mass. 259. |
| 150 Mass. 473. | 218 Mass. 231. | 251 Mass. 503. |
| 151 Mass. 454. | 219 Mass. 164, 285. | 259 Mass. 383. |
| 170 Mass. 260. | 225 Mass. 37, 599. | 260 Mass. 38. |
| 262, 560. | 226 Mass. 71. | 261 Mass. 496. |
| 174 Mass. 349. | 227 Mass. 375. | 267 Mass. 75, 122. |
| 190 Mass. 554. | 229 Mass. 1. | 272 Mass. 134. |

Affidavit when corporation is a party. 1852, 312, § 89. G. S. 129, § 83. P. S. 167, § 86. R. L. 173, § 122.

* † § || SECTION 139. If a corporation is a party to an action or proceeding referred to in this chapter, all precepts, answers, replications or other papers requiring the signature or oath of the party may be signed or sworn to in behalf of the corporation by an officer or agent thereunto specially authorized.

1 *SECTION 140. No action at law shall be discontinued, nor shall the
 2 plaintiff in any such action become nonsuit after the action shall have
 3 been referred to an auditor and hearings before such auditor have been
 4 begun, except with the written consent of the defendant or in the dis-
 5 cretion of the court.

Action not to
 be discontin-
 ued after
 being referred
 to auditor,
 except, etc.
 1914, 576, § 1.

218 Mass. 271.

235 Mass. 304.

1 SECTION 141. Sections one, two, three, four, five, six, seven, ten,
 2 eleven, twelve, thirteen, thirteen A, fourteen, fifteen, sixteen, seventeen,
 3 eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three,
 4 twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty,
 5 thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six,
 6 thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-
 7 three, forty-four, forty-five, forty-seven, forty-eight, forty-nine, fifty, fifty-
 8 one, fifty-two, fifty-three, fifty-four, fifty-six, fifty-seven, fifty-eight, fifty-
 9 eight A, fifty-nine B, sixty-one, sixty-two, sixty-three, sixty-four, sixty-
 10 five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-two,
 11 seventy-three, seventy-four, seventy-five, seventy-nine, eighty-five,
 12 eighty-five A, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-
 13 one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-seven,
 14 ninety-eight, ninety-nine, one hundred and one, one hundred and two,
 15 one hundred and three, one hundred and four, one hundred and five, one
 16 hundred and six, one hundred and seven, one hundred and eight, one
 17 hundred and nine, one hundred and ten, one hundred and twenty-four,
 18 one hundred and twenty-five, one hundred and twenty-six, one hundred
 19 and thirty-two, one hundred and thirty-four, one hundred and thirty-
 20 five, one hundred and thirty-six, one hundred and thirty-seven, one
 21 hundred and thirty-eight, one hundred and thirty-nine, one hundred and
 22 forty and one hundred and forty-seven shall apply to civil actions before
 23 district courts, and no other sections of this chapter shall so apply, ex-
 24 cept to the municipal court of the city of Boston under section one
 25 hundred and forty-three.

Sections
 applicable to
 civil actions
 before district
 courts
 1851, 225, § 1.
 1852, 312, § 87.
 G. S. 129, § 85.
 1862, 26
 1881, 113.
 P. S. 167,
 §§ 89, 92
 1893, 396, § 23.
 R. L. 173,
 §§ 125, 126,
 129
 1913, 307.
 1917, 326.
 1918, 257,
 § 430.
 1919, 5.
 1920, 2
 1928, 317, § 2.
 1929, 265, § 3.
 1930, 65, § 1.
 1931, 426,
 § 120; 463, § 2.
 [See sections
 noted thus. *]

1 SECTION 142. Sections eight, twelve, thirteen, fifteen, sixteen, seven-
 2 teen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three,
 3 thirty, thirty-one, thirty-five, thirty-nine, forty-two, forty-three, forty-
 4 four, forty-five, forty-seven, forty-eight, forty-nine, fifty, fifty-one,
 5 fifty-two, fifty-three, fifty-four, fifty-six, fifty-seven, fifty-eight, sixty,
 6 sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-
 7 seven, sixty-eight, sixty-nine, seventy-one, seventy-two, seventy-three,
 8 seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-
 9 one, eighty-three, eighty-seven, eighty-nine, ninety, ninety-six, one
 10 hundred and eleven, one hundred and twelve, one hundred and thirteen,
 11 one hundred and fourteen, one hundred and fifteen, one hundred and
 12 sixteen, one hundred and seventeen, one hundred and eighteen, one
 13 hundred and nineteen, one hundred and twenty, one hundred and
 14 twenty-one, one hundred and twenty-two, one hundred and twenty-
 15 three, one hundred and twenty-four, one hundred and twenty-five, one
 16 hundred and twenty-six, one hundred and twenty-seven, one hundred
 17 and twenty-eight, one hundred and twenty-nine, one hundred and
 18 thirty, one hundred and thirty-one, one hundred and thirty-two, one
 19 hundred and thirty-three, one hundred and thirty-four, one hundred
 20 and thirty-five, one hundred and thirty-six, one hundred and thirty-
 21 seven, one hundred and thirty-eight and one hundred and thirty-nine

Sections
 applicable to
 real and mixed
 actions, except,
 etc.
 1851, 233, § 65.
 1852, 312, § 51.
 G. S. 129, § 84.
 1881, 113.
 P. S. 167, § 88.
 R. L. 173,
 § 121
 1913, 815, § 8.
 1928, 39.
 [See sections
 noted thus. †]

FORMS.

1 * SECTION 147. The following forms of pleadings may be used for the
 2 purposes therein indicated, and similar forms with the necessary changes
 3 may be used for other like purposes, subject to such changes as the su-
 4 preme judicial court may from time to time by general rules prescribe;
 5 but any other suitable forms may also be used:

Forms.
 1851, 233,
 § 119
 1852, 312, § 84
 G. S. 129, § 87.
 P. S. 167, § 94
 R. L. 173,
 § 130.

200 Mass. 232.

223 Mass. 568.

254 Mass. 424.

DECLARATIONS IN ACTIONS OF CONTRACT.

1. COMMON COUNTS.

And the plaintiff says that the defendant owes him one hundred dollars for — 3 Gray, 261.
 (a) *Money had and received.* — Money received by the defendant to the 7 Gray, 184.
 plaintiff's use. 14 Gray, 129.

99 Mass. 194
 103 Mass. 556.
 120 Mass. 465.
 128 Mass. 377.

139 Mass. 230.
 161 Mass. 516.
 164 Mass. 54, 118.
 167 Mass. 77.

177 Mass. 36, 280.
 202 Mass. 75
 253 Mass. 321.

(b) *Money lent.* — Money lent by the plaintiff to the defendant. 16 Gray, 273.
 (c) *Goods sold.* — Goods sold by the plaintiff to the defendant. 111 Mass. 480.
 106 Mass. 430. 112 Mass. 265. 7 Gray, 187,
 190.

(d) *Work.* — Work done by the plaintiff for the defendant. 4 Gray, 292.
 112 Mass. 299. 127 Mass. 546. 177 Mass. 1. 9 Allen, 355.

(e) *Work and Materials.* — Work done and materials provided by the plaintiff 100 Mass. 92.
 for the defendant. 115 Mass. 44.
 177 Mass. 584.

(f) *Board, or Board and Lodging.* — Board (and lodging) furnished by the 111 Mass. 390.
 plaintiff for the defendant.

(g) *Carriage of Goods.* — The carriage of certain goods by the plaintiff for
 the defendant.

(h) *Warehouse Room.* — Warehouse room furnished by the plaintiff for the
 storage of certain goods for the defendant.

(i) *Hire of Personal Property.* — The use of a certain horse and carriage hired
 of the plaintiff by the defendant.

(j) *Insimul computassent.* — The balance found due to the plaintiff by the 15 Gray, 293.
 parties on accounting together. 129 Mass. 50.
 170 Mass. 422.

(k) *Use and Occupation.* — The use and occupation of a certain tenement 11 Cush. 366.
 hired of the plaintiff by the defendant. 9 Allen, 357.
 103 Mass. 379. 138 Mass. 363 170 Mass. 278
 124 Mass. 123. 164 Mass. 391. 172 Mass. 329.

(l) *Rent under a Sealed Instrument.* — The rent of a certain 1915, 146, § 2.
 (house, or building, or land) held by the defendant of the plaintiff.

BILL OF PARTICULARS.

(1) Rent of house No. _____ street,
 _____, for one month, due 1st July, 19____, under an indenture of lease
 dated 1st January, 19____, \$ _____
 (2) Interest on same from _____, \$ _____.

Instruction: Interest is declared on by adding or inserting the words "and
 interest". An item of interest is also included in the bill of particulars.

2. ACCOUNT ANNEXED.

And the plaintiff says that the defendant owes him _____ dollars,
 according to the account hereto annexed.

3. PROMISSORY NOTES.

10 Allen, 556.

(a) *Payee against Maker*. — And the plaintiff says that the defendant made a promissory note payable to the plaintiff or order, a copy whereof is hereto annexed, and the defendant owes the plaintiff the amount thereof, and interest.

(b) *Bearer of Note payable to Bearer against Maker*. — And the plaintiff says that the defendant made a promissory note, a copy whereof is hereto annexed payable to G H or bearer, and the plaintiff is the bearer of the said note, and the defendant owes him the amount thereof, and interest.

Instruction: If payments are endorsed on the note, the declaration may be varied as follows: "a copy whereof, with the endorsements thereon, is hereto annexed, and the defendant owes the plaintiff the balance thereof, and interest". If payments have been made which are not endorsed on the note, the allegation should be varied accordingly.

(c) *Endorsee against Endorser*. — And the plaintiff says that C D made a promissory note, a copy whereof with the endorsements thereon is hereto annexed, payable to the defendant or order, and the defendant endorsed the same to the plaintiff, and payment of the said note was duly demanded of the said C D, who neglected to pay the same, and due notice thereof was given to the defendant. And the defendant owes the plaintiff the amount of the said note, and interest.

R. L. 173, § 3.

(d) *Endorsee against Maker and Successive Endorsers*. — And the plaintiff says that the defendant C D made a promissory note, a copy whereof with the endorsements thereon is hereto annexed, payable to the defendant E F or order, and the said E F endorsed the same to the defendant G H or order, and the said G H endorsed the same to the plaintiff, and payment of the said note was duly demanded of the defendant C D who neglected to pay the same, and due notice thereof was given to the defendants E F and G H. And each of the defendants severally owes the plaintiff the amount of the said note, and interest.

(e) *Payee against Anomalous Endorser*. — And the plaintiff says that A B made a promissory note payable to the plaintiff or order, a copy whereof, with the endorsements thereon, is hereto annexed, and the defendant endorsed the said note before it was delivered to the plaintiff, and payment of the said note was duly demanded of the said A B, who neglected to pay the same, and due notice thereof was given to the defendant. And the defendant owes the plaintiff the amount of the said note, and interest.

(f) *Endorsee against Anomalous Endorser*. — And the plaintiff says that A B made a promissory note payable to C D, a copy whereof, with the endorsements thereon, is hereto annexed, and the defendant endorsed the same before it was delivered to C D, and C D endorsed it to the plaintiff, and payment of the said note was duly demanded of the said A B, who neglected to pay the same, and due notice thereof was given to the defendant. And the defendant owes the plaintiff the amount of the said note, and interest.

4. GRANTEE AGAINST GRANTOR IN A DEED OF WARRANTY FOR BREACHES OF COVENANT.

And the plaintiff says that the defendant made a deed of conveyance to him, a copy whereof is hereto annexed. And the defendant was not seized in fee simple of a part of the land described as follows: (*insert description*) but the same was held adversely by L M, and the residue of the said land was not free from encumbrances, but was subject to a mortgage to S T to secure the payment of six hundred dollars. And the defendant did not warrant and defend the premises against the rightful claims of all persons, but W S had a right of dower therein, and compelled the plaintiff to assign the same to her.

5. ON AN AWARD.

And the plaintiff says that the parties hereto by their agreement in writing, a copy whereof is hereto annexed, referred the matters therein mentioned to arbitrators, and the said arbitrators made an award thereon in writing, a copy whereof is hereto annexed. (*Aver performance of condition by plaintiff, when necessary to be proved, and the non-performance by the defendant, which is relied on. If it is for the mere payment of money, aver as follows*: And the defendant owes the plaintiff the amount of the said award.)

6. PROMISE TO PAY THE DEBT OF ANOTHER.

And the plaintiff says that E F owed him the sum of _____ for _____, and the plaintiff was about to sue the said E F to recover the same. And in consideration that the plaintiff would forbear to sue the said E F, the defendant made an agreement to pay the same to the plaintiff, a copy whereof is hereto annexed, and the plaintiff did forbear to sue the said E F, and the defendant owes him the said sum.

7. AGREEMENT TO CONVEY LAND, THE PLAINTIFF TO PAY IN PART AND GIVE A NOTE FOR THE BALANCE SECURED BY A MORTGAGE OF THE LAND.

And the plaintiff says that the defendant made an agreement with him in writing, a copy whereof is hereto annexed. And the plaintiff was ready and willing (*or offered*) to perform the said agreement on his part. But the defendant did not complete the said sale [*or refused (or neglected) to convey the said land to the plaintiff*].

Note. — The form in P. S., p. 977, did not state a breach. It is not right to allege *tender of money and mortgage*; and all that is required is to be *ready and willing*. *Tinney v. Ashley*, 15 Pick. 546; *Cook v. Doggett*, 2 Allen, 439; *Cole v. Killam*, 187 Mass. 213; 2 Chitty Pl. (13th Am. ed.) 287. It would be improper for the plaintiff to execute a mortgage before he got a conveyance.

8. BREACH OF PROMISE OF MARRIAGE.

And the plaintiff says that she and the defendant promised to marry each other and she was always ready and willing to marry the defendant, but the defendant refused to perform his promise.

9. NON-DELIVERY OF GOODS SOLD.

And the plaintiff says that he purchased of the defendant the following goods, namely, _____ for the sum of one hundred dollars, to be paid for on delivery and to be delivered by the defendant on the _____ day of _____ at the defendant's store. And the plaintiff was ready and willing (*or offered*) to perform the said agreement on his part. But the defendant refused to deliver the said goods to the plaintiff.

Note. — See note to form 7 as to purchase of land, and 2 Chitty Pl. (13th Am. ed.) 269.

10. POLICIES OF INSURANCE.

(*With or without copy of policy.*)

(a) *On a Ship for a Total Loss.* — And the plaintiff says that the defendants made a policy of insurance, (a copy of which is hereto annexed,) insuring the plaintiff for the sum of ten thousand dollars on the ship John, in which the plaintiff was interested, against the perils of the seas and other perils therein mentioned, on a voyage therein described (*or from Boston to Cadiz in Spain, and at Cadiz, and thence to her port of discharge in the United States*). And the said ship, while proceeding on the said voyage, was wrecked and totally lost by the perils of the seas, of which the defendants had notice, and the defendants were bound to pay the said amount to the plaintiff within sixty days thereafter. And the defendants owe the plaintiff the said sum of ten thousand dollars. 119 Mass. 592.

(b) *For a Partial Loss and Contribution to a General Average.* — (*State as in the last count to the description of the voyage inclusive.*) And the defendants thereby agreed that, in case of any loss or misfortune to the said ship, it should be lawful for the plaintiff and his agents to labor for and in the defence and recovery of the said ship, and that the defendants would contribute to the charges thereof in proportion as the sum assured by them should be to the whole sum at risk. (*Omit the preceding sentence if a copy of the policy is annexed.*) And the said ship, while proceeding on the said voyage, was by the perils of the seas dismantled, and otherwise damaged in her hull, rigging, and appurtenances, and it was necessary, for the preservation of the said ship and her cargo, to throw over a part of her cargo, and the same was thrown over for that purpose, and the plaintiff was obliged to expend two thousand dollars for repairing the

said ship at Cadiz, and five hundred dollars as a contribution for the loss occasioned by the said throwing over of a part of the cargo, and the ship suffered damage that was not repaired at Cadiz, of all which the defendants had notice, and the defendants were bound to pay the same within sixty days thereafter. And the defendants owe the plaintiff the sum of _____ dollars.

(c) *For a Total Loss of Cargo by Fire.* — And the plaintiff says that the defendants made a policy of insurance, (a copy of which is hereto annexed) insuring the plaintiff for the sum of ten thousand dollars on the cargo of the brigantine William, in which cargo the plaintiff was interested, against fire and other perils therein mentioned, at and from Boston, and on a voyage from thence to Hamburg, or any other port or ports in the north of Europe, and while the said vessel was proceeding on the said voyage the said cargo was totally destroyed by fire, of which the defendants had notice, and the defendants were bound to pay the plaintiff the amount of such loss. And the defendants owe the plaintiff the sum of ten thousand dollars.

Note. — These forms were adapted in 1851, 233, from those in 24 Pick. 406, but they did not mention the plaintiff's interest, as the latter did. They were not intended to have a copy of the policy annexed, and that change was made in 1852, in view of which the alternative methods of declaring noted in the forms may be used. It is, however, better pleading to set out the essential facts in the declaration, and avoid encumbering the pleadings with copies.

266 Mass. 543.

(d) *Fire Insurance.* — And the plaintiff says that by a policy dated the _____ day of _____ 19____, made by the defendant in the form of a Massachusetts Standard Policy, (or a copy of which is hereto annexed,) in consideration of \$ _____ paid to the defendant by the plaintiff (or A F) the defendant insured the plaintiff (or A F) against loss or damage by fire to the amount of \$ _____ on a dwelling house in the said policy described (and \$ _____ on the furniture and goods in the said dwelling house) for a year from the _____ day of _____ 19____ at noon to the _____ day of _____ 19____ at noon (and payable in case of loss to M F and the plaintiff as their interest might appear). And the plaintiff at the time of the making of the said policy and thenceforth until and at the time of the loss and damage hereinafter mentioned was interested in the several premises so insured to the amount so insured thereon respectively (or in the dwelling house so insured as mortgagee thereof to the amount so insured thereon in priority to any interest of the said M F therein). And while the said policy was in force and during the said year the several premises (or the said dwelling house) so insured were (or was) burnt and destroyed by fire, whereby the plaintiff suffered loss and damage on the said premises (or dwelling house) (and on the said furniture and goods) to the several amounts so insured thereon respectively (or otherwise according to the facts). And thereafter forthwith and more than sixty days before the commencement of this action a statement was duly rendered to the defendant in accordance with the provision in that behalf contained in the said policy, setting forth all the particulars required by the said provision to be set forth therein (or in case of waiver of the statement the necessity of the statement of particulars required by the provision in that behalf contained in the said policy was waived by the defendant), and the amount for which the defendant was liable to the plaintiff on account of the said loss and damage was agreed by them to be \$ _____ [or the plaintiff and the defendant having failed to agree as to the amount of the said loss and damage, the same was duly referred to three persons as provided in the said policy, and by the award in writing thereupon made by the (or a majority of the) said referees in respect thereof the amount of the loss and damage was determined to be \$ _____] (or the provision in the said policy for a reference as to the amount of the said loss or damage was waived by the defendant). And the defendant has not paid to the plaintiff the amount for which the defendant was so liable or replaced the said property, and owes the plaintiff the sum of \$ _____.

Note. — This form, by alleging that the policy was in the Massachusetts standard form, makes it unnecessary to set out the provisions prescribed by law (Chap. 175, § 99), or to load the files of the court with copies containing provisions immaterial to the case. As to the allegations when the loss is payable to a mortgagee, see *Frisbee v. Prussian Ins. Co.*, 223 Mass. 159; *Palmer Savings Bk. v. Ins. Co. of North America*, 166 Mass. 189. Performance of conditions precedent must be alleged as at common law. *R. L.* 173, § 6 (11th); *Palmer v. Sawyer*, 114 Mass. 1; 2 Chitty Pl. (13th Am. ed.) 224 n., or a reason for non-performance must be stated. *Lamson Co. v. Prudential Ins. Co.*, 171 Mass. 433; *Lamson & Goodnow Co. v. Russell*, 112 Mass. 387.

(e) *Life Insurance. — (I) Action by Executor (without Copy of Policy).* 138 Mass. 151.

And the plaintiff says that by a policy dated the _____ day of _____ 19____ made by the defendant, in consideration of the payment of premiums by the said A B as therein provided, the defendant insured the life of the said A B in the sum of \$ _____ for the term of his life payable at the office of the defendant at _____ to his executors, administrators, or assigns, immediately upon receipt of due proof of his death, and it was thereby provided that the annual premium of \$ _____ should be payable by the insured on delivery of the said policy and on the _____ day of _____ in each year at the office of the defendant at _____, or to its agents in exchange for receipts signed by its president or treasurer, until ten full years' premiums should have been paid or until the death of the insured if that event should sooner occur, and that the said policy should not take effect unless the first premium should be paid during the lifetime of the insured. And the insured duly paid the said annual premium to the defendant on delivery of the said policy and in each of the _____ subsequent years, and afterwards and while the said policy remained in force the said A B died, and due proof of his death was produced by the plaintiff to the defendant, and the said sum of \$ _____ thereupon became payable by the defendant to the plaintiff, but no part thereof has been paid. And the defendant owes the plaintiff the sum of \$ _____.

Instruction: If this form is used, any warranties or conditions precedent contained in the policy or application must be set out, and the truth of the warranties and performance of the conditions averred. Copies of the policy or application, or both, may be annexed to the declaration, in which case such of the allegations of this form as are clearly set forth in such copies may be omitted; but it is always desirable to avoid encumbering the record with bulky copies.

(II) *Endowment Policy. Action by Insured or Beneficiary (without Copy of Policy).* And the plaintiff says that by a policy dated the _____ day of _____ 19____ made by the defendant, in consideration of the statements and agreements contained in the application therefor, which was made part of the said policy, and the annual premium of \$ _____ then paid by the plaintiff (or by A B) to the defendant and the like annual premium so to be paid on the _____ day of _____ in every year thereafter during the continuance of the said policy, the defendant promised to pay the sum of \$ _____ to the plaintiff (or the said A B the insured thereunder), if he should be living at the end of ten years from the date thereof, or, in case of his previous death, upon receipt at the office of the defendant at _____ of satisfactory proofs of his death, then to (the plaintiff) C D, his wife, the beneficiary thereunder, if she should then be living, or otherwise to the executors, administrators, or assigns of the insured. (And it was thereby declared that the said policy should be incontestable after one year from its date of issue except for non-payment of premium, and that, after payment of the first annual premium thereon, payment of any subsequent premium might be made within thirty-one days after the same should have become due, the policy meanwhile continuing in force, but in the event of the death of the insured during the said thirty-one days, the premium, if unpaid, should be deducted from the sum payable on account of the policy, and that, if the age of the insured had been misstated, the amount payable under the policy should be such as the premium would have purchased at the correct age, and that the policy and the application therefor should constitute the entire contract between the parties, and all statements made by the insured should in the absence of fraud be deemed representations and not warranties, and no such statement should avoid the policy or be a defence to a claim thereunder unless contained in the said application.) And the plaintiff (or the said A B) duly paid the said annual premiums to the defendant in every year during the continuance of the said policy, and the said period of ten years elapsed, and the sum of \$ _____ mentioned in the said policy thereupon became due and payable by the defendant to the plaintiff by virtue thereof (or while the said policy was in force and before the end of the said ten years the said A B died, and satisfactory proof of his death was produced to the defendant at its said office, and the sum of \$ _____ mentioned in the said policy thereupon became due and payable by the defendant to the plaintiff by virtue thereof) and no part of the same has been paid to the plaintiff. And the defendant owes the plaintiff the sum of \$ _____.

Instruction: This form is subject to the instruction at the end of the preceding form.

DECLARATIONS IN ACTIONS OF TORT.

4 Gray, 333.
6 Allen, 410.
200 Mass. 232.
223 Mass. 568.

Instruction as to all such declarations: The ad damnum is a sufficient allegation of damage in all cases in which special damages are not claimed. The latter, if claimed, should be alleged.

11. CONVERSION.

And the plaintiff says that the defendant converted to his own use one horse (or the goods mentioned in the particulars hereto annexed) the property of the plaintiff.

Note. — Both the form and the fiction of *trover* were abolished by 1851, 233, § 1, and *conversion*, which was the substance, is the only thing left.

12. DECEIT.

1 Allen, 207.
3 Allen, 261.
114 Mass. 99.
115 Mass. 405.
117 Mass. 195.
151 Mass. 547.
154 Mass. 445.
161 Mass. 516.
162 Mass. 260.
169 Mass. 576.

(a) And the plaintiff says that the defendant, by fraudulently representing to the plaintiff that ten bags of coffee were the property of the defendant, induced the plaintiff to buy the same of him, for which the plaintiff paid to the defendant the sum of one hundred dollars, whereas the said coffee was not the property of the defendant, as the defendant then knew, but was the property of A S, who has since taken the same from the plaintiff.

(b) And the plaintiff says that the defendant induced the plaintiff to buy a certain horse from him and to pay him three hundred dollars therefor by fraudulently representing to the plaintiff that the said horse was sound, so far as the defendant knew, whereas the said horse was not sound, but had a certain disease called _____, as the defendant then knew.

(c) And the plaintiff says that the defendant, by fraudulently representing to the plaintiff (in writing) that S C was a man possessed of a large property and able to pay his debts, (a copy of which writing is hereto annexed,) induced the plaintiff to sell and deliver to the said S C on credit the goods mentioned in the particulars hereto annexed, whereas the said S C was not a man of property, nor able to pay his debts, but was insolvent, as the defendant then knew, whereby the plaintiff lost the price of the said goods, and was unable to obtain payment therefor.

13. NEGLIGENCE IN DRIVING A MOTOR VEHICLE.

266 Mass. 424.

And the plaintiff says that the defendant so negligently and unskilfully drove a motor vehicle in a public highway, called _____ street, in Boston, that by reason thereof the said motor vehicle struck the plaintiff who was then properly crossing the said highway (or a carriage of the plaintiff in which he was then properly passing along the said highway) whereby the plaintiff was thrown down and had his leg broken and was otherwise much injured (or the said carriage was broken and damaged and the plaintiff was hurt, etc.) and was prevented from transacting his business, and suffered great pain both of body and mind, and incurred expense for medicine, medical attendance and nursing, (and in repairing the said carriage, and was deprived of the use thereof for a long time and was thereby delayed and injured in his business).

14. NEGLIGENCE OF RAILROAD CORPORATION TOWARD PASSENGER.

And the plaintiff says that he was a passenger traveling in a car managed by the defendant upon the defendant's railroad between A and B, and, by reason of the negligence of the defendant in using an insufficient axle in the said car, the said axle broke and the plaintiff was thereby hurt. (*Add allegation of special damages, as in form 13.*)

Note. — This form may be varied to adapt it to many cases by changing the allegation as to the cause of the accident. It is not intended to restrict a party to the statement of one cause if there were several concurrent causes, and if the plaintiff is in doubt which of several different causes occasioned the accident he may so declare.

15. WANT OF REPAIR OF HIGHWAY.

10 Allen, 18.
197 Mass. 374.

And the plaintiff says that there was in the town of _____ a public highway leading from _____ to _____ which the defendants were bound to keep in repair, and by reason of the want of repair thereof (or a defect

therein consisting of, etc.), which the defendants negligently suffered, the plaintiff traveling thereon (fell and) was hurt [or a vehicle in which the plaintiff was traveling thereon was overturned (or if the accident was not the overturning of the vehicle, state what took place) and the plaintiff was hurt (insert allegation of special damages) (and the said vehicle belonging to the plaintiff was damaged)], (insert allegation of special damages relating to carriage, if any). And due notice of the time, place and cause of the said damage was given to the defendants.

Note. — The words "which the defendants negligently suffered" are necessary, because the town is liable for the damage caused by the want of repair, under Chap. 84, § 15, if it negligently suffered the want of repair. A general allegation of the notice required by Chap. 84, § 18, seems necessary.

16. OBSTRUCTING WAY.

And the plaintiff says that he owned a piece of land (*describing it*), and had a way from the same over a certain close to (*here mention the other terminus*) and thence back again, for himself and his servants on foot and with horses, cattle and vehicles, and the defendant wrongfully obstructed the said way.

Note. — *Cf.* 2 Chitty Pl. (13th Am. ed.) 807; Bullen & Leake Pl. (1st ed.) 251.

17. IMMODERATE DRIVING.

And the plaintiff says that the defendant hired of him a horse and carriage to drive from Boston to Cambridge, and thence back to Boston, and the defendant drove the said horse so negligently and unreasonably that the said horse became sick and lame and was greatly damaged.

Note. — *Cf.* Bullen & Leake Pl. (1st ed.) 99; *Moors v. Larry*, 15 Gray, 451.

18. SLANDER IMPUTING PERJURY.

And the plaintiff says that the defendant falsely and maliciously spoke and published of the plaintiff the words following. "You swore false at the trial of your brother John", the defendant meaning thereby that the plaintiff was guilty of perjury in testifying as a witness at the trial of his brother J F upon a criminal proceeding against him in the District Court of _____ for an assault and battery. 12 Mass. 498.

Instruction: In actions of libel and slander, it is sufficient to allege that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense, without a further statement of facts to show that they were used in that sense, and such allegation shall be put in issue by a denial of the alleged libel or slander. If, however, the natural import of the words is not intelligible without further explanation, or reference to facts understood but not mentioned, or parts of the conversation not stated, a concise and clear statement of such particulars as are necessary to make the words relied on intelligible to the court and jury in the same sense in which they were spoken may be required upon motion of the defendant.

Note. — The foregoing instruction changes the rule followed in *Brettun v. Anthony*, 103 Mass. 37, requiring all the circumstances, necessary at common law to make the words spoken slanderous or libellous, to be set out in the inducement of prefatory statement, followed by a colloquium or allegation that the words were used of and concerning those circumstances, and permits the simpler form authorized by the English Common Law Procedure Act, 1852, § 61. See *Chace v. Sherman*, 119 Mass. 387. It is, however, often desirable to draw a declaration containing an introduction or colloquium, and this may be required on an application for particulars.

19. SLANDER INDIRECTLY CHARGING A CRIMINAL OFFENCE.

And the plaintiff says that the defendant falsely and maliciously spoke and published of the plaintiff the words following: "Some of the folks up your way think that Henry burned the store. I have no doubt but what he burned it", the defendant meaning thereby that the plaintiff burned a building and goods and chattels therein belonging to him with intent to injure certain insurance companies by whom the same were insured at the time against loss or damage by fire. 5 Gray, 22.
6 Gray, 321,
495.
8 Gray, 161.
9 Gray, 254.
10 Gray, 250.
14 Gray, 221.
3 Allen, 69.
97 Mass. 1.

100 Mass. 194.	116 Mass. 482.	131 Mass. 433.	151 Mass. 567.
101 Mass. 115.	119 Mass. 387.	137 Mass. 136.	153 Mass. 1.
102 Mass. 139.	124 Mass. 338.	144 Mass. 38.	164 Mass. 13.
112 Mass. 237.	127 Mass. 487.		

Note. — This form is based on the facts in *Brettun v. Anthony*, 103 Mass. 37.

20. LIBEL.

16 Pick. 132.
98 Mass. 224.
169 Mass. 512.
208 Mass. 600.

And the plaintiff says that the defendant falsely and maliciously printed and published (or wrote and published) of the plaintiff in a newspaper called the words following: "He is a regular prover in bankruptcies", the defendant meaning thereby that the plaintiff had proved and was in the habit of proving fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious: [(or, if it is a picture, describe it, e.g.)] falsely and maliciously composed and published of the plaintiff and a court-martial of which he was a member a lithograph picture and caricature of the said court-martial in which the plaintiff is represented in an awkward, ludicrous and contemptible light and posture and as saying of A B the respondent then on trial upon certain charges before the said court-martial the words following: (here set out the words) the defendant thereby meaning to impute to the plaintiff low, vulgar and contemptible language, views and motives.]; [(or, if it is a letter) falsely and maliciously wrote and published of the plaintiff in a letter addressed to W D, by whom the plaintiff was then employed as bookkeeper, the words following: "There is a duplicity about your bookkeeper in serving your interest in this affair of ours which is sadly too transparent. I conceive there is nothing too base for him to be guilty of."]

Note. — The first of these forms for actions of libel is taken from Bullen & Leake Pl. (1st ed.) 179, 180; the second from *Ellis v. Kimball*, 16 Pick. 132; and the third from *Tighe v. Cooper*, 7 Ellis & Bl. 639.

21. TRESPASS TO PERSON.

And the plaintiff says that the defendant assaulted and beat the plaintiff (and imprisoned him and kept him in prison for a long time).

Note. — *Cf.* Bullen & Leake, 240, 241.

22. TRESPASS TO LAND.

9 Gray, 73.
103 Mass. 360.
115 Mass. 561.
125 Mass. 532.
152 Mass. 532.
157 Mass. 474.

And the plaintiff says that the defendant broke and entered the plaintiff's close (*describing it*) and ploughed up the soil thereof and took and carried away fifty bushels of the plaintiff's corn therefrom, and converted the same to his own use.

Note. — See also Bullen & Leake Pl. (1st ed.) 245. The form in 1851, 233 (P. S. p. 979), used the word "forcibly" as the older forms used "with force and arms" (2 Chitty Pl. 869), but no real force is necessary, and "every entry therein without the owner's leave . . . is a trespass". 3 Bl. Com. 208. As the statute dispenses with all averments which the law does not require to be proved (§ 7 of this chapter), the form ought not to require an allegation of force.

23. PENALTY. TREBLE DAMAGES FOR INJURY TO AQUEDUCT.

2 Allen, 320.

And the plaintiffs say that they had an aqueduct (*describing it*), and the defendant maliciously injured the same by cutting off one of the pipes thereof, whereby the defendant became liable to pay the plaintiffs treble the amount of the damage thereby sustained by the plaintiffs, and the amount of such damage was ten dollars.

Note. — See Chap. 165, § 24.

MIXED ACTION.

24. EJECTMENT UNDER SECTION NINE.

1915, 146, § 1.
225 Mass. 510.

And the plaintiff says that the defendant is wrongfully in possession of a piece of land situate, etc., (*description*) to which the plaintiff is entitled by virtue of a lease for a term not yet expired.

PARTICULARS OF TITLE.

The premises were leased by A B to the plaintiff (*or to X Y*) by an indenture dated the _____ day of _____ 19____ for a term of twenty years from the _____ day of _____ 19____ (and were afterwards assigned by the said X Y to the plaintiff by an indenture dated the _____ day of _____ 19____ for the unexpired residue of the said term).

Note. — This is the common law action of ejectment, not the action of summary process in which no declaration is required.

ANSWERS IN ABATEMENT.

25. NON-JOINDER.

The defendant says that, if he is indebted to the plaintiffs for the goods mentioned in the declaration, he is indebted to them jointly with G H, who is still alive, and not alone, and therefore he ought not to be held to answer to the plaintiffs' writ.

Note. — There is no use in saying that "the defendant comes", for "comes" is only the old way of entering on the record the statement of his appearance. 3 Chitty Pl. (13th Am. ed.) 892, 900; see 2 Saund. 30, 108a. Cf. Bullen & Leake Pl. (1st ed.) 253.

26. MISNOMER.

The defendant says that the plaintiff's name is John Stiles, and not James Stiles, and therefore he ought not to be held to answer to the plaintiff's writ.

ANSWERS IN ACTIONS OF CONTRACT.

27. MONEY HAD AND RECEIVED, OR PROMISSORY NOTE, OR OTHER CAUSE OF ACTION.

The defendant denies all the allegations in the plaintiff's declaration [and denies the genuineness of the supposed signature of the defendant (or the said C D) to the promissory note therein declared on] [and denies that the plaintiff (or the defendant) ever was or is executor as alleged] (and denies that there was at the commencement of this action or is any such corporation as the supposed plaintiff).

Note. — An "answer denying all the allegations in the declaration" (*Mosler v. Potter*, 121 Mass. 89 at p. 90) has long been in general use, and no one would use the old forms given in P. S. at p. 980. The bill of particulars is part of the declaration (§ 14 of this chapter), and so does not require special mention in the answer.

As to denial of genuineness of signature, see § 29. *Spoooner v. Gilmore*, 136 Mass. 248.

As to denial of representative capacity or corporate existence, see § 30.

As to executor, etc., cf. *Bullen & Leake Pl.* (1st ed.) 335; *Story Pl.* (2d ed.) 192.

As to corporation, cf. *Story Pl.* 91; *Christian Society v. Macomber*, 3 Met. 235; *Whiton v. Balch*, 203 Mass. 576.

28. STATUTE OF LIMITATIONS.

The defendant says that the cause of action mentioned in the declaration ^{266 Mass. 543.} did not accrue within six years before the commencement of this action.

29. PAYMENT.

The defendant says that he paid the plaintiff the sum of _____ dollars, which was the full amount of the account stated in the plaintiff's bill of particulars.

(If there are several items, add and he annexes hereto a bill of particulars of the said payment).

30. ACCOUNT ANNEXED. GOODS SOLD AND DELIVERED. WORK.

The defendant, as to the first ten items of the plaintiff's bill of particulars, denies that the plaintiff sold and delivered any of the same to the defendant. And as to the eleventh item, he denies that the price was to be more than ten dollars, which sum he has paid.

31. PROMISSORY NOTE. ALTERNATIVE DEFENCES.

The defendant denies that he made the said promissory note as alleged in the declaration and denies the genuineness of his supposed signature thereto. And, if he made the said note, the same was paid.

Note. — See *Swett v. Southworth*, 125 Mass. 417; *Jewett v. Locke*, 6 Gray, 233. See also § 37.

32. MINORITY.

As to the note mentioned in the plaintiff's second count, the defendant says that at the time of making the same he was a minor under the age of twenty-one.

33. DURESS.

As to the contract mentioned in the plaintiff's third count, the defendant says that he was induced to make the same by the plaintiff's unlawfully keeping him in prison until he made the same.

Note. — *Cf.* Bullen & Leake Pl. (1st ed.) 329.

34. PART PAYMENT. TENDER.

The defendant says that he paid the note mentioned in the declaration, except the sum of fifty dollars, and, before the commencement of this action, he tendered to the plaintiff the said sum of fifty dollars and now brings the same into court for the plaintiff.

35. ACCORD AND SATISFACTION.

The defendant says that he delivered to the plaintiff, and the plaintiff accepted, a wagon, in full satisfaction of the note mentioned in the declaration.

36. RES JUDICATA.

The defendant says that in the superior court held (*etc.*) the plaintiff recovered judgment against the defendant for dollars and cents damages, and dollars and cents costs, for the cause of action mentioned in the plaintiff's first count.

37. RELEASE.

The defendant says that the plaintiff by deed (a copy whereof is hereto annexed) released him from the cause of action mentioned in the second count.

38. INSURANCE.

(*a*) The defendants deny that the said loss was actually total, and deny that any abandonment was made.

(*b*) The defendants say that the said vessel was not seaworthy for the voyage in the said policy mentioned at the inception of the said voyage.

(*c*) The defendants deny that the said vessel was lost while proceeding on the voyage in the said policy described.

39. EQUITABLE DEFENCE.

Action for not forwarding goods by a specified steamer according to a written agreement and sending them by another steamer, alleged to be unseaworthy, which was lost.

The defendant says that the plaintiff delivered the goods mentioned in the declaration to the defendant to be forwarded by the defendant to L C B at Havre in France by the first steamer sailing from New York for Havre, and without any other directions from the plaintiff as to the steamer by which they should be sent, and the defendant agreed with the plaintiff to forward them accordingly. And by mistake of the defendant's agent the name of the steamer J S was written in the bill of lading and agreement mentioned in the declaration in the supposition that the said steamer J S was the first steamer sailing from New York for Havre after the delivery of the goods as aforesaid, whereas in fact that steamer was not the first steamer so sailing and was not then about to sail and did not sail from New York for Havre. And the defendant in accordance with the real agreement made between the plaintiff and the defendant as aforesaid forwarded the said goods by the steamer P, which was the first steamer so sailing and which sailed soon afterwards on the said voyage and was seaworthy at the commencement thereof.

Note. — See *Fowle v. Pitt & Scott*, 183 Mass. 351; see also *Steele v. Haddock*, 10 Ex. 643; Bullen & Leake Pl. (1st ed.) 331.

ANSWERS IN ACTIONS OF TORT.

40. CONVERSION.

(*a*) The defendant denies that the horse mentioned in the declaration was the property of the plaintiff, and also denies that he converted the same to his own use.

(b) The defendant admits that the said horse was the general property of the plaintiff, but says that the defendant had a special property therein by reason of his having attached the same as the plaintiff's property by virtue of a writ (*describing it*), which writ was delivered to the defendant, who then was a deputy sheriff in the county of _____, for service, and the said action is now pending. And so the defendant denies that he converted the said horse to his own use.

41. DECEIT.

(a) The defendant denies that he made the said representation knowing that the same was not true.

(b) The defendant denies that the said horse was unsound, as alleged in the declaration.

(c) The defendant denies that he made the representation alleged in the declaration. And the defendant also says that the said coffee was the defendant's property, and that he had a right to sell the same.

42. OBSTRUCTING WAY.

(a) The defendant denies that the plaintiff had a right of way as set out in the declaration.

(b) The defendant denies that he obstructed the said way as alleged in the declaration.

43. SLANDER OR LIBEL.

The defendant denies that he accused the plaintiff of the crime of perjury as alleged in the first count.

And answering the second count, the defendant says that (the plaintiff feloniously stole ten dollars the property of S T and so) the words alleged to have been written (*or spoken*) and published of the plaintiff by the defendant were true.

Note. — The clause in parentheses at the beginning of the answer to the second count might be omitted. *McLaughlin v. Cowley*, 127 Mass. 316.

3 Allen, 69.
6 Allen, 496.
7 Allen, 61.

44. ASSAULT AND BATTERY.

(a) The defendant says that the plaintiff first assaulted him, and he thereupon necessarily committed the alleged assault in his own defence.

(b) The defendant says that the plaintiff was his apprentice and deserted and ran away from his service, and the defendant lawfully retook and restrained the plaintiff, using no more force than was necessary.

45. TRESPASS QUARE CLAUSUM.

The defendant says that a part of the close mentioned in the plaintiff's writ was the soil and freehold of the defendant, the same being described as follows, etc. And he denies that he broke or entered any part of said close, except the part above described.

REPLICATIONS.

46. LIMITATIONS.

(a) The plaintiff says that within six years before the commencement of this action the defendant in a writing signed by him (*or his agent A B*), a copy whereof is hereto annexed (*or by part payment on account of the moneys then due*) acknowledged that the debt mentioned in the declaration remained due and unpaid.

(b) The plaintiff says that during the six years next before the commencement of this action the defendant resided out of this commonwealth for three years.

Note. — The form in P. S., p. 981, is changed because the statute then in force, P. S. 197, § 11, was changed by R. L. 202, § 9. See Chap. 260, § 9.

47. MINORITY.

The plaintiff says that the articles mentioned in his bill of particulars were necessaries for the defendant and suitable to his estate and degree.

CHAPTER 232.

SET-OFF AND TENDER.

SECT.

SET-OFF.

- 1. Set-off, when allowed.
- 2. Set-off of bonds, etc.
- 3. Several plaintiffs or defendants.
- 4. Assignment of claim.
- 5. Actions by trustee.
- 6. Actions by or against executors or administrators.
- 7. Form of judgment against executor, etc.

SECT.

- 8. Declaration in set-off.
- 9. Filing of declaration.
- 10. Limitations in bar.
- 11. Judgment.

TENDER.

- 12. Payment or tender.
- 13. Acceptance of tender.
- 14. Tender in lien cases.

SET-OFF.

Set-off, when allowed.
 1730-1, 7, § 1.
 1732-3, 12, § 1.
 1734-5, 4.
 1742-3, 19, § 1.
 1784, 28, § 12.
 1793, 75, § 4.
 R. S. 96,
 §§ 1-5, 7.
 G. S. 130,
 §§ 1-5, 7.
 P. S. 168,
 §§ 1-5, 7.

SECTION 1. If at the commencement of an action upon a judgment or upon a contract, express or implied, for property sold, for money paid, for money had and received, for services performed and for an amount which is liquidated or may be ascertained by calculation, the defendant has in his own right a claim against the plaintiff such as is hereinbefore mentioned or such a claim which has been assigned to him with notice thereof to the plaintiff, it may be set off against the plaintiff's claim as hereinafter provided.

- | | | |
|----------------------|---------------------|-----------------------|
| R. L. 174, § 1. | 103 Mass. 556. | 176 Mass. 46. |
| 17 Mass. 66 | 114 Mass. 24. | 180 Mass. 194. |
| 5 Pick. 223, 312. | 119 Mass. 397. | 192 Mass. 511. |
| 3 Met. 520. | 122 Mass. 553. | 201 Mass. 123. |
| 4 Met. 430. | 123 Mass. 598. | 208 Mass. 593. |
| 6 Met. 7. | 124 Mass. 470. | 212 Mass. 459. |
| 9 Met. 39, 341, 367. | 127 Mass. 394. | 215 Mass. 403. |
| 11 Met. 129. | 129 Mass. 234. | 233 Mass. 32. |
| 12 Met. 567. | 130 Mass. 352, 421. | 240 Mass. 162. |
| 13 Met. 132. | 131 Mass. 277. | 241 Mass. 50. |
| 3 Gray, 502. | 137 Mass. 181. | 249 Mass. 14, 401. |
| 3 Allen, 111. | 151 Mass. 204. | 251 Mass. 196, 514. |
| 5 Allen, 36. | 152 Mass. 108, 260. | 252 Mass. 571. |
| 9 Allen, 192. | 153 Mass. 544. | Op. A. G. (1920) 265. |
| .97 Mass. 502. | | |

Set-off of bonds, etc.
 R. S. 96, § 6.
 G. S. 130, § 6.
 P. S. 168, § 6.

SECTION 2. If the claim which is set off is founded on a bond or other contract having a penalty, no more shall be set off than the amount equitably due.

- | | | |
|-----------------|-------------|----------------|
| R. L. 174, § 2. | 4 Met. 430. | 251 Mass. 514. |
|-----------------|-------------|----------------|

Several plaintiffs or defendants.
 R. S. 96, §§ 8, 9.
 G. S. 130,
 §§ 8, 9.
 P. S. 168, §§ 8, 9.
 R. L. 174, § 3.
 11 Mass. 140.
 1 Met. 80.

SECTION 3. If there are several plaintiffs or defendants, the claim set off shall be due from all of the plaintiffs jointly and to all of the defendants jointly, except that in an action by or against partners, one of whom is a dormant partner, a claim due to or from the person with whom the contract was made may be set off as though such dormant partner were not a party to the action.

- | | | |
|----------------|----------------|----------------|
| 5 Allen, 371. | 172 Mass. 516. | 240 Mass. 162. |
| 168 Mass. 537. | 239 Mass. 272. | |

Assignment of claim.
 R. S. 96, § 10.
 G. S. 130, § 10.
 P. S. 168, § 10.
 R. L. 174, § 4.
 12 Mass. 193.

SECTION 4. If at the commencement of an action the defendant has notice that the claim declared on has been assigned, he shall not set off a claim against the original creditor which was acquired after such notice.

- | | | |
|---------------|----------------|----------------|
| 14 Mass. 291. | 129 Mass. 234 | 244 Mass. 134. |
| 15 Gray, 541 | 151 Mass. 338. | 249 Mass. 14 |

1 SECTION 5. In an action brought by one person in trust or for the Actions by
 2 use or benefit of another, the defendant may set off a claim against the trustee.
 3 beneficiary. R. S. 96, § 11.

G. S. 130, § 11. R. L. 174, § 5. 125 Mass. 571. 192 Mass. 511.
 P. S. 168, § 11. 7 Cush. 217. 135 Mass. 558. 216 Mass. 296.

1 SECTION 6. In an action by or against an executor, administrator Actions by
 2 or other person in a representative capacity, the defendant may set off or against
 3 a claim due to or from the testator, intestate or person represented, executors or
 4 respectively; but he shall not set off a claim due in his own right to or administrators.
 5 from the executor, administrator or other person who sues or defends R. S. 96, §§ 12,
 6 in a representative capacity, nor a claim which did not belong to him at 14, 15.
 7 the death of the testator or intestate. G. S. 130, §§ 12,
 14, 15.
 P. S. 168, §§ 12,
 14, 15.

R. L. 174, § 6. 4 Gray, 284. 151 Mass. 204.
 9 Pick. 37. 7 Gray, 170. 153 Mass. 544.
 2 Met. 255. 11 Allen, 101. 225 Mass. 458.
 6 Met. 537. 146 Mass. 333. Op. A. G. (1920) 265.
 9 Met. 509.

1 SECTION 7. If, upon such set-off against an executor or adminis- Form of judg-
 2 trator, a balance is found due to the defendant, the judgment therefor ment against
 3 shall be in the same form and have the same effect as if the action had executor, etc.
 4 been commenced by the defendant. R. S. 96, § 13.
 G. S. 130, § 13.

P. S. 168, § 13. R. L. 174, § 7.

1 SECTION 8. If the defendant relies on a claim of set-off, he shall Declaration
 2 file a declaration in set-off. 1730-1, 7, § 2.
 3 thereto, shall be governed by the same rules as if an action had 1734-5, 4, § 2.
 4 brought thereon; and the plaintiff shall be entitled to every defence 1742-3, 19, § 2.
 5 thereto, which he might have had in an action against himself. After 1784, 29, § 12.
 6 such declaration in set-off has been filed, the plaintiff shall not discon- 1793, 75, § 4.
 7 tinue his action without the consent of the defendant. R. S. 96, §§ 16,
 17, 19, 24.
 1851, 233, § 47.
 1852, 312, § 37.

G. S. 130, §§ 16, 3 Met. 409. 9 Allen, 192.
 17, 21. 2 Gray, 260. 112 Mass. 22.
 P. S. 168, §§ 16, 7 Gray, 191. 116 Mass. 283.
 17, 21. 4 Allen, 498. 228 Mass. 390.
 R. L. 174, § 8. 5 Allen, 36. 235 Mass. 304.

1 SECTION 9. In the supreme judicial and superior courts, a declara- Filing of
 2 tion in set-off shall be filed with the answer. In the municipal court of declaration.
 3 the city of Boston, it may be filed at any time during the sitting at which 1730-1, 7, § 2.
 4 the writ is returnable, or within such further time as the court may allow. 1734-5, 4, § 2.
 5 In other district courts, it shall be filed when the action is entered, or 1742-3, 19, § 2.
 6 within such further time as the court allows. 1784, 29, § 12.
 1793, 75, § 4.
 R. S. 96, §§ 16,
 23.

1851, 233, § 47. 1878, 170. 1917, 326.
 1852, 312, § 37. P. S. 168, §§ 16, 22. 126 Mass. 399.
 G. S. 130, §§ 16, 22. R. L. 174, § 9. 177 Mass. 397.
 1870, 330, § 3.

1 SECTION 10. The provisions of law relative to the limitation of Limitations
 2 actions shall apply to declarations in set-off, and the time limited shall in bar.
 3 be computed from the commencement of the action by the plaintiff. 1793, 75, § 4.
 4 This section shall apply to actions brought by the commonwealth or 1834, 182, § 4.
 5 for its benefit. R. S. 96, § 20;
 120, § 19.
 G. S. 130, § 18;
 155, §§ 18, 19.

P. S. 168, § 18; R. L. 174, § 10. 4 Gray, 385. 107 Mass. 285.
 197, §§ 20, 21. 18 Pick. 521. 11 Allen, 101. 135 Mass. 558.

1 SECTION 11. Judgment in an action in which a declaration in set-off Judgment.
 2 has been filed shall be rendered in favor of the party to whom a balance 1730-1, 7, § 1.
 3 is found due for the amount of such balance, with costs. If the amounts 1734-5, 4, § 1.
 4 found due to the respective parties are equal, judgment shall be rendered 1742-3, 19, § 1.
 5 1784, 29, § 12.
 R. S. 96, §§ 21-
 23.

G. S. 130, §§ 19, 20, 22, 1878, 170
 F. S. 168, §§ 19, 20, 22.
 R. L. 174, § 11.
 1917, 326.
 1931, 426,
 § 101.
 10 Cush. 312.
 4 Gray, 511.
 1 Allen, 292.

in favor of each for such amounts and an entry shall be made that the judgments are satisfied by the set-off, with costs to either party, or without costs, as the court orders. If, on the set-off in an action upon a claim assigned to the plaintiff before action is brought, a balance is found due to the defendant, or if a balance is found due from any person other than the plaintiff, judgment shall not be rendered against the plaintiff for the balance.

130 Mass. 447. 229 Mass. 72. 230 Mass. 160. 248 Mass. 68.

TENDER.

Payment or tender.
 1830, 85, §§ 1, 2; 128.
 R. S. 100, §§ 14-16.
 G. S. 130, §§ 23, 25.
 P. S. 168, §§ 23-25.
 R. L. 174, § 12.
 17 Pick. 366.
 10 Gray, 351.
 11 Allen, 527.
 98 Mass. 528.
 130 Mass. 277.
 162 Mass. 275.
 165 Mass. 132.

SECTION 12. The payment or tender of payment of the whole amount due on a contract for the payment of money after it is due and payable and before action is commenced shall, if pleaded, have the same effect as if made at the time provided in the contract. Such payment or tender may also be made after action has been commenced and at least four days before the return day of the writ, with costs to the time of payment or tender. The tender last mentioned may be made to the plaintiff or to his attorney in the action, and, if not accepted, the defendant may avail himself of the tender in defence in like manner as if made before the commencement of the action, bringing into court the amount so tendered.

181 Mass. 275 263 Mass. 206. 1 Op. A. G. 510.

Acceptance of tender.
 1830, 85, § 2.
 R. S. 100, § 17.
 G. S. 130, § 26.
 P. S. 168, § 26.
 R. L. 174, § 13.

SECTION 13. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the writ, and deliver it to the defendant; and if any further costs are incurred for a service made by the officer after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

Tender in lien cases.
 1878, 205.
 P. S. 168, § 27.
 R. L. 174, § 14.

SECTION 14. A person upon whose property a lien is claimed may make in any proceeding a tender or an offer of judgment relating thereto in like manner and with like effect as in matters of contract.

CHAPTER 233.

WITNESSES AND EVIDENCE.

SECT.

WITNESSES.

1. Witnesses, how summoned.
2. Service of summons.
3. Payment or tender of fees.
4. Liability for not attending.
5. Non-attendance a contempt.
6. Warrant to compel attendance.
7. Witnesses before executive council.
8. Witnesses before town officers, commissions, etc.
9. Same, warrant to compel attendance.
10. Enforcement of attendance by courts.
11. Compelling witnesses to testify.

SECT.

12. Witnesses in criminal cases in adjoining states.
13. Penalty for not attending.
14. Oaths administered by auditors, etc.
15. Manner of administering oaths.
16. Same subject.
17. Affirmation.
18. Same subject.
19. Persons other than Christians, how sworn.
20. Competency of witnesses.
21. Conviction of crime may be shown to affect credibility.
22. Cross-examination of adverse party.
23. Party not to impeach own witness.

SECT.

DEPOSITIONS.

24. Depositions in civil cases.

25. Depositions of witnesses unable to attend trial.

26. Notice.

27. Service of notice.

28. Manner of service.

29. Verbal notice. Notice not necessary under certain circumstances.

30. Deponent, how sworn and examined.

31. Order of examination.

32. Manner of taking deposition.

33. Certificate to be annexed.

34. Deposition to be sent to court, etc.

35. Deposition excluded in certain cases.

36. Objection to testimony of deponent.

37. Deposition may be used in another action, when.

38. Compelling deponent to testify.

39. Deposition of non-resident witness commorant here.

40. Courts may make rules for depositions.

41. Depositions of persons outside commonwealth.

42. Written interrogatories, etc.

43. Rules of courts for depositions outside commonwealth.

44. Use of foreign depositions not taken as above provided.

45. Depositions for other states.

DEPOSITIONS TO PERPETUATE TESTIMONY.

46. Depositions to perpetuate testimony.

47. Notice. Compelling testimony.

48. Procedure on objection to taking deposition.

49. Method of taking.

50. Recording in registry of deeds.

51. Use of deposition.

52. Depositions to perpetuate testimony of persons outside commonwealth.

53. Application for such deposition.

54. Notice.

55. Issuing commission.

56. Written interrogatories.

57. Rules of court for such depositions.

SECT.

58. Use of such deposition.

59. Depositions to perpetuate testimony for use against all persons.

60. Application.

61. Proceedings on application.

62. Return of deposition. Record in registry of deeds.

63. Use of such deposition.

DYING DECLARATIONS AND DECLARATIONS OF DECEASED PERSONS.

64. Dying declaration of woman in certain cases.

65. Declaration of deceased person.

65A. Use of answers to interrogatories in case of death of party interrogated.

66. Declaration of testator, etc.

EVIDENCE IN EQUITY.

67. Evidence in equity.

PROOF OF ATTESTED INSTRUMENT.

68. Proof of attested instrument.

PROOF OF STATUTES, LAWS, ETC.

69. Records of court of other state or United States.

70. Judicial notice of laws of other jurisdictions.

71. [Repealed.]

72. [Repealed.]

73. Oaths before a notary of another state or country.

74. Acts of incorporation.

75. Acts, resolves, ordinances and by-laws.

76. Records, etc., of departments of commonwealth, cities or towns.

77. Books, etc., of trust companies and banks.

78. Entries in books of account, etc.

79. Records of hospitals.

STENOGRAPHIC TRANSCRIPTS.

80. Stenographic transcripts.

WITNESSES.

1 SECTION 1. A clerk of a court of record, a notary public or a justice
 2 of the peace may issue summonses for witnesses in all cases pending
 3 before courts, magistrates, auditors, referees, arbitrators or other persons
 4 authorized to examine witnesses; but a notary public or a justice of the
 5 peace shall not issue summonses for witnesses in criminal cases except
 6 upon request of the attorney general, district attorney or other person
 7 who acts in the case in behalf of the commonwealth or of the defendant.
 8 If the summons is issued at the request of the defendant that fact shall
 9 be stated therein. The summons shall be in the form heretofore adopted
 10 and commonly used, but may be altered from time to time like other
 11 writs.

Witnesses,
 how summoned
 1791-2, 5, § 4
 1743-4, 24, § 1.
 1783, 42,
 § 5; 51, § 2.
 1784, 28,
 §§ 5, 6.
 1791, 53, § 6.
 R 8, 85, § 38.
 91, § 1, 96, § 28
 G 8, 131, § 1
 P 8, 169, § 1.
 1884, 247.
 1883, 141.
 1889, 197.
 1896, 476.

Service of
summons.
1826, 86, § 5.
R. S. 94, § 2.
G. S. 131, § 2.
1863, 157, § 3.
P. S. 169, § 2.

SECTION 2. Such summons may be served in any county by an officer qualified to serve civil process or by a disinterested person by exhibiting and reading it to the witness, by giving him a copy thereof or by leaving such copy at his place of abode.

R. L. 175, § 2.

1
2
3
4

Payment or
tender of fees.
C. L. 159, § 3.
1701-2, 5, § 5.
1743-4, 24, § 1.
1784, 28, § 6.
R. S. 94, § 3.

SECTION 3. No person shall be required to attend as a witness in a civil case or for the defendant in a criminal case, unless the legal fees for one day's attendance and for travel to and from the place where he is required to attend are paid or tendered to him.

G. S. 131, § 3.
P. S. 169, § 3.

1885, 141.
R. L. 175, § 3.

4 Cush. 249.
99 Mass. 177.

1
2
3
4

Liability for
not attending.
1701-2, 5, § 5.
1743-4, 24, § 1.
1784, 28, § 6.
R. S. 94, § 4.
G. S. 131, § 4.
P. S. 169, § 4.
R. L. 175, § 4.

SECTION 4. If a person who has been duly summoned and required to attend as a witness under the preceding sections or section thirty-seven of chapter two hundred and eighteen fails, without a sufficient excuse, to attend, he shall be liable to the aggrieved party in tort for all damages caused by such failure.

1918, 257, § 435; 285.

1919, 5.

1920, 2.

1
2
3
4
5

Non-attend-
ance a con-
tempt.
1701-2, 5, § 5.
1743-4, 24, § 1.
1784, 28, § 6.
R. S. 94, § 5.
1838, 42.
1856, 284, § 9.
1858, 93,
§§ 2, 3.
G. S. 131, § 5.
P. S. 169, § 5.
R. L. 175, § 5.

SECTION 5. Such failure to attend as a witness before a court, justice of the peace, master in chancery, master or auditor appointed by a court, or the county commissioners, shall also be a contempt of the court, and may be punished, in case of such failure to attend as a witness in a criminal prosecution, by a fine of not more than two hundred dollars or by imprisonment for not more than one month or both, or, in case of any other such failure to attend as aforesaid, by a fine of not more than twenty dollars.

1926, 230; 296.

12 Cush. 320.

2 Gray, 123.

120 Mass. 118.

1
2
3
4
5
6
7
8

Warrant
to compel
attendance.
1784, 28, § 6.
R. S. 94, § 6.
G. S. 131, § 6.
P. S. 169, § 6.

SECTION 6. The court, justice, master in chancery, master, auditor or county commissioners may in such case issue a warrant to bring such witness before them to answer for the contempt, and also to testify in the case in which he was summoned.

R. L. 175, § 6.

12 Cush. 320.

2 Gray, 410.

166 Mass. 123.

1
2
3
4

Witnesses
before exec-
utive council.
1861, 166.
P. S. 169, § 9.
R. L. 175, § 7.
3 Op. A. G.
441.

SECTION 7. Witnesses may be summoned to attend and testify at a hearing before the executive council, or a committee thereof, as to matters within its authority. They shall be summoned in the same manner, be paid the same fees and in the same manner, and be subject to the same penalties for default, as witnesses before the general court.

1
2
3
4
5

Witnesses
before town
officers, com-
missions, etc.
1863, 158, § 1.
P. S. 169, § 7.
1882, 267, 1.
1885, 323, 2.
1900, 267, 1.
R. L. 175, § 8.
1906, 291.
1907, 328.
1913, 85.
1916, 31.
1919, 350,
§ 123.
1930, 62
120 Mass. 118.

SECTION 8. Witnesses may be summoned to attend and testify and to produce books and papers at a hearing before a city council, or either branch thereof, or before a joint or special committee of the same or of either branch thereof, or before a board of selectmen, a board of police commissioners, a fire commissioner or a board of fire commissioners, a commissioner of public safety, a school board, a licensing board or licensing authorities for the granting of licenses for certain non-intoxicating beverages, as defined in section one of chapter one hundred and thirty-eight, a board of registrars of voters, the police commissioner or election commissioners of Boston, the metropolitan district commission, or a board of appeals designated or appointed under section twenty-seven of chapter forty, as to matters within their authority; and such

1
2
3
4
5
6
7
8
9
10
11
12

13 witnesses shall be summoned in the same manner, be paid the same fees
 14 and be subject to the same penalties for default, as witnesses in civil
 15 cases before the courts. The presiding officer of such council, or of
 16 either branch thereof, or a member of any such committee, board or
 17 commission, or any such commissioner, may administer oaths to wit-
 18 nesses who appear before such council, branch thereof, committee,
 19 board, commission or commissioner, respectively.

1 SECTION 9. If a witness who has been so summoned and paid or
 2 tendered the proper fees fails to attend in pursuance thereof, the presid-
 3 ing officer of such city council, or of either branch thereof, or the chairman
 4 of such committee, board or commission, or any such commissioner, may
 5 issue a warrant to bring such witness before them, to testify in the case
 6 in which he was summoned.

Same,
 warrant to
 compel
 attendance.
 1863, 158, § 2.
 P. S. 169, § 8.
 1882, 267, § 2.
 1900, 267, § 2.
 R. L. 175, § 9.

120 Mass. 118.

1 SECTION 10. A justice of the supreme judicial or the superior court,
 2 upon application of a tribunal authorized to summon but not to compel
 3 the attendance of witnesses and the giving of testimony before it, may,
 4 in his discretion, compel the attendance of such witnesses and the giving
 5 of testimony before any such tribunal, in the same manner and to the
 6 same extent as before said courts.

Enforcement
 of attendance
 by courts.
 1879, 155.
 P. S. 112, § 25.
 1883, 195.
 1891, 140.
 1901, 286.
 R. L. 175, § 10.

141 Mass. 307.

175 Mass. 179.

1 Op. A. G. 638.

1 SECTION 11. A justice of the supreme judicial or the superior court,
 2 upon the application of a magistrate or tribunal authorized to summon
 3 and compel the attendance of witnesses may, in his discretion, compel
 4 the giving of testimony by them before such magistrate or tribunal, in
 5 the same manner and to the same extent as before said courts.

Compelling
 witnesses to
 testify.
 1879, 155.
 P. S. 112, § 25.
 1898, 374.
 1901, 286.
 R. L. 175, § 11.

175 Mass. 179.

185 Mass. 171.

1 SECTION 12. A justice of the peace, upon receipt of a certificate of
 2 the clerk of a court of record in the state of Maine or in a state adjoining
 3 this commonwealth that a criminal prosecution is pending in such court,
 4 and that a resident of the commonwealth is supposed to be a material
 5 witness therein, shall issue a summons requiring such witness to appear
 6 and testify at the court in which such case is pending.

Witnesses
 in criminal
 cases in
 adjoining
 states.
 1777-8, 5, § 1.
 1873, 319, § 1.
 1874, 150.
 P. S. 169, § 10.
 R. L. 175, § 12.

1 SECTION 13. If the person on whom such summons is served is paid
 2 or tendered double the fees allowed by law for travel and attendance of
 3 witnesses in the supreme judicial court, and double traveling expenses
 4 for the whole distance out and home by the ordinary traveled route, he
 5 shall, if he neglects without good cause to attend as a witness at the court
 6 named in such summons, forfeit not more than three hundred dollars.

Penalty for
 not attending.
 1873, 319, § 2.
 P. S. 169, § 11.
 R. L. 175, § 13.

1 SECTION 14. Arbitrators, referees, masters and auditors appointed
 2 according to law may administer oaths or affirmations to all persons
 3 offered as witnesses before them.

Oaths
 administered
 by auditors,
 etc.

1852, 54.

G. S. 131, § 7.

P. S. 169, § 12.

R. L. 175, § 14.

1 SECTION 15. The usual mode of administering oaths now practiced
 2 in the commonwealth, with the ceremony of holding up the hand, shall
 3 be observed in all cases in which an oath may be administered by law,
 4 except as provided in sections sixteen to nineteen, inclusive.

Manner of
 administering
 oaths.
 1701-2, 5, § 7.
 1797, 35, § 10.
 R. S. 94, § 7.

G. S. 131, § 8.

P. S. 169, § 13.

R. L. 175, § 15.

11 Allen, 243.

Same subject.
1797, 35, § 10.
R. S. 94, § 8.
G. S. 131, § 9.
1873, 212, § 1.

SECTION 16. If a person to be sworn declares that a different mode of taking the oath is in his opinion more solemn and obligatory than the upholding of the hand, the oath may be administered in such mode.

P. S. 169, § 14. R. L. 175, § 16. 6 Mass. 262.

Affirmation.
1743-4, 20,
§§ 1, 2.

SECTION 17. A Friend or Quaker when called on to take an oath may solemnly and sincerely affirm under the penalties of perjury.

1758-9, 18, §§ 1, 2.
1797, 35, §§ 9, 10.
1810, 127, § 1.

R. S. 94, § 9.
G. S. 131, § 10.

P. S. 169, § 15.
R. L. 175, § 17.

Same subject.
1824, 91, § 1.
R. S. 94, § 10.
G. S. 131, § 11.
P. S. 169, § 16.
R. L. 175, § 18.
3 Met. 251.

SECTION 18. A person who declares that he has conscientious scruples against taking an oath shall, when called upon for that purpose, be permitted to affirm in the manner prescribed for Quakers, if the court or magistrate on inquiry is satisfied of the truth of such declaration.

11 Cush. 449. 113 Mass. 344.

Persons
other than
Christians,
how sworn.
1797, 35, § 10.
R. S. 94, § 11.
G. S. 131, § 12.
P. S. 169, § 17.
R. L. 175, § 19.

SECTION 19. A person believing in any other than the Christian religion may be sworn according to the peculiar ceremonies of his religion. A person not a believer in any religion shall be required to testify truly under the penalties of perjury, and the evidence of his disbelief in the existence of God may be received to affect his credibility as a witness.

16 Gray, 33. 253 Mass. 152.

Competency
of witnesses.
1851, 233, § 97;
255, § 3.
1852, 312, § 60.

SECTION 20. Any person of sufficient understanding, although a party, may testify in any proceeding, civil or criminal, in court or before a person who has authority to receive evidence, except as follows:

1856, 188.	1866, 148, § 5; 260.	116 Mass. 227.
1857, 305, § 1.	1870, 393, § 1.	142 Mass. 577.
1859, 250.	P. S. 169, § 18.	238 Mass. 322.
G. S. 131, §§ 13, 14, 16.	R. L. 175, § 20.	246 Mass. 274.
1864, 304, § 1.	1911, 456, § 7.	249 Mass. 51.
1865, 207, § 2.	101 Mass. 193.	258 Mass. 109.

14 Gray, 186.
2 Allen, 559.
13 Allen, 244.
97 Mass. 171.
113 Mass. 157.

First, Except in a prosecution begun under sections one to ten, inclusive, of chapter two hundred and seventy-three, neither husband nor wife shall testify as to private conversations with the other.

117 Mass. 90.	154 Mass. 488.	185 Mass. 96.
121 Mass. 137.	155 Mass. 534.	223 Mass. 451.
131 Mass. 31.	162 Mass. 412.	230 Mass. 567.
143 Mass. 567.	177 Mass. 184.	235 Mass. 364.
145 Mass. 289.	181 Mass. 487.	265 Mass. 189.
152 Mass. 491.		

162 Mass. 441.
212 Mass. 438.
219 Mass. 197.

Second, Except as otherwise provided in section seven of chapter two hundred and seventy-three, neither husband nor wife shall be compelled to testify in the trial of an indictment, complaint or other criminal proceeding against the other.

97 Mass. 545,
587.
107 Mass. 199,
403.
110 Mass. 411.
113 Mass. 211.
114 Mass. 285.

Third, The defendant in the trial of an indictment, complaint or other criminal proceeding shall, at his own request, but not otherwise, be allowed to testify; but his neglect or refusal to testify shall not create any presumption against him.

119 Mass. 312.	141 Mass. 58.	207 Mass. 240.
123 Mass. 239, 273.	150 Mass. 315.	212 Mass. 209.
130 Mass. 279.	163 Mass. 411.	255 Mass. 9.
137 Mass. 98.	175 Mass. 152.	260 Mass. 329.
140 Mass. 457.	196 Mass. 369.	149 U. S. 60.

Conviction of
crime may
be shown to
affect credi-
bility.
R. S. 94, § 56.
1851, 233, § 97.
1852, 312, § 60.
G. S. 131, § 13.
1870, 393, § 3.
P. S. 169, § 19.

SECTION 21. The conviction of a witness of a crime may be shown to affect his credibility, except as follows:

First, The record of his conviction of a misdemeanor shall not be shown for such purpose after five years from the date on which sentence on said conviction was imposed, unless he has subsequently been convicted of a crime within five years of the time of his testifying.

7 Second, The record of his conviction of a felony upon which a fine
 8 only was imposed, or a sentence to a reformatory prison, jail, or house
 9 of correction, shall not be shown for such purpose after ten years from
 10 the date on which sentence on said conviction was imposed, unless he
 11 has subsequently been convicted of a crime within ten years of the time
 12 of his testifying.
 13 Third, The record of his conviction of a felony upon which a state
 14 prison sentence was imposed shall not be shown for such purpose after
 15 ten years from the date of expiration of the minimum term of imprison-
 16 ment imposed by the court, unless he has subsequently been convicted
 17 of a crime within ten years of the time of his testifying.

255 Mass. 369. 263 Mass. 356. 273 Mass. 578. 1 Op. A. G. 499.

1 SECTION 22. A party who calls the adverse party as a witness shall be
 2 allowed to cross-examine him. Cross-
examination
of adverse
party.

1870, 393, § 4. 198 Mass. 306. 212 Mass. 335. 266 Mass. 374.
 P. S. 169, § 20. 202 Mass. 506. 251 Mass. 109. 267 Mass. 501.
 R. L. 175, § 22. 208 Mass. 270. 259 Mass. 46. 273 Mass. 578.
 185 Mass. 427.

1 SECTION 23. The party who produces a witness shall not impeach
 2 his credit by evidence of bad character, but may contradict him by other
 3 evidence, and may also prove that he has made at other times statements
 4 inconsistent with his present testimony; but before proof of such incon-
 5 sistent statements is given, the circumstances thereof sufficient to desig-
 6 nate the particular occasion shall be mentioned to the witness, and he
 7 shall be asked if he has made such statements, and, if so, shall be allowed
 8 to explain them. Party not
to impeach
own witness.

133 Mass. 407. 176 Mass. 253. 224 Mass. 229. 258 Mass. 145.
 134 Mass. 191. 185 Mass. 427. 235 Mass. 440. 259 Mass. 388.
 139 Mass. 1. 188 Mass. 484. 251 Mass. 275. 267 Mass. 501.
 140 Mass. 463. 207 Mass. 240. 252 Mass. 450. 268 Mass. 582.
 150 Mass. 330. 218 Mass. 144. 256 Mass. 452. 273 Mass. 578.
 172 Mass. 432. 219 Mass. 393.

DEPOSITIONS.

1 SECTION 24. Depositions may be taken as provided in this chapter,
 2 to be used before courts, magistrates or other persons authorized to
 3 examine witnesses, except in criminal cases. Depositions
in civil cases.
R. S. 94, § 13.

G. S. 131, § 17. 3 Piek. 74. 131 Mass. 88.
 P. S. 169, § 23. 5 Gray, 440. 170 Mass. 498.
 R. L. 175, § 25. 103 Mass. 318.

1 SECTION 25. If a witness or party whose testimony is wanted in a
 2 civil cause or proceeding pending in the commonwealth lives more than
 3 thirty miles from the place of trial, or is about to go out of the common-
 4 wealth and not to return in time for the trial, or is so ill, aged or infirm as
 5 to make it probable that he will not be able to attend at the trial, his
 6 deposition may be taken. Depositions
of witnesses
unable to
attend trial.
C. L. 158, § 2.
1695-6, 14,
§§ 1, 2.
1785, 12, § 3.
1797, 35, § 1.

R. S. 94, § 14. P. S. 169, §§ 24, 65. 14 Gray, 130.
 1887, 305, § 2. R. L. 175, § 26. 185 Mass. 171.
 G. S. 131, §§ 18, 59.

1 SECTION 26. After service of process in an action, or after a submis-
 2 sion to arbitrators or referees, either party may apply to a justice of the
 3 peace, who shall issue a notice to the adverse party to appear and propose
 4 interrogatories before said justice or any other justice of the peace at the
 5 time and place appointed for taking the deposition. Notice.
C. L. 158, § 2.
1695-6, 15, § 1.
1797, 35, § 1.
1817, 181, § 1.
R. S. 94, § 15.
G. S. 131, § 19.

P. S. 169, § 25. 1931, 394, § 191. 131 Mass. 88.
 1883, 252. 13 Allen, 33. 135 Mass. 586.
 R. L. 175, § 27. 106 Mass. 338. 139 Mass. 294.

- Service of notice.** **SECTION 27.** The notice may be served on the adverse party, his agent or attorney, and if there are several plaintiffs or defendants, on any of them.
- 1797, 35, § 2.
R. S. 94,
§§ 16, 17.
- G. S. 131, § 20. P. S. 169, § 26. R. L. 175, § 28. 7 Pick. 137.
- Manner of service.** **SECTION 28.** The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, not less than twenty-four hours before the time appointed for taking the deposition, and also allowing not less time than at the rate of one day, Sundays excluded, for every twenty miles' travel to the place appointed.
- 1695-6, 15, § 1.
1797, 35, § 2.
R. S. 94, § 18.
G. S. 131, § 21.
P. S. 169, § 27.
R. L. 175, § 29.
7 Met. 287.
1 Allen, 343.
182 Mass. 541.
- 220 Mass. 494.
- Verbal notice.** **SECTION 29.** The justice who takes the deposition may give a verbal notice instead of the written notice. If the adverse party or his attorney in writing waives notice, or if the defendant does not enter his appearance in the action within the time required by law, no notice shall be required.
- Notice not necessary under certain circumstances.
1817, 181, § 1.
R. S. 94, § 19.
- G. S. 131, § 22.
P. S. 169, § 28.
- 1883, 188, § 1.
R. L. 175, § 30.
- 1931, 394, § 192.
- Deponent, how sworn and examined.** **SECTION 30.** The deponent shall be sworn or affirmed to testify the truth, the whole truth and nothing but the truth, relative to the cause for which the deposition is taken. He shall then be examined by the justice, and the parties if they think fit, and his testimony shall be taken in writing.
- 1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 20.
G. S. 131, § 23.
P. S. 169, § 29.
R. L. 175, § 31.
- 1931, 394, § 193. 1 Allen, 109. 8 Allen, 146.
- Order of examination.** **SECTION 31.** The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he considers material; the adverse party may then examine him in like manner, after which either party may propose further interrogatories.
- R. S. 94, § 21.
G. S. 131, § 24.
P. S. 169, § 30.
R. L. 175, § 32.
- Manner of taking deposition.** **SECTION 32.** The deposition shall be written by the justice or deponent or by a disinterested person in the presence and under the direction of the justice, shall be carefully read to or by the deponent, and then subscribed by him.
- 1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 22.
G. S. 131, § 25.
- P. S. 169, § 31.
R. L. 175, § 33.
- 1931, 394, § 194.
5 Met. 173.
- 12 Cush. 132.
- Certificate to be annexed.** **SECTION 33.** The justice shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request and the cause in which it was taken, the reason for taking it, and that the adverse party attended, or if he did not attend what notice was given to him.
- 1797, 35, § 3.
R. S. 94, § 23.
G. S. 131, § 26.
P. S. 169, § 32.
R. L. 175, § 34.
- 1931, 394, § 195.
1 Mass. 73.
20 Pick. 167.
- 5 Met. 173.
11 Cush. 364.
1 Allen, 109, 475.
- 3 Allen, 358.
8 Allen, 146.
105 Mass. 96.
- Deposition to be sent to court, etc.** **SECTION 34.** The deposition shall be delivered by the justice to the court, arbitrators, referees or other persons before whom the cause is pending, or shall be enclosed and sealed by him and directed to it or them, and shall remain sealed until opened by it or them.
- C. L. 158, § 2.
1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 24.
- G. S. 131, § 27.
P. S. 169, § 33.
- R. L. 175, § 35.
1931, 394, § 196.
- 8 Gray, 394.
1 Allen, 475.
- Deposition excluded in certain cases.** **SECTION 35.** The court may exclude the deposition if it finds that the adverse party failed without fault to attend the taking thereof, and

3 shall exclude it if it finds that the reason for taking it, or other sufficient
4 cause for its use, no longer exists.

G. S. 131, § 28.
P. S. 169, § 34.

R. L. 175, § 36.
6 Cush. 394.

131 Mass. 88.

1 SECTION 36. Objections to the competency or credibility of the de-
2 ponent and to the admissibility of any questions asked of or answers
3 made by him may be made when the deposition is produced in the
4 same manner as if he were personally examined as a witness at the trial;
5 but if a deposition is taken upon written interrogatories annexed to a
6 commission, all objections to an interrogatory shall be made before the
7 commission issues, and unless the interrogatory is withdrawn shall be
8 noted in the deposition, otherwise they shall not be allowed.

Objection to
testimony of
deponent.
R. S. 94, § 26.
G. S. 131, § 29.
P. S. 169, § 35.
R. L. 175, § 37.
1 Pick. 309.
2 Pick. 145.
8 Pick. 51.
15 Pick. 56.
2 Met. 58.

6 Met. 279.
2 Gray, 279.

4 Gray, 574.
7 Gray, 418.

10 Gray, 360.
8 Allen, 577.

103 Mass. 318.
135 Mass. 319.

1 SECTION 37. If a plaintiff discontinues his action or becomes nonsuit,
2 and another action is afterward commenced for the same cause between
3 the same parties or their respective representatives, depositions lawfully
4 taken for the first action may be used in the second in the same manner
5 and subject to the same conditions and objections as if originally taken
6 for the second action, if the deposition was duly filed in the court in
7 which the first action was pending and has remained in the custody of
8 the court from the termination of the first action until the commence-
9 ment of the second.

Deposition
may be used
in another
action, when.
1826, 86, § 1.
R. S. 94, § 27.
G. S. 131, § 39.
P. S. 169, § 36.
R. L. 175, § 38.
22 Pick. 309.

1 SECTION 38. A person may be summoned and compelled to give his
2 deposition at a place within twenty miles of his place of abode, in like
3 manner and under the same penalties as are provided for a witness before
4 a court.

Compelling
deponent
to testify.
1797, 35, § 4.
R. S. 94, § 29.

G. S. 131, § 32.

P. S. 169, § 38.

R. L. 175, § 40.

1 SECTION 39. A person not a resident of but found within the com-
2 monwealth may be summoned and compelled to give his deposition
3 at any place within ten miles of the place at which the summons is served
4 upon him, in like manner and under the same penalties as he may be
5 summoned and compelled to attend as a witness before a court.

Deposition of
non-resident
witness com-
pulsory here.
1837, 236.
G. S. 131, § 33.
P. S. 169, § 39.
R. L. 175, § 41.

1 SECTION 40. The courts may make rules regulating the time and
2 manner of opening, filing and safe keeping of depositions, and the taking
3 and use thereof.

Courts may
make rules
for depositions.

R. S. 94, § 28.
G. S. 131, § 31.

P. S. 169, § 37.
R. L. 175, § 39.

133 Mass. 131.
135 Mass. 586.

1 SECTION 41. The deposition of a person without the commonwealth
2 may be taken under a commission issued to one or more competent
3 persons in another state or country by the court in which the cause is
4 pending, or it may be taken before a commissioner appointed by the
5 governor for that purpose, and in either case the deposition may be used
6 in the same manner and subject to the same conditions and objections
7 as if it had been taken in the commonwealth.

Depositions
of persons
outside com-
monwealth.
1797, 35, § 6.
1829, 125, § 1.
R. S. 94, § 30.
1856, 253, § 1.
G. S. 131, § 34.
P. S. 169, § 40.
R. L. 175, § 42.

6 Met. 270
12 Gray, 26
103 Mass. 41.

136 Mass. 386.
168 Mass. 415.

206 Mass. 395.
229 Mass. 435.

1 SECTION 42. Unless the court otherwise orders, a deposition taken
2 before commissioners shall be taken upon written interrogatories, which

Written inter-
rogatories, etc.
R. S. 94, § 31.

G. S. 131, § 35.
P. S. 169, § 41.
1883, 188, 2.
1899, 123, 1.
R. L. 175, § 43.

shall be filed in the clerk's office and notice thereof given to the adverse party or his attorney, and upon cross interrogatories, if any are filed by him. But if the defendant does not enter his appearance in the action within the time required by law, no notice to him shall be required. The court may in any case order depositions to be taken before commissioners, in the manner provided by law for taking the depositions of witnesses within the commonwealth in actions at law, or in such manner as the court orders, and in such cases shall determine what notice shall be given to the adverse party, his agent or attorney, and the manner of service thereof, may authorize the taking of depositions of witnesses not specifically named in the commission, and may limit the extent of the inquiry. The court may order the production before the commissioner of any books, instruments or papers relative to any matter in issue.

Rules of courts for depositions outside commonwealth. 1797, 35, § 7.

SECTION 43. The courts may make rules for the issuing of commissions, the filing of interrogatories and all other matters relative to depositions taken without the commonwealth.

R. S. 94, § 32. G. S. 131, § 36. P. S. 169, § 42. R. L. 175, § 44.

Use of foreign depositions not taken as above provided. 1797, 35, §§ 6, 7. R. S. 94, § 33. G. S. 131, § 37. P. S. 169, § 43. R. L. 175, § 45. 14 Pick. 313. 20 Pick. 167, 441. 24 Pick. 35. 2 Met. 522.

SECTION 44. Depositions and affidavits taken without the commonwealth in any manner other than is provided in the three preceding sections, if taken before a notary public or other person authorized by the laws of any other state or country to take depositions, may be admitted or rejected in the discretion of the court; but such deposition or affidavit shall not be admitted unless the court finds that the adverse party had sufficient notice of the taking thereof and an opportunity to cross-examine the witness, or that from the circumstances of the case it was impossible to give him such notice.

6 Met. 270. 12 Gray, 26. 103 Mass. 41.
1 Cush. 449. 5 Allen, 320. 162 Mass. 137.
9 Gray, 370. 8 Allen, 391. 229 Mass. 435.

Depositions for other states. 1826, 86, § 3. R. S. 94, § 53. G. S. 131, § 38. P. S. 169, § 44. 1883, 252. 1889, 197. R. L. 175, § 46. 1931, 394, § 197. 11 Allen, 243.

SECTION 45. A person may be summoned and compelled, in like manner and under the same penalties as are provided for a witness before a court, to give his deposition in a cause pending in a court of any other state or government. Such deposition may be taken before a justice of the peace in the commonwealth, or before a commissioner appointed under the authority of the state or government in which the action is pending. If the deposition is taken before such commissioner, the witness may be summoned and compelled to appear before him by process from a justice of the peace in the commonwealth.

DEPOSITIONS TO PERPETUATE TESTIMONY.

Depositions to perpetuate testimony. R. S. 94, § 34. G. S. 131, § 39. 1874, 297. P. S. 169, § 45. R. L. 175, § 47. 1931, 394, § 198.

SECTION 46. If a person desires to perpetuate his own testimony or the testimony of another person, he shall apply in writing to two justices of the peace, one of whom shall be an attorney at law, requesting them to take his deposition or the deposition of the person whose testimony he desires to perpetuate, and stating briefly and substantially his title, claim or interest in or to the subject relative to which he desires the evidence perpetuated, the names of all other persons interested or supposed to be interested therein and the name of the witness proposed to be examined.

Notice Compelling testimony.

SECTION 47. The justices shall thereupon cause notice of the time and place appointed for taking the deposition to be given to all persons

3 named in said statement as interested in the case, in the manner pro-
 4 vided in sections twenty-six to twenty-nine, inclusive; and if in the
 5 opinion of the justices no sufficient provision is made by law for giving
 6 notice to parties adversely interested, they shall cause such reasonable
 7 notice to be given as they consider proper. A person may be sum-
 8 moned and compelled to give a deposition in perpetuation of his testi-
 9 mony in like manner and under the same penalties as are provided for a
 10 witness before a court.

1797, 35, § 8.
 R 26, 86, § 3.
 R 8, 94,
 § 35, 39
 R 39, 110, § 2
 G 8, 131,
 § 10, 45,
 1871, 297
 P 8, 169,
 § 46, 51
 R L 175, § 48
 1931, 394,
 § 199.

249 Mass. 546.

1 SECTION 48. If at the time and place so appointed a witness or a
 2 person interested appears and objects, the justices shall not take the
 3 deposition unless upon hearing the parties they shall find that such
 4 testimony may be material to the petitioner and, except when the wit-
 5 ness himself is petitioner, that it is not sought for the purpose of dis-
 6 covery or of using it in an action then pending or thereafter to be brought
 7 against said witness, and that the petitioner is in danger of losing the
 8 same before it can be taken in any action wherein his right, title, interest
 9 or claim can be tried. In all cases the petitioner, his agent or attorney
 10 shall, at the request of such witness or of a person interested, be ex-
 11 amined on oath relative to his reasons for taking the deposition.

Procedure on
 objection to
 taking
 deposition
 1839, 110, § 1.
 G 8, 131, § 41.
 1871, 297
 P 8, 169, § 47
 R L 175, § 49.
 1931, 394,
 § 209

1 SECTION 49. The deponent shall be sworn and examined, and his
 2 deposition shall be written, read and subscribed in the manner provided
 3 in sections thirty to thirty-two, inclusive; and the justices shall sign
 4 and annex thereto a certificate of the name of the person at whose
 5 request it was taken, the names of all persons who were notified to attend,
 6 of all who attended the taking thereof, of the time and manner of taking
 7 it, and that it was taken for the purpose of perpetuating the testimony
 8 therein.

Method
 of taking
 1797, 35, § 8
 1817, 181, § 2.
 R 8, 94, § 36
 G 8, 131, § 42.
 1871, 297
 P 8, 169, § 48.
 R L 175, § 50.
 1931, 394,
 § 201.
 5 Met 173.

1 SECTION 50. The deposition, the certificate and the application of the
 2 petitioner shall, within ninety days after the taking of the deposition, be
 3 recorded in the registry of deeds in the county or district where the land
 4 lies, if the deposition relates to land; otherwise, in the county or district
 5 where the parties or some of them reside.

Recording
 in registry
 of deeds.
 1797, 35, § 8
 R 8, 94, § 37
 G 8, 131, § 43
 1871, 297.

P. S. 169, § 49.

R. L. 175, § 51.

1 SECTION 51. If, at the time of taking such deposition or afterward,
 2 an action is pending between the petitioner and the persons named in
 3 his application or any of those who were notified as aforesaid, or any
 4 persons claiming under any of said persons, relative to the title, claim or
 5 interest set forth in the application, the deposition or a certified copy
 6 of it from the registry of deeds may be used in such action in the same
 7 manner and subject to the same conditions and objections as if it had
 8 been originally taken therefor.

Use of
 deposition
 1797, 35, § 8
 1826, 86, § 2
 R 8, 94, § 38
 G 8, 131, § 44.
 1871, 297
 P 8, 169, § 50
 R L 175, § 52.
 3 Pick 74.

1 SECTION 52. Depositions to perpetuate the testimony of persons liv-
 2 ing without the commonwealth may be taken without the common-
 3 wealth upon a commission issued by the supreme judicial or the superior
 4 court.

Depositions
 to perpetuate
 testimony of
 persons outside
 commonwealth.

R. S. 94, § 40.
G. S. 131, § 46.

P. S. 169, § 52.
R. L. 175, § 53.

3 Pick. 14.
132 Mass. 171.

1 SECTION 53. The person who desires to take such deposition shall
 2 file in either of said courts the application provided for in section forty-

Application
 for such
 deposition.

R. S. 94, § 41. six; and if the subject of the proposed deposition relates to land within 3
 G. S. 131, § 47. the commonwealth, a copy of the application with the statement therein 4
 P. S. 169, § 53. shall be filed in the registry of deeds for the county or district where 5
 R. L. 175, § 54. the land or any part thereof lies; otherwise, in the registry of deeds for 6
 the county or district where the parties or some of them reside. 7

Notice. SECTION 54. The court shall order notice of such application and 1
 R. S. 94, § 42. statement to be served on all the persons named therein as adversely inter- 2
 G. S. 131, § 48. ested, and living within the commonwealth, fourteen days at least 3
 P. S. 169, § 54. 1882, 140 before the time therein appointed for hearing the parties, and shall 4
 R. L. 175, § 55. order reasonable notice to be given to such persons living without the 5
 132 Mass. 171. commonwealth. 6

Issuing commission. SECTION 55. If, upon hearing the parties who appear, the court finds 1
 R. S. 94, § 43. that there is sufficient cause for taking the deposition, it shall issue a com- 2
 G. S. 131, § 49. mission therefor in like manner as for taking a deposition to be used in a 3
 P. S. 169, § 55. cause pending in the same court. 4
 R. L. 175, § 56.

Written interrogatories. SECTION 56. The deposition shall be taken upon written interroga- 1
 R. S. 94, § 44. tories filed by the applicant, and cross interrogatories, if any are filed 2
 G. S. 131, § 50. by any party adversely interested, and it shall be taken and returned 3
 P. S. 169, § 56. substantially in the same manner as if taken to be used in a cause pending 4
 R. L. 175, § 57. in the same court. 5

Rules of court for such depositions. SECTION 57. The supreme judicial court may make rules for taking 1
 R. S. 94, § 46. depositions to perpetuate the testimony of witnesses without the com- 2
 G. S. 131, § 52. monwealth, taken under a commission from the supreme judicial or the 3
 P. S. 169, § 58. superior court, and for filing or recording them. 4
 R. L. 175, § 58.

Use of such deposition. SECTION 58. Depositions to perpetuate the testimony of witnesses 1
 R. S. 94, § 47. which are taken without the commonwealth under this chapter may be 2
 G. S. 131, § 53. used in like manner as if taken within the commonwealth. 3
 P. S. 169, § 59. R. L. 175, § 59. 3 Pick. 14.

Depositions to perpetuate testimony for use against all persons. SECTION 59. Depositions to perpetuate the testimony of witnesses 1
 R. S. 94, § 48. within or without the commonwealth, so that they may be evidence 2
 G. S. 131, § 54. against all persons, may, after public notice, be taken upon a commis- 3
 P. S. 169, § 60. sion issued by the supreme judicial court or the superior court. 4
 R. L. 175, § 60. R. L. 175, § 60. 132 Mass. 171.

Application. SECTION 60. The person who desires to have such deposition taken 1
 R. S. 94, § 49. may apply to either of said courts in the manner provided in section 2
 G. S. 131, § 55. fifty-three, and the proceedings thereon shall be the same as are provided 3
 P. S. 169, § 61. in sections fifty-four to fifty-six, inclusive. 4
 R. L. 175, § 61.

Proceedings on application. SECTION 61. The court shall, in addition to the proceedings before 1
 R. S. 94, § 50. provided, require the applicant, upon oath or otherwise, in its discretion, 2
 G. S. 131, § 56. to state the names of all persons known or supposed to be interested in 3
 P. S. 169, § 62. the subject matter of the application, and shall in the commission direct 4
 R. L. 175, § 62. the commissioner or commissioners to publish in such newspaper within 5
 132 Mass. 171. or without the commonwealth, or both, or in such other manner, as the 6
 court orders, such notice of the time and place of taking such deposition 7

8 and of the subject matter thereof as the court approves. Such notice
 9 shall be addressed by name to all persons who are known or supposed to
 10 be interested in the subject matter of the application, and generally to
 11 all others, and shall state that they may attend and propose cross in-
 12 terrogatories to the witness. The court may require additional personal
 13 notice of the time and place of taking and of the subject matter of such
 14 deposition to be given to such persons and in such manner as it orders.

1 SECTION 62. After such deposition has been taken, it shall be returned
 2 to the court by whose order the commission issued, which, if the deposi-
 3 tion is found to have been taken according to law and the directions
 4 contained in the commission, shall order it to be recorded within thirty
 5 days after the date of the order in the registry of deeds, in the manner
 6 provided in section fifty.

Return of
 deposition.
 Record in
 registry of
 deeds.
 R. S. 94, § 51.
 G. S. 131, § 57.
 P. S. 169, § 63.
 R. L. 175, § 63.
 131 Mass. 179.

1 SECTION 63. A deposition taken and recorded under the provisions of
 2 the four preceding sections, or a certified copy thereof from the registry
 3 of deeds, may be used by the person at whose request it was taken, or
 4 by any person who claims under him, against any person whatever, in
 5 any action or process wherein is brought in question the title, claim or
 6 interest set forth in the statement upon which the commission was
 7 founded, in the same manner, and subject to the same conditions and
 8 objections, as if it had been originally taken for said action or process.

Use of such
 deposition.
 R. S. 94, § 52.
 G. S. 131, § 58.
 P. S. 169, § 64.
 R. L. 175, § 64.

DYING DECLARATIONS AND DECLARATIONS OF DECEASED PERSONS.

1 SECTION 64. In prosecutions under section nineteen of chapter two
 2 hundred and seventy-two in which the death of a woman is alleged to
 3 have resulted from the means therein described, her dying declarations
 4 shall be admissible in evidence.

Dying declara-
 tion of woman
 in certain
 cases.
 1889, 100.

R. L. 175, § 65.	195 Mass. 100.	224 Mass. 229.
153 Mass. 313.	207 Mass. 563.	245 Mass. 405.
165 Mass. 148, 174.	213 Mass. 563.	264 Mass. 571.

1 SECTION 65. A declaration of a deceased person shall not be inadmis-
 2 sible in evidence as hearsay if the court finds that it was made in good
 3 faith before the commencement of the action and upon the personal
 4 knowledge of the declarant.

Declaration
 of deceased
 person.
 1898, 535.
 R. L. 175, § 66.
 165 Mass. 174.

175 Mass. 137.	210 Mass. 500, 581.	232 Mass. 183.
180 Mass. 187.	211 Mass. 590.	235 Mass. 428.
183 Mass. 262.	212 Mass. 352, 547.	236 Mass. 165.
186 Mass. 75.	214 Mass. 366.	237 Mass. 245, 249.
188 Mass. 38, 214, 595.	215 Mass. 50, 199, 318.	238 Mass. 475.
190 Mass. 184, 563.	216 Mass. 51.	241 Mass. 268.
192 Mass. 8, 52.	217 Mass. 148, 558.	243 Mass. 587.
193 Mass. 58.	218 Mass. 205.	246 Mass. 533.
194 Mass. 218, 560.	220 Mass. 539.	251 Mass. 512.
196 Mass. 316.	221 Mass. 248, 304, 461.	253 Mass. 518.
198 Mass. 109, 393.	223 Mass. 501.	255 Mass. 369.
201 Mass. 444.	225 Mass. 68.	259 Mass. 401.
202 Mass. 500.	226 Mass. 168, 416.	263 Mass. 401.
203 Mass. 273, 299.	228 Mass. 516, 563.	267 Mass. 296.
204 Mass. 383.	229 Mass. 275, 304.	268 Mass. 69, 494.
207 Mass. 563.	230 Mass. 317.	269 Mass. 415.
208 Mass. 193, 221.	231 Mass. 186.	270 Mass. 204.

1 SECTION 65A. If a party to an action or suit who has filed answers to
 2 interrogatories under sections sixty-one to sixty-seven, inclusive, of
 3 chapter two hundred and thirty-one dies, so much of such answers as
 4 the court finds have been made upon the personal knowledge of the de-
 5 ceased shall not be inadmissible as hearsay or self-serving if offered in
 6 evidence in said action or suit by a representative of the deceased party.

Use of answers
 to interroga-
 tories in case
 of death of
 party interro-
 gated.
 1931, 386.

Declaration of
testator, etc.
1896, 445.
R. L. 175, § 67.
175 Mass. 137,
177.
180 Mass. 483.
185 Mass. 455.
187 Mass. 109.
201 Mass. 444.
206 Mass. 534.
212 Mass. 171.

SECTION 66. If a cause of action brought against an executor or administrator is supported by oral testimony of a promise or statement made by the testator or intestate of the defendant, evidence of statements, written or oral, made by the decedent, memoranda and entries written by him, and evidence of his acts and habits of dealing tending to disprove or to show the improbability of the making of such promise or statement, shall be admissible.

217 Mass. 558. 227 Mass. 584. 255 Mass. 519.

EVIDENCE IN EQUITY.

Evidence in
equity.
1852, 312, § 85.
G. S. 131, § 60.
P. S. 169, § 66.
1899, 123, § 2.
R. L. 175, § 69.

SECTION 67. Evidence in equity proceedings shall be taken in the same manner as in actions at law, unless the court otherwise orders; but this section shall not prevent such use of affidavits as has been heretofore allowed.

13 Allen, 33. 137 Mass. 487.

PROOF OF ATTESTED INSTRUMENT.

Proof of
attested
instrument.

SECTION 68. A signature to an attested instrument or writing, except a will, may be proved in the same manner as if it were not attested.

1897, 386. R. L. 175, § 70.

PROOF OF STATUTES, LAWS, ETC.

Records of
court of other
state or
United States.
R. S. 94, § 57.
G. S. 131, § 61.
P. S. 169, § 67.

SECTION 69. The records and judicial proceedings of a court of another state or of the United States shall be admissible in evidence in this commonwealth, if authenticated by the attestation of the clerk or other officer who has charge of the records of such court under its seal.

R. L. 175, § 71. 12 Allen, 98. 178 Mass. 68. 236 Mass. 446.
5 Met. 436. 103 Mass. 283. 209 Mass. 282. 256 Mass. 598.
10 Allen, 485. 119 Mass. 262.

Judicial notice
of laws of
other juris-
dictions.
R. S. 94,
§§ 59-61.

SECTION 70. The courts shall take judicial notice of the law of the United States or of any state, territory or dependency thereof or of a foreign country whenever the same shall be material.

G. S. 131, §§ 63-65. 12 Gray, 244. 161 Mass. 111.
P. S. 169, §§ 71-73. 4 Allen, 504. 170 Mass. 356.
R. L. 175, §§ 75-77. 7 Allen, 395. 193 Mass. 588.
G. L. (ed. of 1920) 10 Allen, 337, 485. 244 Mass. 411.
233, § 71, 72. 99 Mass. 233. 255 Mass. 611.
1926, 168, §§ 1, 2. 100 Mass. 79. 260 Mass. 250.
14 Mass. 455. 105 Mass. 480. 264 Mass. 414.
3 Pick. 293. 124 Mass. 85. 270 Mass. 559.
7 Met. 384. 135 Mass. 126, 349. 272 Mass. 189.
8 Gray, 150. 156 Mass. 65.

SECTION 71. [REPEALED, 1926, 168, § 2.]

SECTION 72. [REPEALED, 1926, 168, § 2.]

Oaths before
a notary of
another state
or country.
1873, 191.
P. S. 169, § 74.
R. L. 175, § 78.

SECTION 73. All oaths and affidavits administered or taken by a notary public, duly commissioned and qualified by authority of any other state or government, within the jurisdiction for which he is commissioned, and certified under his official seal, shall be as effectual in this commonwealth as if administered or taken and certified by a justice of the peace therein.

Acts of in-
corporation.
R. S. 2, § 3.

SECTION 74. Acts of incorporation shall be held to be public acts and as such may be declared on and given in evidence.

G. S. 3, § 5. P. S. 169, § 68. R. L. 175, § 72. 194 Mass. 596.

1 SECTION 75. The printed copies of all statutes, acts and resolves of
 2 the commonwealth, public or private, which are published under its au-
 3 thority, and copies of the ordinances of a city, the by-laws of a town or of
 4 the rules and regulations of a board of aldermen, if attested by the clerk
 5 of such city or town, shall be admitted as sufficient evidence thereof in all
 6 courts of law and on all occasions.

Acts, resolves,
 ordinances
 and by-laws.
 1805, 36.
 R. S. 94, § 58.
 G. S. 131, § 62.
 P. S. 169, § 69.
 1889, 387, § 1.
 R. L. 175, § 73.
 184 Mass. 398.

1 SECTION 76. Copies of books, papers, documents and records in any
 2 department of the commonwealth or of any city or town, authenticated
 3 by the attestation of the officer who has charge of the same, shall be
 4 competent evidence in all cases equally with the originals thereof; pro-
 5 vided, that, except in the case of books, papers, documents and records
 6 of the department of public utilities in matters relating to common
 7 carriers, the genuineness of the signature of such officer shall be at-
 8 tested by the secretary of the commonwealth under its seal or by the
 9 clerk of such city or town, as the case may be.

Records, etc.,
 of departments
 of common-
 wealth, cities
 or towns.
 1867, 213.
 P. S. 169, § 70.
 1889, 387, § 2.
 R. L. 175, § 74.
 1913, 784, § 7.
 142 Mass. 71.
 175 Mass. 460.
 215 Mass. 204.
 218 Mass. 501.
 249 Mass. 511.

257 Mass. 580.

261 Mass. 510.

1 Op. A. G. 423.

1 SECTION 77. Copies from the records, books and accounts of a trust
 2 company, national bank or savings bank, doing business in the com-
 3 monwealth, shall be competent evidence in all cases, equally with the
 4 originals thereof, if there is annexed to such copies an affidavit, taken
 5 before a clerk of a court of record or notary public, under the seal of
 6 such court or notary, stating that the affiant is the officer having charge
 7 of the original records, books and accounts, and that the copy is correct
 8 and is full so far as it relates to the subject matter therein mentioned.

Books, etc., of
 trust com-
 panies and
 banks.
 1885, 92.
 1894, 317, § 49.
 R. L. 113, § 54.
 1908, 590,
 §§ 41, 69.
 1918, 98.

1 SECTION 78. An entry in an account kept in a book or by a card
 2 system or by any other system of keeping accounts, or a writing or record,
 3 whether in the form of an entry in a book or otherwise, made as a memo-
 4 randum or record of any act, transaction, occurrence or event, shall not
 5 be inadmissible in any civil proceeding as evidence of the facts therein
 6 stated because it is transcribed or because it is hearsay or self-serving,
 7 if the court finds that the entry, writing or record was made in good
 8 faith in the regular course of business and before the beginning of the
 9 civil proceeding aforesaid and that it was the regular course of such
 10 business to make such memorandum or record at the time of such act,
 11 transaction, occurrence or event or within a reasonable time thereafter.
 12 For the purposes hereof, the word "business", in addition to its ordinary
 13 meaning, shall include profession, occupation and calling of every kind.
 14 The court, in its discretion, before admitting such entry, writing or record
 15 in evidence, may, to such extent as it deems practicable or desirable, but
 16 to no greater extent than the law required before April eleventh, nineteen
 17 hundred and thirteen, require the party offering the same to produce and
 18 offer in evidence the original entry, writing, document or account or any
 19 other from which the entry, writing or record offered or the facts therein
 20 stated were transcribed or taken, and to call as his witness any person
 21 who made the entry, writing or record offered or the original or any
 22 other entry, writing, document or account from which the entry, writing
 23 or record offered or the facts therein stated were transcribed or taken, or
 24 who has personal knowledge of the facts stated in the entry, writing or
 25 record offered. When any such entry, writing or record is admitted,
 26 all other circumstances of the making thereof, including lack of personal
 27 knowledge by the entrant or maker, may be shown to affect its weight.

Entries in
 books of
 account, etc.
 1913, 288.
 1930, 87, § 1.
 217 Mass. 513.
 218 Mass. 205.
 223 Mass. 152.
 227 Mass. 138.
 243 Mass. 210.
 248 Mass. 19,
 290.
 254 Mass. 488.
 260 Mass. 492.
 269 Mass. 126.
 273 Mass. 437.

Records of hospitals.
1905, 339, § 2.
1908, 269.
1912, 442, § 2.
202 Mass. 359.
225 Mass. 521.
234 Mass. 480.
236 Mass. 439.
258 Mass. 127.
261 Mass. 40.

SECTION 79. Records kept by hospitals under section seventy of chapter one hundred and eleven shall be admissible as evidence in the courts of the commonwealth so far as such records relate to the treatment and medical history of such cases; but nothing therein contained shall be admissible as evidence which has reference to the question of liability.

263 Mass. 427.
264 Mass. 276.

266 Mass. 10.
270 Mass. 189.

271 Mass. 27, 501.
3 Op. A. G. 581.

STENOGRAPHIC TRANSCRIPTS.

Stenographic transcripts.
1894, 424, § 9.
1896, 459, § 7.
R. L. 175, § 68.
1927, 332, § 11.
207 Mass. 390.
222 Mass. 129.
271 Mass. 485.

SECTION 80. Transcripts from stenographic notes duly taken under authority of law in the supreme judicial, superior or probate court by a stenographer duly appointed for the purpose and sworn, when verified by the certificate of such stenographer, shall be admissible as evidence of testimony given whenever proof of such testimony is otherwise competent.

CHAPTER 234.

JURIES.

SECT.

OBLIGATION TO SERVE, AND LISTS.

1. Qualifications and exemptions.
2. To serve, when.
3. Limit of service in Suffolk.
- 3A. Postponement of service.
4. Preparation of lists.
5. Printing of lists, delivery to clerks, etc.
6. Revision of lists in cities.
7. Deposit of names in box.
8. Withdrawal of names.
9. Publication.

VENIRES.

10. Writs of venire facias.
11. Service.
12. Additional venires.
13. Provisions for Dukes county.
14. Provisions for Bristol.
15. Jurors from Nantucket and Dukes county.
16. Venires in Barnstable.

DRAWING AND SUMMONING OF JURORS.

17. Drawing of jurors.
18. Drawing of jurors in cities.
19. Same in towns.
20. Return of names to box.
21. Endorsement on ballot.
22. Names drawn in town meeting.

SECT.

23. Meetings for drawing jurors.
24. Summoning of jurors and return of venire.

GENERAL PROVISIONS.

25. Impanelling.
26. Same in capital cases.
27. Talesmen.
28. Examination of jurors.
29. Peremptory challenges.
30. Interest not to disqualify, when.
31. Objections, when made.
32. Irregularities.
33. Gratuities.
34. Jury not to be sent out more than twice, unless, etc.
35. View by jury.

PENALTIES.

36. Penalty for neglect to attend.
37. Penalty for improperly putting name on jury list.
38. Penalty for soliciting placing name on jury list.
39. Penalty on officers, etc., for neglect.
40. Penalty in certain other cases.
41. Penalty for fraud in drawing jurors.

SPECIAL JURIES.

42. Special juries not affected.

OBLIGATION TO SERVE, AND LISTS.

Qualifications and exemptions.
C. L. 55, § 2;
148, § 4; 352.

SECTION 1. A person qualified to vote for representatives to the general court, whether a registered voter or not, shall be liable to serve as a juror, except that the following persons shall be exempt:

1
2
3

4 The governor; lieutenant governor; members of the council; state
 5 secretary; members and officers of the senate and house of representa-
 6 tives during a session of the general court; judges and justices of a court;
 7 county and associate commissioners; clerks of courts and assistant clerks
 8 and all regularly appointed officers of the courts of the United States
 9 and of the commonwealth; registers of probate and insolvency; registers
 10 of deeds; sheriffs and their deputies; constables; marshals of the
 11 United States and their deputies, and all other officers of the United
 12 States; attorneys at law; settled ministers of the gospel; officers of
 13 colleges; preceptors and teachers of incorporated academies; registered
 14 practicing physicians and surgeons; persons over seventy years of age;
 15 persons under twenty-five years of age; members of the volunteer militia;
 16 superintendents, officers and assistants employed in or about a state
 17 hospital, insane hospital, jail, house of correction, state industrial school
 18 or state prison; keepers of lighthouses; conductors and engine drivers
 19 of railroad trains; teachers in public schools; enginemen and members
 20 of the fire department of Boston, and of other cities and towns in which
 21 such exemption has been made by vote of the city council or the inhab-
 22 itants of the town, respectively.

1784, 7, §§ 2, 9.
 1785, 42, § 4.
 1802, 92, § 1.
 1807, 140, § 1.
 1808, 25.
 1812, 141, § 2.
 R. S. 18, § 17;
 95, §§ 1-3.
 1838, 21.
 1849, 218, § 8.
 1851, 204.
 1858, 93, § 2.
 G. S. 132,
 §§ 1, 2.
 1864, 215.
 1874, 320, § 17.
 P. S. 170,
 §§ 1, 2.
 1896, 427.
 R. L. 176, § 1.
 1923, 413, § 1.
 1924, 311, § 1.
 9 Mass. 107.
 19 Pick. 368.
 20 Pick. 1.
 121 Mass. 69,
 93.
 143 Mass. 130.
 163 Mass. 453.

1 SECTION 2. A person attending and serving as a juror in any court
 2 in pursuance of a draft shall not be liable to be drawn or to so serve
 3 again within three years after the termination of such service, except
 4 in Nantucket and Dukes counties, in which he shall be so liable once in
 5 every two years.

To serve,
 when.
 B. L. 49
 C. L. 87, § 5.
 1694-5, 24, § 6.
 1741-2, 18, § 3.
 1749-50, 5, § 2.

1756-7, 13, § 3.	1824, 119, § 1.	P. S. 170, §§ 3, 4.
1759-60, 29, § 3.	1825, 176, § 1.	R. L. 176, § 2.
1802, 92, § 5.	R. S. 95, §§ 12, 38.	16 Mass. 220.
1807, 140, §§ 1, 4, 5.	G. S. 132, §§ 3, 4.	8 Pick. 504.
1812, 141, § 2.		

1 SECTION 3. Except as provided in section three A, a person shall not
 2 serve as a traverse juror in Suffolk county more than thirty days at
 3 any sitting of the court, except to finish a case commenced within that
 4 time, nor in the trial of criminal cases at more than one sitting thereof
 5 during the year.

Limit of
 service in
 Suffolk.
 1822, 13, § 3.
 R. S. 86, § 7.
 G. S. 132, § 10.
 1873, 44.

1879, 76.	1904, 307, § 1.	1921, 455, § 2.
P. S. 170, § 5.	1906, 257.	125 Mass. 458.
R. L. 176, § 3.		

1 SECTION 3A. The presiding justice at a sitting of the court with
 2 juries may, in his discretion, postpone the whole or any part of the time
 3 of service of a juror to a later day during the same or a subsequent sit-
 4 ting; and the presiding justice may thereupon make an order that such
 5 juror whose term of service is so postponed to a day certain, shall attend
 6 at the opening of the court on that day, and thereafter, until he is dis-
 7 charged from such service. But no such juror whose term of service or
 8 part thereof is postponed shall be required to serve for a greater number
 9 of days than he would have been required to serve if such postponement
 10 had not been granted.

Postponement
 of service.
 1921, 455, § 1.

1 SECTION 4. The board of election commissioners in cities having
 2 such boards, the board of registrars of voters in other cities and the
 3 board of selectmen in towns shall annually before July first prepare a
 4 list of such inhabitants of the city or town, qualified as provided in

Preparation
 of lists.
 1736-7, 10, § 1.
 1741-2, 18,
 §§ 1, 4.
 1749-50, 5,
 §§ 1, 4.

1756-7, 13,
 §§ 1, 4
 1759-60, 29,
 §§ 1, 1
 1784, 7, § 2.
 1802, 92, § 1.
 1807, 140, § 1.
 1812, 141, § 2.
 1822, 13, § 5.
 1824, 119, § 2.
 1825, 176, § 2.
 R. S. 95, §§ 4,
 34
 G. S. 132, §§ 6,
 21.
 1876, 207
 P. S. 170, §§ 6,
 23, 24
 1891, 131.
 1897, 515, § 1.
 R. L. 176, § 4.
 1907, 348, § 1.
 1924, 311, § 2.
 7 Met. 326.
 207 Mass. 259.

Number
 on lists.

Decision
 in case
 of dispute.
 1907, 348, § 4.

Removal for
 failure to
 comply.
 1907, 348, § 2.

Printing of
 lists, delivery
 to clerks, etc.
 1736-7, 10,
 §§ 1, 4.
 1741-2, 18, § 1.
 1749-50, 5,
 §§ 1, 4.
 1759-60, 29,
 §§ 1, 4.
 1784, 7, § 2.
 1802, 92, § 1.
 1807, 140, § 1.

section one, of good moral character, of sound judgment and free from 5
 all legal exceptions, not exempt from jury service under section one or 6
 two, as they think qualified to serve as jurors. The board shall not 7
 place the name of any person on said list unless such person is deter- 8
 mined to be qualified as aforesaid upon the knowledge of one of its mem- 9
 bers, or after personal appearance and, if the board deems it necessary, 10
 examination under oath. The board may summon persons to appear 11
 before it for examinations as to their qualifications for jury service and 12
 may compel their attendance before it and the giving of testimony in 13
 the same manner and to the same extent as may magistrates authorized 14
 to summon and compel the attendance of witnesses. Such examinations 15
 may be held before a single member of the board and for the aforesaid 16
 purpose each member may administer oaths. If the board elects, such 17
 examination may be in the form of a questionnaire to be answered under 18
 oath. The board may further investigate by inquiries at such person's 19
 place of residence and of business or employment, or by other means, 20
 his reputation, character and fitness for such service. The chief of police 21
 or the police commissioner or the official having charge of the police shall 22
 upon request give the board all possible assistance in making such investi- 23
 gation. Upon the request of the board or any member thereof, any 24
 person shall answer all questions and give such information as he may 25
 have relating to the character or fitness for jury service of any person 26
 concerning whom such request is made, which information shall be con- 27
 fidential. To the name of each juror on said list shall be appended his 28
 place of residence and of business or occupation. 29

Such lists shall include not less than one juror for every hundred in- 30
 habitants nor more than one for every sixty according to the latest cen- 31
 sus, state or national, but in Nantucket or Dukes county it may include 32
 one for every thirty inhabitants. In no event shall a person's name 33
 appear on the jury lists of more than three successive years or on more 34
 than three jury lists in any six year period. 35

If any question concerning the preparation of such list arises, as to 36
 which the board of election commissioners, registrars or selectmen are 37
 equally divided, it shall be referred, if arising in Boston, to the chief 38
 justice of the municipal court of the city of Boston, or, in case of his 39
 absence or disability, to the senior justice thereof, and, if arising in any 40
 other city or in any town, to the justice of the district court within whose 41
 jurisdiction such city or town lies, or in case of his absence or disability 42
 to the senior special justice thereof, and his decision on the question shall 43
 be final. 44

Failure by a registrar of voters or election commissioner to comply 45
 with the requirements of this section shall be sufficient ground for his 46
 removal from office. 47

SECTION 5. Jury lists prepared as above provided shall annually, 1
 before August first, be printed with the address and occupation of each 2
 juror, and a copy thereof shall be delivered to the mayor or selectmen 3
 and to the clerk of the city or town to which such list relates, and to 4
 the clerks and assistant clerks of the supreme judicial and superior 5
 courts in the county where such city or town is situated, to be kept by 6
 said clerks and assistant clerks for the use of said courts. 7

1812, 141, § 2.
 R. S. 95, § 5.
 1855, 167.
 1856, 125.
 G. S. 132, §§ 7, 21.
 1876, 207.
 P. S. 170, §§ 7,
 23, 24.
 1888, 123.
 1894, 514, § 2.

1897, 515, § 2.
 R. L. 176, § 5.
 1907, 348, § 5.
 207 Mass. 259.

1 SECTION 6. If a list prepared as provided in this chapter includes
 2 less than one juror for every one hundred inhabitants of a city, said
 3 registrars of voters or board of election commissioners shall prepare
 4 and submit as aforesaid a further list and like proceedings shall be had
 5 as in the case of the original list, until the required number of jurors is
 6 obtained.

Revision of
lists in cities.
1888, 123.
1897, 515, § 3.
R. L. 176, § 6.
1907, 348, § 6.

1 SECTION 7. The aldermen or selectmen shall cause the names on
 2 the list as completed to be written each on a separate ballot and shall
 3 roll or fold the ballots so as to resemble each other as much as possible
 4 and so that the name written thereon shall not be visible on the outside,
 5 and shall place the ballots in a box kept by the city or town clerk for
 6 that purpose.

Deposit of
names in box.
1736-7, 10, § 1.
1741-2, 18,
§§ 1, 4.
1749-50, 5,
§§ 1, 4.
1756-7, 13,
§§ 1, 4.

1759-60, 29, § 1.	1812, 141, § 2.	P. S. 170, §§ 8, 25.
1784, 7, § 2.	R. S. 95, § 6.	1897, 515, § 5.
1793, 63, § 4.	G. S. 132, § 8.	R. L. 176, § 7.
1802, 92, § 1.	1876, 297.	1907, 348, § 7.

1 SECTION 8. If a person whose name has been so placed in the jury
 2 box has been convicted of any felony, or of any other offence punishable
 3 by imprisonment in a jail or house of correction for more than one year,
 4 or is guilty of gross immorality, or is found by the justice holding court to
 5 be unqualified or unfit to serve as a juror, he may be relieved by said
 6 justice from sitting in any case, or his name ordered by the justice to be
 7 stricken from the jury list.

Withdrawal
of names.
1784, 7, § 2.
1802, 92, § 1.
1807, 140, § 2.
R. S. 95, § 7.
G. S. 132, § 9.
P. S. 170, § 9.
1897, 515, § 6.
R. L. 176, § 8.
1907, 348, § 8.

1926, 193; 296.

1 SECTION 9. The jury lists in cities shall be published as a public
 2 document, with the address and occupation of each juror; and in towns,
 3 the list with the occupation of each juror shall be published in the annual
 4 town report.

Publication.
1894, 514, § 3.
1897, 515, § 4.
R. L. 176, § 9.

VENIRES.

1 SECTION 10. The clerks of the supreme judicial and superior courts
 2 shall, before each sitting and at such other times as the respective courts
 3 may order, issue writs of venire facias for jurors, requiring their at-
 4 tendance on such day of the sitting as the court may order. The number
 5 of jurors required by such writs shall be apportioned among the cities and
 6 towns, as nearly as may be, according to their respective populations.

Writs of
venire facias.
C. L. 86, § 1.
1699-1700, 1,
§ 4; 2, § 4;
3, § 5.
1741-2, 18, § 5.
1749-50, 5, § 5.
1756-7, 13, § 5.

1759-60, 29, § 5.	1820, 79, § 8.	P. S. 170, §§ 10, 11.
1784, 7, § 1.	R. S. 95, §§ 13, 14.	R. L. 176, § 10.
1807, 140, § 3.	G. S. 132, §§ 10, 11.	180 Mass. 492.
1817, 63, § 3.		

1 SECTION 11. The venires shall be delivered to the sheriff of the
 2 county to be transmitted by him to a constable in each of the cities
 3 and towns to which they are respectively issued, who shall forthwith
 4 serve them in cities on the board authorized to draw jurors and in towns
 5 on the selectmen and town clerk.

Service.
C. L. 86,
§§ 1, 2.
1694-5, 24, § 1
1699-1700, 1,
§ 4; 2, § 4;
3, § 5.

1741-2, 18, § 5.	1802, 92, § 2.	P. S. 170, §§ 12, 25.
1749-50, 5, § 5.	1807, 140, § 4.	1897, 515, § 7.
1756-7, 13, § 5.	1822, 13.	R. L. 176, § 11.
1759-60, 29, § 5.	R. S. 95, §§ 15, 35.	189 Mass. 457.
1784, 4, §§ 1, 2; 7, §§ 1, 8.	G. S. 132, §§ 12, 22.	

1 SECTION 12. Either court may issue venires for additional jurors
 2 when necessary for the convenient despatch of its business. They
 3 shall be served and returned, and the jurors required to attend on such
 4 days, as the court orders.

Additional
venires.
1713-4, 5.
1737-8, 20.
1741-2, 18, § 8.

1749-50, 5, § 8.	1759-60, 29, § 8.	R. S. 95, § 18.	P. S. 170, § 13.
1756-7, 13, § 8.	1807, 140, § 7.	G. S. 132, § 13.	R. L. 176, § 12.

Provisions for
Dukes county.
1852, 75.
G. S. 132, § 14.
P. S. 170, § 14.
R. L. 176, § 13.

SECTION 13. If a case is pending in the superior court for Dukes county, in which the inhabitants of a town in said county are disqualified from serving as jurors, a justice of the court may order the clerk thereof to issue writs of venire facias for a sufficient number of jurors to try such case, from any town whose inhabitants are not so disqualified.

Provisions for
Bristol.
1878, 151, § 3.
P. S. 170, § 15.
R. L. 176, § 14.

SECTION 14. At the sittings of the supreme judicial court in Bristol county for which jurors are summoned to attend, one or more jurors from Nantucket county and at least four from Dukes county shall be summoned, the venires for which shall be issued by the clerk of the courts for Bristol county. The cost of their travel and attendance shall be paid by the counties from which they are summoned.

Jurors from
Nantucket
and Dukes
county.
1878, 151, § 3.
P. S. 170, § 16.
1891, 379, § 1.
R. L. 176, § 15.

SECTION 15. For the trial of an indictment found and returned in Nantucket or Dukes county for a capital crime, such number of jurors as a justice of the superior court may order shall be summoned from said counties, respectively, and the cost of their travel and attendance shall be paid by the counties from which they are summoned.

Venires in
Barnstable.
1889, 173.
R. L. 176, § 16.

SECTION 16. No venires for the drawing and summoning of jurors for the sitting of the supreme judicial court for Barnstable county shall be issued unless at the time for their issue there shall be one or more cases to be tried thereat by jury.

DRAWING AND SUMMONING OF JURORS.

Drawing of
jurors.
1807, 139, § 5.

SECTION 17. All jurors shall be selected by drawing ballots from the jury box.

R. S. 95, § 8. P. S. 170, § 17. R. L. 176, § 17. 1920, 2.
G. S. 132, § 15. 1897, 515, § 7. 1919, 333, § 19.

Drawing of
jurors in
cities.
1822, 13, § 5.
R. S. 95, § 35.
G. S. 132, § 22.
1876, 207.
P. S. 170, § 25
1894, 514, § 1.
1897, 515, § 7.
R. L. 176, § 18.

SECTION 18. If jurors are to be drawn in a city, the mayor and city clerk shall meet with the aldermen at its regular place of meeting. The ballots in the jury box shall be shaken and mixed and one of the aldermen, designated by the mayor, shall, without seeing the names written thereon, openly draw a number of ballots equal to the number of jurors required. He shall announce clearly and distinctly the names of the jurors so drawn, and shall then hand the ballots drawn by him to the mayor, who shall examine and verify them. The mayor shall then hand such ballots to the city clerk, who shall announce clearly and distinctly the names upon the ballots and return the same to the jury box, after making the endorsements thereon required by law, and the names so drawn shall be recorded as part of the proceedings and shall be published if and when the proceedings are published officially. In the absence of the mayor, the chairman or president of the board of aldermen shall perform the duties required of the mayor by this section.

Same in
towns.
1736-7, 10, § 2.
1741-2, 18, § 2.
1749-50, 5, § 2.
1756-7, 13, § 2.
1759-60,
29, § 2.
1784, 7, § 4.
1793, 63, § 1.
1807, 139, § 5.
R. S. 95, § 9
G. S. 132, § 16.

SECTION 19. When jurors are to be drawn in a town, the town clerk and selectmen shall meet at the clerk's office or at some other public place appointed for the purpose, and, if the clerk is absent, the selectmen may proceed without him. The ballots in the jury box shall be shaken and mixed and one of the selectmen, without seeing the names written thereon, shall openly draw therefrom a number of ballots equal to the number of jurors required.

P. S. 170, § 18. R. L. 176, § 19.

1 SECTION 20. If a person drawn as provided in the two preceding
 2 sections is exempt or unable by reason of illness or absence from home
 3 to attend as a juror, or has so served in any court within the time pro-
 4 vided in section two, his name shall thereupon be returned to the box
 5 and another drawn.

1784, 7, § 4. R. S. 95, §§ 9, 35. 1897, 515, § 7.
 1793, 63, § 5. G. S. 132, §§ 16, 22. R. L. 176, § 20.
 1807, 139, § 5. P. S. 170, §§ 18, 25. 171 Mass. 459.

1 SECTION 21. If a person is drawn and returned to serve as a juror
 2 in a court, the selectmen or the city clerk, respectively, shall endorse
 3 on the ballot the date of the draft and return it to the box; and when
 4 there is a revision and renewal of the ballots in the box, the date of all
 5 the drafts made within the time provided in section two shall be trans-
 6 ferred to the new ballots.

1807, 139, § 6. G. S. 132, §§ 17, 22. 1897, 515, § 7.
 R. S. 95, §§ 11, 35. P. S. 170, §§ 19, 25. R. L. 176, § 21.

1 SECTION 22. If a town at a meeting votes that drafts for jurors shall
 2 be made in open town meeting, they shall be so made by the selectmen
 3 in the manner provided in the three preceding sections. When in such
 4 town a venire is served upon the selectmen, they shall cause a town
 5 meeting to be notified and warned for the purpose in the manner ordered
 6 by the town or otherwise provided by law.

R. S. 95, §§ 10, 15. G. S. 132, § 18. P. S. 170, § 20. R. L. 176, § 22.

1 SECTION 23. The meeting for drawing jurors shall, unless the court
 2 otherwise orders when issuing venire for additional jurors under section
 3 twelve, be not less than twenty days before the day when the jurors are
 4 required to attend.

1756-7, 13, § 5. R. S. 95, §§ 16, 35. 1897, 515, § 7.
 1759-60, 29, § 5. G. S. 132, §§ 19, 22. R. L. 176, § 23.
 1784, 7, § 5. P. S. 170, §§ 21, 25. 1924, 311, § 3.
 1807, 139, § 4.

1 SECTION 24. The constable shall, fourteen days at least before the
 2 time when the jurors are required to attend unless the court otherwise
 3 orders when issuing venire for additional jurors under section twelve,
 4 summon each person who is drawn, by reading to him the venire with
 5 the endorsement thereon of his having been drawn, or by leaving at his
 6 place of abode a written notice of his having been drawn and of the time
 7 and place of the sitting of the court at which he is required to attend,
 8 and shall make a return of the venire with his doings thereon to the
 9 clerk of the court, before the sitting of the court by which it was issued.

1897, 515, § 7. 1924, 311, § 4. 143 Mass. 80.
 R. L. 176, § 24. 13 Met. 316. 189 Mass. 457.

GENERAL PROVISIONS.

1 SECTION 25. On the day when jurors are summoned to attend at
 2 court for the trial of civil or criminal cases, except capital cases, the
 3 clerk of the court shall cause the name, place of abode and occupation
 4 of each person so summoned to be written on separate ballots, sub-
 5 stantially of uniform size, and shall cause them to be placed in a box
 6 provided therefor. When a case is ready for trial the clerk in open
 7 court, after shaking the ballots thoroughly, shall draw them out in
 8 succession until the names of twelve are drawn who appear and are
 9 not excused or set aside. The twelve men so drawn shall be duly sworn

Return of names to box.
 1736-7, 19, § 4.
 1749-50, 5, § 2.
 1756-7, 13, § 2.
 1759-60, 29, § 2.
 1784, 7, § 2.
 1793, 63, § 2.
 1807, 139, § 2.
 1897, 515, § 2.
 1741-2, 18, § 2.
 1749-50, 5, § 2.
 1756-7, 13, § 3.
 1759-60, 29, § 2.
 1784, 7, §§ 4, 5.
 1802, 92, § 5.
 Names drawn in town meeting.
 1749-50, 5, § 2.
 1756-7, 13, § 3.
 1759-60, 29, § 3.
 1784, 7, § 4.
 1793, 63, § 6.
 1807, 139, §§ 4, 5, 13.
 Meetings for drawing jurors.
 1741-2, 18, § 5.
 1749-50, 5, § 5.
 Summoning of jurors and return of venire.
 1736-7, 10, § 2.
 1741-2, 18, § 5.
 1749-50, 5, § 5.
 1756-7, 13, § 5.
 1759-60, 29, § 5.
 1784, 4, §§ 1, 2; 7, § 5.
 1807, 139, § 6.
 R. S. 95, § 17.
 G. S. 132, § 20.
 P. S. 170, § 22.
 Impanelling.
 1807, 139, § 11.
 R. S. 95, §§ 20, 23.
 G. S. 132, §§ 23, 25, 26.
 1881, 300.
 P. S. 170, §§ 26, 28-31.
 1897, 515, § 8.
 R. L. 176, § 25.
 6 Met. 224.
 135 Mass. 521.
 203 Mass. 493.
 211 Mass. 156.

and impanelled and shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The ballots containing names of the jurors so sworn shall be kept apart by the clerk until the verdict of such jury has been recorded or such jury has been discharged, when such ballots shall be returned to the box. If a case is ready for trial before the verdict in the preceding case has been recorded or the jury discharged, the court may order a jury for the trial of such issue to be impanelled by the drawing in the manner aforesaid of ballots from those remaining in the box.

Same in capital cases. 1873, 308. P. S. 170, § 32. 1897, 515, § 9. R. L. 176, § 26.

SECTION 26. If a jury is to be impanelled for the trial of a capital case, the clerk of the court shall cause the name of each juror summoned therein to be written on a separate ballot and each ballot to be folded uniformly in such manner that the name written thereon shall not be visible, and shall cause such ballots to be placed in a box provided therefor. He shall then in open court draw the ballots in succession from said box, and the twelve persons whose names are upon the ballots first drawn and who are not excused or otherwise set aside, shall be sworn as the jury for the trial of the case.

Talesmen. 1699-1700, 1, § 4; 2, § 4; 3, § 5. 1784, 7, § 6. 1807, 140, § 7. R. S. 95, §§ 24-26. G. S. 132, §§ 27, 28. P. S. 170, §§ 33, 34. R. L. 176, § 27. 6 Cush. 174. 243 Mass. 472. 255 Mass. 369.

SECTION 27. If, by challenge or otherwise, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of a case, the court shall cause jurors to be returned from the bystanders or from the county at large, to complete the panel, if there are on the jury not less than seven of the jurors who were originally drawn and summoned as before provided. The jurors from the bystanders shall be returned by the sheriff or his deputy or by a disinterested person appointed therefor by the court, and shall be such as are qualified and liable to be drawn as jurors.

Examination of jurors. B. L. 30. C. L. 152, § 3. 1736-7, 10, § 5. 1741-2, 18, § 7. 1749-50, 5, § 7. 1756-7, 13, § 7. 1759-60, 29, § 7. 1784, 7, § 8. 1807, 139, § 9. R. S. 95, § 27. G. S. 132, § 29.

SECTION 28. Upon motion of either party, the court shall, or the parties or their attorneys may under the direction of the court, examine on oath a person who is called as a juror therein, to learn whether he is related to either party or has any interest in the case, or has expressed or formed an opinion, or is sensible of any bias or prejudice, therein; and the objecting party may introduce other competent evidence in support of the objection. If the court finds that the juror does not stand indifferent in the case, another shall be called in his stead.

P. S. 170, § 35.	6 Gray, 343.	159 Mass. 56.
1887, 149.	113 Mass. 297.	209 Mass. 396.
R. L. 176, § 28.	118 Mass. 531.	212 Mass. 438.
16 Pick. 153.	139 Mass. 56, 315.	215 Mass. 143.
13 Met. 120.	140 Mass. 425.	219 Mass. 1.
5 Cush. 295.	143 Mass. 136.	231 Mass. 10.
6 Cush. 174.	145 Mass. 242.	255 Mass. 369.
4 Gray, 18.	157 Mass. 180, 510.	

Peremptory challenges. 1776-7, 32, § 13. 1795, 45, § 3. R. S. 137, §§ 3-5. G. S. 172, §§ 3, 4. 1862, 84, § 1. 1867, 254. 1869, 151. 1873, 317. 1875, 167.

SECTION 29. Upon the trial of an indictment for a crime punishable by death or imprisonment for life, each defendant shall be entitled to twelve peremptory challenges of the jurors called to try the case, and in other criminal cases each defendant shall be entitled to two such challenges. In every criminal case the commonwealth shall be entitled to as many such challenges as equal the whole number to which all the defendants in the case are entitled. In a civil case each party shall be entitled to two such challenges. Peremptory challenges shall be made before the

9 commencement of the trial and may be made after the determination
 10 that a person called to serve as a juror stands indifferent in the case.

1895, 120	107 Mass. 216	203 Mass. 493
R. L. 176, § 29.	111 Mass. 439.	207 Mass. 259.
1926, 192; 296.	124 Mass. 32.	208 Mass. 202.
11 Allen, 568.	152 Mass. 397.	219 Mass. 1.
103 Mass. 412.	202 Mass. 585.	252 Mass. 465.

P. S. 170,
 §§ 36, 37; 214,
 §§ 5, 6.

1 SECTION 30. In indictments and penal actions for the recovery of a
 2 forfeiture, it shall not be a cause of challenge to a juror that he is liable
 3 to pay taxes in a county, city or town which may be benefited by such
 4 recovery.

Interest not
 to disqualify,
 when.
 R. S. 95, § 28.
 G. S. 132, § 30.

P. S. 170, § 38	5 Mass. 90	1 Gray, 472	147 Mass. 585.
R. L. 176, § 30.	9 Met. 572.	2 Allen, 402.	

1 SECTION 31. If a party knows of an objection to a juror in time to
 2 propose it before the trial and omits so to do, he shall not afterward
 3 make the same objection, unless by leave of the court.

Objections,
 when made.
 R. S. 95, § 29.

G. S. 132, § 31.	1 Pick. 38	2 Gray, 281
P. S. 170, § 39.	21 Pick. 456.	111 Mass. 103.
R. L. 176, § 31.	2 Met. 558.	246 Mass. 485.

1 SECTION 32. No irregularity in a writ of venire facias or in the draw-
 2 ing, summoning, returning or impanelling of jurors shall be sufficient
 3 to set aside a verdict, unless the objecting party has been injured thereby
 4 or unless the objection was made before the verdict.

Irregularities.
 R. S. 95, § 30.
 G. S. 132, § 32.
 P. S. 170, § 40.
 R. L. 176, § 32.

1 Pick. 38, 196.	9 Met. 572.	139 Mass. 381.
2 Pick. 550.	121 Mass. 93.	203 Mass. 493.

1 SECTION 33. If either party to a case at the sitting at which a ver-
 2 dict is returned, either before or after the trial, gives to any of the jurors
 3 who try the case anything by way of treat or gratuity, the court may,
 4 upon motion of the adverse party, set aside the verdict and award a new
 5 trial.

Gratuities.
 1807, 139, § 17.
 R. S. 95, § 31.
 G. S. 132, § 33.
 P. S. 170, § 41.
 R. L. 176, § 33.
 2 Allen, 556.

1 SECTION 34. If a jury, after due and thorough deliberation, return
 2 to court without having agreed on a verdict, the court may state anew
 3 the evidence or any part thereof, explain to them anew the law applicable
 4 to the case and send them out for further deliberation; but if they
 5 return a second time without having agreed on a verdict, they shall
 6 not be sent out again without their own consent, unless they ask from
 7 the court some further explanation of the law.

Jury not to
 be sent out
 more than
 twice, unless,
 etc.
 1807, 139, § 15.
 R. S. 95, § 32.
 G. S. 132, § 34.
 P. S. 170, § 42.
 R. L. 176, § 34.

1 Pick. 337.	115 Mass. 567.	123 Mass. 254
13 Allen, 411.	116 Mass. 37, 367.	164 Mass. 440.
110 Mass. 70.	122 Mass. 477.	257 Mass. 63.

1 SECTION 35. The court may, upon motion, allow the jury in a civil
 2 case to view the premises or place in question or any property, matter
 3 or thing relative to the case if the party making the motion advances
 4 an amount sufficient to defray the expenses of the jury and the officers
 5 who attend them in taking the view, which shall be taxed as costs, if
 6 the party who advanced them prevails. The court may order a view by
 7 a jury impanelled to try a criminal case.

View by
 jury.
 1746-7, 6.
 1784, 7, § 9.
 1807, 139, § 8.
 R. S. 95, § 33;
 137, § 10.
 G. S. 132, § 35;
 172, § 9.
 P. S. 170, § 43;
 214, § 11.

R. L. 176, § 35.	157 Mass. 579.	194 Mass. 250.
5 Cush. 295.	174 Mass. 245.	267 Mass. 490, 501.
134 Mass. 499.	186 Mass. 582.	

PENALTIES.

Penalty for neglect to attend
C. L. 55, § 2.
1694-5, 24, §§ 2-4.
1698, 13.
1741-2, 18, § 6.
1749-50, 5, § 6.

SECTION 36. A person duly drawn and summoned as a juror in a court who neglects to attend without sufficient cause shall be punished by a fine of not more than forty dollars, to be imposed by the court to which the juror was summoned, to the use of the county where the offence is committed.

1756-7, 13, § 6.
1759-60, 29, § 6.
1784, 4, §§ 1, 2; 7, § 7.

1802, 92, § 3.
1807, 139, § 17.
R. S. 95, § 19.

G. S. 132, § 36.
P. S. 170, § 44.
R. L. 176, § 36.

Penalty for improperly putting name on jury list.
1907, 348, § 2.
1924, 311, § 5.

SECTION 37. Whoever, being a registrar of voters, a selectman or an election commissioner, shall put or cause to be put upon the jury list the name of any person for any reason other than his judgment in good faith of the qualifications and fitness of such person for such jury service shall be punished by a fine of not more than five hundred dollars or imprisonment in the jail or house of correction for not more than one year.

Penalty for soliciting placing name on jury list.
1907, 348, § 3.
1931, 426, § 303.

SECTION 38. Whoever solicits or requests a registrar of voters, a selectman or an election commissioner to put his or any other name upon a jury list shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than one year.

Penalty on officers, etc., for neglect.
1694-5, 24, §§ 1, 4.
1699-1700, 1, § 4; 2, § 4; 3, § 5.
1784, 4, §§ 1, 2; 7, §§ 3, 7.
1807, 139, § 17.

SECTION 39. If, by reason of the neglect of a person upon whom any duty is imposed by this chapter, jurors are not duly drawn and summoned to attend a court, he shall be punished by a fine of not more than twenty dollars, to be imposed by the court to which they should have been summoned, to the use of the county where the offence is committed.

R. S. 95, § 39. G. S. 132, § 37. P. S. 170, § 45. R. L. 176, § 37.

Penalty in certain other cases.
R. S. 95, § 40.
G. S. 132, § 38.
P. S. 170, § 46.
R. L. 176, § 38.

SECTION 40. If such neglect occurs with regard to jurors required to serve on any occasion other than in the supreme judicial or superior court, the officer before whom the jurors were required to appear shall report the fact to the superior court for the same county, which, after an examination and a hearing, may impose the fine provided by the preceding section.

Penalty for fraud in drawing jurors.
1793, 63, § 5.
1807, 139, § 17.
R. S. 95, § 41.
G. S. 132, § 39.
P. S. 170, § 47.
1894, 514, § 1.
R. L. 176, § 39.

SECTION 41. Whoever is guilty of fraud in the drawing of jurors, either by tampering with the jury box previous to a draft or in drawing a juror, or in returning to the box the name of a juror lawfully drawn out and drawing or substituting another in his stead, or in striking a name from the jury list, or in any other way, shall be punished by a fine of not more than five hundred dollars.

SPECIAL JURIES.

Special juries not affected.
R. S. 95, § 42.
G. S. 132, § 40.
P. S. 170, § 48.

SECTION 42. This chapter shall not affect the power and duty of any officer or magistrate to summon and impanel jurors when otherwise authorized.

R. L. 176, § 40.

CHAPTER 235.

JUDGMENT AND EXECUTION.

SECT.

- 1. Entry of judgment.
- 2. Same in inferior courts.
- 3. Same in summary process.
- 4. Judgment *nunc pro tunc*.
- 5. Assessment of damages by clerk.
- 6. Judgment on default.
- 7. Separate executions against different defendants.
- 8. Interest on judgments, etc.
- 9. Judgment on forfeiture of a penalty.
- 10. Amount of execution upon judgment for penal sum.
- 11. *Scire facias* to recover further damages.
- 12. Proceedings in actions for further damages.
- 13. Action for damages instead of penalty.
- 14. Executions in actions on judgments.
- 15. Execution if action in erroneous venue.
- 16. Execution not to issue within twenty-four hours.
- 17. Execution to issue within one year.
- 18. Execution of district court valid where directed.
- 19. Remedy after time for taking execution.
- 20. Proceedings after ineffectual levy.
- 21. Proceedings after ineffectual levy on member of corporation.
- 22. Form of execution.
- 23. Return of execution.

SPECIAL JUDGMENTS AGAINST BANKRUPTS OR INSOLVENTS.

- 24. Special judgments against bankrupts or insolvents.
- 25. Special judgment if insolvent, etc., has given bond to dissolve an attachment.
- 26. Special judgment upon bankruptcy, etc., of petitioner for review.

SET-OFF OF EXECUTIONS.

- 27. Set-off of executions.

LEVY OF EXECUTION AND PERSONAL PROPERTY EXEMPT THEREFROM.

- 28. Creditor may direct mode of service.
- 29. Levy on land and personal property.

SECT.

- 30. Levy on property of a corporation.
- 31. Property liable to execution.
- 32. Current coin.
- 33. Bank notes.
- 34. Property exempt from execution.
- 35. Indemnification of officer.

SALE OF PERSONAL PROPERTY TAKEN ON EXECUTION.

- 36. Sale of personal property on execution.
- 37. Notice of sale.
- 38. Same, if value exceeds three hundred dollars.
- 39. Adjournment of sale.
- 40. Adjournment upon injunction.
- 41. Re-sale.
- 42. Return of execution. Liability for fraud.
- 43. Disposition of proceeds of sale.
- 44. Disposition among two or more creditors.
- 45. Disposition upon successive attachments.

LEVY ON TERMS FOR YEARS.

- 46. Levy on terms for years.

SUSPENSION OF LEVY.

- 47. Suspension of levy.
- 48. Same subject.

DEATH, ETC., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY OR SERVICE.

- 49. Death, etc., of officer after beginning of levy or service.
- 50. Removal of officer, etc., after beginning of levy.
- 51. Death of party after beginning of levy.

PENALTY ON OFFICER FOR DETAINING MONEY COLLECTED.

- 52. Penalty for detaining money collected.

1 SECTION 1. Judgments in civil actions and proceedings in the su- Entry of
 2 preme judicial court shall be entered on motion unless the court by judgment.
 3 general or special order otherwise orders. Judgments in civil actions R. S. 97, § 1.
 4 and proceedings ripe for judgment in the superior court shall, unless 1852, 312, § 11.
 5 the court by general or special order otherwise orders, be entered by G. S. 133, § 1.
 6 the clerk at ten o'clock in the forenoon on the first Monday of each P. S. 171, § 1.
 1912, 190 R. L. 177, § 1.
 161 Mass. 55.
 168 Mass. 297.

176 Mass. 18.
194 Mass. 328.
204 Mass. 331.

month, or on the following day if said Monday is a legal holiday, unless the party entitled thereto otherwise requests in writing.

212 Mass. 108.	227 Mass. 46	246 Mass. 502.
218 Mass. 463.	231 Mass. 138.	272 Mass. 39.
219 Mass. 597.	238 Mass. 221, 298.	

Same in inferior courts.
1897, 431.
1898, 488.
R. L. 177, § 2.
221 Mass. 161.
237 Mass. 506.

SECTION 2. Judgment in civil actions and proceedings ripe for judgment in district courts shall be entered at ten o'clock in the forenoon on Friday of each week, but if a legal holiday occurs on Friday, at ten o'clock in the forenoon of the Thursday preceding; or it may be entered at any time in a case ripe for judgment upon notice and motion.

Same in summary process.
1898, 488.
R. L. 177, § 3.

SECTION 3. District courts may by rule establish the time for the entry of judgment in actions of summary process under chapter two hundred and thirty-nine which are ripe for judgment.

Judgment nunc pro tunc.
1842, 89, § 2.
G. S. 119, § 14;
133, § 7.
P. S. 153, § 20;
171, § 7.

SECTION 4. Every judgment, order or decree of the supreme judicial or superior court shall bear date of the year, month and day when entered; but the court may order it to be entered as of an earlier day than that of entry.

1885, 384, § 13.	116 Mass. 275.	225 Mass. 392.
R. L. 177, § 4	122 Mass. 176.	244 Mass. 14
7 Mass. 393	128 Mass. 296.	245 Mass. 114.
12 Cush. 319.	137 Mass. 221.	254 Mass. 14.
106 Mass. 339.	155 Mass. 86.	264 Mass. 592.

Assessment of damages by clerk.
R. S. 97, § 4
G. S. 133, § 4
P. S. 171, § 4.
R. L. 177, § 5.

SECTION 5. In an action upon a promissory note or other contract where the amount due appears to be undisputed, the debt or damages may be ascertained and assessed by the clerk under a general order of the court or by special reference to him. The judgment in either case shall be entered in the same form as if awarded on an assessment or computation made by the court.

Judgment on default.
R. S. 100, § 6.
1851, 255, § 1.
G. S. 133, § 5.
P. S. 171, § 5.
R. L. 177, § 6.
12 Cush. 486
13 Allen. 217.

SECTION 6. In an action against two or more defendants upon a contract express or implied, the plaintiff shall be entitled to judgment against such defendants as are defaulted and against those who upon trial are found liable, although it is found that all the defendants are not jointly liable.

121 Mass. 347	205 Mass. 80.	231 Mass. 472
131 Mass. 397	212 Mass. 392.	235 Mass. 304, 471.
164 Mass. 504.	214 Mass. 374.	240 Mass. 368.
201 Mass. 451.	221 Mass. 259.	

Separate executions against different defendants.
1851, 255, § 2.
G. S. 133, § 6.
P. S. 171, § 6.
R. L. 177, § 7.

SECTION 7. If in such action any defendants are defaulted, and upon trial any of the others are found liable, the court shall render judgment both against those defaulted and those found liable for the debt or damages, with costs to the time of the default, and against those who defend, for all costs which accrue after the default; and shall issue separate executions on such judgment.

Interest on judgments, etc.
1847, 153.
1849, 124.
G. S. 133, § 8.
P. S. 171, § 8.
R. L. 177, § 8.
1924, 38.
2 Allen, 562.
6 Allen, 243
116 Mass. 196.
136 Mass. 344
139 Mass. 360.

SECTION 8. When judgment is made up upon an award of county commissioners, a committee or referees, or upon the report of an auditor or master in chancery, or upon the verdict of a jury or the finding of a justice, interest shall be computed upon the amount of the award, report, verdict or finding, from the time when made to the time of making up the judgment. Every judgment for the payment of money shall bear interest from the day of its rendition. The warrant or execution issued

8 on a judgment for the payment of money shall specify the day upon
 9 which judgment is rendered, and shall require the collection or satisfac-
 10 tion thereof with interest from the day of its rendition.

193 Mass. 257.	228 Mass. 1	255 Mass. 206.
207 Mass. 424	238 Mass. 221.	263 Mass. 107.
209 Mass. 388.	252 Mass. 510.	273 Mass. 529.

1 SECTION 9. If in an action for a breach of the condition of a bond,
 2 or to recover a penalty for the non-performance of a covenant, contract
 3 or agreement, it is found that the condition has been broken or the
 4 penalty forfeited, judgment shall be entered for the penal sum, but exe-
 5 cution shall issue only as provided in the following sections.

R. S. 100, § 8.	12 Allen, 243.	185 Mass. 349, 582.
G. S. 133, § 9.	97 Mass. 15.	211 Mass. 22.
P. S. 171, § 9.	98 Mass. 515.	228 Mass. 581.
R. L. 177, § 9.	100 Mass. 191.	249 Mass. 511.
11 Gray, 212.	136 Mass. 226.	269 Mass. 75.

1 SECTION 10. The court shall award an execution for so much of the
 2 penal sum as is then due and payable in equity and good conscience for
 3 the breach of the condition or other non-performance of the contract.
 4 The amount shall be determined by the court, unless a jury trial was
 5 claimed under section sixty of chapter two hundred and thirty-one or
 6 is ordered by the court.

P. S. 171, § 10.	135 Mass. 591.	206 Mass. 270.
R. L. 177, § 10.	136 Mass. 174, 226.	211 Mass. 22.
1 Mass. 10.	148 Mass. 562.	213 Mass. 437.
7 Met 116.	152 Mass. 568.	215 Mass. 242.
13 Gray, 157.	155 Mass. 203.	261 Mass. 261.
100 Mass. 191.	185 Mass. 349, 582.	269 Mass. 75.
105 Mass. 44.		

Amount of execution upon judgment for penal sum.
 1698, 22, § 1.
 1785, 22, § 1.
 1798, 77, § 6.
 R. S. 100, § 9.
 G. S. 133, § 10.

1 SECTION 11. If a further amount afterward becomes due on such
 2 bond or other contract, the plaintiff, his executor or administrator may
 3 have a writ of scire facias on the judgment from the court where it
 4 was rendered against the original defendant, his executor, administrator,
 5 heirs, devisees or assigns, stating a further breach of the contract and
 6 summoning the adverse party to show cause why execution should not
 7 be awarded upon the judgment for the damages caused by such further
 8 breach.

Scire facias to recover further damages.
 1735-6, 2
 1798, 77, § 6.
 R. S. 100, § 10.
 G. S. 133, § 11.
 P. S. 171, § 11.
 R. L. 177, § 11.
 264 Mass. 592.

1 SECTION 12. The amount due in such action shall be determined
 2 and execution awarded in the same manner as in the original action;
 3 and such proceedings may be repeated upon further breaches until the
 4 penalty is exhausted.

G. S. 133, § 12.	P. S. 171, § 12.	R. L. 177, § 12.
------------------	------------------	------------------

Proceedings in actions for further damages.
 1798, 77, § 6.
 R. S. 100, § 11.

1 SECTION 13. The four preceding sections shall not prevent a person
 2 from bringing an action for the breach of a covenant or other contract,
 3 instead of suing for the penalty by which the performance of the cove-
 4 nant or contract was secured.

G. S. 133, § 13.	P. S. 171, § 13.	R. L. 177, § 13.
------------------	------------------	------------------

Action for damages instead of penalty.
 1798, 77, § 6.
 R. S. 100, § 12.

1 SECTION 14. If a judgment is rendered for the plaintiff by a court in
 2 an action founded on a judgment rendered by a different court, execu-
 3 tion shall not issue until the plaintiff files with the court rendering the
 4 judgment in the later action a transcript of the record of the judgment
 5 in the earlier action under the seal of the court rendering it, attested by
 6 the clerk of such court.

Executions in actions on judgments.
 1898, 489.
 R. L. 177, § 14.
 1917, 326.

Execution if action in erroneous venue. 1851, 233, § 116.

SECTION 15. If judgment is rendered in a local action brought in an erroneous venue, the court shall cause its writ of possession or other writ of execution to be directed to the sheriff of the proper county.

1852, 312, § 79. P. S. 171, § 14. 102 Mass. 370.
G. S. 133, § 14. R. L. 177, § 15. 130 Mass. 335.

Execution not to issue within twenty-four hours.

SECTION 16. No execution shall issue within twenty-four hours after the entry of judgment.

C. L. 3, § 9. R. S. 97, § 5. § Mot 496.
1701-2, 5, § 10. G. S. 133, § 15. 190 Mass. 497.
1783, 57, § 1. P. S. 171, § 15. 243 Mass. 252.
1784, 28, § 15. R. L. 177, § 16.

Execution to issue within one year. 1692-3, 24, § 3. 1741-2, 22. 1783, 57, § 1. R. S. 97, § 6. 1859, 16. G. S. 133, § 16. P. S. 171, § 16. R. L. 177, § 18. 1914, 54, § 1. 1925, 217, § 1. 138 Mass. 72. 264 Mass. 592. 270 Mass. 96. 272 Mass. 413.

SECTION 17. An original execution shall not issue after the expiration of one year after the party is first entitled to take it out; and an alias or other successive execution shall not issue after the expiration of five years from the return day of that which preceded it. Subject to section twenty of chapter two hundred and sixty, alias or successive executions shall be of full force and effect for five years from the date thereof unless satisfied in whole or discharged by law. All executions shall be returned to the court issuing them within ten days after their satisfaction or discharge. If any execution is returned for any reason to the court issuing the same unsatisfied in whole or in part, the court may, subject to the provisions of this section, order the issue of a new execution for the amount then remaining due.

Execution of district court valid where directed.

SECTION 18. Executions issued by a district court may be served and shall be obeyed in every county to which they are directed.

1876, 227, § 2. 1894, 398, § 2; R. L. 177, § 17.
P. S. 154, § 32. 431. 1917, 326.
1893, 396, § 17. 1895, 380.

Remedy after time for taking execution. 1692-3, 24, § 3. 1741-2, 22. 1772-3, 32. 1773-4, 16, § 1. 1783, 57, § 1. 1795, 61, § 1.

SECTION 19. If a judgment remains unsatisfied after the expiration of the time for taking out execution thereon, the creditor may have a writ of scire facias to obtain a new execution, or he may at any time after the judgment, subject to section twenty of chapter two hundred and sixty, have an action of contract thereon.

R. S. 97, § 8. R. L. 177, § 19. 240 Mass. 551.
G. S. 133, § 17. 114 Mass. 76. 264 Mass. 592.
P. S. 171, § 17. 174 Mass. 550.

Proceedings after ineffectual levy. 1835, 145. R. S. 97, § 43. G. S. 133, § 18. P. S. 171, § 18. R. L. 177, § 20. 8 Allen, 429. 264 Mass. 592.

SECTION 20. If an execution is returned satisfied in whole or in part by the sale of property not liable to such execution, and if damages are recovered against the judgment creditor or the officer who served the execution on account of the seizure and sale of such property, the creditor may have a writ of scire facias on his judgment, and shall thereupon be entitled to a new execution for the amount then remaining due him.

Proceedings after ineffectual levy on member of corporation. 1851, 213. G. S. 133, § 19. P. S. 171, § 19. R. L. 177, § 21.

SECTION 21. If an execution against a corporation is satisfied in whole or in part by service or levy on the person or property of a member thereof, and the property levied on or damages for the service or levy are subsequently recovered by such member from the officer or judgment creditor, the creditor may have a writ of scire facias on his judgment, and shall thereupon be entitled to a new execution for the amount then remaining due him.

1 SECTION 22. The forms of execution shall be the same as have hereto-
 2 fore been established by law and the usage and practice of the courts.
 3 Executions issued upon judgments in civil actions in favor of the com-
 4 monwealth shall be in form like those in favor of natural persons. Execu-
 5 tions issued by a district court for an amount as damages exceeding
 6 twenty dollars shall be so framed as to direct a levy upon the lands and
 7 tenements of the debtor. Alterations in the forms may be made by the
 8 courts, subject to the final control of the supreme judicial court, which
 9 may by general rules regulate such changes in all courts of the common-
 10 wealth.

Form of exe-
 cution
 C. L. 320, § 2.
 1783, 58, § 1.
 1784, 28
 R. S. 73, § 54;
 97, §§ 10, 11
 1853, 269, § 1
 G. S. 133, §§ 20,
 21
 P. S. 171, §§ 20,
 21
 R. L. 177, § 22.
 1917, 326
 10 Met. 320.
 3 Cush. 460.

122 Mass. 133.

161 Mass. 135.

168 Mass. 373.

229 Mass. 308.

1 SECTION 23. Original executions issuing on judgments against execu-
 2 tors, administrators, trustees and other fiduciary officers in their repre-
 3 sentative capacity, including any such original execution running against
 4 two or more parties, any one or more of whom are fiduciary officers as
 5 aforesaid in their representative capacity, or against sheriffs under section
 6 ten of chapter thirty-seven, or on special judgments entered under section
 7 twenty-four, shall be made returnable within sixty days after the date of
 8 the execution. In all other cases, original executions shall be made re-
 9 turnable within twenty years after the date of the judgment.

Return of
 execution.
 1736-7, 19, § 1.
 1763-4, 7
 1783, 57, § 1
 R. S. 97, § 9.
 1850, 209
 1852, 312, § 83.
 G. S. 133, § 22
 P. S. 171, § 22.
 R. L. 177, § 23
 1914, 54, § 2
 1925, 217, § 2.
 2 Met. 587.

163 Mass. 79.

217 Mass. 71.

247 Mass. 334.

SPECIAL JUDGMENTS AGAINST BANKRUPTS OR INSOLVENTS.

1 SECTION 24. If a plaintiff would be entitled to a judgment or a decree,
 2 except for the bankruptcy or insolvency of the debtor or his discharge
 3 therein, and if, more than four months prior to the commencement of
 4 proceedings in bankruptcy, or, in voluntary proceedings in insolvency,
 5 more than four months prior to the time of the first publication of the
 6 notice of the issuing of the warrant, or, in involuntary proceedings,
 7 more than four months prior to the first publication of the notice of the
 8 filing of the petition, or, in proceedings in composition in insolvency in
 9 which no assignment has been made, more than four months prior to
 10 the notice by the register to the creditors of the debtor's proposal of
 11 composition, any property, estate, interest or money of a debtor has
 12 been attached, or brought within the control of a court of equity by
 13 proceedings under clause seven of section three of chapter two hundred
 14 and fourteen, by other proceedings in equity, or by payment into court,
 15 the court may at any time upon motion enter a special judgment or
 16 decree for the plaintiff, for the amount of his debt or damages and costs,
 17 or for such other relief as he may be entitled to, to be enforced in the
 18 first instance only against the property, estate, interest or money, so
 19 attached or brought within the control of a court of equity. If such
 20 property, estate, interest or money shall be insufficient to satisfy the
 21 judgment or decree in full, the court may thereafter, if the debtor's
 22 discharge is refused, or if he shall unreasonably delay to prosecute
 23 said proceedings to a discharge, order an alias or other successive execu-
 24 tion or other process to be issued upon such judgment or decree for such
 25 portion thereof as remains unsatisfied. The creditor may also in case of
 26 such refusal or delay have a writ of seire facias or action as provided in
 27 section nineteen. This section shall not impair the powers which courts
 28 of equity may otherwise exercise.

Special judg-
 ments against
 bankrupts or
 insolvents.
 1885, 59.
 1892, 209.
 R. L. 177, § 24
 140 Mass. 69
 175 Mass. 559.
 185 Mass. 58
 223 Mass. 274.
 249 Mass. 459.

Special judgment if insolvent, etc., has given bond to dissolve an attachment.
 1875, 68, § 1.
 1880, 246, § 8.
 P. S. 171, § 23.
 1888, 405, § 1.
 R. L. 177, § 25.
 100 Mass. 450.
 112 Mass. 293.
 113 Mass. 382.
 119 Mass. 426.
 122 Mass. 67.
 124 Mass. 115.
 128 Mass. 228.
 170 Mass. 179.
 175 Mass. 559.
 212 Mass. 416.
 223 Mass. 274.
 226 Mass. 14.
 229 Mass. 33,
 308
 249 Mass. 459.
 252 Mass. 376.
 260 Mass. 184.

SECTION 25. If a plaintiff would be entitled to a judgment or decree 1
 except for the bankruptcy or insolvency of a defendant, or his discharge 2
 therein, who has given a bond to dissolve an attachment or to release 3
 money or property brought within the control of a court of equity in 4
 any manner specified in the preceding section, which attachment was 5
 made or money or property brought within control more than four 6
 months prior to the commencement of proceedings in bankruptcy, or, in 7
 voluntary proceedings in insolvency, more than four months prior to 8
 the first publication of the notice of the issuing of the warrant, or, in 9
 involuntary proceedings in insolvency, more than four months prior to 10
 the first publication of the notice of the filing of the petition, or, in pro- 11
 ceedings in composition in insolvency in which no assignment has been 12
 made, more than four months prior to the notice by the register to the 13
 creditors of the debtor's proposal of composition, the court may at any 14
 time, upon motion, enter a special judgment or decree for the plaintiff, 15
 which shall be a sufficient judgment or decree, within the meaning of 16
 the condition of the bond, if like that set forth in sections one hundred 17
 and twenty and one hundred and twenty-five of chapter two hundred 18
 and twenty-three, to enable him to maintain an action against the 19
 sureties thereon. 20

Special judgment upon bankruptcy, etc., of petitioner for review
 1875, 68, § 3.
 1880, 246, § 8.
 P. S. 171, § 24.
 1888, 405, § 3.
 R. L. 177, § 26.
 249 Mass. 459.

SECTION 26. The court may enter a special judgment, with like 1
 effect, if a defendant who petitions for a review is adjudged a bankrupt, 2
 or a warrant in insolvency is issued against his estate, or he is discharged 3
 upon proceedings in composition if no assignment has been made, before 4
 or after having given the security required upon such petition, and if 5
 the attachment in the original action was not made within the time named 6
 in the preceding section. 7

SET-OFF OF EXECUTIONS.

Set-off of executions.
 1732-3, 12, § 2.
 1810, 84.
 1830, 124.
 R. S. 97.
 §§ 74-76.
 G. S. 133,
 §§ 23-25.
 P. S. 171,
 §§ 25-27.
 R. L. 177, § 27.
 7 Mass. 140
 105 Mass. 328.
 176 Mass. 46.

SECTION 27. Executions between the same parties may, if required 1
 by either party, be set off one against the other. In such case, the 2
 debtor in an execution which has been delivered to an officer to be 3
 served shall deliver his execution to the same officer, whether directed to 4
 him or to another, and the officer shall apply the smaller execution, so 5
 far as it will extend, to the satisfaction of the larger execution, and the 6
 balance due on the larger execution may be collected and paid by him as 7
 if there had been no set-off; but such set-off shall not be allowed — 8

215 Mass. 403. 219 Mass. 299. 247 Mass. 530.

9 Met. 509.
 13 Met. 482.
 13 Mass. 525.
 22 Pick. 210.
 176 Mass. 161.

First, If the creditor in one of the executions is not, in the same 9
 capacity and trust, the debtor in the other. 10
 Second, If the amount due on the first execution was lawfully and 11
 in good faith assigned to another person before the creditor in the second 12
 execution became entitled to the amount due thereon. 13
 Third, If there are several creditors in one execution, from a part of 14
 whom only the amount due on the other is due. 15
 Fourth, If there are several debtors in one execution, to a part of 16
 whom only the amount due on the other is due. 17
 Fifth, As to the portion of either execution upon which the attorney 18
 has a lien under section fifty of chapter two hundred and twenty-one. 19

LEVY OF EXECUTION AND PERSONAL PROPERTY EXEMPT THEREFROM.

1 SECTION 28. If an execution is in the alternative, so that it may
 2 be lawfully served in any of two or more ways, the creditor or his at-
 3 torney may require the officer to serve it in any of said ways; and the
 4 officer shall conform to such directions if it is in his power.

Creditor may
 direct mode of
 service.
 R. S. 97, § 12.
 G. S. 133, § 26.

P. S. 171, § 28. 11 Mass. 317. 2 Gray, 210. 236 Mass. 93.
 R. L. 177, § 28. 3 Cush. 460. 3 Gray, 496.

1 SECTION 29. If the creditor directs an officer to levy his execution
 2 on land, the officer shall serve it as provided in the following chapter.
 3 If he directs the officer to levy it on the personal property of the debtor,
 4 the officer shall serve it as provided in the following sections.

Levy on land
 and personal
 property.
 R. S. 97, §§ 16,
 17.

G. S. 133, § 27. P. S. 171, § 29. R. L. 177, § 29. 7 Mass. 123.

1 SECTION 30. An execution against a corporation, if levied upon its
 2 property, shall be levied in the same manner as other executions.

Levy on prop-
 erty of a
 corporation.

R. S. 97, § 42. P. S. 171, § 30. 1931, 426, § 86.
 G. S. 133, § 28. R. L. 177, § 30.

1 SECTION 31. All property which by common law is liable to be taken
 2 on execution, may be taken and sold thereon, except as otherwise ex-
 3 pressly provided.

Property
 liable to
 execution.

R. S. 97, § 19. 7 Mass. 438. 17 Mass. 405. 13 Allen, 449.
 G. S. 133, § 29. 9 Mass. 537. 3 Pick. 368. 116 Mass. 410.
 P. S. 171, § 31. 12 Mass. 505. 8 Pick. 298. 143 Mass. 123.
 R. L. 177, § 31. 15 Mass. 534. 7 Gray, 491.

1 SECTION 32. Current gold or silver coin may be taken on execution,
 2 and may be paid to the creditor as money collected.

Current coin.
 R. S. 97, § 20.

G. S. 133, § 30. P. S. 171, § 32. R. L. 177, § 32. 16 Pick. 567.

1 SECTION 33. Bank notes and all other bills or evidences of debt,
 2 issued by a moneyed corporation and circulated as money, may be
 3 taken on execution and paid to the creditor at their par value as money
 4 collected, if he will accept them; otherwise, they shall be sold like other
 5 chattels.

Bank notes.
 R. S. 97, § 21.
 G. S. 133, § 31.
 P. S. 171, § 33.
 R. L. 177, § 33.
 15 Mass. 534.
 1 Pick. 271.

147 Mass. 81.

1 SECTION 34. The following property of the debtor shall be exempt
 2 from seizure on execution:

Property ex-
 empt from
 execution.

C. L. 104, § 8. R. S. 97, § 22. 135 Mass. 401.
 1698, 11, § 5. 1857, 235. 198 Mass. 315.
 1732-3, 7, § 6. G. S. 133, § 32. 207 Mass. 159.
 1736-7, 13, § 7. P. S. 171, § 34. 242 Mass. 321.
 1737-8, 17, § 7. R. L. 177, § 34. 272 Mass. 334.
 1759-60, 12, § 4. 6 Allen, 292. 96 U. S. 595.
 1762-3, 18, § 4.

3 First, The necessary wearing apparel of himself and of his wife and
 4 children; one bedstead, bed and the necessary bedding for every two
 5 persons of the family; one iron stove used for warming the dwelling
 6 house, and fuel not exceeding the value of twenty dollars procured and
 7 intended for the use of the family.

1805, 100, § 1.
 1817, 108.
 1832, 58.
 15 Mass. 170.
 19 Pick. 470.
 10 Met. 506.

8 Second, Other household furniture necessary for him and his family,
 9 not exceeding three hundred dollars in value.

1805, 100, § 1.
 1874, 38.

4 Cush. 359. 113 Mass. 333. 207 Mass. 407.
 11 Allen, 582. 167 Mass. 371.

10 Third, The bibles, school books and library, used by him or his family,
 11 not exceeding fifty dollars in value.

1805, 100, § 1.
 1855, 264.

1805, 100, § 1. 1813, 172	Fourth, One cow, six sheep, one swine and two tons of hay.	12
	15 Mass. 205. 2 Allen, 219. 134 Mass. 401. 11 Gray, 211. 8 Allen, 583.	
1805, 100, § 1. 1855, 264. 5 Mass. 313.	Fifth, Tools, implements and fixtures necessary for carrying on his trade or business, not exceeding one hundred dollars in value.	13 14
	13 Mass. 82. 12 Gray, 351. 9 Allen, 156. 108 Mass. 52. 2 Pick. 80 2 Allen, 395. 14 Allen, 236. 123 Mass. 194. 10 Pick. 423. 3 Allen, 570. 101 Mass. 105. 134 Mass. 401. 6 Gray, 298. 5 Allen, 43, 148. 103 Mass. 181. 173 Mass. 90. 7 Gray, 67, 69. 6 Allen, 292.	
1855, 264. 6 Gray, 298. 7 Gray, 69. 9 Gray, 62. 10 Gray, 242.	Sixth, Materials and stock designed and procured by him and necessary for carrying on his trade or business, and intended to be used or wrought therein, not exceeding one hundred dollars in value.	15 16 17
	5 Allen, 148. 6 Allen, 292. 9 Allen, 156.	
1839, 75. 16 Gray, 211. 4 Allen, 157.	Seventh, Provisions necessary and procured and intended for the use of the family, not exceeding fifty dollars in value.	18 19
	5 Allen, 158.	
1851, 262.	Eighth, One pew occupied by him or his family in a house of public worship; but this provision shall not prevent the sale of a pew for the non-payment of a tax legally laid thereon.	20 21 22
1859, 142.	Ninth, Boats, fishing tackle and nets of fishermen actually used by them in the prosecution of their business, not exceeding one hundred dollars in value.	23 24 25
1809, 108, § 11. 1878, 265, § 70. P. S. 14, § 72.	Tenth, The uniform of an officer or soldier in the militia and the arms and accoutrements required by law to be kept by him.	26 27
	1887, 411, § 71. 1905, 465, §§ 90, 194. 1912, 67. 1890, 425, § 8. 1906, 504, § 7. 1917, 327, §§ 131, 1893, 367, § 71. 1908, 604, §§ 106, 209. 230, 268. R. L. 16, § 85.	
1822, 93, § 8.	Eleventh, Rights of burial and tombs while in use as repositories for the dead.	28 29
1860, 65. 1 Allen, 283. 3 Allen, 570.	Twelfth, One sewing machine, in actual use by each debtor or by his family, not exceeding one hundred dollars in value.	30 31
	6 Allen, 292. 190 Mass. 265.	
1870, 224, § 53.	Thirteenth, Shares in co-operative associations subject to chapter one hundred and fifty-seven, not exceeding twenty dollars in value in the aggregate.	32 33 34
1851, 340, § 1. 1855, 238, § 1. 1857, 298, § 1.	Fourteenth, Estates of homestead as defined in chapter one hundred and eighty-eight.	35 36
	G. S. 104, § 1. P. S. 123, § 1. R. L. 131, § 1.	

Indemnification of officer. R. S. 97, § 18. G. S. 133, § 33. P. S. 171, § 35. R. L. 177, § 35. 1921, 425, § 4. 7 Mass. 123. 150 Mass. 531.

SECTION 35. If there is reasonable doubt as to the ownership of personal property or as to its liability to be taken on execution, before or after the execution has been levied thereon, the officer may require sufficient security from the creditor to indemnify him for taking or continuing to hold the same. If sufficient security is not furnished within a reasonable time after the officer has made a written demand upon the creditor or his attorney, the officer may refuse to levy the execution or, if he has already levied it, may discharge his levy, without liability to the creditor therefor.

SALE OF PERSONAL PROPERTY TAKEN ON EXECUTION.

Sale of personal property on execution. 1772-3, 12. 1783, 57, § 5.

SECTION 36. Personal property seized on execution shall be safely kept by the officer, at the expense of the debtor, for four days at least; and shall be sold by public auction within fourteen days next after the

4 seizure, except as provided in the following sections, unless the debtor
 5 before such sale redeems it by otherwise satisfying the execution.

P. S. 171, § 36.

R. L. 177, § 36.

7 Gray, 416.

R. S. 97, § 23.
 G. S. 133, § 34

1 SECTION 37. The officer shall give notice of the time and place of
 2 sale by causing notices thereof to be posted forty-eight hours at least
 3 before the time of sale in a public place in the town where the sale is to be
 4 made, or by causing an advertisement of the time and place of sale to be
 5 published in a newspaper, if any, published in the town where the debtor
 6 had his last and usual place of residence.

Notice of sale.
 1772-3, 12.
 1783, 57, § 5.
 R. S. 97, § 24.
 G. S. 133, § 35.
 P. S. 171, § 37.
 R. L. 177, § 37.
 1915, 131.
 279 Mass. 49.

1 SECTION 38. If the value of such property to be sold exceeds three
 2 hundred dollars, the officer shall, at the request of either party, give
 3 notice of the sale by advertisement in a newspaper as provided in the
 4 preceding section; and the sale may be made at any time after the expira-
 5 tion of four days, and within thirty days after seizure on execution.

Same, if value
 exceeds three
 hundred
 dollars.
 R. S. 97, § 25.
 G. S. 133, § 36.
 P. S. 171, § 38.
 R. L. 177, § 38.

1 SECTION 39. If, at the time appointed for the sale, the officer con-
 2 siders it for the interest of all persons concerned to postpone it, he may
 3 adjourn it for not more than seven days, and so from time to time until
 4 the sale is completed; giving notice of every such adjournment by a
 5 public declaration thereof at the time and place previously appointed for
 6 the sale.

Adjournment
 of sale.
 R. S. 97, § 26.
 G. S. 133, § 37.
 P. S. 171, § 39.
 R. L. 177, § 39.
 9 Mass. 265.

1 SECTION 40. If a sale of such property on execution is enjoined, it may
 2 be adjourned by the court granting the injunction to await further order
 3 of the court, and upon dissolution of the injunction the court may order
 4 the sale to proceed, and may order additional notice of the adjourned
 5 sale.

Adjournment
 upon injunc-
 tion.
 1884, 175.
 R. L. 177, § 40

1 SECTION 41. If the highest bidder for an article at such sale refuses
 2 to take and pay for it, the officer shall sell it again by auction, at the
 3 same time or within ten days thereafter, giving notice of the second sale;
 4 and he shall account for what he receives on the second sale, and for any
 5 damages recovered of the first bidder for a loss on the re-sale, as for so
 6 much received on the execution.

Re-sale.
 R. S. 97, § 27.
 G. S. 133, § 38.
 P. S. 171, § 40.
 R. L. 177, § 41.
 7 Mass. 392.
 124 Mass. 291.

1 SECTION 42. The officer making such sale shall in his return of the
 2 execution particularly describe the property sold and the amount for
 3 which each article was sold; and if he is guilty of fraud in the sale or
 4 return, he shall be liable in tort to the party injured for five times the
 5 amount of the actual damage sustained by reason of such fraud.

R. L. 177, § 42.

102 Mass. 414.

Return of exe-
 cution. Lia-
 bility for fraud.
 1783, 57, § 5.
 R. S. 97, § 28.
 G. S. 133, § 39.
 P. S. 171, § 41.

1 SECTION 43. The officer shall apply the money arising from the sale
 2 to paying the charges and satisfying the execution, and shall return the
 3 residue, if any, to the debtor on demand, or shall apply and pay over the
 4 same as provided in the following sections.

R. S. 97, § 29.

G. S. 133, § 40.

P. S. 171, § 42.

R. L. 177, § 43.

Disposition
 of proceeds
 of sale.
 1772-3, 12.
 1783, 57, § 5.

1 SECTION 44. If the property sold on execution has been attached by
 2 another creditor, or seized on another execution, either by the same or
 3 another officer, or if before payment of such residue to the debtor another

Disposition
 among two
 or more cred-
 itors.
 1804, 83, § 6.

1819, 87.
R. S. 97, § 30.
G. S. 133, § 41.
P. S. 171, § 43.
R. L. 177, § 44.
210 Mass. 90.

writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments in the order in which the respective writs of attachment or execution were served, and any residue returned to the debtor.

Disposition upon successive attachments.
1804, 83, § 6.
1819, 87.
R. S. 97, § 31.
G. S. 133, § 42.
P. S. 171, § 44.
R. L. 177, § 45.
1910, 541, § 1.
9 Mass. 265.

SECTION 45. If an attachment or seizure on execution is made of any property which may be attached without taking and keeping the exclusive possession thereof, and if the same property is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who made the first attachment or seizure; and if the latter, before he receives such notice, pays to the debtor the balance of the proceeds of a sale, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure.

LEVY ON TERMS FOR YEARS.

Levy on terms for years.
1834, 162, § 1.
R. S. 97, § 33.
1847, 267, § 4.
G. S. 133, § 49.
P. S. 171, § 51.
R. L. 177, § 52.
142 Mass. 206.

SECTION 46. Terms for years, if the original lease was for one hundred years or more, and fifty years or more thereof remain unexpired, shall be regarded as real estate, for the levy of an execution thereon. Other terms for years shall be seized and sold on execution in like manner as personal property, except that the officer before selling the same shall give fourteen days' notice of the time and place of sale, by leaving a written notice thereof with the debtor personally or at his last and usual place of abode, and by posting a notice on the leased premises.

SUSPENSION OF LEVY.

Suspension of levy.
R. S. 97, § 34.
G. S. 133, § 50.
P. S. 171, § 52.
R. L. 177, § 53.
3 Met. 251.
5 Met. 90.
97 Mass. 339.

SECTION 47. If personal property has been seized on execution, and the further service of the execution is suspended by reason of a prior attachment or seizure of the same property, such property shall remain bound by such later seizure until sold, in whole or in part, under the prior attachment or seizure, or until that attachment or seizure is dissolved.

100 Mass. 126.

128 Mass. 427.

Same subject.
R. S. 97, § 35.
G. S. 133, § 51.
P. S. 171, § 53.
R. L. 177, § 54.
111 Mass. 84.

SECTION 48. If such property is sold in part under the prior attachment or seizure, or if that attachment or seizure is dissolved, the property or any part thereof remaining undisposed of shall continue bound for thirty days thereafter by the seizure on the execution; and service of the execution may be completed as if the estate had been first seized thereon within said thirty days, although the return day of the execution has passed.

DEATH, ETC., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY OR SERVICE.

Death, etc., of officer after beginning of levy or service.
R. S. 97, § 13.
G. S. 133, § 52.
P. S. 171, § 54.
1885, 125.
R. L. 177, § 55.
2 Pick. 276.
148 Mass. 501.

SECTION 49. If an officer, who has begun to serve an execution or other writ or process, dies or becomes incapable of completing the service and return thereof, the service may be completed by any officer qualified to serve it; or in case of illness or absence, the judgment creditor or the officer who began to serve the writ or process may delegate any officer qualified to serve it temporarily to act for him during said illness or absence. If the first officer has not made a certificate of his doings, the second officer shall certify whatever he finds to have been done by the first officer, and shall add thereto a certificate of his own doings.

1 SECTION 50. If an officer has begun to serve an execution, he may
 2 complete the service and return thereof, although he is removed from
 3 office or although the service cannot be completed until after the return
 4 day.

Removal of officer, etc., after beginning of levy.
 R. S. 97, § 14.

G. S. 133, § 53. P. S. 171, § 55. R. L. 177, § 56. 166 Mass. 33.

1 SECTION 51. If either party dies after any property, real or personal,
 2 has been seized on execution, the service thereof may be completed in
 3 like manner and with like effect as if both parties were living and the
 4 officer may appoint an appraiser for the deceased party.

Death of party after beginning of levy.
 R. S. 97, § 15.
 G. S. 133, § 54.

P. S. 171, § 56. 9 Mass. 209. 222 Mass. 131.
 R. L. 177, § 57. 3 Met. 251.

PENALTY ON OFFICER FOR DETAINING MONEY COLLECTED.

1 SECTION 52. An officer who, upon demand by the creditor, unreason-
 2 ably neglects to pay money collected by him on execution shall forfeit
 3 to the creditor five times the lawful interest of the money from the time
 4 of the demand until it is paid.

Penalty for detaining money collected.
 1736-7, 19, § 2.
 1784, 44, § 3.

R. S. 97, § 73. P. S. 171, § 57. 7 Mass. 464.
 G. S. 133, § 56. R. L. 177, § 58. 4 Met. 149.

CHAPTER 236.

LEVY OF EXECUTIONS ON LAND.

SECT.

LAND SUBJECT TO LEVY.

- 1. Land and rights liable to be taken.
- 2. Estates tail.

PROCEEDINGS UPON LEVY.

- 3. Notice and appraisal.
- 4. Deposit of notice of land taken on execution.
- 5. Entries by register.

LEVY BY SET-OFF.

- 6. Appointment of appraisers.
- 7. Duties of appraisers.
- 8. Estate to be valued as a fee simple, unless.
- 9. Appraisal of land subject to mortgage.
- 10. Appraisal when several parcels are levied on.
- 11. Description of land in certificate.
- 12. Levy on land held jointly or in common.
- 13. Levy on land incapable of division.
- 14. Levy on life estate.
- 15. Levy on rents and profits.
- 16. Levy on leased land.
- 17. Same subject.
- 18. Levy of execution upon property in which homestead exists.
- 19. Officer to deliver seisin to creditor.

SECT.

- 20. Momentary seisin, when.
- 21. Return and record of execution.
- 22. Effect of record.
- 23. Officer's return.
- 24. Levy void, when.
- 25. Levy valid against the creditor.

LEVY BY SALE.

- 26. Levy by sale.
- 27. Sale, how made.
- 28. Notice of sale.
- 29. Adjournment.
- 30. Adjournment by court.

SUSPENSION OF LEVY.

- 31. Suspension of levy.
- 32. Proceedings after dissolution of prior attachment.

RIGHT OF REDEMPTION.

- 33. Right of redemption.
- 34. Ascertainment of amount due.
- 35. Redemption of mortgage paid by creditor or purchaser.
- 36. Redemption of right to redeem from tax sale.
- 37. Redemption of life estate if levy is on rents and profits.

SECT.

- 38. Remedy if creditor does not release.
- 39. Suit to redeem.
- 40. Proceedings.
- 41. Costs.
- 42. Rights of debtor, creditor or purchaser may be exercised by his heirs, etc.

GENERAL PROVISIONS.

- 43. When levy made.
- 44. Notice, how served.
- 45. Fees and charges added to debt.
- 46. Levy upon lands in different counties.

SECT.

- 47. Action for possession to be brought, when.
- 48. Levy on land subject to lien not allowed for.
- 49. Levy on right of redeeming land taken on execution.
- 50. Waiver of levy.
- 51. Scire facias on invalid levy.
- 52. Procedure.
- 53. Levy on land of deceased.
- 54. Redemption and exemption.
- 55. Curtesy and dower in land taken on execution.

LAND SUBJECT TO LEVY.

Land and rights liable to be taken.
 1696, 10,
 §§ 1, 3.
 1716-17, 3, § 1.
 1735-6, 9, § 1.
 1783, 57,
 §§ 2, 4.
 R. S. 73,
 §§ 1, 31.
 1844, 107, § 1.
 1855, 453.
 G. S. 103, § 1.
 P. S. 172, § 1.
 R. L. 178, § 1.
 13 Mass. 207.
 14 Mass. 378.

SECTION 1. All the land of a debtor in possession, remainder or reversion, all his rights of entry into land and of redeeming mortgaged land, and all such land and rights fraudulently conveyed by him with intent to defeat, delay or defraud his creditors, or purchased or directly or indirectly paid for by him but the record title of which has been retained in the vendor or conveyed to a third person with intent to defeat, delay or defraud the creditors of the debtor, or on a trust for him, express or implied, whereby he is entitled to a present conveyance, may, except as provided in chapter one hundred and eighty-eight, be taken on execution for his debts as provided in this chapter.

16 Mass. 345.
 1 Pick. 351.
 2 Pick. 508.
 3 Pick. 484.
 4 Pick. 131.
 17 Pick. 137.
 1 Met. 528.
 7 Cush. 431.
 2 Gray, 538.
 11 Gray, 217.
 1 Allen, 235.
 2 Allen, 77.

13 Allen, 257.
 97 Mass. 310.
 99 Mass. 478.
 101 Mass. 422.
 102 Mass. 56.
 114 Mass. 520.
 116 Mass. 410.
 120 Mass. 481.
 121 Mass. 476.
 125 Mass. 11.
 126 Mass. 278.
 150 Mass. 289.

151 Mass. 71.
 175 Mass. 373.
 189 Mass. 390, 424.
 225 Mass. 217.
 228 Mass. 385.
 230 Mass. 197.
 231 Mass. 563.
 233 Mass. 158.
 256 Mass. 250.
 258 Mass. 402.
 265 Mass. 403, 428.
 267 Mass. 274.

Estates tail.
 1791, 60, § 2.
 R. S. 73, § 2.
 G. S. 103, § 2.
 P. S. 172, § 2.

SECTION 2. Estates tail may be taken on execution in like manner as estates in fee simple; and whoever lawfully holds such land under the execution shall have an estate in fee simple therein.

R. L. 178, § 2.

3 Gray, 162.

PROCEEDINGS UPON LEVY.

Notice and appraisal.
 R. S. 73, § 22.
 G. S. 103, § 24.
 P. S. 172, § 3.
 R. L. 178, § 3.
 111 Mass. 84.

SECTION 3. An officer taking land on execution shall give notice thereof to the debtor, if found within his precinct, cause the land to be appraised as provided in this chapter, if an appraisal is required, and complete the levy without unnecessary delay.

124 Mass. 172.

130 Mass. 25.

Deposit of notice of land taken on execution.
 1862, 190,
 §§ 1, 4.
 1871, 123.
 1873, 297, § 1.
 P. S. 172, § 4.
 R. L. 178, § 4.
 1920, 344.
 143 Mass. 195.
 209 Mass. 368.

SECTION 4. If land, which was not attached on mesne process in the action in which the execution issued, is taken on execution, the officer shall forthwith deposit in the registry of deeds for the county or district where the land lies a copy of the execution with a memorandum thereon that the execution is in his hands for the purpose of taking the land of the defendant, and no such taking shall be valid against a purchaser in good faith, for value and without notice, before such copy is deposited. If land was attached on mesne process, a copy of the execution with a memorandum as aforesaid shall be deposited by the officer in the registry

10 of deeds for the county or district where the land lies, within forty days
 11 after the judgment in the action, and the attachment shall become void
 12 forty days after said judgment unless the copy is so deposited; provided,
 13 that if land was attached on mesne process in Nantucket county and judg-
 14 ment was rendered in another county, or if judgment was rendered in
 15 Nantucket county and land was attached in another county, said copy
 16 shall be deposited within seventy days after judgment in the action,
 17 and the attachment shall become void seventy days after said judgment
 18 unless the copy is so deposited.

1 SECTION 5. The register shall note on every such copy the day,
 2 hour and minute when received and shall file it in his office. He shall
 3 enter in the book, kept by him for the entry of attachments of land, the
 4 names of the plaintiff and defendant as stated in the copy and the time
 5 when the copy was deposited.

Entries by
 register.
 1862, 190, § 2.
 P. S. 172, § 5.
 R. L. 178, § 5.

LEVY BY SET-OFF.

1 SECTION 6. The officer shall cause the land to be appraised by three
 2 disinterested persons, to be appointed, one by the creditor, one by the
 3 debtor whose land is taken or, if the debtor is absent from or does not
 4 reside in the commonwealth, by his agent or attorney if he has any
 5 known to the officer, and one by the officer. If the debtor is absent from
 6 or does not reside in the commonwealth and has no agent or attorney
 7 known to the officer or if he neglects within a reasonable time to appoint
 8 an appraiser, the officer shall appoint one for him.

Appointment
 of appraisers.
 1716-17, 3, § 1.
 1719-20, 9, § 1.
 1783, 57, § 2.
 R. S. 73, §§ 3,
 22.
 1851, 257.
 1852, 256.
 G. S. 103,
 §§ 3, 24.
 P. S. 172, § 7.
 R. L. 178, § 7.

8 Mass. 113.	8 Met. 599.	2 Allen, 338.	114 Mass. 429.
11 Mass. 468.	2 Cush. 32.	110 Mass. 529.	122 Mass. 267.
2 Pick. 382, 443.	15 Gray, 28.	113 Mass. 347.	126 Mass. 93.

1 SECTION 7. The appraisers shall be sworn, before a justice of the
 2 peace or the officer, faithfully and impartially to appraise the land
 3 shown to them as taken on the execution, shall, with the officer, view
 4 the same and shall make such examination of it as may be necessary
 5 to form a just estimate of its value. A certificate of their appraisal
 6 signed by them shall be endorsed on the execution; but if one of the
 7 appraisers who was sworn and acted with the others refuses to sign the
 8 certificate, the certificate of the others shall be sufficient.

Duties of
 appraisers.
 1716-17, 3, § 1.
 1719-20, 9, § 1.
 1783, 57, § 2.
 R. S. 73, §§ 3,
 4, 7.
 1848, 317.
 1851, 257.
 G. S. 103, §§ 3,
 4, 7.
 P. S. 172,
 §§ 8, 9.

R. L. 178, § 8.	8 Mass. 284.	2 Pick. 331,
7 Mass. 71.	14 Mass. 143.	382, 564.

1 SECTION 8. The value of the estate of the debtor shall be appraised
 2 as an estate in fee simple in possession, unless it is expressly stated in the
 3 description endorsed on the execution to be a less estate. All the free-
 4 hold estate and interest which the debtor has in the land shall be taken
 5 and shall pass by the levy, unless it is a larger estate than is mentioned
 6 in said description.

Estate to be
 valued as a
 fee simple,
 unless.
 R. S. 73, § 8.
 G. S. 103, § 8.
 P. S. 172, § 10.
 R. L. 178, § 9.
 14 Mass. 404.

1 Met. 345.	4 Met. 404.	125 Mass. 7.
-------------	-------------	--------------

1 SECTION 9. If a right of redeeming mortgaged land is taken and set
 2 off on execution, the appraisers shall deduct the value of the encumbrance
 3 or the amount of the mortgage debt, when known, from the appraised
 4 value of the land, and the amount so deducted shall be stated in the
 5 return of the execution.

Appraisal of
 land subject
 to mortgage.
 R. S. 73, § 31.
 G. S. 103, § 33.
 P. S. 172, § 11.
 R. L. 178, § 10.

11 Mass. 222.	10 Cush. 526.	125 Mass. 66.
16 Mass. 400.	97 Mass. 339.	258 Mass. 402.
4 Met. 404.		

Appraisal when
several parcels
are levied on.
R. S. 73, § 6.
G. S. 103, § 6.
P. S. 172, § 12.
R. L. 178, § 11.
7 Mass. 71.
11 Mass. 515.

SECTION 10. If the execution is levied at the same time upon several parcels of land, each parcel may be separately appraised, or all may be appraised together. If several parcels are taken successively on the same execution, all the parcels may be appraised by the appraisers first appointed, or appraisers may be appointed for each parcel.

2 Pick. 382.

10 Allen, 494.

Description
of land in
certificate.
R. S. 73, § 5.
G. S. 103, § 5.
P. S. 172, § 13.
R. L. 178, § 12.
9 Mass. 92.
11 Mass. 515.
4 Met. 404.
10 Met. 62.
6 Gray, 552.
8 Gray, 427.
125 Mass. 7.

SECTION 11. Land levied upon, whether an entire parcel or an undivided part, and whether the debtor's estate therein is a fee simple or a less estate, and whether it is in possession, reversion or remainder, shall be described, by metes and bounds or otherwise, with as much precision as is necessary in a deed of land, and in such manner that the land may be known and identified. Such description may be contained in the certificate of the appraisers or in the return of the officer, and the description in either may be referred to and adopted in the other.

Levy on land
held jointly
or in common.
1783, 57, § 2.
R. S. 73, § 9.
G. S. 103, § 9.
P. S. 172, § 14.
R. L. 178, § 13.
12 Mass. 348,
474.
13 Mass. 57.
21 Pick. 283.
215 Mass. 65.
265 Mass. 428.

SECTION 12. If land is held by a debtor in joint tenancy or as a tenant in common, the share thereof belonging to the debtor may be taken on execution, and shall thereafter be held in common with the co-tenant. If the whole share of the debtor is more than sufficient to satisfy the execution, the levy shall be made upon such undivided portion of such share as will, in the opinion of the appraisers, satisfy the execution, and such undivided portion shall be held in common with the debtor and the other co-tenant.

Levy on land
incapable of
division.
1818, 115, § 1.
R. S. 73, § 10.
G. S. 103, § 10.
P. S. 172, § 15.
R. L. 178, § 14.
101 Mass. 418.

SECTION 13. If the land levied upon cannot be divided without damage to the whole and is more than sufficient to satisfy the execution, the levy shall be made upon such undivided portion of the whole as will, in the opinion of the appraisers, satisfy the execution, and such undivided portion shall be held in common with the debtor.

111 Mass. 83.

Levy on life
estate.
R. S. 73, § 11.
G. S. 103, § 11.
P. S. 172, § 16.

SECTION 14. A life estate may be taken and set off to the creditor like other land at the appraised value or, at the election of the creditor, the execution may be levied on the rents and profits.

R. L. 178, § 15.

10 Mass. 260.

15 Mass. 439.

Levy on rents
and profits.
R. S. 73, § 12.
G. S. 103, § 12.
P. S. 172, § 17.
R. L. 178, § 16.

SECTION 15. If execution is levied on rents and profits, the annual value thereof shall be determined by the appraisers, and the land shall be set off to the creditor for such time as will satisfy the execution at the rate of rents and profits as determined by the appraisers, if the life estate endures so long, computing interest on the amount due on the execution and deducting the rents and profits as they accrue as so much paid from time to time. If the life estate expires before the end of the term so fixed, the creditor may have a new action on the judgment to recover the amount then due thereon.

Levy on
leased land.
R. S. 73, § 13.
G. S. 103, § 13.
P. S. 172, § 18.
R. L. 178, § 17.

SECTION 16. If the land levied upon is under lease to a third person, and the reversion of the whole is taken on the execution, the lessee shall pay to the creditor the rent accruing after the levy, except such part as he has paid before notice of the levy.

1 SECTION 17. If the land is under lease as aforesaid and the reversion
 2 of a part only is taken, the appraisers shall determine the portion of the
 3 whole annual rent to be paid to the creditor, and the lessee shall pay it
 4 to him.

Same subject.
 R. S. 73, § 14.
 G. S. 103, § 14.
 P. S. 172, § 19.
 R. L. 178, § 18.

17 Mass. 439

1 SECTION 18. If a judgment creditor requires an execution to be
 2 levied on property which is claimed by the debtor to be as a homestead
 3 exempt from such levy, and if the officer holding such execution is of
 4 opinion that the premises are of greater value than eight hundred dol-
 5 lars, appraisers shall be appointed to appraise the property in the manner
 6 provided by section six. If, in the judgment of the appraisers, the prem-
 7 ises are of greater value than eight hundred dollars, they shall set off
 8 to the judgment debtor so much of the premises, including the dwelling
 9 house, in whole or in part, as shall appear to them to be of the value of
 10 eight hundred dollars; and the residue of the property shall be levied
 11 upon and disposed of in like manner as land not exempt from levy on
 12 execution; and if the property levied on is subject to a mortgage, it may
 13 be set off or sold subject to the mortgage and to the estate of home-
 14 stead, in like manner as land subject to a mortgage only.

Levy of execu-
 tion upon prop-
 erty in which
 homestead
 exists.
 1851, 340, § 7.
 1855, 238, § 6.
 1857, 298, § 15.
 1858, 62.
 G. S. 104, § 11.
 P. S. 123, § 13.
 R. L. 131, § 13.
 11 Gray, 217.
 6 Allen, 401.
 99 Mass. 7.

1 SECTION 19. An officer serving an execution shall deliver to the
 2 creditor or to his attorney seisin and possession of the land taken thereon,
 3 so far as the nature of the estate and the title of the debtor will admit;
 4 but if the estate taken is a remainder, reversion or right of redemption,
 5 the officer shall not oust the person lawfully in possession of the land,
 6 but shall assign to the creditor the right which the debtor had therein,
 7 and make his return accordingly.

Officer to del-
 iver seisin to
 creditor.
 1716-17, 3, § 1.
 1719-20, 9, § 1.
 1783, 57, § 4.
 R. S. 73, § 15.
 G. S. 103, § 15.
 P. S. 172, § 20.
 R. L. 178, § 19.

1 SECTION 20. If an execution is levied on land of which a person other
 2 than the debtor is actually seized, the officer shall deliver to the creditor
 3 or to his attorney such momentary seisin and possession thereof as will
 4 enable the creditor to maintain an action therefor upon his own seisin;
 5 but the officer shall not oust the tenant then in possession.

Momentary
 seisin, when.
 R. S. 73, § 16.
 G. S. 103, § 16.
 P. S. 172, § 21.
 R. L. 178, § 20.
 3 Mass. 523.

128 Mass. 427.

260 Mass. 33.

1 SECTION 21. The officer shall return the execution, with a certificate
 2 of his doings endorsed thereon, to the court to which it is returnable,
 3 and such execution and certificate shall be forthwith recorded. The
 4 officer shall also, within three months after the levy has been completed,
 5 cause the execution and return to be recorded in the registry of deeds
 6 for the county or district where the land lies.

Return and
 record of exec-
 ution.
 1696, 10, § 2.
 1716-17, 3, § 1.
 1719-20, 9, § 1.
 1735-6, 9, § 2.
 1783, 57, § 2.
 R. S. 73, § 17.

G. S. 103, § 17.
 P. S. 172, § 22.
 1895, 437.

R. L. 178, § 21.
 1917, 326.
 15 Mass. 137.

3 Pick. 331.
 135 Mass. 65.
 148 Mass. 501.

1 SECTION 22. Such record in the registry of deeds of an execution
 2 issued by a district court, and of the levy thereon, shall be prima facie
 3 evidence of the regularity of the judgment and prior proceedings in the
 4 case.

Effect of
 record.
 1853, 269, § 2.
 G. S. 103, § 18.
 P. S. 172, § 23.

R. L. 178, § 22.

1917, 326.

1 SECTION 23. The return of the officer on the execution shall, in
 2 addition to the other requirements of law, set forth substantially —

Officer's
 return.
 R. S. 73, § 23.

1852, 256.
 G. S. 103, § 25.
 P. S. 172, § 24.

R. L. 178, § 23.
 10 Met. 62
 97 Mass. 310.

103 Mass. 151.
 118 Mass. 517.
 125 Mass. 7.

9 Met. 413, 476.	First, The time when the land was taken on execution;	3
2 Mass. 154.	Second, Either that the appraisers were appointed by the officer, the	4
8 Mass. 284.	creditor and the debtor, or that the debtor was absent from, or not resi-	5
14 Mass. 20.	dent in, the commonwealth and had no agent or attorney known to the	6
2 Cush. 32,	officer, or neglected to appoint an appraiser, and the officer appointed	7
417.	one for him;	8
10 Cush. 247.		
8 Gray, 427.		
15 Gray, 28.		
16 Gray, 334.		
	4 Allen, 406. 12 Allen, 543. 124 Mass. 172. 126 Mass. 93.	
9 Met. 476.	Third, That the appraisers were duly sworn, unless a certificate of	9
	the oath is endorsed on the execution and signed by the person adminis-	10
	tering it;	11
9 Met. 413.	Fourth, That they appraised and set off the land at the value stated;	12
101 Mass. 418.	Fifth, That the officer either delivered seisin thereof to the creditor or	13
11 Mass. 515.	his attorney, or assigned it to him as provided in the case of a remainder	14
13 Mass. 361.	or incorporeal estate;	15
2 Pick. 382.	Sixth, The description of the land unless it is sufficiently described	16
	in the certificate of the appraisers and the return refers to and adopts that	17
	description; and	18
8 Mass. 284.	Seventh, If the appraisal is signed by only two of the appraisers, that	19
14 Mass. 143.	all three of them were present and acted in the appraisal.	20
2 Pick. 331.		

Levy void, when. SECTION 24. If the execution and return are not recorded in the registry of deeds within three months as aforesaid, the levy shall be void as against a creditor who has attached the same land or taken it on execution without notice of such levy, and also as against a purchaser in good faith for value and without such notice; but if such execution and return are recorded after the expiration of the three months, the levy shall be valid and effectual as against a conveyance, attachment or levy made after such recording.

Levy valid against the creditor. SECTION 25. If the execution and return have not been returned or recorded as aforesaid, the levy shall be so far valid against the creditor that he shall not waive the levy and have a new execution, except as provided in section fifty.

LEVY BY SALE.

Levy by sale. SECTION 26. Land and rights mentioned in section one and rights of redeeming land sold for the payment of taxes and other assessments may, if the creditor so elects, be sold on execution as provided in the four following sections, and, after satisfying the execution with the costs and charges, the surplus proceeds of the sale shall be applied and disposed of as provided upon a sale of personal property on execution under the preceding chapter. Land or rights taken on an execution in favor of the commonwealth shall in all cases be so sold.

128 Mass. 369. 129 Mass. 210. 133 Mass. 374. 140 Mass. 373.

Sale, how made. SECTION 27. The officer authorized to serve the execution shall make the sale by public auction to the highest bidder, and convey by deed to the purchaser all the debtor's title to the land or rights so sold. Such deed shall, if the execution with the return thereon has been returned, be valid as against the debtor or any person claiming under him who has actual notice thereof and, if recorded within three months after

7 such sale in the registry of deeds for the county or district where the
8 land lies, shall be valid as against any other person.

3 Allen, 357.	129 Mass. 210.	170 Mass. 239
101 Mass. 409.	135 Mass. 65.	238 Mass. 492
110 Mass. 273	143 Mass. 195.	270 Mass. 96.
128 Mass. 427.	145 Mass. 501.	

4 Gray, 168,
486.

1 SECTION 28. The officer, thirty days at least before the sale, shall
2 deliver to the debtor, if found within his precinct, a written notice of
3 the time and place of sale and shall post such a notice in a public place
4 in the town where the land lies and also in two adjoining towns, if there
5 are so many in the county. The officer shall also publish such a notice
6 once in each of three successive weeks, the first publication to be not less
7 than twenty-one days before the day of sale, in a newspaper published
8 in the town where the land lies.

Notice of sale.
1798, 77, § 4.
R. S. 73, § 39.
G. S. 103, § 41.
P. S. 172, § 29.
R. L. 178, § 28.
1912, 369.
1915, 127.
12 Mass. 513.
1 Pick. 351.
8 Cush. 35.
128 Mass. 427.
132 Mass. 457.

136 Mass. 414.	163 Mass. 147.	228 Mass. 385, 417.
155 Mass. 451.	164 Mass. 209.	270 Mass. 96.
159 Mass. 432.	219 Mass. 588.	

1 SECTION 29. If, at the time appointed for the sale, the officer con-
2 siders it for the interest of all persons concerned to postpone it, he may
3 adjourn it for not more than seven days, and so from time to time until
4 the sale is completed, giving notice of every such adjournment by a public
5 declaration thereof at the time and place previously appointed for the
6 sale.

Adjournment.
1798, 77, § 4.
R. S. 73, § 40.
G. S. 103, § 42.
P. S. 172, § 30.
R. L. 178, § 29.
4 Pick. 354.
101 Mass. 409.
179 Mass. 456.

1 SECTION 30. Section forty of chapter two hundred and thirty-five
2 relative to adjournment by order of court shall apply to such sales.

Adjournment
by court.
1884, 175.

R. L. 178, § 30.

SUSPENSION OF LEVY.

1 SECTION 31. If land has been seized on execution and further service
2 thereof is suspended by reason of a prior attachment or seizure of the
3 same land, the officer making the later seizure shall cause a record thereof
4 to be made in the same manner as an attachment of land on mesne
5 process is recorded. Such record shall be sufficient notice of said seizure,
6 and the levy on such land shall be considered as having been made at
7 the time of such seizure if such record is made within three days there-
8 after; otherwise, at the time when said record is made. The land shall
9 remain bound by such seizure until set off or sold in whole or in part
10 under the prior attachment or seizure or until that attachment or seizure
11 is dissolved.

Suspension
of levy.
R. S. 97, § 34.
G. S. 133, § 50.
P. S. 171, § 52.
1887, 407, § 1.
R. L. 178, § 31.
3 Met. 245,
251.
97 Mass. 339.
189 Mass. 390.

1 SECTION 32. If land is set off or sold in part under a prior attachment
2 or seizure, or if that attachment or seizure is dissolved, the land or such
3 part thereof as remains undisposed of shall continue bound for thirty
4 days thereafter by the seizure on execution, and service of the execution
5 may be completed as if the land had been first seized thereon within
6 said thirty days, although the return day thereof has passed.

Proceedings
after dissolu-
tion of prior
attachment.
R. S. 97, § 35.
G. S. 133, § 51.
P. S. 171, § 53.
1887, 407, § 2.
R. L. 178, § 32.

111 Mass. 81.

RIGHT OF REDEMPTION.

1 SECTION 33. If land or rights have been taken and set off on execu-
2 tion, the debtor may within one year after the levy or, if such land or
3 rights have been sold on execution, within one year after such sale or

Right of
redemption.
1712-13, 8, § 1.
1735-6, 9, § 3.
1783, 57, § 3;
58, § 6.

1798, 77, § 5.
 1815, 137, § 1.
 R. S. 73, §§ 24,
 33, 42, 50.
 G. S. 103,
 §§ 26, 35, 44,
 59.
 1874, 188, § 3.
 1876, 235.
 P. S. 172,
 §§ 31, 32.
 R. L. 178, § 33.
 1 Pick. 485.
 2 Met. 510.
 2 Cush. 141.
 13 Allen, 262.
 166 Mass. 407.
 218 Mass. 129.
 222 Mass. 303.

within the time and upon the terms provided in section forty-seven, 4
 redeem the same by paying or tendering to the creditor or purchaser, 5
 as the case may be, the amount for which they were so set off or sold, 6
 with interest thereon from the time of the levy, all amounts paid for 7
 lawful taxes and assessments, reasonable expenses incurred for repairs 8
 and improvements and, in case of levy by set-off, all amounts lawfully 9
 paid on account of any mortgage or other lien recoverable under section 10
 forty-eight, and deducting from such amount in each case the rents and 11
 profits received or which might have been received by the creditor or 12
 purchaser and with which he is lawfully chargeable. The creditor or 13
 purchaser shall thereupon deliver to the debtor a deed of release, pre- 14
 pared by the debtor or at his expense, of the land or rights so taken and 15
 set off or sold. 16

Ascertainment
 of amount due.
 1783, 57, § 3.
 R. S. 73, § 25.
 G. S. 103, § 27.
 P. S. 172, § 33.
 R. L. 178, § 34.

SECTION 34. The debtor may in all cases cause the amount due for 1
 redemption to be ascertained at his own expense by three justices of the 2
 peace in the manner following: one of the justices shall be chosen by 3
 the debtor, one by the creditor, and one by the two first chosen; or if 4
 the creditor neglects to choose one, the justice chosen by the debtor 5
 shall appoint the other two. After a hearing before the three justices, 6
 they or two of them shall make and sign a certificate of the amount 7
 which they adjudge to be due for the redemption of the land, which 8
 certificate shall be final and conclusive between the parties. A tender 9
 by the debtor of the amount so adjudged to be due shall be a sufficient 10
 tender notwithstanding any previous tender. 11

Redemption
 of mortgage
 paid by
 creditor or
 purchaser.
 1815, 137, § 1.
 R. S. 73,
 §§ 34-36, 43.
 G. S. 103,
 §§ 36-38, 45.
 P. S. 172,
 §§ 34-36.
 R. L. 178, § 35.
 22 Pick. 390.

SECTION 35. If the creditor or, in case of a sale, the purchaser pays 1
 the debt due on a mortgage to which the land levied on is subject, the 2
 judgment debtor may redeem the mortgage from the creditor or pur- 3
 chaser at the time when, and upon the terms upon which, he might have 4
 redeemed it from the mortgagee if no execution had been levied. If the 5
 debtor does not so redeem the mortgage, the creditor or purchaser shall 6
 hold the land as an assignee of the mortgage and free from any right 7
 of redemption, notwithstanding the debtor has redeemed or offered to 8
 redeem the right taken on the execution. If the debtor does not within 9
 one year after the levy redeem the right taken on the execution, the 10
 creditor or purchaser shall hold the land against the debtor, notwith- 11
 standing the debtor has redeemed or offered to redeem the mortgage. 12

Redemption
 of right to
 redeem from
 tax sale.
 1881, 39.

SECTION 36. Rights of redeeming land sold for the payment of taxes 1
 or other assessments may, if sold on execution, be redeemed in the same 2
 manner as rights of redeeming mortgaged land so sold. 3

P. S. 172, § 37.

R. L. 178, § 36.

Redemption of
 life estate if
 levy is on
 rents and
 profits.
 1783, 57, § 3.
 R. S. 73, § 30.
 G. S. 103, § 32.
 P. S. 172, § 38.
 R. L. 178, § 37.

SECTION 37. If an execution is levied on rents and profits of a life 1
 estate, the debtor may, at any time before the debt with interest thereon 2
 is fully satisfied, redeem the same by paying or tendering to the creditor 3
 the amount then due to him; and the proceedings relative to such re- 4
 demption shall be the same as are provided for the redemption of other 5
 land. 6

Remedy if
 creditor does
 not release.
 1783, 57, § 3.
 R. S. 73,
 §§ 26, 44.

SECTION 38. If the debtor tenders the amount justly due for redemp- 1
 tion, and the creditor or, in case of a sale, the purchaser does not within 2
 seven days after the tender release the land as before provided, the 3

4 debtor may recover it, with costs, in a writ of entry on his own seisin
 5 against the creditor or purchaser as a disseisor; but before judgment
 6 therein is entered for him, he shall bring into court for the use of the
 7 creditor or purchaser the amount so tendered.

G. S. 103,
 §§ 28, 46
 P. S. 172, § 39.
 R. L. 178, § 38.
 19 Pick. 467.

1 SECTION 39. The debtor may, within the year before limited for
 2 redemption and irrespective of any tender, bring in the supreme judicial
 3 or the superior court in the county where the land lies, instead of a
 4 writ of entry, a suit in equity for redemption, under the two follow-
 5 ing sections.

Suit to
 redeem
 R. S. 73,
 §§ 27, 44
 G. S. 103,
 §§ 29, 46
 P. S. 172, § 40.

R. L. 178, § 39. 2 Cush. 141. 152 Mass. 17.

1 SECTION 40. The debtor shall in his bill offer to pay the amount
 2 found due for redemption and may set forth any tender he has made.
 3 The court shall determine the amount due, unless it has been already
 4 ascertained under section thirty-four, and shall require the debtor,
 5 within such time as it may order, to deposit with the clerk for the use
 6 of the creditor or purchaser the amount due for redemption. Upon the
 7 debtor's complying with the order, he shall be entitled to judgment and
 8 execution for seisin of the land as at common law.

Proceedings.
 R. S. 73,
 §§ 28, 44
 G. S. 103,
 §§ 30, 46
 P. S. 172, § 41
 R. L. 178, § 40.

1 SECTION 41. The court may award costs to either party, but the
 2 creditor or purchaser shall not be required to pay costs, unless it appears
 3 that he has unreasonably neglected to render, when requested, a just
 4 and true account of the amount due on the judgment, of the money
 5 expended in repairing and improving the land and of the rents and
 6 profits thereof; or unless it appears that a sufficient amount was ten-
 7 dered to him for the redemption of the land, and that he neglected for
 8 seven days thereafter to execute and deliver a release thereof as before
 9 required. If the creditor or purchaser has, before the commencement
 10 of the suit, tendered such a deed of release and alleges such tender and
 11 brings the deed into court to be delivered to the debtor, he shall recover
 12 costs.

Costs.
 R. S. 73,
 §§ 29, 44,
 G. S. 103,
 §§ 31, 46
 P. S. 172, § 42
 R. L. 178, § 41.
 130 Mass. 201.
 218 Mass. 129.
 222 Mass. 303.

1 SECTION 42. Everything required in this chapter to be done by or
 2 to a debtor or by or to a creditor or purchaser relative to the redemp-
 3 tion of an estate taken and set off or sold on execution may be done by
 4 or to his heirs, assigns, executor, administrator or by or to any person
 5 lawfully claiming under him or them, in like manner and with like effect
 6 as if done by or to him; except that if an executor or administrator re-
 7 covers the land, the recovery shall operate only as a discharge of the lien
 8 or encumbrance on the land, and the heir or other person entitled thereto
 9 shall be seized thereof under his title.

Rights of
 debtor, creditor
 or purchaser
 may be exer-
 cised by his
 heirs, etc.
 R. S. 73,
 §§ 46, 47,
 G. S. 103,
 §§ 50, 51,
 P. S. 172,
 §§ 43, 44
 R. L. 178, § 42.

GENERAL PROVISIONS.

1 SECTION 43. A levy by set-off or sale shall be considered as made at
 2 the time when the land is taken, and the subsequent proceedings and
 3 the officer's return thereof shall be valid, although made after the return
 4 day or after the removal or other disability of the officer.

When levy
 made.
 R. S. 73,
 §§ 22, 41.
 G. S. 103,
 §§ 24, 43.

P. S. 172, § 45. 3 Met. 245. 13 Allen, 262.
 1896, 464. 9 Met. 23 132 Mass. 332.
 R. L. 178, § 43. 2 Allen, 562. 155 Mass. 451.
 11 Mass. 153. 9 Allen, 147.

Notice, how served.
 1881, 207.
 P. S. 172, § 46.
 R. L. 178, § 44.
 130 Mass. 25.
 143 Mass. 195.
 210 Mass. 588.
 234 Mass. 25.

SECTION 44. Notice to the debtor under this chapter may be served upon him personally or left at his last and usual place of abode. If the debtor does not reside within the precinct of the officer serving the execution, and is not found by him therein, such officer shall, in addition to any other service required by law, send by mail, postpaid and addressed to the debtor at his residence as described in the execution, a copy of any notice service of which upon him would be required if he were found within such precinct.

1
2
3
4
5
6
7
8

Fees and charges added to debt.
 R. S. 73, § 45.
 G. S. 103, § 49.
 P. S. 172, § 47.
 R. L. 178, § 45.

SECTION 45. The fees and charges of levying an execution shall be added to and considered as part of the amount due on the execution, in the setting off or sale of land on execution, in the redemption thereof and in everything relative to the proceedings under the execution.

1
2
3
4

2 Allen, 562.

9 Allen, 147.

Levy upon lands in different counties.
 G. S. 103, § 47.
 P. S. 172, § 48.

SECTION 46. A levy upon lands in different counties or upon rights of redemption in such lands, under the same execution, may be made by an officer of any of such counties.

1
2
3

R. L. 178, § 46.

1914, 318.

Action for possession to be brought, when.
 1844, 107, § 4.
 1855, 453.
 G. S. 103, § 48.
 1874, 188, §§ 4, 5.
 1876, 235.
 P. S. 172, § 49.
 1886, 86.
 R. L. 178, § 47.
 1925, 217, § 3.
 1927, 167, §§ 1, 2.
 3 Allen, 508.
 6 Allen, 401.
 10 Allen, 144.
 12 Allen, 591.
 13 Allen, 257.
 110 Mass. 273.
 132 Mass. 53.
 139 Mass. 157.
 141 Mass. 489.
 149 Mass. 152.

SECTION 47. If an execution is levied on land or rights the record title to which fraudulently stands in the name of a person other than the debtor and such other person is in possession claiming title thereto, the levy shall be void unless the judgment creditor to whom the land is set off or the purchaser at the sale or a person lawfully claiming under either of them commences his action to recover possession thereof within one year after the recording of the execution and return in the registry of deeds in the case of a levy by set-off or after the recording of the deed therein in the case of a levy by sale; and such land or rights so set off or sold may be redeemed by the defendant in said action or by any person lawfully claiming under him, within three months from the date of the judgment recovered in said action for possession, in the manner and according to the terms and conditions provided in section thirty-three upon payment of the costs of such action for possession.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

189 Mass. 390.
 201 Mass. 236.
 215 Mass. 76.

225 Mass. 217.
 228 Mass. 385.
 230 Mass. 197.

231 Mass. 563.
 234 Mass. 25.
 241 Mass. 505.

260 Mass. 33.
 262 Mass. 191.

Levy on land subject to lien not allowed for.
 R. S. 73, § 32.
 G. S. 103, § 34.
 P. S. 172, § 50.
 R. L. 178, § 48.

SECTION 48. If, after an execution has been levied by setting off land, there proves to be a mortgage or other lien on the land or an estate of homestead therein, not known or allowed for, or not fully allowed for, by the appraisers, the creditor shall nevertheless be entitled to hold the land by force of the execution, except the estate of homestead, as against the debtor, and may recover, in a new action against the debtor, the amount of the homestead estate or the amount which he may lawfully pay on account of such mortgage or other lien, or so much thereof as has not been deducted and allowed for in the estimate of the appraisers.

1
2
3
4
5
6
7
8
9

Levy on right of redeeming land taken on execution.
 R. S. 73, § 48.
 G. S. 103, § 52.
 1877, 176.
 P. S. 172, § 51.
 R. L. 178, § 49.
 124 Mass. 330.
 234 Mass. 25.

SECTION 49. The right of redeeming land taken on execution may be taken and sold on another execution, in like manner as the right of redeeming mortgaged land may be taken and sold; and the debtor and those claiming under him may redeem the right sold under such second execution in like manner as if the right so sold had been a right of redeeming mortgaged land. All proceedings in levying such second execution, the redemption of the right sold under it and all the rights and

1
2
3
4
5
6
7

8 obligations of the several parties relative to such levy and redemption
 9 shall be substantially the same as if the right taken and sold on such
 10 second execution had been a right of redeeming mortgaged land.

1 SECTION 50. If, before an execution which has been levied on land
 2 is returned and recorded, it appears that there is a defect or error in the
 3 proceedings which would defeat the levy, or that the land levied upon
 4 cannot be held thereby, the creditor may waive the levy, which shall
 5 thereupon be void, and resort to any other remedy for the satisfaction
 6 of his judgment.

Waiver of levy.
 R. S. 73, § 20.
 G. S. 103, § 21.
 P. S. 172, § 52.
 R. L. 178, § 50.

1 SECTION 51. If, after the return of such execution, it appears to the
 2 creditor that the land levied on, or any part thereof, cannot be held
 3 thereby, he may take out from the court from which the execution issued
 4 a writ of scire facias requiring the debtor to appear and show cause why
 5 another execution should not be issued on the same judgment, and the
 6 writ may issue although there is a subsequent judgment for a part
 7 thereof not satisfied by the levy. If the debtor, after being duly sum-
 8 moned, does not show sufficient cause to the contrary, the levy of the
 9 former execution may be set aside and another execution issued for the
 10 amount then due on the original judgment and not included in a subse-
 11 quent judgment, but without interest or further costs.

Scire facias on
 invalid levy.
 1785, 6.
 R. S. 73, § 21.
 G. S. 103, § 22.
 1863, 125, § 1.
 P. S. 172, § 53.
 R. L. 178, § 51.
 19 Pick. 433.
 11 Met. 233.
 12 Met. 449.
 2 Gray. 326.
 10 Gray. 29.
 143 Mass. 365.
 150 Mass. 239.
 155 Mass. 320.
 206 Mass. 408.
 222 Mass. 480.

1 SECTION 52. If at the hearing the court finds that a part only of the
 2 land levied on is held thereby, a warrant may be issued, if the creditor
 3 so requires, to an officer qualified to serve the execution, requiring him
 4 to cause the part held thereby to be appraised at its value when taken.
 5 The officer shall thereupon cause such appraisal to be made in the manner
 6 required upon the original levy, and, upon return of said warrant, the
 7 levy may be set aside so far as it relates to the part not held thereby,
 8 and, if duly recorded, shall be valid as to the remaining part. A new
 9 execution may thereupon be issued for the difference between the amount
 10 of the original appraisal of the land levied on and the amount of the
 11 appraisal of the part held by the levy, without interest or costs. If the
 12 court finds that the creditor in proceedings under this or the preceding
 13 section had no just cause for such action, the debtor shall recover costs.

Procedure.
 G. S. 103, § 23.
 P. S. 172, § 54.
 R. L. 178, § 52.

1 SECTION 53. Land of a deceased person which has not been sold and
 2 conveyed, by deed duly recorded, by the executor or administrator of
 3 such deceased person under a license from the probate court or under
 4 a power of sale contained in the will of the deceased, may be taken on
 5 execution on a judgment against his executor or administrator for the
 6 debt of the deceased, for the costs of the action against him if the execu-
 7 tor or administrator has not appeared therein, and for the fees and
 8 charges of the levy, and such land shall be appraised and set off or sold,
 9 in like manner as if execution had been levied against the deceased in
 10 his lifetime.

Levy on land
 of deceased.
 1758-9, 37, § 1.
 1783, 32, § 7.
 R. S. 73, § 49.
 G. S. 103, § 53.
 P. S. 172, § 55.
 R. L. 178, § 53.
 1914, 436.
 3 Mass. 523.
 136 Mass. 249.
 189 Mass. 390.
 191 Mass. 187.

1 SECTION 54. Land taken as provided in the preceding section may
 2 be redeemed by the executor, administrator, heir or devisee of the
 3 deceased, or by any person lawfully claiming under him or them, in like
 4 manner as if the land had been taken on an execution against the de-

Redemption
 and exemption.
 1783, 32, § 7.
 R. S. 73,
 § 50, 51.
 G. S. 103,
 §§ 54, 55.

P. S. 172, § 56, 57. ceased in his lifetime, and thereafter shall not be again taken on execu- 5
 R. L. 178, § 54. tion for any other debt of the deceased, nor be in any way liable therefor. 6
 191 Mass. 187.

Curtesy and dower in land taken on execution. SECTION 55. A surviving husband shall be entitled to curtesy and 1
 C. L. 42, § 1. a widow to dower in land taken on execution from his wife or her hus- 2
 1716-17, 3, § 2. band, respectively, or on execution upon a judgment against her or his 3
 1783, 57, § 4. executor or administrator, respectively, in like manner as if the land had 4
 R. S. 73, § 53. been conveyed by the wife or husband in her or his lifetime without 5
 G. S. 103, § 57. release of curtesy by him or dower by her. 6
 P. S. 172, § 59.
 R. L. 178, § 55.

TITLE III.

REMEDIES RELATING TO REAL PROPERTY.

- CHAPTER 237. Writs of Entry.
- CHAPTER 238. Writs of Dower.
- CHAPTER 239. Summary Process for Possession of Land.
- CHAPTER 240. Proceedings for Settlement of Title to Land.
- CHAPTER 241. Partition of Land.
- CHAPTER 242. Waste and Trespass.
- CHAPTER 243. Actions for Private Nuisances.
- CHAPTER 244. Foreclosure and Redemption of Mortgages.
- CHAPTER 245. Informations by the Commonwealth.

CHAPTER 237.

WRITS OF ENTRY.

SECT.

REQUISITES.

1. Estates recoverable.
2. Writ of entry against commonwealth.
3. Form of declaration.
4. Proof of actual entry not required.
5. Manner of prosecuting action.
6. Who may be deemed a disseisor.
7. Effect of actual ouster.
8. Joinder or separation of actions.

PLEADINGS AND EVIDENCE.

9. Pleadings and evidence.
10. Manner of making certain defences.
11. Part recoverable.

DAMAGES FOR DEMANDANT.

12. Damages recoverable by demandant.
13. Measure of damages.
14. Use of improvements not element of damages.
15. Limitation of tenant's liability.

ALLOWANCE TO TENANT.

16. Allowance to tenant for improvements.
17. Effect of possession under supposedly good title.
18. Manner of claiming allowance.
19. Time of recording suggestion.
20. Limitation of allowance.

SECT.

ASSESSMENT OF DAMAGES AND ALLOWANCE.

21. Assessment by court. Postponement.
22. Assessment by jury. Postponement.
23. Resumption of procedure for assessment by jury.
24. Waiver of claim for trial by jury.
25. Assessment by assessors.

SET-OFF.

26. Set-off of improvements against damages.
27. Effect of excess of improvement over rents and profits.
28. Payment of balance due tenant.
29. Writ of seisin before assessment.
30. Collection of balance due tenant.

ELECTION BY DEMANDANT.

31. Determination of value of estate without improvements.
32. Election to relinquish estate.
33. Tenant to hold estate if he pays such value.
34. Effect of non-payment.
35. Remedy on failure of title.

DEATH OF PARTY AFTER JUDGMENT.

36. Effect of death of parties on manner of payment.
37. Against whom writ of seisin shall run.

SECT.	SECT.
LIFE TENANT OR REMAINDERMAN.	EXECUTION TO BE RECORDED.
38. Recovery by life tenant from remainderman.	42. Execution for possession to be recorded.
39. Manner of determining and recovering amount.	APPLICATION OF CHAPTER.
40. Limitation of amount recoverable.	43. Demandant's remedy against trespassers not affected.
41. Limitation of time for bringing action.	44. Certain provisions not to apply to actions by mortgagees.

REQUISITES.

SECTION 1. All estates of freehold in fee simple, fee tail or for life may be recovered by a writ of entry upon disseisin, unless a different action is provided.

Estates recoverable.
R. S. 101, § 1.
G. S. 134, § 1.
P. S. 173, § 1.

R. L. 179, § 1. 13 Allen, 286. 220 Mass. 197.

SECTION 2. A writ of entry may be prosecuted against the commonwealth under this chapter.

Writ of entry against commonwealth.

1913, 624. 236 Mass. 121. 237 Mass. 403.

SECTION 3. The demandant shall declare on his own seisin within twenty years then last past, without specifying any particular day, and shall allege a disseisin by the tenant, but need not aver a taking of the profits. He shall set forth the estate which he claims in the land, whether in fee simple, fee tail or for life, and if the latter, whether for his own life or for the life of another, but he need not set forth the original gift, devise or other conveyance or title by which he claims the estate.

Form of declaration.
1786, 13.
1807, 75.
§§ 1, 2.
1828, 137, § 2.
R. S. 101, § 2, 3.
G. S. 134, § 2.
P. S. 173, § 2.
R. L. 179, § 2.
3 Mass. 352.
22 Pick. 283.

6 Cush. 265. 101 Mass. 188. 131 Mass. 179.
8 Allen, 61. 116 Mass. 117. 141 Mass. 93.
9 Allen, 370. 124 Mass. 468. 214 Mass. 546.
97 Mass. 34. 128 Mass. 458.

SECTION 4. The demandant need not prove an actual entry under his title, but proof that he is entitled to such an estate as he claims in the land and that he has a right of entry therein shall be sufficient to prove his seisin. No writ of entry shall be maintained unless the demandant has at the time of commencing his action a right of entry into the land demanded.

Proof of actual entry not required.
R. S. 101, § 4.
G. S. 134, § 3.
P. S. 173, § 3.
R. L. 179, § 3.
21 Pick. 215.
8 Allen, 597.
13 Allen, 346.
102 Mass. 512.

113 Mass. 318. 133 Mass. 201. 161 Mass. 91.
130 Mass. 384. 137 Mass. 584. 217 Mass. 583.

SECTION 5. A writ of entry shall be prosecuted in the same manner as if the demandant, at the time of commencing the action, had made an actual entry on the land demanded and had been immediately ousted by the tenant. In a trial upon the general issue, if the demandant proves that he is entitled to the estate set forth in the declaration and that he had a right of entry on the day when the action was commenced, he shall recover the land unless the tenant proves a better title in himself.

Manner of prosecuting action.
R. S. 101, § 8.
G. S. 134, § 7.
P. S. 173, § 4.
R. L. 179, § 4.
13 Mass. 472.
9 Cush. 427.
102 Mass. 374, 512.
139 Mass. 244.
155 Mass. 461.

220 Mass. 197.

SECTION 6. A person in possession of land demanded in a writ of entry, claiming an estate of freehold therein, may be considered as a disseisor for the purpose of trying the right, irrespective of the manner of his original entry therein.

Who may be deemed a disseisor.
R. S. 101, § 6.
G. S. 134, § 5.
P. S. 173, § 5.
R. L. 179, § 5.

99 Mass. 7.

110 Mass. 419.

1 SECTION 7. If the person in possession has actually ousted the de- Effect of
 2 mandant or withheld from him the possession of the land, he may, at actual ouster.
 3 the election of the demandant, be considered as a disseisor for the R. S. 101, § 7.
 4 purpose of trying the right, although he claims an estate less than G. S. 134, § 6.
 5 a freehold. P. S. 173, § 6.
R. L. 179, § 6.
6 Pick 5.

20 Pick. 458.	1 Gray, 416.	99 Mass. 209.	126 Mass. 327.
12 Met. 154.	2 Gray, 135.	110 Mass. 419.	154 Mass. 535.
12 Cush. 185.	4 Allen, 150.	124 Mass. 307.	161 Mass. 91.

1 SECTION 8. Joint tenants or tenants in common may join in a writ Joinder or
 2 of entry for the recovery of land, or any one of them may sue alone for separation
 3 his share. of actions.

1783, 52, § 3.	R. S. 101, § 10.	R. L. 179, § 7.	135 Mass. 231.
1785, 62, § 3.	G. S. 134, § 9.	6 Gray, 428.	141 Mass. 93.
1828, 137, § 3.	P. S. 173, § 7.	97 Mass. 508.	155 Mass. 461.

PLEADINGS AND EVIDENCE.

1 SECTION 9. The law and practice relative to pleadings and evidence Pleadings and
 2 in a writ of entry upon disseisin, as heretofore recognized and established, evidence.
 3 shall continue in force, except as altered by this chapter and chapters R. S. 101, § 9.
 4 one hundred and eighty-five and two hundred and thirty-one. G. S. 134, § 8.
P. S. 173, § 8.

R. L. 179, § 8.	99 Mass. 7.	128 Mass. 458.
13 Mass. 439.	104 Mass. 1.	139 Mass. 244.
2 Met. 293.	112 Mass. 535.	143 Mass. 195.
4 Gray, 53.	116 Mass. 577.	208 Mass. 391.
6 Allen, 28.	123 Mass. 187.	258 Mass. 383.

1 SECTION 10. Non-tenure, disclaimer, several tenancy and sole Manner of
 2 tenancy may be pleaded in abatement or given in evidence under the making certain
 3 general issue, but the party shall be allowed such costs only as accrue defences.
 4 after the filing of the plea. 1828, 137, § 4.
R. S. 101, § 13.

1836, 273, § 1.	12 Met. 154.	98 Mass. 500.
G. S. 134, § 12.	4 Gray, 53.	108 Mass. 232.
P. S. 173, § 9.	6 Gray, 107.	123 Mass. 187.
R. L. 179, § 9.	6 Allen, 28.	124 Mass. 307.
2 Met. 293.	13 Allen, 286.	139 Mass. 244.

1 SECTION 11. The demandant may recover any specific part or un- Part recover-
 2 divided portion of the land to which he proves a sufficient title, although able
 3 less than demanded in the writ. R. S. 101, § 11

G. S. 134, § 10.	R. L. 179, § 10.	99 Mass. 7.
P. S. 173, § 10.	2 Pick 387.	111 Mass. 386.

DAMAGES FOR DEMANDANT.

1 SECTION 12. If the demandant recovers judgment, he shall recover Damages re-
 2 in the same action, subject to the limitations provided in this chapter. coverable by
 3 damages for rents and profits of the land from the time when his title demandant.
 4 accrued and for any destruction or waste of the buildings or other prop- R. S. 101, § 14.
 5 erty for which the tenant is liable. G. S. 134, § 13.
P. S. 173, § 12.
R. L. 179, § 12.

2 Met. 293.	111 Mass. 386.	150 Mass. 535.
6 Cush. 265.	114 Mass. 140.	212 Mass. 135.
4 Gray, 53.	124 Mass. 307.	214 Mass. 329.
105 Mass. 328.	128 Mass. 458.	258 Mass. 383.

1 SECTION 13. Rents and profits for which the tenant is liable shall Measure of
 2 be the clear annual value of the land while he was in possession thereof, damages.
 3 after deducting all lawful taxes and assessments on the land paid by R. S. 101, § 16.
 4 him and all necessary and ordinary expenses of cultivating the land or G. S. 134, § 15.
 5 collecting rents, profits or income thereof. P. S. 173, § 14.
R. L. 179, § 14.
103 Mass. 146.

104 Mass. 1.	114 Mass. 140.	179 Mass. 163.	198 Mass. 137
--------------	----------------	----------------	---------------

Use of improve- SECTION 14. In determining rents and profits, the value of the use 1
 ments not by the tenant of any improvements made by him or by those under 2
 element of whom he claims shall be excluded. 3
 damages. R. S. 101, § 17. G. S. 134, § 16. P. S. 173, § 15. R. L. 179, § 15. 198 Mass. 137.

Limitation of tenant's liability. SECTION 15. The tenant shall not be liable for rents and profits 1
 R. S. 101, § 18. for any time more than six years prior to the date of the writ or for 2
 G. S. 134, § 17. waste or damage committed before said six years, unless rents and 3
 P. S. 173, § 16. profits are allowed by way of set-off to his claim for improvements under 4
 R. L. 179, § 16. section twenty-seven. 5
 9 Cush. 427. 104 Mass. 1. 6

ALLOWANCE TO TENANT.

Allowance to tenant for im- SECTION 16. If the land demanded has been actually held and 1
 provements. possessed by the tenant and by those under whom he claims for six 2
 1807, 75, § 3. years next before the date of the writ, he shall, if judgment is against 3
 R. S. 101, § 19. him, be entitled to compensation as hereinafter provided for the value 4
 G. S. 134, § 18. of any buildings or improvements made or erected on the land by him 5
 P. S. 173, § 17. or by any person under whom he claims. 6
 R. L. 179, § 17. 6 Mass. 303. 12 Mass. 329. 13 Mass. 241. 15 Mass. 291. 17 Mass. 350. 5 Pick. 140. 15 Pick. 141. 16 Pick. 260. 7 Met. 310. 12 Cush. 458. 15 Gray, 36. 100 Mass. 177. 111 Mass. 386. 117 Mass. 360. 190 Mass. 449. 215 Mass. 324. 244 Mass. 1. 271 Mass. 191.

Effect of pos- SECTION 17. The tenant shall also be entitled to like compensation 1
 session under although the land has not been so held for six years, if he holds it under 2
 supposedly good title. R. S. 101, § 20. a title which he had reason to believe good. 3
 R. S. 101, § 20. G. S. 134, § 19. 12 Cush. 458. 109 Mass. 206. 179 Mass. 163.
 P. S. 173, § 18. 10 Gray, 40. 117 Mass. 360. 190 Mass. 449.
 R. L. 179, § 18. 5 Allen, 319. 393. 244 Mass. 1.
 7 Met. 310. 8 Allen, 363. 128 Mass. 167. 271 Mass. 191.
 10 Cush. 451. 100 Mass. 177, 270. 134 Mass. 82.

Manner of claiming allowance. SECTION 18. If the tenant claims allowance for improvements, he 1
 1807, 75, § 3. shall enter on the record a suggestion of his claim, with a request that, 2
 R. S. 101, § 21. if judgment is rendered for the demandant, the value of the improve- 3
 G. S. 134, § 20. ments may be ascertained and allowed to him. 4
 P. S. 173, § 19. R. L. 179, § 19. 7 Met. 310. 11 Gray, 217. 244 Mass. 1.

Time of recording suggestion. SECTION 19. The suggestion shall be entered at the same sitting 1
 R. S. 101, § 22. with the plea, unless the land court allows it to be entered afterward; 2
 G. S. 134, § 21. but if judgment is rendered for the demandant without a plea, the court 3
 P. S. 173, § 20. may allow it to be entered at any time. 4
 R. L. 179, § 20. 1904, 448, § 1. 244 Mass. 1.

Limitation of allowance. SECTION 20. The amount allowed for improvements shall not exceed 1
 R. S. 101, § 27. the amount actually expended by the tenant and those under whom he 2
 G. S. 134, § 25. claims, nor shall it exceed the amount to which the value of the land 3
 P. S. 173, § 24. is actually increased thereby at the time of the assessment. 4
 R. L. 179, § 22. 244 Mass. 1.

ASSESSMENT OF DAMAGES AND ALLOWANCE.

Assessment by court. SECTION 21. Except as provided in sections twenty-two to twenty- 1
 Postponement. four, inclusive, and section twenty-six, if there is a trial in the land 2
 1807, 75, § 3. court it shall at the same time assess the amounts due the demandant 3
 R. S. 101, §§ 15, 23, 24, for rents and profits or other damages, if any, and shall determine the 4
 32, 33.

5 amount to be allowed to the tenant for improvements, if any, and also,
 6 if duly required, the value of the demandant's estate, unless, on its
 7 own motion or that of either party, made before its finding or decision
 8 on the title is recorded, it postpones such assessments or determination
 9 till after its trial of the title and its finding or decision thereon.

1904, 448, §§ 1, 8,
 1910, 560, § 6.

8 Gray, 435
 214 Mass. 135.

214 Mass. 329.

G. S. 134,
 §§ 14, 22, 23,
 30, 31
 P. S. 173,
 §§ 13, 21, 22,
 30, 31
 R. L. 179,
 §§ 13, 21, 28.

1 SECTION 22. If trial by jury shall be claimed under section fifteen
 2 of chapter one hundred and eighty-five, and if issues therefor are to be
 3 framed to obtain an assessment of the amounts due to the demandant
 4 for rents and profits or other damages, or a determination of the amount
 5 to be allowed to the tenant for improvements, or of the value of the
 6 demandant's estate, the land court, on its own motion, or on that of
 7 either party, made at any time before the papers required by said section
 8 fifteen have been entered in the superior court, may postpone such
 9 issues till after its trial of the title and its finding or decision thereon.
 10 In such case said court shall order that the procedure provided by said
 11 section fifteen be suspended pending its further order under the follow-
 12 ing section.

Assessment
 by jury
 Postponement.
 1807, 75, § 3.
 R. S. 101,
 §§ 15, 23, 24,
 32, 33.
 G. S. 134,
 §§ 14, 22, 23,
 30, 31.
 P. S. 173,
 §§ 13, 21, 22,
 30, 31.
 R. L. 179,
 §§ 13, 21, 28.
 1904, 448,
 §§ 1, 8,
 1910, 560, § 6.

1 SECTION 23. If issues are postponed under the preceding section,
 2 and if, on its trial of the title, the land court shall make a finding or
 3 decision in favor of the demandant, that court shall, on motion of either
 4 party, made before its finding or decision on the title is recorded, order
 5 that the procedure provided by section fifteen of chapter one hundred
 6 and eighty-five be resumed, except that the papers required by said sec-
 7 tion fifteen shall be entered in the superior court for the county where
 8 the land lies within thirty days after such order.

Resumption of
 procedure for
 assessment
 by jury
 R. S. 101, § 25.
 G. S. 134, § 23.
 P. S. 173, § 22.
 R. L. 179, § 21.
 1904, 448,
 §§ 1, 8,
 1910, 560, § 6.

1 SECTION 24. If issues have been postponed under section twenty-
 2 two, and if, after a finding or decision in favor of the demandant on the
 3 title, no motion under section twenty-three is seasonably made, that
 4 the procedure provided by section fifteen of chapter one hundred and
 5 eighty-five be resumed, jury trial on such postponed issues shall be
 6 deemed to be waived, and such assessment or determinations shall be
 7 made as provided in section twenty-one or twenty-five.

Waiver of
 claim for trial
 by jury
 R. S. 101, § 25
 G. S. 134, § 23
 P. S. 173, § 22
 R. L. 179, § 21
 1904, 448,
 §§ 1, 8,
 1910, 560, § 6.

1 SECTION 25. In cases where an assessment of the amounts due to
 2 the demandant for rents and profits and other damages, or a determina-
 3 tion of the amount to be allowed to the tenant for improvements, or of
 4 the value of the demandant's estate is to be made by the land court, such
 5 assessment or determinations may, if the parties consent, be made by
 6 assessors appointed by that court.

Assessment
 by assessors.
 1807, 75, § 3.
 R. S. 101,
 §§ 26, 32, 33.
 G. S. 134,
 §§ 24, 30, 31.
 P. S. 173,
 §§ 23, 30, 31.

R. L. 179, §§ 21, 28.

1904, 448, § 1.

SET-OFF.

1 SECTION 26. If an allowance is made to the tenant for improvements,
 2 it shall be set off against the amount found due from him for rents and
 3 profits and other damages; and the demandant shall have judgment and
 4 execution for the balance, if any, due from the tenant as well as for seisin
 5 of the land.

Set-off of im-
 provements
 against
 damages.
 R. S. 101, § 28.
 G. S. 134, § 26.
 P. S. 173, § 25.

R. L. 179, § 23.

190 Mass. 449.

204 Mass. 448.

215 Mass. 324.

Effect of excess
of improve-
ment over
rents and
profits.
R. S. 101, § 30.
G. S. 134, § 28.
P. S. 173, § 26.
R. L. 179, § 24.

SECTION 27. If the amount found due to the tenant for improve- 1
ments exceeds the amount due from him for rents and profits accruing 2
within six years, he shall be chargeable with rents and profits accruing 3
before that time, so far as necessary to balance his claim for improve- 4
ments; but in such case he shall not be liable to repay rents and profits 5
in excess of the value of the improvements. 6

Payment of
balance due
tenant.
R. S. 101, § 29.
G. S. 134, § 27.
1864, 302,
§§ 1, 2.
P. S. 173, § 27.
R. L. 179, § 25.
1904, 448, § 1.
105 Mass. 328.

SECTION 28. The demandant shall, except as provided in the follow- 1
ing section, before taking out execution for seisin of the land, pay to the 2
tenant, or for his use to the recorder of the land court, the balance, if 3
any, due the tenant for improvements after deducting the amount due 4
from the tenant for rents and profits and other damages; but the tenant 5
or person claiming under him shall not be liable for rents and profits 6
accruing between the date of the judgment and payment by the demand- 7
ant of said balance. 8

Writ of seisin
before assess-
ment.
1864, 302,
§§ 1, 2.
P. S. 173, § 28.
R. L. 179, § 26.

SECTION 29. The demandant may take out a writ of seisin before 1
the amounts due for rents and profits or other damages or for improve- 2
ments have been assessed; but if the tenant has entered on the record 3
the suggestion of a claim for improvements, the demandant, before 4
taking out his writ of seisin, shall furnish such security or pay into court 5
such amount of money as the land court may order, to secure to the 6
tenant the payment of any balance found due him for such improvements. 7

Collection of
balance due
tenant.
1864, 302, § 3.
P. S. 173, § 29.
R. L. 179, § 27.

SECTION 30. If a balance is found due the tenant for such improve- 1
ments, he may have judgment and execution therefor, or he may collect 2
the same, with all reasonable costs and expenses of such collection, out 3
of the security furnished, or may receive it out of the money paid into 4
court, and the residue thereof shall be returned to the demandant. 5

ELECTION BY DEMANDANT.

Determination
of value of
estate without
improvements.
1867, 75, § 3.
R. S. 101,
§§ 32, 33.
G. S. 134,
§§ 30, 31.
P. S. 173,
§§ 30, 31.
R. L. 179, § 28.

SECTION 31. If the tenant claims an allowance for improvements 1
as before provided, the demandant may, by an entry on the record, 2
require the value of his estate in the land demanded, without the im- 3
provements, to be determined as provided for the assessment of rents 4
and profits and improvements. Such value shall be the value which, 5
at the time of assessment, the land would have had if the improvements 6
had not been made by the tenant or a person under whom he claims. 7

11 Pick. 193, 219.

Election to
relinquish
estate.
1867, 75, § 3.
R. S. 101,
§§ 34-36.
G. S. 134,
§§ 32, 33.
P. S. 173,
§§ 32, 33.
R. L. 179, § 29.

SECTION 32. After said determination of value the demandant may, 1
at the sitting at which judgment is entered for him, enter upon the 2
record his election to relinquish his estate in the land to the tenant at 3
said value; and upon his motion for further time in which to make such 4
election the land court may postpone the entry of judgment without 5
further costs for him. 6

1904, 448, § 1.

Tenant to hold
estate if he pays
such value.
1867, 75, § 3.
1869, 84.
R. S. 101,
§§ 37, 38.

SECTION 33. If the demandant elects to relinquish the land as 1
before provided, the tenant shall thenceforth hold all the estate which 2
the demandant had therein at the date of the writ, if he pays said value 3
thereof in three equal instalments on or before the expiration of one, 4

5 two and three years, respectively, from the time when said election was G. S. 134,
 6 entered on the record, with interest therefrom on the amount unpaid. §§ 34, 35.
 P. S. 173, § 34.
 R. L. 179, § 30.

1 SECTION 34. Said payments shall be made to the demandant or for Effect of
 2 his use to the recorder of the land court; and if the tenant fails to make non-payment.
 3 any such payment within the time limited therefor, the demandant may, 1897, 75, § 3.
 4 within three months after default of payment, take out his writ of seisin 1899, 84.
 5 on the judgment recovered by him, and shall take and hold the land R. S. 101,
 6 without allowance for any improvements made thereon. 1739, 49,
 G. S. 134,
 §§ 36, 37.
 P. S. 173, §§ 35, 36. R. L. 179, § 31. 1904, 448, § 1.

1 SECTION 35. If the tenant or his heirs or assigns, after the land is so Remedy on
 2 relinquished to him, are evicted therefrom by force of a better title than failure of
 3 that of the original demandant, the person so evicted may recover from title.
 4 such demandant, or from his executors, administrators, heirs or devisees 1897, 75, § 3.
 5 under chapter one hundred and ninety-seven, the amount so paid for R. S. 101,
 6 the land in an action for money had and received by the demandant in §§ 41-43.
 7 his lifetime for the use of the plaintiff, with lawful interest thereon; but G. S. 134,
 8 in order to be so entitled to recover, the tenant or those holding under §§ 38, 39, 50.
 9 him shall give notice to the person so liable to refund the purchase money P. S. 173,
 10 of the pendency of the action for the recovery of the land, so that he may § 37-39.
 11 offer evidence tending to prove that the original demandant had the R. L. 179,
 12 better title. §§ 32-34,
 1918, 257,
 § 47,
 1919, 5,
 1920, 2.

DEATH OF PARTY AFTER JUDGMENT.

1 SECTION 36. If, after judgment for the demandant, either party Effect of
 2 dies before the writ of seisin is executed, or before the case is otherwise death of
 3 settled under this chapter, any money payable by the demandant or parties on
 4 tenant, respectively, may be paid by him or his executor or adminis- manner of
 5 trator, or by a person entitled to the estate under him, to the tenant or payment.
 6 demandant, respectively, or his executor or administrator. 1899, 84.
 R. S. 101, § 44
 G. S. 134, § 41
 P. S. 173, § 40
 R. L. 179, § 35.

1 SECTION 37. The writ of seisin issued in such case shall be in the Against whom
 2 name of the original demandant against the original tenant, although writ of seisin
 3 either or both of them are dead, and when executed it shall enure to the shall run.
 4 benefit of the demandant or of the person entitled to the land under R. S. 101, § 45
 5 him, as if it had been executed on the day when the judgment was G. S. 134, § 42
 6 rendered. P. S. 173, § 41.
 R. L. 179, § 36.

LIFE TENANT OR REMAINDERMAN.

1 SECTION 38. If a demandant claiming an estate for life only in the Recovery by
 2 land pays an amount allowed to the tenant for improvements, he or his life tenant
 3 executor or administrator shall, at the determination of his estate, be from re-
 4 paid by the remainderman or reversioner the value of the improvements mainderman.
 5 as they then exist, shall have a lien on the land for said value as if it had R. S. 101, § 46.
 6 been mortgaged for the payment of such value, and may keep possession G. S. 134, § 43.
 7 of the land until such payment is made. P. S. 173, § 42.
 R. L. 179, § 37.

1 SECTION 39. If the amount due from the remainderman or reversioner Manner of
 2 is not agreed on by the parties, it may be determined in a suit in equity determining
 3 brought by the remainderman or reversioner; and the proceedings shall and recovering
 4 be the same as in a suit for the redemption of a mortgage. amount.
 R. S. 101, § 47.
 G. S. 134, § 44. P. S. 173, § 43. R. L. 179, § 38.

Limitation of amount recoverable. R. S. 101, § 48. G. S. 134, § 45. P. S. 173, § 44. R. L. 179, § 39.

SECTION 40. The remainderman or reversioner, or those claiming under him, shall not recover from the adverse party the excess, if any, of rents and profits accruing after the determination of the estate for life, over the amount due for the improvements.

Limitation of time for bringing action. R. S. 101, §§ 48, 49. G. S. 134, §§ 45, 46. P. S. 173, § 45. R. L. 179, § 40.

SECTION 41. The remainderman or reversioner, or those claiming under him, shall be deemed disseized at the determination of the life estate, and the suit in equity and all other remedies by action or by entry for the recovery of the land shall be barred as in other cases of disseisin, and the limitation of three years provided for the redemption of a mortgage shall not apply.

EXECUTION TO BE RECORDED.

Execution for possession to be recorded. 1848, 144, § 1. G. S. 133, § 55. P. S. 173, § 46. R. L. 179, § 41. 1904, 448, § 1. 7 Gray, 202.

SECTION 42. An officer serving an execution issued upon a judgment for possession shall, within three months after the service, and before the return of the execution into the recorder's office, cause such execution with his return thereon to be recorded in the registry of deeds for the county or district where the land affected thereby lies, and the expense thereof shall be added to his charge for service.

APPLICATION OF CHAPTER.

Demandant's remedy against trespassers not affected. R. S. 101, § 31.

SECTION 43. This chapter shall not prevent the demandant from maintaining an action of trespass for mesne profits, or for damage done to the land, against any person, except the tenant in the writ of entry.

G. S. 134, § 29. P. S. 173, § 47. R. L. 179, § 42. 6 Cush. 265.

Certain provisions not to apply to actions by mortgagees. 1807, 75, § 3. R. S. 101, § 5. G. S. 134, § 47. P. S. 173, § 48. R. L. 179, § 43.

SECTION 44. The provisions of this chapter relative to rents and profits to be recovered in a writ of entry, the allowance for improvements made on the land demanded and the value of the land without the improvements shall not apply to an action brought by a mortgagee, his heirs or assigns, against a mortgagor, his heirs or assigns, for the recovery of the land mortgaged.

CHAPTER 238.

WRITS OF DOWER.

SECT.	SECT.
1. When writ maintainable.	7. Report of commissioners.
2. Demand for dower.	8. Appeal.
3. Form and manner of making demand.	9. Execution.
4. Damages for detention.	10. Tenant's liability.
5. Commissioners to set out dower.	11. Assignment out of rents and profits.
6. Procedure of commissioners. Oath. Notice.	12. Application of certain provisions.

When writ maintainable. C. L. 42, § 1.

SECTION 1. A woman entitled to dower, if it is not set out to her by the heir or other tenant of the freehold to her satisfaction according to

3 law nor assigned to her by the probate court, may recover the same by
4 a writ of dower as provided in this chapter.

R. S. 60, § 5; 102, § 1
G. S. 135, § 1

P. S. 171, § 1.
R. L. 180, § 1.

1 Pick. 189, 311.
116 Mass. 69.

1 SECTION 2. She shall demand her dower of the person then seized
2 of the freehold, unless such person is unknown to her or absent from
3 the commonwealth. She shall not commence an action before the ex-
4 piration of one month, nor after the expiration of one year, from such
5 demand; but she may make a new demand and commence an action
6 thereon.

R. L. 180, § 2

12 Met. 557

Demand for
dower.
1700-1, 22, § 1
1783, 40, § 1.
1828, 137, § 5.
R. S. 102, § 2.
G. S. 135, § 2.
1878, 67.
P. S. 174, § 2.

1 SECTION 3. A demand of dower shall be sufficient if it is in writing,
2 signed by the widow or by her agent or attorney, containing a general
3 description of the land in which dower is claimed and is given to the
4 tenant of the freehold or left at his last and usual place of abode.

G. S. 135, § 3. P. S. 174, § 3. R. L. 180, § 3. 6 Cush. 196.

Form and
manner of
making de-
mand.
1855, 138.

1 SECTION 4. If the demandant recovers judgment for her dower, she
2 shall in the same action recover damages for its detention, which shall
3 be assessed by a jury under the direction of the court, unless the parties
4 file in court a written agreement that the damages shall be assessed by
5 commissioners as provided in the three following sections.

P. S. 174, § 4. R. L. 180, § 4. 116 Mass. 69. 120 Mass. 417.

Damages for
detention.
1700-1, 22, § 2
1783, 40, § 2.
R. S. 102, § 3.
G. S. 135, § 4.
1869, 418, § 1.

1 SECTION 5. If the court finds that the demandant is entitled to
2 dower, it shall award an interlocutory judgment therefor and issue its
3 warrant to three disinterested commissioners to set out said dower
4 equally and impartially and as conveniently as may be and, if an agree-
5 ment has been filed under the preceding section, to award damages for
6 its detention.

1869, 418, §§ 2, 3.
P. S. 174, § 5.

R. L. 180, § 5.
9 Allen, 254.

Commissioners
to set out
dower.
C. L. 42, § 1
1700-1, 22, § 3.
1783, 40, § 2.
R. S. 102, § 6.
G. S. 135, § 7.

1 SECTION 6. The commissioners, before entering upon their duties,
2 shall be sworn faithfully and impartially to execute the warrant, and
3 a certificate of the oath shall be made thereon by the person administer-
4 ing it. They shall give notice to the parties of the time and place ap-
5 pointed for setting out the dower. All the commissioners shall meet
6 for the performance of any duties, but a majority may act.

P. S. 174, § 6. R. L. 180, § 6.

Procedure of
commissioners
Oath. Notice.
1700-1, 22, § 3.
1783, 40, § 2.
R. S. 102, § 6.
G. S. 135, § 7.
1869, 418,
§§ 4, 6.

1 SECTION 7. The commissioners shall make and sign a report of their
2 doings, with any damages assessed by them, and return it with the
3 warrant to the court issuing it. If the report is confirmed, judgment
4 shall be rendered that the assignment of dower shall be firm and effectual
5 during the life of the demandant, and for the damages as assessed by
6 the commissioners.

Report of
commissioners.
1869, 418, § 7.
P. S. 174, § 7.
R. L. 180, § 7.
138 Mass. 434.

1 SECTION 8. A party aggrieved by a judgment rendered under section
2 five, or upon a report of the commissioners under the preceding section,
3 may appeal therefrom in any matter of law apparent upon the record to
4 the supreme judicial court; but an appeal from the judgment rendered
5 under the preceding section shall not draw in question the interlocutory
6 judgment.

Appeal.
1869, 418, § 8.
P. S. 174, § 8.
R. L. 180, § 8.

Execution 1869, 118, § 9. SECTION 9. When final judgment has been recovered by the de- 1
 1874, 340. mandant, execution shall issue thereon for possession and for costs and, 2
 P. S. 171, § 9. if the judgment is for damages also, for damages. 3
 R. L. 180, § 9.

Tenant's liability. SECTION 10. The action shall be brought against the person who is 1
 R. S. 102, tenant of the freehold at the time when it is commenced. If the demand 2
 §§ 4, 5. was not made on him, he shall be liable for damages only for the time 3
 G. S. 135, § 5, 6. during which he held the land; but if the demandant recovers her dower 4
 P. S. 174, and damages in the writ of dower, she may thereafter recover in tort 5
 §§ 10, 11. against the prior tenant of the freehold, on whom her demand was made, 6
 R. L. 180, § 10. rents and profits for the time during which he held the land after the 7
 12 Mass. 485. demand. 8

Assignment out of rents and profits. SECTION 11. If the land cannot be divided without damage to the 1
 R. S. 102, § 7. whole, dower may be assigned out of rents or profits, which shall be re- 2
 G. S. 135, § 8. ceived by the demandant as tenant in common with the other owners. 3
 P. S. 171, § 12. R. L. 180, § 11.

Application of certain provisions. SECTION 12. The provisions of chapter one hundred and eighty-nine 1
 R. S. 102, § 9. relative to the land out of which dower may be claimed and the manner 2
 G. S. 135, § 10. in which it may be barred, and those of section one of chapter two hun- 3
 P. S. 171, § 14. dred and forty-two relative to the liability of the tenant for waste, shall 4
 R. L. 180, § 12. apply to proceedings under this chapter. 5

CHAPTER 239.

SUMMARY PROCESS FOR POSSESSION OF LAND.

<p>SECT.</p> <ol style="list-style-type: none"> 1. Persons entitled to summary process. 2. Jurisdiction, venue and form of writ. 3. Judgment and execution. 4. Storage of property removed. Lien and enforcement. 5. Appeal. Bond. Action thereon. 6. Condition of bond in action for possession after foreclosure. 	<p>SECT.</p> <ol style="list-style-type: none"> 7. Effect of judgment. 8. Effect of quiet possession for three years. 9. Stay of proceedings. 10. Same subject. Hearing, etc. 11. Same subject. Deposit by applicant. 12. Same subject. Waiver in lease void. 13. Same subject. Costs.
---	---

Persons entitled to summary process. SECTION 1. If a forcible entry into land or tenements has been made, 1
 C. L. 11, § 3. if a peaceable entry has been made and the possession is unlawfully held 2
 1700-1, 14, § 1. by force, if the lessee of land or tenements or a person holding under him 3
 1784, 8, § 1. holds possession without right after the determination of a lease by its 4
 1825, 89, § 1. own limitation or by notice to quit or otherwise, or if a mortgage of 5
 1835, 114. land has been foreclosed by a sale under a power therein contained or 6
 R. S. 104, § 2. otherwise, the person entitled to the land or tenements may recover 7
 1847, 267, § 2. possession thereof under this chapter. A person in whose favor the land 8
 1851, 233, § 77. court has entered a decree for confirmation and registration of his title 9
 G. S. 137, § 2, 3. to land may in like manner recover possession thereof, except where 10
 1879, 237. the person in possession or any person under whom he claims has erected 11
 P. S. 175, § 1. buildings or improvements on the land, and the land has been actually 12
 1899, 129. held and possessed by him or those under whom he claims for six years 13
 R. L. 181, § 1. to land may in like manner recover possession thereof, except where 14
 1914, 145. the person in possession or any person under whom he claims has erected 15
 10 Mass. 403. buildings or improvements on the land, and the land has been actually 16
 3 Pick. 31. held and possessed by him or those under whom he claims for six years 17
 13 Pick. 36. 18
 2 Met. 29. 19
 3 Met. 350, 548. 20

14 next before the date of said decree or was held at the date of said decree 5 Met. 343.
 15 under a title which he had reason to believe good. 7 Met. 147.

10 Met. 298.	99 Mass. 383.	170 Mass. 29.
11 Met. 99.	104 Mass. 595.	172 Mass. 112.
1 Cush. 487.	106 Mass. 532.	175 Mass. 213.
4 Cush. 141.	113 Mass. 36.	191 Mass. 192.
5 Cush. 214, 563.	121 Mass. 85, 309.	197 Mass. 510.
8 Cush. 29, 33, 409.	126 Mass. 226, 292.	206 Mass. 82, 131
11 Cush. 227.	130 Mass. 540.	213 Mass. 405.
4 Gray, 432.	132 Mass. 122, 196.	214 Mass. 238.
7 Gray, 462.	133 Mass. 426.	219 Mass. 151.
9 Gray, 438.	134 Mass. 259.	224 Mass. 209.
10 Gray, 290.	136 Mass. 111.	225 Mass. 510.
11 Gray, 480.	139 Mass. 51.	244 Mass. 273.
15 Gray, 319.	140 Mass. 190.	245 Mass. 135.
1 Allen, 215, 406.	151 Mass. 543.	249 Mass. 262.
6 Allen, 71, 76.	152 Mass. 140.	251 Mass. 163.
9 Allen, 526.	161 Mass. 335.	255 Mass. 551.
10 Allen, 519.	163 Mass. 477.	256 Mass. 138.
13 Allen, 281.	165 Mass. 481.	262 Mass. 463.
14 Allen, 43.	168 Mass. 412.	267 Mass. 236.

1 SECTION 2. Such person may take from the superior court or from Jurisdiction,
 2 a district court a writ in the form of an original summons, which shall venue and
 3 summon the defendant to answer to the complaint of the plaintiff that form of writ.
 4 the defendant is in possession of the land or tenements in question, 1700-1, 14, § 1.
 5 describing them, which he holds unlawfully and against the right of the 1781, S. § 1.
 6 plaintiff; and no other declaration shall be required. The action shall 1825, 89, § 1.
 7 be brought in the county and, if brought in a district court, in the judicial R. S. 104,
 8 district, where the land or tenements lie. §§ 4, 13,
 1841, 53, § 2,
 1851, 233,
 §§ 79-81,
 G. S. 137, § 5.

1866, 47.	1893, 396, § 13.	1917, 326.
1869, 17, § 3.	1894, 398, § 1; 431.	1918, 257, § 409.
1874, 271, § 8.	R. L. 167, § 2; 181, § 2.	1919, 5.
P. S. 154, § 46;	1913, 614.	1920, 2.
175, §§ 2, 3.		

1 SECTION 3. Except as hereinafter provided, if the court finds the Judgment and
 2 plaintiff entitled to possession of the land or tenements, he shall have execution
 3 judgment and execution for possession and for costs. If the plaintiff 1700-1, 14, § 2.
 4 becomes nonsuit, or fails to prove his right to possession, the defendant 1781, S. §§ 1, 3.
 5 shall have judgment and execution for costs. 1825, 89, § 1.
 R. S. 104,
 §§ 6, 7.

1851, 233, § 88.	1931, 426, § 304.	98 Mass. 309.
G. S. 137, §§ 7, 8.	8 Cush. 124.	121 Mass. 257.
P. S. 175, § 5.	13 Gray, 272.	215 Mass. 125.
R. L. 181, § 3.	15 Gray, 316.	

1 SECTION 4. If an officer, serving an execution issued on a judgment Storage of
 2 for the plaintiff for possession of land or tenements, removes personal property removed Lien
 3 property, belonging to a person other than the plaintiff, from the land or and enforce-
 4 tenements and places it upon the sidewalk, street or way on which the ment
 5 land or tenements abut, he may forthwith, and before the expiration 1891, 112,
 6 of the time limited in any ordinance or by-law for the removal of obstruc- §§ 1, 2.
 7 tions in the street, remove such property and cause it to be stored for R. L. 181,
 8 the benefit of the owners thereof. Whoever accepts the same on storage §§ 4, 5.
 9 from such officer shall have a lien thereon for reasonable storage fees and
 10 for reasonable expenses of removing it to the place of storage, but such
 11 lien shall not be enforced by sale of the property until it has been kept
 12 on storage for at least six months. If the owner of such property is present
 13 and claims it when it is so removed from the land or tenements, the
 14 officer shall not remove and store it, and his act of placing it upon the
 15 sidewalk or street shall be deemed the act of the owner, who alone shall
 16 be held to answer therefor.

1 SECTION 5. If the defendant appeals from a judgment of a district Appeal Bond
 2 court rendered for the plaintiff for the possession of the land or tenements Action thereon.
 3 demanded, he shall, except as provided in the following section, before 1783, 42, § 2.
 1825, 89, § 2.
 R. S. 104 § 10.

1848, 142, § 1. such appeal is allowed, give bond in such sum as the court orders, payable 4
 G. S. 137, § 9. to the plaintiff, with sufficient surety or sureties approved by the plaintiff 5
 1871, 315, § 2. or court, conditioned to enter the action in the superior court for that 6
 1874, 271, § 8. county at the return day next after the appeal is taken, and to pay to the 7
 P. S. 175, § 6. plaintiff, if final judgment is in his favor, all rent accrued at the date of 8
 1885, 384, § 5. the bond, all intervening rent, and all damage and loss which he may 9
 1888, 325, § 1. sustain by the withholding of possession of the land or tenements de- 10
 R. L. 181, § 6. manded and by any injury done thereto during such withholding, with 11
 1917, 326. all costs, until the delivery of possession thereof to him. Upon final 12
 10 Met. 1. judgment for the plaintiff, all money then due to him may be recovered in 13
 13 Met. 181. an action on the bond. 14
 2 Gray, 309.
 5 Allen, 423.
 120 Mass. 126.
 121 Mass. 82.
 131 Mass. 561.
 142 Mass. 186.
 146 Mass. 324.
 176 Mass. 236.

182 Mass. 104. 213 Mass. 405. 267 Mass. 162.

Condition of SECTION 6. If the action is for the possession of land after foreclosure 1
 bond in action of a mortgage thereon, the condition of the bond shall be for the entry of 2
 for possession the action and payment to the plaintiff, if final judgment is in his favor, 3
 after fore- of all costs and of a reasonable amount as rent of the land from the day 4
 closure. when the mortgage was foreclosed until possession of the land is obtained 5
 1879, 237. by the plaintiff. 6
 P. S. 175, § 7.
 1888, 325, § 2.
 R. L. 181, § 7.

Effect of SECTION 7. The judgment in an action under this chapter shall not 1
 judgment. be a bar to any action thereafter brought by either party to recover the 2
 R. S. 104, § 12. land or tenements in question, or to recover damages for any trespass 3
 1851, 233, § 93. thereon; but the amount recovered for rent under section five shall be 4
 G. S. 137, § 11. deducted in any assessment of damages in such subsequent action by the 5
 P. S. 175, § 9. original plaintiff. 6
 R. L. 181, § 9.
 215 Mass. 125.

Effect of quiet SECTION 8. There shall be no recovery under this chapter of any 1
 possession for land or tenements of which the defendant, his ancestors or those under 2
 three years. whom he holds the land or tenements have been in quiet possession for 3
 1700-1, 14, § 4. three years next before the commencement of the action unless the 4
 1784, 8, § 3. defendant's estate therein is ended. 5
 R. S. 104, § 3.
 1836, 4, § 14.
 1851, 233, § 78.
 G. S. 137, § 4.

P. S. 175, § 10. 12 Gray, 206. 255 Mass. 551.
 R. L. 181, § 10. 175 Mass. 213.

Stay of SECTION 9. In an action of summary process to recover possession 1
 proceedings. of premises occupied for dwelling purposes, other than a room or rooms 2
 1927, 339, § 2. in a hotel, lodging house or rooming house, where a tenancy has been 3
 terminated without fault of the tenant, either by operation of law or by 4
 act of the landlord, except by a notice to quit for nonpayment of rent 5
 as provided in section twelve of chapter one hundred and eighty-six, a 6
 discretionary stay of judgment and execution may be granted, as hereinafter 7
 provided, upon application of the tenant, for such period not exceeding 8
 one month, as the court may deem just and reasonable. 9

Same subject. SECTION 10. Upon application for such a stay of proceedings, the 1
 Hearing, etc. court shall hear the parties, and if upon the hearing it appears that the 2
 1927, 339, § 2. premises of which possession is sought to be recovered are used for 3
 dwelling purposes; that the applicant cannot secure suitable premises for 4
 himself and his family elsewhere within the city or town in a neighbor- 5
 hood similar to that in which the premises occupied by him are situated; 6
 that he has used due and reasonable effort to secure such other premises; 7
 that his application is made in good faith and that he will abide by and 8
 comply with such terms and provisions as the court may prescribe; or 9

10 that by reason of other facts such action will be warranted, the court
 11 may grant a stay as provided in the preceding section, on condition that
 12 the terms upon which such stay is granted be complied with.

1 SECTION 11. Such stay shall be granted and continue effective only
 2 upon the condition that the applicant shall make a deposit in court of
 3 the entire amount, or such instalments thereof from time to time, as the
 4 court may direct, for the occupation of the premises for the period of
 5 the stay, at the rate to which he was liable as rent for the month im-
 6 mediately prior to the expiration of his term or tenancy plus such ad-
 7 ditional amount, if any, as the court may determine to be reasonable.
 8 The deposit shall also include all rent unpaid prior to the period of the
 9 stay. The amount of the deposit shall be determined by the court at
 10 the hearing upon the application for the stay, and such determination
 11 shall be final and conclusive in respect only to the amount of the deposit,
 12 and the amount thereof shall be paid into court, in such manner and in
 13 such instalments, if any, as the court may direct. A separate account
 14 shall be kept of the amount to the credit of each proceeding, and all such
 15 payments shall be deposited by the clerk of the court, and paid over to
 16 the landlord or his duly authorized agent, in accordance with the terms
 17 of the stay or the further order of the court.

Same subject.
 Deposit by
 applicant.
 1927, 339, § 2.

1 SECTION 12. Any provision of a lease whereby a lessee or tenant
 2 waives the benefits of any provision of sections nine to thirteen, inclusive,
 3 shall be deemed to be against public policy and void.

Same subject.
 Waiver in
 lease void.

1927, 339, § 2.

1 SECTION 13. Costs recoverable under section three shall, in actions
 2 to which sections nine to eleven, inclusive, apply, include only legal
 3 costs covering actual disbursements and shall not include fictitious costs,
 4 so-called.

Same subject.
 Costs.
 1927, 339, § 2.

CHAPTER 240.

PROCEEDINGS FOR SETTLEMENT OF TITLE TO LAND.

SECT.	SECT.
PETITION TO REQUIRE ACTION TO TRY TITLE. 1. Petition to compel supposed claimant to try title. 2. Proceedings upon petition. 3. Proceedings upon appearance. 4. Remedy of party whose right is barred without actual notice. 5. Application of preceding sections. SUITS IN EQUITY TO QUIET TITLE. 6. Suits in equity in supreme judicial, superior or land courts to quiet title. 7. Notice. 8. Guardian ad litem. 9. Compensation and expenses of guardian ad litem. 10. Effect of decree.	DETERMINATION OF VALIDITY OF CERTAIN ENCUMBRANCES. 11. Petition in land court to determine encumbrances. 12. Description of respondents. 13. Notice and appointment of agent. 14. Decree. DISCHARGE OF MORTGAGES. 15. Petition in land court to discharge mortgage. REGISTRATION OF LAND FREE FROM RESTRICTIONS. 16. Land court may determine whether restrictions are enforceable.

- SECT.
 17. Land to be registered free from certain restrictions, etc. Procedure.
 18. Appeal.

DETERMINATION OF BOUNDARIES OF FLATS.

19. Petition to land court to determine boundaries of flats, etc.
 20. Proceedings.
 21. Effect of report and plan.
 22. Costs.
 23. Court may determine boundaries instead of appointing commissioners.
 24. Subsequent purchasers, etc., may be made parties.

- SECT.
 25. Boundaries may be determined concurrently with registration.
 26. Rights of commonwealth.

DETERMINATION OF QUESTIONS RELATING TO POWER TO CONVEY OR MORTGAGE REAL ESTATE UNDER WRITTEN INSTRUMENTS.

27. Fiduciary, etc., may petition land court to establish power or authority
 28. Court may determine question, etc.

PROCEDURE.

29. Procedure under this chapter.

PETITION TO REQUIRE ACTION TO TRY TITLE.

Petition to compel supposed claimant to try title.
 1851, 233, § 66.
 1852, 312, § 52.
 G. S. 134, § 49.
 1873, 178.
 P. S. 176, § § 1, 2.
 1893, 340, § § 1, 3.
 R. L. 182, § 1.
 1904, 448, § 1.
 12 Cush. 185.
 1 Gray, 416.
 4 Allen, 150.
 99 Mass. 209.
 101 Mass. 447.
 102 Mass. 374.
 114 Mass. 340.
 116 Mass. 558.
 117 Mass. 504, 506.
 118 Mass. 595.
 124 Mass. 342.
 129 Mass. 377.
 136 Mass. 32.
 137 Mass. 147, 376.
 139 Mass. 175.
 140 Mass. 578.

SECTION 1. If the record title of land is clouded by an adverse claim, or by the possibility thereof, a person in possession of such land claiming an estate of freehold therein or an unexpired term of not less than ten years, and a person who by force of the covenants in a deed or otherwise may be liable in damages, if such claim should be sustained, may file a petition in the land court stating his interest, describing the land, the claims and the possible adverse claimants so far as known to him, and praying that such claimants may be summoned to show cause why they should not bring an action to try such claim. If no better description can be given, they may be described generally, as the heirs of A B or the like. Two or more persons having separate and distinct parcels of land in the same county and holding under the same source of title, or persons having separate and distinct interests in the same parcel or parcels, may join in a petition against the same supposed claimants. If the supposed claimants are residents of the commonwealth, the petition may be inserted like a declaration in a writ, and served by a copy, like a writ of original summons. Whoever is in the enjoyment of an easement shall be held to be in possession of land within the meaning of this section.

145 Mass. 112.	162 Mass. 438.	177 Mass. 501.	212 Mass. 547.
148 Mass. 552.	168 Mass. 201.	191 Mass. 196.	213 Mass. 483.
150 Mass. 73.	170 Mass. 328.	208 Mass. 391.	221 Mass. 372.
153 Mass. 43.	171 Mass. 46, 367.	209 Mass. 9.	

Proceedings upon petition.
 1851, 233, § 66.
 1852, 312, § 53.
 G. S. 134, § 49.
 P. S. 176, § 2.
 1893, 340, § § 2, 4.
 R. L. 182, § § 2-4.
 1918, 257, § 438.
 1919, 5.
 1920, 2.
 103 Mass. 144.

SECTION 2. If the petition is not so served, the court shall order notice thereof by publication to the supposed claimants, whether residents or non-residents of the commonwealth. Such notice shall bind all the world, but the court may also require personal or other notice, and if, upon return of the order of notice duly executed, the parties notified do not appear within the time limited or, having appeared, disobey the lawful order of the court to try their claim, the court shall enter a decree that they be forever barred from having or enforcing any such claim adversely to the petitioner, his heirs or assigns, in the land described, and may require them to execute, within such time as the court orders, a conveyance, release or acquittance duly relinquishing the same. A judgment or decree under this section may require the giving of a bond to respond to any action brought under section four within five years after the entry of such judgment or decree.

Proceedings upon appearance.

SECTION 3. If the persons notified or summoned appear and disclaim all right and title adverse to the petitioner, they shall recover costs. If

3 they claim title, they shall by answer show why they should not be
 4 required to bring an action to try such title, and the court shall enter
 5 an appropriate decree relative to bringing and prosecuting such action.
 6 If the party or parties against whom a judgment or decree for a con-
 7 veyance, release or acquittance may be rendered by any court in the
 8 commonwealth do not comply therewith, within the time therein limited,
 9 such judgment or decree shall, subject to the following section, have
 10 the same effect as if the conveyance, release or acquittance had been
 11 executed conformably thereto.

1851, 233,
 §§ 66, 67.
 1852, 312,
 §§ 52, 53.
 G. S. 134,
 §§ 49, 50.
 P. S. 176, § 2.
 1893, 340, § 3.
 R. L. 182, § 3.
 103 Mass. 144
 137 Mass. 376.
 160 Mass. 471.
 209 Mass. 9.

1 SECTION 4. A party against whom, without other notice than publi-
 2 cation in a newspaper, a judgment or decree has been rendered under
 3 section two and whose right is barred thereby, may recover from the
 4 person in whose favor such judgment or decree was entered, or from his
 5 executors, administrators, heirs or devisees, in accordance with chapter
 6 one hundred and ninety-seven, the value at the time action is brought
 7 of any interest or right, except of improvements made by the defendants,
 8 of which he may have been deprived by such judgment or decree, unless
 9 at that time an action which, but for such judgment or decree, he might
 10 have maintained for the recovery of such interest or the enforcement of
 11 such right would have been barred by the statute of limitations.

Remedy of
 party whose
 right is barred
 without actual
 notice.
 1893, 340, § 1.
 R. L. 182, § 4
 1918, 257,
 § 458.
 1919, 5.
 1920, 2.

1 SECTION 5. The four preceding sections shall not apply to any
 2 property, right, title or interest of the commonwealth.

1893, 340, § 7.

R. L. 182, § 5.

Application of
 preceding
 sections.

SUITS IN EQUITY TO QUIET TITLE.

1 SECTION 6. If, in a suit in equity in the supreme judicial or the
 2 superior court, or in the land court, to quiet or establish the title to land
 3 situated in the commonwealth or to remove a cloud from the title thereto,
 4 it is sought to determine the claims or rights of persons unascertained,
 5 not in being, unknown or out of the commonwealth, or who cannot be
 6 actually served with process and made personally amenable to the de-
 7 cree of the court, such persons may be made defendants and, if they are
 8 unascertained, not in being or unknown, may be described generally, as
 9 the heirs or legal representatives of A B, or such persons as shall become
 10 heirs, devisees or appointees of C D, a living person, or persons claiming
 11 under A B. It shall be unnecessary for the maintenance of such suit
 12 that the defendants shall have a claim or the possibility of a claim rest-
 13 ing upon an instrument the cancellation or surrender of which would
 14 afford the relief desired; but it shall be sufficient that they claim or may
 15 claim by purchase, descent or otherwise, some right, title, interest or
 16 estate in the land which is the subject of the suit and that their claim
 17 depends upon the construction of a written instrument or cannot be met
 18 by the plaintiffs without the production of evidence. Two or more
 19 persons claiming to own separate and distinct parcels of land in the
 20 same county by titles derived from a common source, or two or more
 21 persons having separate and distinct interests in the same parcel, may
 22 join as plaintiffs in any suit brought under this section.

Suits in equity
 in supreme
 judicial,
 superior or
 land courts
 to quiet title.
 1897, 522, § 1.
 1898, 457.
 1899, 444.
 R. L. 182, § 6.
 1931, 387, § 3.
 170 Mass. 328.
 191 Mass. 196.
 193 Mass. 288.
 212 Mass. 547.
 221 Mass. 372

1 SECTION 7. If in such suit the court finds that actual service cannot
 2 be, or has not been, made upon a defendant, it may at the request of
 3 the plaintiff order notice of the suit to be posted in a conspicuous place

Notice.
 1897, 522, § 2.
 R. L. 182, § 7

on the land or to be published in a newspaper within or without the
commonwealth, or both, or to be given in such other manner as it con-
siders most effectual, and may also require personal notice to be given.
Notice given under this section shall be constructive service on all the
defendants.

Guardian
ad litem,
1897, 522, § 3.
R. L. 182, § 8.

SECTION 8. If, after notice has been given or served as provided in
the preceding section and the time limited in such notice for the ap-
pearance of the defendants has expired, the court finds that there are
or may be defendants not actually served with process within the com-
monwealth who have not appeared in the suit, it may of its own motion,
or on the representation of any party, appoint a guardian ad litem or
next friend of any such defendant, and if any such defendants have or
may have conflicting interests, it may appoint different guardians ad
litem or next friends to represent them.

Compensation
and expenses
of guardian
ad litem.
1897, 522, § 4.
R. L. 182, § 9.

SECTION 9. The cost of appearance of any such guardian ad litem
or next friend, including compensation of his counsel, shall be deter-
mined by the court and paid by the plaintiff, against whom execution
may issue therefor in favor of the guardian ad litem or next friend.

Effect of
decree.
1897, 522, § 5.
R. L. 182, § 10.
191 Mass. 196.

SECTION 10. After all the defendants have been served with process
or notified as provided in section seven and after the appointment
of a guardian ad litem or next friend, if such appointment has been
made, the court may proceed as though all defendants had been actually
served with process. Such suit shall be a proceeding in rem against
the land, and a decree establishing or declaring the validity, nature or
extent of the plaintiff's title may be entered, and shall operate directly
on the land and have the force of a release made by or on behalf of all
defendants of all claims inconsistent with the title established or declared
thereby. This and the four preceding sections shall not prevent the
court from also exercising jurisdiction in personam against defendants
actually served with process who are personally amenable to its decrees.

DETERMINATION OF VALIDITY OF CERTAIN ENCUMBRANCES.

Petition in land
court to de-
termine encum-
brances.
1889, 442,
§§ 1, 2.
1890, 427, § 2.
R. L. 182, § 11.
1904, 448, § 1.
173 Mass. 68.
179 Mass. 325.
181 Mass. 146.
183 Mass. 202.
185 Mass. 589.
187 Mass. 256.
201 Mass. 97,
149.
212 Mass. 547.
218 Mass. 189.
221 Mass. 372.

SECTION 11. If the title to land appears of record to be affected by
a possible condition, restriction, reservation, stipulation or agreement
made or imposed more than thirty years prior to the commencement
of the proceedings hereinafter provided for, a person having a freehold
estate, vested or contingent, in possession, reversion or remainder, in
said land, or in any undivided or any aliquot part thereof, or any interest
therein which may become a freehold estate, and any person who has
conveyed such estate or any such interest therein with covenants of
title or warranty, may file a petition on oath in the land court to de-
termine the validity, or define the nature and extent, of such possible
condition or other encumbrance, against any person who might be
entitled in any event to enforce it or avail himself thereof. Two or
more persons owning in severalty different portions of such estate or
different interests therein may join in such petition, or two or more
such defects of the same general character in the title to the same parcel
of land or to different portions of the same parcel of land may be set
forth in the same petition, and if the petition is contested the court shall
make an appropriate order for separate issues.

1 SECTION 12. If it is averred in the petition that there are necessary
 2 or proper respondents whose names are unknown to the petitioner, they
 3 may be described generally, as heirs or devisees of a person deceased, as
 4 persons claiming under certain persons named, as the owners of cer-
 5 tain land, or otherwise, and if it is so averred that the true name of
 6 a respondent cannot be ascertained, he shall be described as accurately
 7 as practicable. If it is so averred that there are classes of necessary or
 8 proper respondents whom it is impracticable and unnecessary to name
 9 and to serve with process individually, they may be described gener-
 10 ally. The court may, if in its opinion the petitioner can and should do
 11 so, require him by amendment to name or describe respondents more
 12 particularly.

Description of respondents.
 1889, 442, § 2.
 R. L. 182, § 12.

1 SECTION 13. The court shall prescribe the notice to be given to
 2 non-resident respondents, to respondents whose residences are unknown,
 3 to unknown or unnamed respondents, and to any other respondents
 4 upon whom for any reason service cannot be made. If the court finds
 5 that there are respondents to be affected by the decree, who have not
 6 had actual notice of the petition, it shall appoint a disinterested person
 7 to act for them.

Notice and appointment of agent
 1889, 442, § 3.
 R. L. 182, § 13.

1 SECTION 14. Upon service of such notice, the court shall have juris-
 2 diction of all persons made respondents to the petition in the manner
 3 above provided, and shall, upon a hearing, make a decree determining
 4 the validity, nature or extent of any such possible condition or other
 5 encumbrance, which shall be effectual to exclude all the respondents
 6 from any claim thereunder contrary to such determination, and shall
 7 have the same effect as a release by such respondents of such claims.
 8 The court may award costs in its discretion.

Decree
 1889, 442,
 §§ 4, 5
 R. L. 182, § 14.

DISCHARGE OF MORTGAGES.

1 SECTION 15. If the record title of land or of easements or rights in
 2 land held and possessed in fee simple is encumbered by an undischarged
 3 mortgage or a mortgage not properly or legally discharged of record,
 4 and the mortgagor and those having his estate therein have been in unin-
 5 terrupted possession of the land or exercising the rights in easements or
 6 other rights in land, either for any period of twenty years after the ex-
 7 piration of the time limited in the mortgage for the full performance of the
 8 condition thereof, or for any period of twenty years after the date of a
 9 mortgage not given to secure the payment of money or a debt but to
 10 secure the mortgagee against a contingent liability which has so ceased to
 11 exist that no person will be prejudiced by the discharge thereof, the
 12 mortgagor, or those having his estate in the land, or exercising the rights
 13 in easements, or any person named in section eleven, may file a petition
 14 in the land court; and if, after such notice by publication or otherwise
 15 as the court orders, no evidence is offered of a payment on account of
 16 the debt secured by said mortgage within such period of twenty years
 17 after the expiration of the time limited for the performance of the con-
 18 dition thereof, or of any other act within said time in recognition of its
 19 existence as a valid mortgage, or if the court finds that such contingent
 20 liability has ceased to exist and that the mortgage ought to be discharged,
 21 it may enter a decree, reciting the facts and findings, which shall, within
 22 thirty days after its entry, be recorded in the registry of deeds for the

Petition in land court to discharge mortgage.
 1882, 237.
 1885, 283.
 1890, 427, § 1.
 R. L. 182, § 15.
 1904, 448, § 1.
 1913, 533.
 1924, 20.
 155 Mass. 57.
 160 Mass. 407.
 168 Mass. 384.
 192 Mass. 244.
 205 Mass. 99,
 197.
 212 Mass. 547.

county or district where the land lies, and no action to enforce a title 23
 under said mortgage shall thereafter be maintained. Two or more 24
 persons owning in severalty different portions or different interests, such 25
 as are described in section eleven, in the land subject to the mortgage may 26
 join in one petition, and two or more defects arising under different 27
 mortgages affecting one parcel of land may be set forth in the same 28
 petition. If the petition is contested, the court shall make an ap- 29
 propriate order for separate issues. 30

REGISTRATION OF LAND FREE FROM RESTRICTIONS.

Land court
 may determine
 whether re-
 strictions are
 enforceable.
 1915, 112, § 1.
 221 Mass. 372.
 228 Mass. 242.

SECTION 16. The land court shall have jurisdiction upon a petition 1
 to register land, or if land has been previously registered, upon a supple- 2
 mental petition by the owner thereof, to hear and determine the question 3
 whether or not equitable restrictions arising under contracts, deeds or 4
 other instruments limiting or restraining the use or the manner of using 5
 land are enforceable in whole or in part. 6

Land to be reg-
 istered free
 from certain
 restrictions, etc.
 Procedure.
 1915, 112, § 2.
 228 Mass. 242.

SECTION 17. If the land court shall find and determine, after hear- 1
 ing, that the enforcement of any of such restrictions or limitations 2
 would be injurious to the public interests, it shall register title to the land 3
 free from said restrictions as and to the extent required by the public 4
 interests, or, in case of registered land, shall enter an appropriate order 5
 therefor; provided, that if the land court shall find and determine that 6
 any of such restrictions or limitations, though they ought not to be 7
 enforced, are nevertheless valid and have not become inoperative, it 8
 shall, before registering said land free from said restrictions or limita- 9
 tions or any of them, ascertain and determine whether any person or 10
 property entitled to the benefits of any of such restrictions or limitations 11
 may be damaged by the non-enforcement thereof. If so, the case shall 12
 be referred to the superior court for the assessment of such damages. 13
 Chapter seventy-nine, so far as applicable, shall govern such assessment. 14
 The amount of any damages so assessed, with interest thereon from the 15
 date of such assessment to the date of payment at the rate allowed by law 16
 upon judgments, may be paid by the owner of the land into the superior 17
 court at any time after such assessment for the benefit of the persons or 18
 property entitled thereto; and, if so paid, the clerk of the superior court 19
 shall so certify to the land court, and shall pay the sum so received by 20
 him to the parties to whom it has been awarded. If no damages shall 21
 be awarded the clerk of the superior court shall certify that fact to the 22
 land court. Upon such certification from the clerk of the superior court 23
 of the final determination of such proceedings for assessment and of the 24
 payment of any damages therein assessed, the title may be registered 25
 free from any restrictions, or in case of registered land may be freed 26
 therefrom by the entry of such order as may be appropriate therefor. 27

Appeal.
 1915, 112, § 3.

SECTION 18. Any party aggrieved by a finding or decision of the 1
 land court that the enforcement of any such restrictions or limitations 2
 would be injurious to the public interests may appeal therefrom to the 3
 supreme judicial court, which may draw from the facts and instruments 4
 stated in the record, findings or decision any inferences of fact that 5
 might have been drawn therefrom at a trial, and reverse or order such 6
 modification of said findings or decision as justice may require. The 7
 appeal shall be taken within twenty days after receipt of notice of 8

9 the filing of such finding or decision, and further proceedings under the
 10 preceding section shall be suspended until after the determination of
 11 said appeal. If an appeal is not duly prosecuted, the finding or decision
 12 shall stand as if no appeal had been taken.

DETERMINATION OF BOUNDARIES OF FLATS.

1 SECTION 19. One or more persons holding land or flats adjacent to
 2 or covered by high water may apply by petition to the land court for the
 3 settlement and determination of the lines and boundaries of their owner-
 4 ship therein.

1864, 306, §§ 1, 2.
 1867, 205.

1871, 338, §§ 1, 2.
 P. S. 177, § 1.

R. L. 183, § 1.
 1906, 50, § 1.

Petition to
 land court to
 determine
 boundaries of
 flats, etc.

1 SECTION 20. Upon such petition the court may by a warrant appoint
 2 one or more commissioners who shall, before entering upon their duties,
 3 be sworn to faithfully and impartially execute the warrant, and a certifi-
 4 cate of such oath shall be made on the warrant by the person administer-
 5 ing it. The commissioners shall notify all persons interested, by personal
 6 service or by publication as the court orders, to appear at a time and
 7 place named and be heard relative to a proposed survey of such flats,
 8 and thereafter shall survey the flats of the petitioners and all adjacent
 9 flats owned by other parties whose rights may be affected by a deter-
 10 mination of the lines of the flats of the petitioners, shall determine the
 11 boundary lines thereof and report to the court the boundaries established
 12 for each owner, with a plan of the several portions of flats showing the
 13 lines established for each owner, which, after its approval, shall by order
 14 of the court be recorded in the registry of deeds for the county or dis-
 15 trict where said flats lie. The proceedings upon such petition shall be
 16 according to sections two, four, six, seven and eight of chapter two
 17 hundred and forty-one, so far as applicable thereto.

Proceedings,
 1871, 306, § 3.
 1871, 338,
 §§ 2-4
 P. S. 177,
 §§ 2-4
 R. L. 183, § 2.

1 SECTION 21. When the report and plan of said commissioners has
 2 been accepted by the court and recorded as aforesaid, it shall forever fix
 3 and determine the rights of all persons and parties, except where definite
 4 boundary lines have been established by parties legally authorized to
 5 establish them.

Effect of
 report and
 plan.
 1871, 338, § 3.
 P. S. 177, § 3.
 R. L. 183, § 3.

1 SECTION 22. The expenses and charges of the commissioners shall
 2 be allowed by the court; the other costs shall be taxed in the usual
 3 manner, and the whole shall be apportioned by the court among all
 4 parties interested in the determination of the boundary lines in such
 5 flats, and shall be paid in proportion to the value of the interests which
 6 they respectively hold therein.

Costs.
 1871, 338, § 5.
 P. S. 177, § 5.
 R. L. 183, § 4.
 129 Mass. 413.

1 SECTION 23. Instead of appointing the commissioners authorized by
 2 section twenty, the court may exercise the powers and duties of such
 3 commissioners.

1906, 50, § 2.

Court may
 determine
 boundaries
 instead of
 appointing
 commissioners.

1 SECTION 24. Whoever, during the pendency of proceedings for the
 2 division of flats, acquires by purchase, devise or descent, or by the en-
 3 forcement of a mortgage or lien, an interest or title in or to any flats which
 4 are the subject matter of such proceedings, may by order of the court
 5 be made a party to such proceedings, and shall be chargeable with such
 6 share of the expenses as the court orders.

Subsequent
 purchasers,
 etc., may be
 made parties.
 1878, 103.
 P. S. 177, § 6.
 R. L. 183, § 5.

Boundaries may be determined concurrently with registration. 1906, 50, § 3.

SECTION 25. A petitioner for registration may in his petition request the court to proceed under sections nineteen to twenty-four, inclusive, concurrently with the registration proceedings, and the court may comply with the request, if such compliance seems conducive to justice and the rights of all parties.

Rights of commonwealth. 1864, 306, § 4. 1871, 338, § 6. P. S. 177, § 7.

SECTION 26. Proceedings under sections nineteen to twenty-five, inclusive, shall not affect any right or title of the commonwealth to any land or flats, unless it consents to become a party thereto.

R. L. 183, § 6.

DETERMINATION OF QUESTIONS RELATING TO POWER TO CONVEY OR MORTGAGE REAL ESTATE UNDER WRITTEN INSTRUMENTS.

Fiduciary, etc., may petition land court to establish power or authority. 1906, 344, § 1.

SECTION 27. Any person having, in a representative or fiduciary capacity or otherwise, a power or authority created by any written instrument to sell, convey, mortgage or otherwise transfer any interest in real estate may file a petition in the land court setting forth the act or acts which he proposes to do by virtue of such power or authority, and praying that his power or authority under such written instrument to do such act or acts may be established.

Court may determine question, etc. 1906, 344, § 2.

SECTION 28. Upon such petition, after such notice as the court may direct, it may determine the existence and extent of the power or authority of the petitioner to do such act or acts, including the existence of the necessity for its exercise and also any other fact or circumstance required for the exercise of such power or authority.

PROCEDURE.

Procedure under this chapter. 1904, 448, §§ 1-8.

SECTION 29. Except as otherwise provided, procedure in the land court under this chapter shall be that provided by sections fifteen to twenty-five, inclusive, of chapter one hundred and eighty-five.

1906, 344, § 3.

1910, 560, §§ 6, 7.

CHAPTER 241.

PARTITION OF LAND.

- SECT.
1. Who may have partition.
 2. Probate courts to have exclusive jurisdiction.
 3. Case in two or more counties to remain within jurisdiction of court where proceedings were begun.
 4. Partition may be made of all or part of land.
 5. Division into shares.
 6. Form of petition.
 7. Notice to be filed in the registry of deeds.
 8. Notice to be given by citation, etc.
 9. Absent, incompetent and undetermined parties.
 10. Interlocutory decree.
 11. Dispute as to ownership of share.
 12. Commissioners, duties, etc.
 13. If land lies in different counties.
 14. Partition of land indivisible.
 15. Payment or security if money awarded.
 16. Return may be set aside, amended, etc.
 17. Court may order examination of title, etc.
 18. Effect of partition.
 19. Remedy of stranger claiming a share assigned.

- SECT.
20. Remedy of stranger claiming as co-tenant.
 21. Remedy of stranger holding title paramount, etc.
 22. Costs, how paid.
 23. Compensation for improvements.
 24. Improvements made before new partition.
 25. Equity jurisdiction.
 26. Death of part owner during proceedings.
 27. Party evicted.
 28. Mortgage, etc., of co-tenant.
 29. Improvements made by person evicted.
 30. Trusteeship, etc., not to prevent partition.
 31. Partition by sale.
 32. Commissioners not liable.
 33. Penalty for not disclosing attachment or lien.
 34. Disposal of proceeds unclaimed.
 35. Appointment of trustee.
 36. Division of water rights and other incorporeal hereditaments.
 37. Partition of water of a natural stream, etc.

1 SECTION 1. Any person, except a tenant by the entirety, owning a
 2 present undivided legal estate in land, not subject to redemption, shall
 3 be entitled to have partition in the manner hereinafter provided. If
 4 such estate is in fee, he shall be entitled to partition in fee; if a life estate
 5 or a term for years, he shall be entitled to partition thereof to continue so
 6 long as his estate endures. A life tenant or a tenant for years of whose
 7 term at least twenty years remain unexpired may, in the discretion of
 8 the court, have partition of the fee. The existence of a lease of the whole
 9 or a part of the land to be divided shall not prevent partition, but such
 10 partition shall not disturb possession of a lessee under a lease covering
 11 the interests of all the co-tenants.

Who may have partition.
 1693, 8, § 1.
 1742-3, 24, § 1;
 29, § 1.
 1748-9, 12, § 1
 1752-3, 13,
 § 1, 2.
 1760-1, 13, § 1.
 1783, 36, § 13.
 41, § 1, 52, § 2.
 1785, 62, § 2.
 1817, 199,
 §§ 24, 25.
 1820, 54, § 1
 R. S. 103, §§ 1,
 3-5, 50, 69
 1833, 419, § 1.

1857, 298, § 14	13 Pick. 237, 251.	109 Mass. 181, 513.
G. S. 104, § 9.	5 Met. 1.	112 Mass. 42
136, §§ 1, 3-5, 48, 61, 67	10 Met. 408.	120 Mass. 174.
P. S. 123, § 11;	6 Cush. 472.	135 Mass. 317.
178, §§ 1, 3, 4, 48, 60, 68.	12 Cush. 170.	140 Mass. 82, 430.
R. L. 131, § 11;	3 Gray, 111.	163 Mass. 325.
184, §§ 1-3, 34, 44, 50.	15 Gray, 499.	170 Mass. 68.
1912, 135.	7 Allen, 192, 196.	179 Mass. 200.
1917, 279, §§ 1, 40.	8 Allen, 186.	216 Mass. 61.
4 Mass. 122.	10 Allen, 144.	229 Mass. 566.
10 Mass. 5.		

1 SECTION 2. Probate courts shall have exclusive jurisdiction of all
 2 petitions for partition. Any such petition may be filed in the probate
 3 court for any county where any part of the land included in the peti-

Probate courts to have exclusive jurisdiction.
 1742-3, 24, § 1;
 29, §§ 1, 2.

1748-9, 12, § 1.
1752-3, 13,
§§ 1, 3.

tion lies, and may include any or all of the common land within the 4
commonwealth. 5

1783, 36, §§ 12,
13; 41, § 1.
1817, 190, §§ 24, 28.
R. S. 103, §§ 2, 50, 61.
1842, 14, § 1.
G. S. 136, §§ 2, 48, 60.

1860, 121, § 1.
1874, 266, §§ 1, 2.
P. S. 178, §§ 2, 45,
46, 48, 59.
1888, 346, § 1.
1892, 169, § 1.

R. L. 184, §§ 2, 31,
32, 34, 43.
1912, 135.
1917, 279, §§ 2, 40.
213 Mass. 167.
268 Mass. 111.

Case in two or
more counties
to remain
within juris-
diction of court
where proceed-
ings were
begun.
R. S. 103, § 72.
G. S. 136, § 70.
P. S. 178, § 64.

SECTION 3. If a case is within the jurisdiction of the probate court in 1
two or more counties, the court in which proceedings are first begun 2
shall retain jurisdiction thereof, which shall exclude the jurisdiction of 3
probate courts of other counties; but this shall not prevent the probate 4
court in any other county where a part of the common land lies, not 5
included in the original petition, from making partition thereof. 6

R. L. 184, § 46. 1917, 279, §§ 3, 40. 11 Allen, 187.

Partition may
be made of all
or part of land.
1742-3, 24, § 1;
29, § 1.
1752-3, 13, § 1.
1783, 36, § 12.
R. S. 103, §§ 2,
50, 55.
G. S. 136,
§§ 2, 48, 54.

SECTION 4. The court may make partition of all or any portion of the 1
land included in the petition of which the parties thereto are co-tenants; 2
but if all of the common land is not included in the petition, the court 3
may, upon request of any party thereto, seasonably filed, cause any other 4
part of the common land to be included, unless a petition for partition 5
thereof is pending in another county. 6

P. S. 178, §§ 2, 48, 54. R. L. 184, §§ 2, 34, 39. 1917, 279, §§ 4, 40.
1888, 346, § 1. 1912, 135. 159 Mass. 469.

Division into
shares.
R. S. 103,
§§ 21, 56.
G. S. 136,
§§ 25, 55.
P. S. 178,
§§ 25, 55.

SECTION 5. The court may set off to the petitioner his share, leaving 1
the residue of the land for the persons entitled thereto, subject to a 2
future partition; or it may set off to the persons entitled to the residue 3
their respective shares therein. If two or more co-tenants consent to 4
hold their shares undivided, such shares may be so set off. 5

1885, 293. R. L. 184, §§ 2, 15, 40. 1917, 279, §§ 5, 40.

Form of
petition.
1786, 53, § 1.
R. S. 103,
§§ 6, 14.
G. S. 136,
§§ 6, 16.
P. S. 178,
§§ 5, 14.
R. L. 184,
§§ 4, 8,
1917, 279,
§§ 6, 40.
9 Pick. 66.
9 Allen, 260.
185 Mass. 107.
187 Mass. 279.
250 Mass. 324.

SECTION 6. The petition shall set forth on oath the nature and 1
extent of the share of each co-tenant, so far as known to the petitioner, 2
stating whether he has an estate of inheritance, for life or for years, 3
whether in possession, remainder or reversion, and whether vested or 4
contingent. It shall contain a description of each parcel of land suffi- 5
ciently specific for identification. If the common title is derived by 6
will or inheritance from a common ancestor, the name of the testator 7
or common ancestor shall be given; if under a deed, reference shall be 8
made thereto. The petition shall be in the alternative, praying for 9
division of the land or for the sale, either public or private, of all or 10
any part thereof which the court may find cannot be advantageously 11
divided. If a private sale is desired, the minimum sum for which the 12
sale may be made shall be stated. Only persons having legal title to 13
an estate for years, for life or in fee, whether in possession, reversion or 14
remainder, shall be necessary or proper parties. Mortgagees, lienors, 15
attaching creditors and other persons having or claiming encumbrances 16
on the land shall not be parties, but shall be named in the petition and 17
given such notice as the court may order, and shall be permitted to 18
intervene so far as may be necessary to protect their interests in the 19
land or to establish their rights in the proceeds of a sale. 20

Notice to be
filed in the reg-
istry of deeds.
1917, 279, § 7.

SECTION 7. Upon the filing of a petition for partition, the petitioner 1
shall forthwith cause to be filed, in the registry of deeds for each registry 2
district where any of the land included in the petition lies, a notice of the 3

4 same, containing a brief description of the land in such district included
 5 therein, and the names of all persons appearing in the petition as parties.
 6 If the probate proceedings are at any time amended, either by the in-
 7 clusion of more land or by adding new parties, a further notice thereof
 8 shall be filed forthwith in the registry district where said land lies. No
 9 interlocutory decree for partition or sale shall be made by the court
 10 until it appears by affidavit that such notices have been filed. If any
 11 part of the land is registered land, the petitioner shall, in filing said
 12 notices, comply with section eighty-six of chapter one hundred and
 13 eighty-five.

1 SECTION 8. Notice shall be given by a citation containing a brief
 2 description of the land, and the minimum price in case it is desired to
 3 sell the land or any part thereof at private sale. The citation shall be
 4 addressed to all known respondents by name, and, in addition, in ex-
 5 press terms to all other persons interested. Said notice shall be given
 6 to each respondent, whether within or without the commonwealth,
 7 whose address is known, by serving the same, either personally or by
 8 registered mail, fourteen days at least before the return day; and if
 9 any party is not so served, by publishing the notice once in each of
 10 three successive weeks in such newspaper as the court shall order, the
 11 last publication to be one day at least before the return day, and by
 12 mailing a copy thereof to the last known address of such party fourteen
 13 days at least before the return day. Proof of service and notice shall
 14 be made by affidavit, setting forth the particulars of the service on each
 15 respondent, and any other notice given, and if actual notice has been
 16 given by registered mail the affidavit shall so state. The court may in
 17 its discretion cause further notice to be given.

Notice to be given by citation, etc.
 1742-3, 24, § 3.
 1748-9, 12, § 2.
 1753-4, 17, § 2.
 1783, 11, § 3.
 R. S. 103, §§ 7, 9-11, 53.
 G. S. 136, §§ 8, 10-12, 51.
 P. S. 178, §§ 7, 9, 10, 51.
 1882, 55.
 R. L. 184, §§ 5, 6, 35.
 1917, 279, §§ 8, 40.

1 SECTION 9. If any party named in the petition has not been served
 2 personally with the citation and has not appeared, or is a minor or
 3 under other disability and has no guardian or other legal representative
 4 within the commonwealth, or if any person whose name is unknown, or
 5 who is unascertained or not in being, appears by the record in the case
 6 to have an estate, vested or contingent, as a co-tenant of the land of
 7 which partition is sought, the court shall appoint a suitable person to
 8 act for him in the proceedings.

Absent, incompetent and undetermined parties.
 1742-3, 29, § 3.
 1752-3, 13, § 4.
 1760-1, 13, § 2.
 1783, 36, § 13.
 1817, 190, § 26.
 R. S. 103, § 54.
 1839, 164, § 1.
 1850, 219.
 1853, 257.

1858, 137. P. S. 178, §§ 52, 53, 62, 70. 1917, 279, §§ 9, 40.
 G. S. 136, §§ 52, 53, 69. R. L. 184, §§ 36, 52. 109 Mass. 513.
 1877, 158, § 2.

1 SECTION 10. If it is found that the petitioner is entitled to have
 2 partition for the share claimed or for any less share, the court shall
 3 make the interlocutory decree that partition be made, and therein
 4 determine the persons to whom and the proportions in which the shares
 5 shall be set off. The petition shall not be defeated by the payment by a
 6 party of a mortgage, lien, tax or other encumbrance upon the land, if
 7 the other parties are entitled to redeem from such payment; but the
 8 interlocutory decree shall contain such terms and conditions relative to
 9 redemption by a contribution on account of any such payment as the
 10 court may deem equitable.

Interlocutory decree.
 1786, 53, § 1.
 R. S. 103, § 18.
 G. S. 136, § 20.
 P. S. 178, § 19.
 1880, 168, § 1.
 R. L. 184, § 12.
 1917, 279, § 10, 40.
 3 Mass. 299.
 11 Cush. 168.
 140 Mass. 430.

1 SECTION 11. If the ownership of any share appears to be in dispute
 2 or uncertain, the court may, in its discretion, without determination
 3 of such question, order the partition to proceed by setting off the re-

Dispute as to ownership of share.
 R. S. 103, §§ 11, 42.

G. S. 136, 38, 39, 178, 16, 17, 184, § 10, 1917, 279, § 11.

maining shares, or by sale. The land not set off, or the proceeds of the share in dispute or uncertain, may be left for the parties entitled thereto in a further partition or distribution in such manner and upon such proceedings as the court may order. The interlocutory decree shall not preclude the parties sharing in the partition from any share to which they may be entitled in a subsequent partition or distribution.

Commissioners, duties, etc. 1742-3, 24, §§ 1, 2; 29, § 1. 1748-9, 12, § 1. 1752-3, 13, § 1. 1759-60, 31, § 1. 1783, 36, § 12; 41, §§ 1, 3. R. S. 103, §§ 20, 22-24, 29, 51. G. S. 136, §§ 21-24, 29, 49. P. S. 178, §§ 20-24, 49.

SECTION 12. If the court determines the petitioner entitled to partition, it shall thereupon appoint one or more disinterested commissioners and issue a warrant to them to make partition. The commissioners, before entering upon their duties, shall be sworn to execute the warrant faithfully and impartially, and a certificate of the oath shall be made on the warrant by the person administering it. They shall give at least seven days' notice of the time and place appointed for making the partition, either personally or by registered mail, to all known persons interested therein, and shall make and sign a report of their doings and return it with their warrant.

R. L. 184, §§ 13, 37. 1917, 279, §§ 12, 40. 244 Mass. 472.

If land lies in different counties. R. S. 103, § 52. G. S. 136, § 50. P. S. 178, § 50. R. L. 184, § 38. 1917, 279, §§ 13, 40.

SECTION 13. If the land lies in different counties, the court may in its discretion issue separate warrants and appoint different commissioners for each county, or for two or more counties together, in which case the partition shall be made of the land in each county, or group of counties, as if there were no other land to be divided.

Partition of land indivisible. 1692-3, 14, § 1. 1759-60, 30, § 2. 1783, 36, §§ 6, 15; 41, § 2. 1817, 190, §§ 24, 29. R. S. 103, §§ 25, 26, 57. 1838, 28.

SECTION 14. If a part of the land cannot be divided without great inconvenience to the owners, or is of greater value than the share of any party, or if all the land cannot be divided without such inconvenience, the whole or any part thereof may be set off to any one or more of the parties, with his or their consent, upon payment by him or them to any one or more of the others of such amounts of money as the commissioners award to make the partition just and equal.

G. S. 136, §§ 26, 56, 58. 1917, 279, §§ 14, 40. 11 Gray, 490. P. S. 178, §§ 26, 56. 15 Pick. 364. 181 Mass. 490. R. L. 184, §§ 16, 41.

Payment or security if money awarded. 1830, 239. G. S. 136, § 71. P. S. 178, § 71. R. L. 184, § 53. 1917, 279, § 15, 40.

SECTION 15. If money is awarded to make the partition just and equal, the court shall be satisfied, before the partition is confirmed, that the money has been paid or secured to the parties entitled thereto. Money awarded on account of shares in dispute or uncertain may be ordered to be deposited in the manner provided in section thirty-four.

16 Mass. 122. 7 Pick. 209. 8 Met. 365. 3 Gray, 536.

Return may be set aside, amended, etc. 1742-3, 24, § 1; 29, § 1. 1748-9, 12, § 1. 1752-3, 13, § 1. 1783, 41, § 1. 1817, 190, § 26. 1820, 51, § 2. R. S. 103, §§ 29, 30, 59. 1847, 170. G. S. 136, §§ 29, 74, 75. P. S. 178, §§ 24, 74, 75. 1888, 346, § 3. R. L. 184, §§ 13, 56, 57.

SECTION 16. The court may after hearing accept and confirm the return of the commissioners, or set it aside and commit the case anew to the same or to other commissioners having the same powers as those originally appointed; or it may, after a hearing, amend the return, and accept and confirm it as amended. After the return of the commissioners has been accepted and confirmed, the court shall thereupon enter a decree that the partition be firm and effectual forever. If the partition is by division, the commissioners shall record a copy of the decree, certified by the register of probate, in the registry of deeds for each district where any of the land lies, together with so much of the return, as finally confirmed, as relates thereto; or, if any part of the

12 land is registered land, they shall in recording the same comply with 1917, 279,
 13 section ninety-two of chapter one hundred and eighty-five. §§ 16, 40.

11 Allen, 187.

152 Mass. 136.

1 SECTION 17. The court may at any time direct an examination of the Court may
 2 title, or the making of a plan, of any land included in the petition, or such order examina-
 3 investigation relating to the description or title of any of it as seems useful tion of title, etc.
 4 or desirable for its better division or sale. If it appears from the report 1917, 279, § 17.
 5 of a title examiner or from any other source that there are necessary
 6 parties, as defined in section six, who were not made parties to the petition,
 7 and have not appeared, the court shall, before proceeding further, cause
 8 the petitioner to amend his petition by making such persons parties,
 9 and to give notice to them in the manner provided in section eight. The
 10 court may also cause notice to be given to any encumbrancer whose
 11 interest may be disclosed by the examination or otherwise. If it appears
 12 at any stage of the proceedings that the land is improperly described, the
 13 court may, before proceeding further, require the petitioner to amend
 14 his petition by inserting a correct description.

1 SECTION 18. The partition by division, when confirmed and estab- Effect of
 2 lished by a final decree under section sixteen, or the sale if partition is partition.
 3 made by sale, shall be conclusive upon all persons named in the petition 1817, 190, § 26.
 4 or interested in the land therein described who appeared in the case or R. S. 103,
 5 who waived notice or assented in writing to the same, or to whom due §§ 33, 68.
 6 notice was given in accordance with section six or eight, or who were G. S. 136,
 7 represented as provided in section nine, and upon all persons claiming §§ 32, 64
 8 through or under them or any of them, and, if the common title is derived 1881, 180.
 9 through the settlement of the estate of a deceased person in any probate P. S. 178,
 10 court within the commonwealth, upon all the heirs and devisees of such §§ 35, 63
 11 deceased person to whom the notice aforesaid was given or who were so 1882, 6, § 2.
 12 represented, and upon all persons claiming through or under them. 1889, 468, § 2.
 176 Mass. 453. R. L. 184,
 187 Mass. 279. §§ 22, 45.
 1917, 279,
 §§ 18, 40.
 8 Met. 365.
 2 Allen, 118.
 11 Allen, 26.
 12 Allen, 600.

1 SECTION 19. A person who was not made a party and has not ap- Remedy of
 2 peared, who claims the whole or any part of the share assigned to or left stranger claim-
 3 for any of the supposed co-tenants in the decree for partition, shall be ing a share
 4 concluded by the decree, so far as it relates to the partition and the assign- assigned.
 5 ment of the shares, as if he had been a party to the proceedings; but he R. S. 103,
 6 may bring his action for the share claimed by him against the person to §§ 39, 40.
 7 whom it was assigned or for whom it was left. Such action shall be G. S. 136,
 8 brought against the tenant in possession, as if the demandant had origi- §§ 36, 37.
 9 nally claimed the specific parcel demanded instead of an undivided part P. S. 178,
 10 of the land; and it may be brought within the time in which it might §§ 39, 40
 11 have been brought if no such decree for partition had been rendered. R. L. 184, § 26.
 12 If partition is made by sale, the claimant may recover the share of the 1917, 279,
 13 proceeds to which he is entitled by action against the persons to whom §§ 19, 40.
 14 the proceeds were paid, or, before such payment, by a petition in equity
 15 in the probate court in which the partition was made, to which the
 16 commissioner or commissioners and all known claimants of such share
 17 shall be made parties defendant.

1 SECTION 20. A person who was not made a party and has not ap- Remedy of
 2 peared and who claims part of the land as a co-tenant with any of those stranger claim-
 3 who were parties to the action, shall, if the share so claimed was unknown as
 co-tenant.

R. S. 103,
 §§ 43, 44
 G. S. 136, § 40.
 P. S. 178, §§ 41
 R. L. 184, § 27.
 1917, 279,
 §§ 20, 40.
 22 Pick. 316.

or not allowed and left for him in the process of partition, be concluded by the decree so far as it relates to the partition, but may, subject to section eighteen, bring an action for the share claimed by him against each of the persons holding any part of the land under the decree for partition; and, if he prevails, shall recover against each the same proportion of the part so held that he was entitled to claim out of all the land before the partition. If the partition was made by sale, he may in like manner recover his portion of the proceeds, as provided in the preceding section.

Remedy of stranger holding title paramount, etc.
 R. S. 103,
 §§ 38, 69.
 G. S. 136,
 §§ 35, 65.
 P. S. 178,
 §§ 38, 63.
 1882, 6, § 2.

SECTION 21. A person who has not appeared and who claims to hold by title paramount to that under which the petitioner claims as a co-tenant shall not be concluded by the partition, but may maintain his action for the land against any or all of the parties, or persons holding under them, within the time in which he might have brought such action if the petition for partition had not been filed.

R. L. 184, §§ 25, 45.

1917, 279, §§ 21, 40.

Costs, how paid.
 1752-3, 13, § 2.
 1783, 36, § 14.
 1786, 53, § 1.
 1817, 190, § 30.
 R. S. 103,
 §§ 17, 49, 60.
 1857, 149
 G. S. 136, §§ 19,
 44, 45, 59.
 1877, 106
 P. S. 178, §§ 18,
 29, 30, 58.
 R. L. 184,
 §§ 11, 14, 42, 52.
 1917, 279,
 §§ 23, 40.
 4 Pick. 246.
 19 Pick. 539.
 5 Allen, 96.
 11 Allen, 104,
 187.
 133 Mass. 413.
 244 Mass. 472.

SECTION 22. The reasonable expenses and charges of partition proceedings, including examination of title and preparation of plan ordered by the court under section seventeen, and the fees of counsel, of the commissioners, and of all agents, guardians and other persons appointed to represent interests in accordance with section nine, shall be determined by the court, and in case of sale paid by the commissioners out of the proceeds; and in case of partition by division shall be paid by the petitioner, who shall be entitled to contribution from the parties to whom shares of the land are set off who take a vested, and not contingent, interest. Such contribution shall be in proportion to the interests of the parties unless the court finds a different proportion more equitable. Costs may also be awarded under section forty-five of chapter two hundred and fifteen. Execution may issue for said contribution and costs.

Compensation for improvements.
 1850, 278,
 §§ 1, 2.
 G. S. 136,
 §§ 46, 47.
 P. S. 178,
 §§ 31, 32.
 R. L. 184,
 §§ 19, 20.
 1917, 279,
 §§ 24, 40.
 13 Met. 462.
 105 Mass. 412.
 131 Mass. 480.
 135 Mass. 317.
 190 Mass. 449.
 244 Mass. 1.

SECTION 23. If the court in which partition proceedings are pending finds that one of the co-tenants has erected any buildings or made other permanent improvements on the common land, it may, if justice and equity so require, award such compensation as it deems proper for the value of such buildings or other improvements, not exceeding, however, the actual amount by which the market value of the common land has been increased thereby; and in awarding such compensation the court may deduct any benefit which the party claiming compensation has received from the common land. The court may make orders and decrees for the enforcement or protection of any such claim, and in case of partition by division may order the improved part set off to the party who made the improvement, and the land divided as if the improvement had not been made.

Improvements made before new partition.
 1742-3, 24, § 4.
 1748-9, 12, § 5.
 1783, 41, § 3.
 R. S. 103,
 §§ 37, 70.
 G. S. 136, § 72.

SECTION 24. If after a first partition improvements have been made on a part of the land which, by a new partition, is taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be awarded and enforced as provided in the preceding section.

P. S. 178, § 72.

R. L. 184, § 54

1917, 279, §§ 25, 40.

1 SECTION 25. The probate court in which a petition has been brought
 2 under this chapter shall have jurisdiction in equity over all matters relat-
 3 ing to the partition, and, in case of sale, over the distribution of the
 4 proceeds thereof; also to hear and determine all matters of accounting
 5 between the parties to the petition in reference to the common land, and
 6 to appoint one or more receivers to take possession of the common land
 7 or any part thereof, and collect the rents and profits therefrom. Such
 8 jurisdiction may be exercised upon petition according to the usual course
 9 of proceedings in the probate court. Such receiver shall give bond in such
 10 amount and with such sureties as the court shall order, and shall dis-
 11 tribute the rents among the co-tenants, or otherwise hold or dispose of
 12 the same in such manner as the court shall determine by its decree.

Equity juris-
 diction.
 R. S. 69, § 12.
 G. S. 100, § 22.
 1880, 163.
 P. S. 141, § 27.
 1891, 415, § 1.
 1892, 116.
 R. L. 162, § 5.
 1910, 190.
 1917, 279, § 26.
 211 Mass. 594.
 210 Mass. 22.
 213 Mass. 249.
 214 Mass. 279.
 251 Mass. 132.
 298 Mass. 111.
 270 Mass. 336.

1 SECTION 26. If a party named in the petition has died prior to the
 2 filing thereof, or dies during its pendency, and such fact did not appear
 3 during the proceedings, his heir or devisee shall be entitled to the share
 4 of land set off to him or his share of the proceeds of a sale. If his death is
 5 made known to the court during the proceedings, the share or portion
 6 formerly belonging to him may be assigned or set off in his name to be
 7 held and disposed of as if the partition had been made prior to his decease,
 8 and his heir or devisee may recover the portion assigned to him, or his
 9 share of the proceeds, by appropriate action. The court may, however,
 10 in any case arising hereunder, if there has been a sale, order his share of
 11 the proceeds to be paid to his personal representatives pending settle-
 12 ment of his estate, or deposited under section thirty-four to await their
 13 appointment.

Death of part
 owner during
 proceedings.
 R. S. 103, § 45.
 G. S. 136, § 41.
 1874, 296, § 3.
 P. S. 178,
 §§ 42, 47.
 1902, 514, § 26.
 R. L. 184,
 §§ 28, 33.
 1917, 279,
 §§ 28, 40.

1 SECTION 27. If a person to or for whom a part of the land has been set
 2 off is evicted by one who, at the time of the partition, had a paramount
 3 title to that parcel, but not to the whole land, the person so evicted may
 4 have a new partition of the remaining land not subject to the paramount
 5 title, as if partition had not been made.

Party evicted.
 R. S. 103, § 46.
 G. S. 136, § 42.
 P. S. 178, § 43.
 R. L. 184, § 29.
 1917, 279,
 §§ 29, 40.

1 SECTION 28. A person having a mortgage, attachment or other lien
 2 on the share of a co-tenant shall be concluded by the decree, so far as it
 3 relates to the partition and the assignment of the shares; but his lien
 4 shall remain in full force upon the part assigned to or left for such co-
 5 tenant, or, in the event of a sale, upon the share of such part owner in the
 6 proceeds, and may be enforced in the manner provided in section nineteen.

Mortgagee,
 etc., of co-
 tenant.
 R. S. 103, § 47.
 G. S. 136, § 43.
 P. S. 178, § 44.
 R. L. 184, § 30.
 1917, 279,
 §§ 30, 40.
 151 Mass. 181.

198 Mass. 37.

240 Mass. 1.

1 SECTION 29. A person holding land under a partition made under
 2 this chapter shall, in case of an eviction, be entitled to compensation for
 3 improvements made thereon, as provided in chapter two hundred and
 4 thirty-seven.

Improvements
 made by person
 evicted.
 R. S. 103, § 71.
 G. S. 136, § 73

P. S. 178, § 73.

R. L. 181, § 55.

1917, 279, §§ 31, 40.

1 SECTION 30. The fact that a co-tenant is, alone or jointly with others,
 2 as trustee or in any other representative capacity, the holder of the legal
 3 title to a share in which he has no beneficial interest shall not prevent
 4 a partition.

Trusteeship,
 etc., not to pre-
 vent partition.
 1853, 410, § 2.
 G. S. 136, § 68.

P. S. 178, § 69.
 R. L. 184, § 51.

1917, 279, §§ 32, 40.
 9 Cush. 405

Partition
by sale.
1870, 257.
1871, 111, § 1.
1877, 158, § 1.
P. S. 178,
§§ 65, 66.
1894, 104,
R. L. 184, § 47.
1907, 361.
1917, 279,
§§ 33, 40.
149 Mass. 82.
162 Mass. 385.
180 Mass. 521.
187 Mass. 279.
218 Mass. 360.
250 Mass. 324.

SECTION 31. In partition proceedings the court may order the commissioners to sell and convey the whole or any part of the land which cannot be divided advantageously, upon such terms and conditions and with such securities for the proceeds of the sale as the court may order, and to distribute the proceeds so as to make the partition just and equal. The sale shall be made by public auction, after like notice as is required for the sale of land by an administrator, and the evidence thereof may be perpetuated in like manner by returns filed with the register of the court in which the proceedings are had; or the sale may be a private sale, upon such terms as the court orders, if it finds after notice, as provided in section eight, and a hearing, or after receiving the written assent of all parties in interest, that the interests of all parties will be promoted thereby. If the sale is by auction, section nineteen of chapter two hundred and four shall apply thereto.

Commissioners
not liable.
1917, 279, § 34.

SECTION 32. If the commissioners, after making a sale in accordance with the preceding section, distribute the proceeds in accordance with the order or decree of the court before learning of any conveyance, mortgage, lien or other encumbrance of or upon the share of any of the joint owners, they shall not be liable to such claimant. If they are in doubt as to the existence or the validity of any such claim against the share of any co-tenant in the proceeds they may ask for instructions by the court.

Penalty for
not disclosing
attachment or
lien.
1917, 279, § 35.

SECTION 33. Whoever receives any proceeds of a sale of land under this chapter after having sold or mortgaged his interest therein, or with knowledge that it has been attached or liened, without disclosing such fact to the commissioners or the court, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Disposal of
proceeds un-
claimed.
1871, 111, § 2.
P. S. 178, § 67.
R. L. 184, § 48.
1917, 279,
§§ 36, 40.

SECTION 34. If the proceeds of a sale, or any share thereof, cannot be paid to the persons entitled thereto, the commissioners shall deposit the same in the name of the judge of probate for the county where the proceedings are had, in such savings bank or other like institution as the court orders, to accumulate for the persons entitled thereto. The deposit shall be subject to sections twenty-five to twenty-eight, inclusive, of chapter two hundred and six, so far as applicable.

Appointment
of trustee.
1887, 286.
R. L. 184, § 49.
1917, 279,
§§ 37, 40.

SECTION 35. If in any share there are estates in succession, the court making partition may, upon petition of any party interested, appoint a trustee to receive, hold, manage and invest the proceeds of the sale of such share. The annual income of such share shall be paid to the owner of each successive estate for years or for life until it terminates, and the principal, after termination of prior estates, shall be paid to the parties entitled to the fee. The trustee shall, before entering upon the duties of his trust, give to the judge of probate and his successors a bond, with sufficient surety and in such penal sum as the court orders, conditioned for the faithful performance of his duties, and, upon breach of the condition, an action may, by order of the probate court, be brought for the use of the persons interested in the trust property, as upon a bond of an administrator.

1 SECTION 36. Joint tenants or tenants in common of a mill privilege,
 2 water right, or other incorporeal hereditament may be compelled to divide
 3 the same in the manner hereinbefore provided for the division of land.
 4 The commissioners appointed to make partition shall set forth in their
 5 return the best method of setting off to the several parties their respective
 6 shares, and thereupon the court may make such orders and decrees as
 7 might be made in equity. If any one of the joint owners so requests, the
 8 court shall order a sale, provided that a sale is feasible.

Division of water rights and other incorporeal hereditaments.
 1854, 74.
 G. S. 136, § 77.
 P. S. 178, § 76.
 R. L. 184, § 58.
 1917, 279, §§ 38, 40.
 4 Gray, 486.

10 Gray, 14.

1 SECTION 37. Under the preceding section, partition may be made of
 2 the water of a natural stream, not navigable, the banks of which are
 3 owned by different riparian proprietors.

Partition of water of a natural stream, etc.

1859, 128.
 G. S. 136, § 78.

P. S. 178, § 77.
 R. L. 184, § 59.

1917, 279, § 39.

CHAPTER 242.

WASTE AND TRESPASS.

SECT.

1. Who may maintain waste. Trial by jury.
2. Who may maintain action of tort in nature of waste.
3. When action maintainable against representative.
4. Liability of co-tenant for triple damages for waste.

SECT.

5. Form of and parties to action for triple damages.
6. Triple damages for waste during pendency of action.
7. Liability for wilfully cutting trees, etc.
8. Involuntary trespass and effect of tender.
9. Jurisdiction to stay waste during pendency of action.

1 SECTION 1. If a tenant in dower, by the curtesy, for life or for years
 2 commits or suffers waste on the land so held, the person having the next
 3 immediate estate of inheritance may have an action of waste against
 4 such tenant to recover the place wasted and the amount of the damage,
 5 and such action shall be subject to the provisions of law relative to trial
 6 by jury. An heir may bring such action for waste done in the lifetime of
 7 his ancestor.

Who may maintain waste.
 Trial by jury.
 1700-1, 22, § 5.
 1783, 40, § 3.
 R. S. 60, § 15;
 105, §§ 1-3.
 G. S. 90, § 14;
 138, §§ 1-3.
 P. S. 124, § 16;
 179, §§ 1, 2.

R. L. 185, § 1.
 5 Pick. 192.
 7 Pick. 152.

8 Pick. 309.
 138 Mass. 466.

152 Mass. 561.
 205 Mass. 350.

1 SECTION 2. A person having the next immediate estate of inheritance,
 2 or a remainder or reversion in fee simple or fee tail after an intervening
 3 life estate, or having a remainder or reversion for life or for years, may
 4 have an action of tort in the nature of waste to recover the amount of the
 5 damage against the tenants named in the preceding section.

Who may maintain action of tort in nature of waste.
 R. S. 105,
 §§ 4, 5.
 G. S. 138,
 §§ 4, 5.

P. S. 179, §§ 3, 4.

R. L. 185, § 2.

3 Pick. 203.

10 Allen, 460.

1 SECTION 3. If such action in tort was commenced in the lifetime of
 2 the tenant, it may be prosecuted against his executor or administrator
 3 or it may be commenced against such executor or administrator for
 4 waste committed or suffered in the tenant's lifetime.

When action maintainable against representative.
 R. S. 105, § 6.

G. S. 138, § 6.

P. S. 179, § 5.

R. L. 185, § 3.

Liability of co-tenant for triple damages for waste.
 1727, 18, § 1.
 1737-8, 8, § 2.
 1783, 52, § 1.
 1785, 62, § 1.
 R. S. 105, § 7.
 G. S. 138, § 7.
 P. S. 179, § 6.
 R. L. 185, § 4.
 1 Met. 266.
 140 Mass. 31.
 145 Mass. 494.
 182 Mass. 415.

SECTION 4. A joint tenant or tenant in common of undivided land who cuts down, destroys or carries away trees, timber, wood or underwood standing or lying on such land, or digs up or carries away stone, ore or other valuable thing found there, or commits any other waste, without first giving thirty days' notice in writing under his hand to all other persons interested therein or to their respective agents or attorneys of his intention to enter upon and improve the land, or who does any of said acts during the pendency of a petition or other proceeding for the partition of the land shall forfeit three times the amount of the damages assessed therefor.

Form of and parties to action for triple damages.
 1727, 18, § 1.
 1737-8, 8, § 2.
 1783, 52, § 1.
 1785, 62, § 1.
 R. S. 105, § 8.
 G. S. 138, § 8.
 P. S. 179, § 7.
 R. L. 185, § 5.
 22 Pick. 495.

SECTION 5. Such damages may be recovered in tort by one or more of the other co-tenants, without naming any one except the plaintiff, one half to the use of the co-tenants who associate themselves with the plaintiff in bringing the action, and the other half to their use and that of all the other co-tenants except the defendant, to be divided among them in each class in proportion to the value of their respective interests in the land.

6 Gray, 338.

182 Mass. 415.

Triple damages for waste during pendency of action.
 1727, 18, § 2.
 1795, 75, § 3.
 R. S. 105, § 9.

SECTION 6. If, during the pendency of an action for the recovery of land, the tenant or person in possession, with knowledge thereof, commits waste, the demandant, if he recovers judgment, may afterward recover in tort three times the amount of the damages assessed therefor.

G. S. 138, § 9.
 P. S. 179, § 8.

R. L. 185, § 6.
 8 Pick. 514.

2 Cush. 400.

Liability for wilfully cutting trees, &c.
 1698, 7, § 2.
 1723-4, 10, § 1.
 1726-7, 5, § 1.
 1727, 8, § 1.
 1817, 173.
 R. S. 105, § 10.
 § 10, 11.
 G. S. 138, § 10.
 P. S. 179, § 9.
 R. L. 185, § 7.

SECTION 7. A person who without license wilfully cuts down, carries away, girdles or otherwise destroys trees, timber, wood or underwood on the land of another shall be liable to the owner in tort for three times the amount of the damages assessed therefor; but if it is found that the defendant had good reason to believe that the land on which the trespass was committed was his own or that he was otherwise lawfully authorized to do the acts complained of, he shall be liable for single damages only.

110 Mass. 280.

114 Mass. 443.

211 Mass. 556.

Involuntary trespass and effect of tender.
 1786, 52, § 2.
 R. S. 105, §§ 12, 13.
 G. S. 138, §§ 11, 12.
 P. S. 179, §§ 10, 11.
 R. L. 185, § 8.
 6 Met. 261.
 16 Gray, 285.
 192 Mass. 600.

SECTION 8. A trespasser, if the trespass was casual and involuntary, may, before an action is commenced, tender the damages and, upon action brought, disclaim title and allege the tender and that the trespass was casual and involuntary; and if it is found that the allegations are true and if he has deposited with the court the amount of his tender at the time of filing his answer and the damages assessed are not more than the amount tendered, he shall recover costs. Such tender may, subject to the same provisions, be made after the action has been commenced with like effect, if it covers the costs to the time of tender.

Jurisdiction to stay waste during pendency of action.
 1740-1, 14.
 1829, 121.
 R. S. 105, §§ 17, 18.
 1851, 235, § 71.
 1852, 312, § 54.
 1856, 278.

SECTION 9. If a person whose land is attached commits waste thereon or threatens or prepares so to do or if a real action is brought to foreclose a mortgage or for possession thereunder or for the recovery of land and any waste, or act in the nature of waste, on the land has been committed or threatened by the tenant or any one who claims under him or acts by his permission, the court in which the action is pending

7 shall, upon motion of the plaintiff or demandant, have jurisdiction in
 8 equity to enjoin such waste or act. In such case the court may require
 9 the plaintiff or demandant to give bond in such sum as it orders to the
 10 adverse party, with sufficient sureties, conditioned, if the injunction is
 11 dissolved, to pay all damages arising from the issuing thereof.

G. S. 138,
 §§ 15-17,
 P. S. 179,
 §§ 12-14,
 R. L. 185, § 9.

CHAPTER 243.

ACTIONS FOR PRIVATE NUISANCES.

SECT.

- 1. Judgment for abatement of nuisance.
- 2. Stay of warrant.
- 3. Judgment for abatement in second action.

SECT.

- 4. Manner of collecting expense of abatement.
- 5. Injunction to restrain nuisance.

1 SECTION 1. If the plaintiff prevails in tort for a nuisance, the court
 2 may, in addition to the judgment for damages and costs, enter judg-
 3 ment that the nuisance be abated and removed and may issue execution
 4 for the damages and costs and a separate warrant to the proper officer,
 5 requiring him to abate and remove the nuisance at the expense of the
 6 defendant as public and common nuisances are abated and removed.

Judgment for
 abatement of
 nuisance.
 1828, 137, § 6.
 R. S. 106,
 §§ 1, 2.
 G. S. 139, § 1.
 P. S. 180, § 1.
 R. L. 186, § 1.
 11 Pick. 452.

7 Allen, 431.

150 Mass. 482.

1 SECTION 2. The court may, upon motion of the defendant, order a
 2 stay of such warrant for not more than six months, to give him op-
 3 portunity to remove the nuisance, upon his undertaking so to do within
 4 the time ordered.

Stay of
 warrant.
 R. S. 106, § 3.
 G. S. 139, § 2.
 P. S. 180, § 2.

R. L. 186, § 2.

1 SECTION 3. If the plaintiff recovers judgment in a second action
 2 for the continuance or repetition of the same nuisance, he shall be en-
 3 titled as of right to a judgment for abatement and removal and to a
 4 warrant as provided in section one, if judgment in the former action
 5 was in his favor and whether it included an order for abatement or
 6 removal or not.

Judgment for
 abatement in
 second action.
 R. S. 106, § 4.
 G. S. 139, § 3.
 P. S. 180, § 3.
 R. L. 186, § 3.
 203 Mass. 448.

1 SECTION 4. The expense of abatement and removal shall be col-
 2 lected by the officer as damages and costs are collected upon execution,
 3 except that the materials of buildings, fences or other things so removed
 4 may be sold by the officer as goods are sold on execution for the pay-
 5 ment of debts. The officer shall apply the proceeds to the expense of
 6 the removal and shall upon demand pay over the remainder to the
 7 defendant. If the proceeds are insufficient to defray the expenses, the
 8 officer shall collect the deficit from the defendant.

Manner of col-
 lecting expense
 of abatement.
 1786, 81, § 6.
 R. S. 106, § 5.
 G. S. 139, § 4.
 P. S. 180, § 4.
 R. L. 186, § 4.

1 SECTION 5. The superior court may in an action of tort pending
 2 therein for a nuisance enjoin such nuisance as in equity.

Injunction
 to restrain
 nuisance.

R. S. 106, § 6.

G. S. 139, § 6.

P. S. 180, § 6.

R. L. 186, § 5.

CHAPTER 244.

FORECLOSURE AND REDEMPTION OF MORTGAGES.

SECT.

- FORECLOSURE BY ENTRY OR ACTION.
1. Foreclosure by entry or action.
 2. Certificate of entry to be recorded.
 3. Form of declaration.
 4. Procedure.
 5. Form of conditional judgment generally.
 6. Form in special cases.
 7. Discharge or release on satisfaction of execution.
 8. Form of action. Parties.
 9. Right to enter before breach.
 10. Foreclosure and redemption where entry is made before breach.

FORECLOSURE BY SALE.

11. Order of court for sale under power.
12. Procedure after sale.
13. Necessary parties.
14. Procedure in foreclosure under power of sale. Form and publication of notice.
15. Record of affidavit of sale as evidence.
16. When dower and curtesy barred by sale.
17. Effect of conveyance by mortgagor.

REDEMPTION.

18. Who may redeem.
19. Tender of payment or performance.
20. Accounting.

SECT.

21. Time of making tender and necessity of suit for redemption.
22. Suit without previous tender.
23. Order for payment of amount not in dispute.
24. Costs.
25. Suit not barred by defective tender.
26. Venue and practice.
27. Decree for possession.
28. Interest.
29. Execution for possession.
30. Judgment and execution for balance.
31. Distribution of money tendered and paid into court.
32. New parties. Process.
33. Survival of right to redeem.
34. Tender to guardian or conservator.

GENERAL PROVISIONS.

35. Right to redeem where foreclosure opened.
36. Action for excess received by mortgagee.

MORTGAGES TO THE COMMONWEALTH.

37. Discharge of mortgage held by commonwealth.
38. Foreclosure.
39. Redemption generally.
40. Suit for redemption.

FORECLOSURE BY ENTRY OR ACTION.

Foreclosure by entry or action.
1785, 22, § 2.
R. S. 107, § 1.
G. S. 140, § 1.
P. S. 181, § 1.
R. L. 187, § 1.
13 Mass. 429.
5 Pick. 418.
11 Met. 467.

SECTION 1. A mortgagee may, after breach of condition of a mortgage of land, recover possession of the land mortgaged by an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming it, or by action under this chapter; and possession so obtained, if continued peaceably for three years, shall forever forelose the right of redemption.

6 Cush. 91.	102 Mass. 298.	139 Mass. 506.
7 Cush. 605.	103 Mass. 475.	157 Mass. 272.
8 Cush. 357.	110 Mass. 311.	165 Mass. 123.
10 Cush. 99, 163.	113 Mass. 36.	170 Mass. 120.
4 Gray, 299.	116 Mass. 163.	185 Mass. 398.
5 Gray, 318, 545.	117 Mass. 365, 439.	234 Mass. 559.
6 Gray, 126, 128, 439.	121 Mass. 139.	236 Mass. 332.
9 Gray, 63, 98.	122 Mass. 129.	241 Mass. 486.
16 Gray, 149.	131 Mass. 464.	244 Mass. 294.
3 Allen, 324.	132 Mass. 502.	262 Mass. 302.
8 Allen, 161, 466.	134 Mass. 364.	267 Mass. 453.
99 Mass. 4.		

Certificate of entry to be recorded.
R. S. 107, § 2.
G. S. 140, § 2.
P. S. 181, § 2.
R. L. 187, § 2.
10 Met. 344.
4 Cush. 172.

SECTION 2. If an entry for breach of condition is made without a judgment, a memorandum of the entry shall be made on the mortgage deed and signed by the mortgagor or person claiming under him, or a certificate, under oath, of two competent witnesses to prove the entry shall be made. Such memorandum or certificate shall within thirty days

6 after the entry, except as provided in section seventy of chapter one
 7 hundred and eighty-five, be recorded in the registry of deeds for the
 8 county or district where the land lies, with a note of reference, if the
 9 mortgage is recorded in the same registry, from each record to the other.
 10 Unless such record is made, the entry shall not be effectual for the pur-
 11 poses mentioned in the preceding section.

8 Allen, 161	109 Mass. 230.	236 Mass. 332.
9 Allen, 530.	131 Mass. 545.	244 Mass. 294.
100 Mass. 108.	145 Mass. 224.	267 Mass. 453.
101 Mass. 184.	165 Mass. 359.	

10 Cush. 163
3 Gray, 517
5 Gray, 318
7 Gray, 202
8 Gray, 152
9 Gray, 98.
11 Gray, 478,
196
16 Gray, 561.

1 SECTION 3. The mortgagee in an action for possession may declare
 2 on his own seisin, stating that it is in mortgage; and if the court finds upon
 3 verdict or otherwise that the plaintiff is entitled to possession of the land
 4 for breach of condition, it shall upon motion of either party, except as
 5 provided in the following section, award a conditional judgment.

G. S. 140, § 3.	22 Pick. 556.	6 Gray, 428.
P. S. 181, § 3.	10 Met. 172.	8 Gray, 154, 147.
R. L. 187, § 3.	12 Met. 154.	11 Allen, 39.
7 Mass. 355.	2 Cush. 374.	122 Mass. 135.
7 Pick. 31.	3 Gray, 517.	131 Mass. 179, 464.

Form of declaration.
1898, 22, § 1
1785, 22, § 1
R. S. 107, § 3
1852, 312, § 2, et 10.

1 SECTION 4. Unless the defendant is the mortgagor or his assignee, or
 2 entitled to hold or claim the land under the mortgagor or his assignee,
 3 he shall not redeem the land nor have a conditional judgment, except
 4 with the consent of the plaintiff, but the action shall be conducted like
 5 a writ of entry, and in all cases the judgment for the plaintiff may be
 6 entered for possession as at common law, unless one or the other of the
 7 parties moves for the conditional judgment.

Procedure.
R. S. 107, § 1
G. S. 140, § 4.
P. S. 181, § 4
R. L. 187, § 4.

1 SECTION 5. If the conditional judgment is to be entered, the court
 2 shall determine the amount due to the plaintiff on the mortgage, and
 3 shall enter judgment that if the defendant within two months after the
 4 judgment pays to the plaintiff such amount with interest and the costs,
 5 the mortgage shall be void, and the defendant shall hold the land dis-
 6 charged thereof; otherwise, that the plaintiff shall have execution for pos-
 7 session and for costs.

24 Pick. 141.	14 Gray, 522.	112 Mass. 271.
7 Met. 576.	1 Allen, 145.	114 Mass. 360.
11 Met. 384.	4 Allen, 440.	118 Mass. 497.
5 Gray, 423.	8 Allen, 78.	123 Mass. 100, 441.
7 Gray, 202.	9 Allen, 69.	140 Mass. 49.
11 Gray, 271.	10 Allen, 76.	142 Mass. 433.
12 Gray, 60.	102 Mass. 475.	

Form of conditional judgment generally.
1698, 22, § 1
1785, 22, § 1
R. S. 107, § 5
G. S. 140, § 5
P. S. 181, § 5
R. L. 187, § 5.
19 Pick. 535.

1 SECTION 6. If the condition of the mortgage is not for the payment of
 2 money, or if a part only of the money, the payment of which is secured
 3 by the mortgage, is due, the court shall vary the terms of the judgment
 4 as the case may require, but shall award execution as before provided
 5 unless the defendant within two months after the judgment performs the
 6 conditions thereof.

Form in special cases.
R. S. 107, § 6
G. S. 140, § 6
P. S. 181, § 6
R. L. 187, § 6.
11 Met. 384
9 Allen, 69.

1 SECTION 7. If, after an execution on a judgment for possession has
 2 been levied, the amount due on the mortgage and costs are paid in full,
 3 the mortgagee, his executor, administrator or assigns shall, at the ex-
 4 pense of the mortgagor, enter on the margin of the record of the execution
 5 an acknowledgment of satisfaction or make to the mortgagor a deed of
 6 release, which shall be recorded with notes of reference to the execution
 7 discharged thereby.

Discharge or release on satisfaction of execution.
1848, 144, § 2
G. S. 140, § 33.
P. S. 181, § 7
R. L. 187, § 7.

Form of action.
Parties.
1788, 51, § 1.
R. S. 107,
§§ 7, 8,
G. S. 140,
§§ 7, 8,
P. S. 181,
§§ 8, 9,
R. L. 187, § 8.
11 Mass. 216.
17 Pick. 118.
12 Met. 154.

SECTION 8. The entry may be made or the action brought by an assignee of the mortgagee. The action for possession may be brought like a writ of entry against the tenant of the freehold, and shall be conducted as if brought by the original mortgagee. The mortgagor may be joined therein as a defendant irrespective of his estate in the land; but if he has no estate in the land and makes no defence to the action, he shall not be liable for costs.

7 Gray, 202. 15 Gray, 461. 131 Mass. 464.
13 Gray, 198, 506. 16 Gray, 485. 140 Mass. 49.

Right to enter before breach.
R. S. 107, § 9.
G. S. 140, § 9.
P. S. 181, § 10.
R. L. 187, § 9.
3 Mass. 138.
16 Mass. 39.
11 Met. 458.
1 Gray, 512.

SECTION 9. This chapter shall not prevent a mortgagee or person claiming under him from entering on the land or from recovering possession thereof before breach of condition of the mortgage, if there is no agreement to the contrary; but if the debt is afterward paid or the mortgage redeemed, the amount of the clear rents and profits from the time of the entry shall be accounted for and deducted from the amount due on the mortgage.

Foreclosure and redemption where entry is made before breach.
R. S. 107,
§§ 10-12.
G. S. 140,
§§ 10-12.
P. S. 181,
§§ 11-13.
R. L. 187, § 10.
13 Mass. 309.
6 Cush. 91.

SECTION 10. A mortgagee, or a person claiming under him in possession under the preceding section, may, after breach of condition, make a new formal entry for breach of condition, or bring an action, under section one, with the same effect as if he were not in possession; or he may foreclose the right of redemption by giving, after breach of condition, to the mortgagor, or person claiming under him, a written notice that he will thenceforward hold the land for the purpose of foreclosure and causing a certificate in proof thereof to be recorded within thirty days after such notice as in case of an original entry. If such notice is given and recorded, the three years limited for redemption shall run from the date of giving the notice.

FORECLOSURE BY SALE.

Order of court for sale under power.
1854, 377, § 1.
G. S. 140, § 38.
P. S. 181, § 14.
R. L. 187, § 11.

SECTION 11. If a conditional judgment has been entered upon a mortgage containing a power of sale, the court shall, instead of issuing a writ of possession, at the request of the plaintiff order the property to be sold pursuant to such power. The plaintiff shall thereupon execute the power and do all things required by it or by the court.

Procedure after sale.
1854, 377, § 2.
G. S. 140, § 40.
P. S. 181, § 15.
R. L. 187, § 12.

SECTION 12. The person selling shall, within ten days after the sale, file in the clerk's office a report on oath of the sale and of his doings, and the court may confirm the sale or set it aside and order a re-sale. Any person interested may appear or be summoned, and the order of the court confirming the sale shall be conclusive evidence against all persons that the power of sale was duly executed.

Necessary parties.
1854, 377, § 3.
G. S. 140, § 41.
P. S. 181, § 16.
R. L. 187, § 13.

SECTION 13. Unless the defendant is seized in fee simple in possession of the whole equity of redemption of the land demanded, an order for a sale shall not be made until all parties interested in the equity of redemption and whose estate or interest therein would be affected by such sale, including a person having a right or possibility of curtesy or dower, have been summoned to appear.

Procedure in foreclosure under power

SECTION 14. The mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney

3 duly authorized by a writing under seal, or the legal guardian or con-
 4 servator of such mortgagee or person acting in the name of such mort-
 5 gagee or person, may, upon breach of condition and without action, do
 6 all the acts authorized or required by the power; but no sale under
 7 such power shall be effectual to foreclose a mortgage, unless, previous
 8 to such sale, notice thereof has been published once in each of three
 9 successive weeks, the first publication to be not less than twenty-one
 10 days before the day of sale, in a newspaper, if any, published in the
 11 town where the land lies. If no newspaper is published in such town,
 12 notice may be published in a newspaper published in the county where
 13 the land lies, and this provision shall be implied in every power of sale
 14 mortgage in which it is not expressly set forth. A newspaper which by
 15 its title page purports to be printed or published in such town, city or
 16 county, and having a circulation therein, shall be sufficient for the purpose.
 17 The following form of foreclosure notice may be used and may be
 18 altered as circumstances require; but nothing herein shall be construed
 19 to prevent the use of other forms.

of sale. Form
 and publication
 of notice.
 1857, 229, § 1.
 G. S. 140, § 12.
 1877, 215.
 P. S. 181, § 17.
 1882, 75.
 R. L. 187, § 11
 1906, 219, § 1.
 1912, 360, § 1.
 1918, 257,
 § 439.
 1919, 5.
 1920, 2.
 151 Mass. 291.
 165 Mass. 273.
 171 Mass. 195.
 181 Mass. 49.
 228 Mass. 417.
 234 Mass. 559.
 241 Mass. 486.
 246 Mass. 356.
 255 Mass. 563.
 258 Mass. 323.
 263 Mass. 188.
 272 Mass. 302,
 391.

(Form.)

MORTGAGEE'S SALE OF REAL ESTATE.

By virtue and in execution of the Power of Sale contained in a certain mortgage
 given by.....to.....
 dated.....and recorded with.....
 Deeds, Book....., page....., of which mortgage the
 undersigned is the present holder,.....

(If by assignment, or in any fiduciary capacity, give reference.)

.....
 for breach of the conditions of said mortgage and for the purpose of foreclosing
 the same will be sold at Public Auction at.....o'clock, M.
 on the.....day
 of.....A. D. 19.....
 (place).....all and singular the premises described in said
 mortgage,

(In case of partial releases, state exceptions.)

To wit: "(Description exactly as in the mortgage, including all references to
 title, restrictions, encumbrances, etc., as made in the mortgage.)"

Terms of sale: (State here the amount, if any, to be paid in cash by the pur-
 chaser at the time and place of the sale, and the time or times for payment of the
 balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed).....

Present holder of said mortgage.

20 A notice of sale in the above form, published in accordance with the
 21 power in the mortgage and with this chapter, together with such other
 22 or further notice, if any, as is required by the mortgage, shall be a suffi-
 23 cient notice of the sale; and the premises shall be deemed to have
 24 been sold, and the deed thereunder shall convey the premises, subject to
 25 and with the benefit of all restrictions, easements, improvements, out-
 26 standing tax titles, municipal or other public taxes, assessments, liens
 27 or claims in the nature of liens, and existing encumbrances of record

created prior to the mortgage, whether or not reference to such restric- 28
tions, easements, improvements, liens or encumbrances is made in the 29
deed; but no purchaser at the sale shall be bound to complete the pur- 30
chase if there are encumbrances, other than those named in the mort- 31
gage and included in the notice of sale, which are not stated at the sale 32
and included in the auctioneer's contract with the purchaser. 33

Record of
affidavit of sale
as evidence.
1857, 229, § 1.
G. S. 140,
§§ 42, 43.
P. S. 181, § 18.
R. L. 187, § 15.
1906, 219, § 2.
1915, 23.
5 Allen, 319.
106 Mass. 310.
115 Mass. 89.
117 Mass. 365.
195 Mass. 124.
201 Mass. 236.
208 Mass. 368.
236 Mass. 332.
246 Mass. 136.

SECTION 15. The person selling, or the attorney duly authorized by 1
a writing under seal, or the legal guardian or conservator of such person, 2
shall, within thirty days after the sale, cause a copy of the notice and 3
his affidavit, fully and particularly stating his acts, or the acts of his 4
principal or ward, to be recorded in the registry of deeds for the county 5
or district where the land lies, with a note of reference thereto on the 6
margin of the record of the mortgage deed, if it is recorded in the same 7
registry. If the affidavit shows that the requirements of the power of 8
sale and of the statute have in all respects been complied with, the affi- 9
davit or a certified copy of the record thereof, shall be admitted as 10
evidence that the power of sale was duly executed. 11

When dower
and curtesy
barred by sale.
1854, 377, § 1.
1857, 229, § 2.
G. S. 140, § 44.
P. S. 181, § 19.
R. L. 187, § 16.

SECTION 16. If the mortgagor had at the time of the execution of 1
the mortgage no husband or wife or if, being married, the husband or 2
wife joined in the deed in token of his or her release of curtesy or dower, 3
the sale in either of the modes aforesaid shall bar all right and possibility 4
of curtesy or dower in the land. 5

Effect of con-
veyance by
mortgagor
G. S. 140, § 39.
P. S. 181, § 20.

SECTION 17. A sale or transfer by the mortgagor shall not impair or 1
annul any right or power of attorney given in the mortgage to the mort- 2
gagee to sell or transfer the land as attorney or agent of the mortgagor. 3
R. L. 187, § 17.

REDEMPTION.

Who may
redeem.
1698, 22,
§§ 4, 5.
1712-13, 8, § 2.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 13.
G. S. 140, § 13.
P. S. 181, § 21.
R. L. 187, § 18.

SECTION 18. The mortgagor or person claiming or holding under him 1
may, after breach of condition, redeem the land mortgaged, unless the 2
mortgagee, or person claiming or holding under him, has obtained poss- 3
ession of the land for breach of condition and has continued that posses- 4
sion for three years, or unless the land has been sold pursuant to a power 5
of sale contained in the mortgage deed. 6

22 Pick. 401	137 Mass. 397.	237 Mass. 153.
6 Gray, 128	143 Mass. 49	246 Mass. 356.
7 Gray, 278.	148 Mass. 540.	248 Mass. 342.
13 Allen, 60	159 Mass. 356.	254 Mass. 282.
105 Mass. 564.	171 Mass. 195.	260 Mass. 33.
112 Mass. 352		

Tender of pay-
ment or per-
formance.
1698, 22, § 4.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 14.
G. S. 140, § 14.
P. S. 181, § 22.
R. L. 187, § 19.
5 Pick. 259

SECTION 19. The person entitled to redeem shall pay or tender to 1
the mortgagee, or person claiming or holding under him, the whole 2
amount then due and payable on the mortgage, and shall perform or 3
tender performance of every other condition contained therein; and if 4
there has been an action to recover the land he shall pay or tender the 5
costs of such action if unpaid. 6

5 Met. 95.	7 Gray, 148.	241 Mass. 286.
7 Cush. 220.	139 Mass. 407	

Accounting.
1698, 22, § 4.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 15.
G. S. 140, § 15.
P. S. 181, § 23

SECTION 20. If the mortgagee or person claiming or holding under 1
him has had possession of the land, he shall account for rents and profits, 2
and be allowed for all amounts expended in reasonable repairs and im- 3
provements, for all lawful taxes and assessments paid and for all other 4

5 necessary expenses in the care and management of the land. A balance
 6 of such account, if due from him, shall be deducted from the debt due on
 7 the mortgage; if due to him, shall be added to the debt, and paid or ten-
 8 dered as such.

7 Met. 157.	14 Gray, 132.	104 Mass. 400.	148 Mass. 300.
2 Cush. 400.	4 Allen, 538.	114 Mass. 497.	199 Mass. 164.
7 Cush. 220.	5 Allen, 78.	124 Mass. 242.	241 Mass. 486.
5 Gray, 423.	12 Allen, 120.	126 Mass. 146.	258 Mass. 431.
6 Gray, 556.	100 Mass. 270.	139 Mass. 77, 407.	262 Mass. 302.
7 Gray, 148.			

1 SECTION 21. The tender may be made before the expiration of the
 2 three years limited for redemption, and before or after entry for breach
 3 of condition, and before a sale pursuant to a power contained in the
 4 mortgage; but if the mortgagee or person claiming or holding under him
 5 does not accept the tender and discharge the mortgage, the tender shall
 6 not prevent the foreclosure unless, within one year after the tender, the
 7 mortgagor or person claiming or holding under him commences suit for
 8 redemption and when he commences suit pays to the clerk of the court
 9 the amount tendered for the use of the party entitled thereto.

R. L. 187, § 21.	143 Mass. 49.	241 Mass. 286.
97 Mass. 459.	230 Mass. 359.	

Time of making
 tender and
 necessity of
 suit for re-
 demption
 1698, 22, § 4
 1798, 77, § 2.
 1821, 85, § 1.
 R. S. 107,
 §§ 16, 17.
 1857, 105, § 2
 G. S. 140,
 §§ 16-18.
 P. S. 181,
 §§ 24-26.

1 SECTION 22. The person entitled to redeem may, before the expira-
 2 tion of the three years limited for redemption, and before or after an
 3 entry for breach of condition, and before a sale pursuant to a power
 4 contained in the mortgage, commence suit for redemption without previ-
 5 ous tender, and may in such suit offer to pay such amount as shall be
 6 found due from him, or to perform such other condition as the case may
 7 require; but a mortgagee who has published a notice of sale prior to the
 8 commencement of such suit may proceed with said sale unless the amount
 9 due is paid into court or the sale enjoined.

181 Mass. 49.	230 Mass. 359.	267 Mass. 506.
197 Mass. 19.	235 Mass. 476.	

Suit without
 previous tender.
 1821, 85, § 1.
 1853, 201, § 1.
 R. S. 107, § 18.
 G. S. 140, § 16.
 P. S. 181, § 27.
 1888, 433.
 R. L. 187, § 22.
 7 Met. 157.
 6 Gray, 128.
 108 Mass. 254.
 143 Mass. 49.
 148 Mass. 300,
 540.

1 SECTION 23. The court may determine, by a reference to a master or
 2 otherwise, whether any and what amount due on the mortgage is not
 3 in dispute, and may by an interlocutory decree order it paid to the
 4 mortgagee, or for his use to the clerk of the court.

G. S. 140, § 20.	R. L. 187, § 23.	148 Mass. 300.
P. S. 181, § 28.	143 Mass. 144.	158 Mass. 371.

Order for
 payment of
 amount not in
 dispute.
 1857, 105, § 1.

1 SECTION 24. The court may award costs in the suit for redemption
 2 to either party; but if suit is brought without previous tender and it is
 3 found that the condition of the mortgage has not been performed, the
 4 plaintiff shall pay costs of suit, unless the court finds that the defendant
 5 has unreasonably refused or neglected, when requested, to render a just
 6 and true account of the money due upon the mortgage and of rents and
 7 profits and amounts paid for taxes, repairs, improvements and other
 8 necessary expenses, or that he otherwise by his default prevented the
 9 plaintiff from performing or tendering performance of the condition
 10 before commencement of suit.

260 Mass. 33.

Costs.
 1821, 85, § 1.
 1853, 201, § 2.
 R. S. 107, § 19.
 G. S. 140, § 21.
 P. S. 181, § 29.
 R. L. 187, § 24.
 2 Pick. 540.
 546.
 5 Pick. 259.
 6 Gray, 556.
 14 Gray, 132.
 16 Gray, 500.
 112 Mass. 352.
 206 Mass. 530.
 255 Mass. 352.

1 SECTION 25. If suit was commenced before the expiration of the three
 2 years limited for redemption, and before or after entry for breach of
 3 condition, the plaintiff shall, although the tender alleged is found to
 4 be insufficient, be entitled to a decree for redemption as if no previous
 5 tender had been alleged.

Suit not barred
 by defective
 tender.
 R. S. 107, § 20.
 G. S. 140, § 22.
 P. S. 181, § 30.
 R. L. 187, § 25.

Venue and practice.
1698, 22, § 2.
1798, 77, § 1.
R. S. 107, § 21.
1853, 316.
G. S. 140, §§ 23, 24.
P. S. 181, §§ 31, 32.
R. L. 187, § 26.
7 Met. 157.
9 Gray, 208.

SECTION 26. Except as provided in section forty, a suit for redemption shall be brought in the county where the land or any part thereof lies. If the bill is inserted in a writ, and the writ or a copy thereof, attested by the officer, with or without the bill but with a description of the land sought to be redeemed, is deposited, within three days after the day on which the service is made, in the office of the clerk of the court to which the writ is returnable, the service shall be the commencement of the suit; otherwise, the deposit of such copy or writ shall be the commencement of the suit.

1
2
3
4
5
6
7
8
9

Decree for possession
1698, 22, § 4.
1798, 77, § 2.
R. S. 107, § 23.
G. S. 140, § 25.
P. S. 181, § 33.
R. L. 187, § 27.
5 Pick. 259.
21 Pick. 355.
7 Cush. 220.
1 Allen, 145.
5 Allen, 62.

SECTION 27. If the court finds the plaintiff entitled to redeem, it shall determine the amount due on the mortgage or what condition the plaintiff is bound to perform for the redemption of the land, and shall enter a decree that, upon payment of such amount or performance of such condition within such time as it shall order, the plaintiff shall have execution for possession of the land and shall hold it discharged of the mortgage.

1
2
3
4
5
6
7

10 Allen, 74.	122 Mass. 76.	140 Mass. 49.
110 Mass. 57.	129 Mass. 398.	142 Mass. 545.
120 Mass. 153.	130 Mass. 55.	203 Mass. 591.

Interest.
1850, 21.
G. S. 140, § 26.
P. S. 181, § 34.
R. L. 187, § 28.
260 Mass. 33.

SECTION 28. If the court finds that the mortgagee has not unreasonably neglected or refused to render a true account of rents and profits of the land mortgaged, it may award him the balance found due on the mortgage, with interest thereon at a rate of not more than twelve per cent a year from the expiration of three years after the entry to the date of the decree.

1
2
3
4
5
6

Execution for possession
1698, 22, § 4.
1798, 77, § 2.
R. S. 107, § 24.
G. S. 140, § 27.
P. S. 181, § 35.
R. L. 187, § 29.

SECTION 29. The court may at the same time decree that, if the defendant neglects or refuses to accept the money or other act required by the decree to be paid or performed, the money shall be left for his use with the clerk of the court, or such other act done as the case requires; and the plaintiff, having performed all acts required by the decree, may have execution for possession of the land.

1
2
3
4
5
6

Judgment and execution for balance.
1818, 98, § 2.
R. S. 107, § 25.
G. S. 140, § 28.
P. S. 181, § 36.
R. L. 187, § 30.
6 Mass. 294.
143 Mass. 110.

SECTION 30. If the court finds that the defendant has received from rents and profits of the land or otherwise more than is due on the mortgage, it shall award judgment and execution against him for the amount due to the plaintiff; and if there are several defendants, such judgment and execution may be awarded against them, either jointly or severally, for the amounts received by them or any of them, respectively.

1
2
3
4
5
6

Distribution of money tendered and paid into court
1818, 98, § 3.
R. S. 107, § 26.
G. S. 140, § 29.
P. S. 181, § 37.
R. L. 187, § 31.

SECTION 31. The court may order the amount found due the plaintiff for rents and profits or costs, if any, to be deducted from the amount found due the defendant, to whom the balance only shall be paid from any money tendered or brought into court, and the residue, if any, shall be paid to the plaintiff.

1
2
3
4
5

New parties. Process.
1818, 98, § 1.
R. S. 107, § 28.
G. S. 140, § 31.
P. S. 181, § 38.
R. L. 187, § 32.

SECTION 32. If a person, other than the parties to a suit for redemption, is interested therein, the court may, upon terms, cause him to be made a party and may order a subpoena to be issued and served on him to appear and answer.

1
2
3
4

1 SECTION 33. If the person entitled to redeem a mortgaged estate dies,
 2 his heirs, devisees, executor or administrator may make a tender or com-
 3 mence or prosecute a suit for redemption which the deceased might have
 4 made, commenced or prosecuted.

Survival of
 right to
 redeem.
 R. S. 107,
 §§ 30, 31.

G. S. 140, §§ 32, 33.	101 Mass. 277.	186 Mass. 430
P. S. 181, §§ 39, 40	117 Mass. 403.	246 Mass. 61, 356.
R. L. 187, § 33.	170 Mass. 120.	

1 SECTION 34. A tender may be made to a guardian or conservator, who
 2 may, upon satisfaction, execute a release of the mortgage.

Tender to
 guardian or
 conservator.

R. S. 107, § 32.	P. S. 181, § 41	1915, 23.
G. S. 140, § 34.	R. L. 187, § 34.	12 Mass. 16.

GENERAL PROVISIONS.

1 SECTION 35. If, after the foreclosure of a mortgage not containing a
 2 power of sale, the person entitled to the debt recovers judgment for any
 3 part thereof on the ground that the value of the land mortgaged at the
 4 time of the foreclosure was less than the amount due, such recovery shall
 5 open the foreclosure, and the person entitled may redeem the land
 6 although the three years limited therefor have expired, if suit for redemp-
 7 tion is brought within one year after the recovery of such judgment.

Right to
 redeem where
 foreclosure
 opened.
 R. S. 107, § 33
 G. S. 140, § 36
 P. S. 181, § 42
 1896, 203
 R. L. 187, § 35.
 3 Mass. 138,
 562

8 Pick. 336.	101 Mass. 181.	113 Mass. 139.	136 Mass. 459.
10 Pick. 380	103 Mass. 475.	117 Mass. 439.	139 Mass. 506.
8 Met. 153	105 Mass. 106.	119 Mass. 550.	170 Mass. 120,
10 Met. 344.	110 Mass. 458.	124 Mass. 249.	303.

1 SECTION 36. If a mortgagee or person claiming or holding under
 2 him receives from rents and profits of the land, or upon a tender made
 3 to him, or in any other manner, more than is due on the mortgage, and
 4 no suit for redemption is brought against him, the mortgagor or other
 5 person entitled to such excess may recover it in an action of contract.

Action for
 excess re-
 ceived by
 mortgagee.
 1818, 98, § 3.
 R. S. 107, § 27.
 G. S. 140, § 30.
 P. S. 181, § 43.

R. L. 187, § 36.	9 Pick. 171.	130 Mass. 88.
------------------	--------------	---------------

MORTGAGES TO THE COMMONWEALTH.

1 SECTION 37. If a mortgage is held by the commonwealth, the state
 2 treasurer may demand and receive the money due, and upon payment
 3 shall make and acknowledge a discharge.

Discharge of
 mortgage held
 by common-
 wealth.

1804, 103, § 1.	G. S. 140, § 45.	R. L. 187, § 37.
R. S. 107, § 35.	P. S. 181, § 45.	

1 SECTION 38. If the condition of such mortgage is not duly performed,
 2 the state treasurer may cause an entry for breach of condition to be made
 3 in the name and behalf of the commonwealth by himself or a person whom
 4 he appoints, or he may bring an action in the name of the commonwealth
 5 to recover possession of the land mortgaged; and possession obtained by
 6 entry or by action shall have the same effect in foreclosing the right of
 7 redemption as a similar possession by any other mortgagee.

Foreclosure.
 R. S. 107, § 36.
 G. S. 140, § 46.
 P. S. 181, § 46.
 R. L. 187, § 38.

1 SECTION 39. The mortgagor or his assigns may redeem the land in like
 2 manner and upon like terms as if held by any other mortgagee, and the
 3 payment or performance of the condition shall be made or tendered to
 4 the state treasurer.

Redemption
 generally.
 1804, 103, § 2.
 R. S. 107, § 37.
 G. S. 140, § 47

P. S. 181, § 47.	R. L. 187, § 39.
------------------	------------------

1 SECTION 40. If the state treasurer and the person applying to redeem
 2 the mortgage do not agree upon the amount due, the person so applying
 3 may bring in the supreme judicial or the superior court, for the county

Suit for
 redemption.
 1804, 103, § 2.
 R. S. 107,
 §§ 38, 39.

G. S. 140, § 18.
P. S. 181, § 48.
R. L. 187, § 40.
127 Mass. 43.

of Suffolk, a suit in equity against the commonwealth for the redemption. 4
The process shall be served on the state treasurer, who shall appear and 5
answer in behalf of the commonwealth; and like proceedings shall be had 6
and like judgment rendered as in case of other mortgagees, except that the 7
state treasurer shall accept any payment due the commonwealth, and upon 8
receipt thereof, or upon performance of such other condition as the court 9
orders, shall discharge the mortgage in like manner as when the debt is 10
paid without suit. 11

CHAPTER 245.

INFORMATIONS BY THE COMMONWEALTH.

SECT.

1. Information for unlawful entry.
2. When order of governor and council necessary.
3. Practice.
4. Notice by publication.
5. Who may defend action. Costs.
6. Liability for rents and profits and improvements.

SECT.

7. Commonwealth seized without execution.
8. Conclusiveness of judgment.
9. Writ of entry by person not concluded.
10. Against whom writ shall be brought.
11. Liability for rents and profits and improvements.
12. Costs.

Information for unlawful entry.
1791, 13, § 2.
1798, 43, § 1.
R. S. 108, §§ 1, 2.
G. S. 141, § 1.
P. S. 182, § 1.
R. L. 188, § 1.
9 Gray, 451.

SECTION 1. If a person unlawfully enters upon or holds land belonging to the commonwealth, it may be recovered upon an information filed by the attorney general or by a district attorney in the superior court in any county, describing the land and setting forth the title and claim of the commonwealth thereto. A summons returnable in the county where the land lies shall thereupon issue to the defendants. 1
2
3
4
5
6

When order of governor and council necessary.
1791, 13, § 1.
1796, 4.
1798, 43, § 1.
R. S. 108, §§ 6, 7.
G. S. 141, §§ 3, 4.
P. S. 182, §§ 2, 3.
R. L. 188, § 2.

SECTION 2. If the title of the commonwealth is founded on a forfeiture for breach of a condition in a grant or conveyance by the commonwealth or by the province or colony of Massachusetts bay, no action for the recovery thereof shall be commenced unless by direction of the governor, with the advice and consent of the council; but in all other cases the attorney general or district attorney may prosecute an action therefor if he believes that the claim of the commonwealth can be established. 1
2
3
4
5
6
7
8

1919, 305.

Practice.
1791, 13, § 1.
R. S. 108, § 3.

SECTION 3. Service of the summons and all other proceedings shall, except as otherwise provided, be substantially the same as in real actions. 1
2

G. S. 141, § 2.

P. S. 182, § 4.

R. L. 188, § 3.

Notice by publication.
1791, 13, § 2.
R. S. 108, §§ 8.
G. S. 141, § 5.
P. S. 182, § 5.
R. L. 188, § 4.

SECTION 4. If, in case of a supposed escheat, no person appears as the heir of the person last seized, or if in any case there is reason to suppose that there is a person claiming an estate or interest in the land, whose name is unknown, who is absent from the commonwealth or who cannot be found therein to be served with process, the court shall, in addition to any other service, order the substance of the information with the order of the court thereon to be published once in each of three successive weeks in a newspaper designated by it, the first publication to be at least ninety days before the time appointed for the appearance of the parties. 1
2
3
4
5
6
7
8
9

1 SECTION 5. A person claiming an estate or interest in the land, al-
 2 though not named in the information nor served with process, may appear
 3 and answer thereto; but a defendant not named shall not recover costs
 4 against the commonwealth, unless it appears that he has an estate or
 5 interest in the land, although the commonwealth fails to establish its
 6 claim thereto. If there are several defendants, the court may award
 7 costs for or against any one, as if he were the sole defendant.

Who may de-
 fend action.
 Costs.
 R. S. 108,
 § 9, 10.
 G. S. 141,
 § 6, 7.
 P. S. 182,
 § 6, 7.
 R. L. 188, § 5.

1 SECTION 6. If the commonwealth prevails, the defendant shall be
 2 chargeable for rents and profits and be entitled to an allowance for im-
 3 provements as provided in chapter two hundred and thirty-seven.

Liability for
 rents and
 profits and
 improvements.

R. S. 108, § 11. G. S. 141, § 8. P. S. 182, § 8. R. L. 188, § 6.

1 SECTION 7. The commonwealth shall be actually seized and pos-
 2 sessed of the land as soon as judgment is rendered in its favor, without
 3 a writ of possession.

Common-
 wealth seized
 without exec-
 ution.

1791, 13, § 3. G. S. 141, § 9. R. L. 188, § 7.
 R. S. 108, § 5. P. S. 182, § 9.

1 SECTION 8. The judgment shall be conclusive between the common-
 2 wealth and the defendants who appear and answer, and against every
 3 person named as a defendant upon whom the summons has been duly
 4 served within the commonwealth and against all persons claiming under
 5 such defendants.

Conclusive-
 ness of
 judgment
 1791, 13, § 3
 R. S. 108, § 12.
 G. S. 141, § 10.
 P. S. 182, § 10.

R. L. 188, § 8.

1 SECTION 9. A person not concluded by a judgment for the com-
 2 monwealth under the preceding section may, until his claim is barred by
 3 law for the limitation of real actions or otherwise, bring a writ of entry
 4 to recover the land from the commonwealth or from any person then
 5 holding under it. He may deny and disprove any facts alleged and
 6 proved in the first action and allege and prove other facts in support of
 7 his claim and shall, if it appears that he is entitled to the land, have
 8 judgment and execution therefor.

Writ of entry
 by person not
 concluded
 R. S. 108, § 13.
 G. S. 141, § 11.
 P. S. 182, § 11.
 R. L. 188, § 9.

1 SECTION 10. If the commonwealth continues seized of the land when
 2 such new action is commenced, such action shall be brought against the
 3 tenant or occupant thereof, and, in addition to the service on him, a copy
 4 of the original writ or summons shall be left with the attorney general or
 5 district attorney at least fourteen days before the return day. If the
 6 commonwealth has granted away the land, the action shall be brought
 7 against the tenant of the freehold. In either case it shall be conducted and
 8 disposed of as if no such information had been filed.

Against whom
 writ shall
 be brought
 R. S. 108, § 14.
 G. S. 141, § 12.
 P. S. 182, § 12.
 R. L. 188, § 10.

1 SECTION 11. If the demandant recovers judgment, he shall be entitled
 2 to rents and profits and chargeable for improvements as provided in
 3 chapter two hundred and thirty-seven, although the land has not been
 4 held and possessed for six years under the adverse title.

Liability for
 rents and
 profits and
 improvements.
 1798, 43, § 2

R. S. 108, § 15. G. S. 141, § 13. P. S. 182, § 13. R. L. 188, § 11.

1 SECTION 12. Costs shall be awarded and taxed for the prevailing
 2 party. If judgment is for the commonwealth, an execution for costs
 3 shall issue; if it is for the defendant, the costs shall be paid by the
 4 commonwealth.

Costs
 1791, 13
 R. S. 108, § 4
 G. S. 141, § 14.
 P. S. 182, § 14

R. L. 188, § 12.

TITLE IV.

CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

- CHAPTER 246. Trustee Process.
 CHAPTER 247. Replevin.
 CHAPTER 248. Habeas Corpus and Personal Liberty.
 CHAPTER 249. Audita Querela, Certiorari, Mandamus and Quo Warranto.
 CHAPTER 250. Writs of Error, Vacating Judgment, Writs of Review.
 CHAPTER 251. Arbitration.
 CHAPTER 252. Improvement of Low Land and Swamps.
 CHAPTER 253. Mills, Dams and Reservoirs.
 CHAPTER 254. Liens on Buildings and Land.
 CHAPTER 255. Mortgages, Conditional Sales and Pledges of Personal Property, and Liens thereon.
 CHAPTER 256. Recognizances for Debts.
 CHAPTER 257. Seizure and Libelling of Forfeited Property.
 CHAPTER 258. Claims against the Commonwealth.

CHAPTER 246.

TRUSTEE PROCESS.

SECT.

COMMENCEMENT AND SERVICE OF PROCESS.

1. Actions which may be commenced by trustee process. Who may be trustees.
2. Venue of action.
3. Change of venue.
4. Venue in district courts.
- 4A. Change of venue in district courts.
5. Service of trustee writs. Attachment of other property.
6. Service upon paymaster of foreign corporation.
7. District court trustee writs. Return day. Service on partnership.
8. New trustees. Successive services.
9. Proceedings if trustees are discharged.

APPEARANCE AND ANSWER OF TRUSTEE.

10. Answer of trustee, filing, contents.
11. Answer to be under oath, etc.
12. Interrogatories.
13. Discharge of trustee.
14. Admission of funds by trustees.
15. Answer by corporation.
16. Answer of trustee to be taken as true, etc.

SECT.

17. Trial of questions of fact arising on answer.
18. Default of trustee.
19. Penalty for false answer by trustee.

PROPERTY LIABLE TO ATTACHMENT BY TRUSTEE PROCESS.

20. Effect of attachment by trustee process.
21. Liability of executors, etc., as trustees.
22. Liability as trustee of assignee in insolvency.
23. Liability of receivers.
24. Attachment of money, etc., due but not payable.
25. Trustee chargeable if conveyance to him fraudulent.
26. Mutual demands between defendant and trustee.
27. Trustee not chargeable for payment before knowledge of service.
28. Wages exempt from attachment, when.
29. Tender and offer of judgment.
30. Penalty for attaching wages exempt from attachment.

- SECT.
 31. Bond by plaintiff to indemnify savings bank.
 32. Claims not attachable by trustee process.

ADVERSE CLAIMANTS.

33. Proceedings if goods are claimed by third person.
 34. Proceedings upon assignment by defendant as security for debt.

PROCEEDINGS IF ACTION PENDING AGAINST TRUSTEE.

35. Proceedings if action pending by defendant against trustee.
 36. Judgment debtor not chargeable as trustee, when.
 37. Proceedings if defendant in pending action is adjudged trustee of plaintiff.
 38. Proceedings if defendant claims set-off in pending action by trustee.

JUDGMENT AND EXECUTION.

39. Form of judgment charging trustee.
 40. Further attachment of goods, when.
 41. Liability of trustee after thirty days, when.
 42. Demand on absent trustee.
 43. Effect of judgment against trustee.
 44. Discharge of trustee no bar to action by defendant.

SCIRE FACIAS AGAINST TRUSTEE.

45. Scire facias against trustee.
 46. Proceedings upon default of trustee on scire facias.
 47. Same subject.
 48. Proceedings upon appearance of trustee.
 49. Limitation of action on scire facias.

DEATH OF PARTIES.

50. Death of trustee before judgment.
 51. Proceedings.
 52. Same subject.
 53. Death of trustee after judgment.
 54. Same subject.

PROCEEDINGS IF AN EXECUTOR IS CHARGED AS TRUSTEE.

55. Service of execution when executor or administrator is adjudged trustee.

- SECT.
 56. Remedy against executor failing to pay amount for which he is charged.

PROCEEDINGS IF TRUSTEE HAS SPECIFIC PROPERTY.

57. Proceedings if trustee is charged for specific property.
 58. Same subject.
 59. Delivery by trustee of specific property according to contract.
 60. Tender by plaintiff of amount for which trustee holds property as security.
 61. Disposal if held for other purpose than as security.
 62. Disposal of property by officer.
 63. Sale by trustee of property held as security, etc.
 64. Liability of trustee for neglect to deliver property for which he is charged.
 65. Liability of carrier if prevented by trustee process from making delivery.

DISSOLUTION OF ATTACHMENT BY TRUSTEE PROCESS.

66. Person other than defendant may file bond, etc.
 67. Delivery of property by trustee. Limitation of action on bond.

COSTS.

68. Costs of trustee.
 69. Costs payable out of effects, when.
 70. Costs payable by plaintiff, when.
 71. Costs of person absent from commonwealth.
 72. Costs of person summoned out of county.
 73. Liability of trustee neglecting to appear.
 74. Recovery of costs.
 75. Liability of several trustees for plaintiff's costs.
 76. Costs in action against trustee.
 77. Liability of trustee for costs on scire facias, when.
 78. Same subject.
 79. Same subject.
 80. Execution for costs against trustee.
 81. Costs against several trustees.
 82. Costs in case of adverse claimant.
 83. Costs if damages do not exceed ten dollars.

COMMENCEMENT AND SERVICE OF PROCESS.

1 SECTION 1. All personal actions, except tort for malicious prosecu-
 2 tion, for slander or libel or for assault and battery, and except replevin,
 3 may be commenced by trustee process, and any person may be sum-
 4 moned as trustee of the defendant therein; but an individual who is not

Actions which
 may be com-
 menced by
 trustee process.
 Who may be
 trustees.
 1798-9, 7, 51

1728-9, 3, § 1.
 1738-9, 15, § 1.
 1753-4, 28.
 1758-9, 10.
 1794, 65, § 1.

an inhabitant of the commonwealth, or a foreign corporation or asso- 5
 ciation, shall not be so summoned unless he or it has a usual place of busi- 6
 ness in the commonwealth. 7

1832, 164, § 1.	R. L. 189, § 1.	10 Allen, 463.	176 Mass. 48, 113.
1833, 171	13 Mass. 80	11 Allen, 357.	204 Mass. 327.
R. S. 109, §§ 1, 4, 6.	16 Mass. 299.	121 Mass. 380	215 Mass. 83.
71, 76, 77	3 Pick. 302	129 Mass. 444.	216 Mass. 118.
1835, 141, § 1.	15 Pick. 445.	150 Mass. 560.	218 Mass. 333.
1839, 158	4 Met. 486	151 Mass. 501.	236 Mass. 117.
G. S. 142, §§ 1, 75	13 Met. 471.	152 Mass. 64.	238 Mass. 345.
1870, 194	9 Allen, 570.	161 Mass. 287.	248 Mass. 86.
P. S. 183, § 1			

Venue of
 action
 1794, 65, § 1.
 R. S. 109, § 7.
 1852, 287.
 G. S. 142, § 4.
 P. S. 183, § 3.
 R. L. 189, § 2.
 14 Mass. 132.
 22 Pick. 250.
 4 Cush. 588.

SECTION 2. If, in an action, suit or proceeding commenced in the 1
 supreme judicial or superior court by trustee process, all the persons 2
 named in the writ as trustees dwell or have usual places of business in 3
 one county, the writ shall be returnable in such county; otherwise, it 4
 may be returnable in any county where any one of them dwells or has 5
 a usual place of business. 6

6 Cush. 560	7 Gray, 282	11 Allen, 357.	193 Mass. 84
12 Cush. 284.	1 Allen, 286.	150 Mass. 560.	218 Mass. 333.

Change of
 venue.
 1803, 285
 R. L. 189, § 3.

SECTION 3. If, in an action, suit or proceeding commenced in the 1
 supreme judicial or superior court by trustee process, the court finds 2
 that the trustee was made a party in order to give the court jurisdic- 3
 tion of the cause in the county where the trustee dwells or has a usual 4
 place of business, and that neither the plaintiff nor the principal de- 5
 fendant dwells or has a usual place of business therein, it may, upon 6
 motion of the defendant at any time before trial, order the cause and all 7
 papers relating thereto transferred to a county where some one of the 8
 principal parties dwells or has a usual place of business, upon terms. 9
 The cause shall thereupon be entered and prosecuted in the same court 10
 for that county as if originally returnable therein, and all prior pro- 11
 ceedings otherwise regularly taken shall thereafter be valid. 12

Venue in
 district courts.
 R. S. 109, § 72.
 G. S. 142, § 78.
 1874, 271, § 9.
 P. S. 183, § 4.
 1893, 396, § 13.
 1894, 398, § 1;
 431
 R. L. 189, § 4.
 1917, 326.

SECTION 4. No person shall be held to answer as a trustee in an 1
 action in a district court, except as provided in section fifty-four of 2
 chapter two hundred and eighteen, in any county other than that where 3
 he dwells or has a usual place of business; and if a person summoned as 4
 trustee in such court is out of the county at the time of the service of 5
 the original writ upon him, and does not return before final judgment 6
 in the action, he shall not be chargeable as trustee. 7

Change of
 venue in
 district courts.
 1921, 417.

SECTION 4A. Whenever an action is commenced by trustee process in 1
 a district court in the district in which the party named in the writ as 2
 trustee lives or has his usual place of business, which could not be brought 3
 in that district except because of the residence or place of business of the 4
 trustee, the court may on motion of any party thereto transfer such 5
 action for trial and final disposition to any other district court in which 6
 the action might have been commenced had there been no trustee named 7
 in the writ. 8

Service of
 trustee writs.
 Attachment of
 other property.
 1708-9, 7, § 2.
 1728-9, 3, § 2.
 1738-9, 15, § 2.
 1758-9, 10, § 2.
 1794, 65, § 1.

SECTION 5. Trustee writs shall be served by copy on each trustee and 1
 on the defendant. In other respects service upon trustees and defend- 2
 ants shall be in the manner provided by chapter two hundred and 3
 twenty-three. Goods and estate of the defendant in his own hands and 4
 possession may be attached upon a trustee writ in the manner provided 5

6 in said chapter, and the writ shall be further served upon each of the
7 trustees and upon the defendant.

G. S. 142, § 5.	6 Mass. 60.	8 Cush. 518.	129 Mass. 444.
P. S. 183, § 6.	16 Mass. 473.	119 Mass. 142.	169 Mass. 502.
R. L. 189, § 5.	13 Met. 471.		

R. S. 109, § 8.
1852, 287.

1 SECTION 6. When a foreign corporation having a usual place of busi-
2 ness in the commonwealth is summoned as trustee in an action against
3 one of its employees, service of the writ may be made as provided in sec-
4 tion thirty-eight or thirty-nine of chapter two hundred and twenty-three,
5 or upon any paymaster or other officer or agent of the corporation whose
6 duty it is to pay such employee, and such service shall be as binding
7 upon the corporation as if it had been made upon the commissioner of cor-
8 porations and taxation or the commissioner of insurance.

Service upon
paymaster of
foreign cor-
poration
1911, 70.
1919, 359,
§§ 52, 53.
1921, 189, § 37.

1 SECTION 7. A trustee writ issued by a district court shall be return-
2 able not more than thirty days after the date thereof and be served
3 seven days at least before the return day. If co-partners are so sum-
4 moned as trustees and the partnership is properly described in the writ,
5 service of the writ upon one partner shall be sufficient.

District court
trustee writs.
Return day
Service on
partnership.
1878, 260, § 1.
P. S. 183, § 7.

1887, 33.	1893, 396, § 17.	R. L. 189, § 6.
1892, 148.	1894, 398, § 2.	1917, 326.

1 SECTION 8. The plaintiff may at any time insert the names of other
2 trustees in the writ and cause the writ to be served upon them; and,
3 after service upon a trustee, he may cause the writ to be again served
4 upon him in like manner and with the same effect as if it had not been
5 previously served. A writ served upon a trustee after service upon the
6 defendant shall be again served upon the defendant.

New trustees.
Successive
services
1798, 5, § 2.
R. S. 109, § 9.
G. S. 142, § 6.
P. S. 183, § 8.
R. L. 189, § 7.
22 Pick. 250.

142 Mass. 447.	215 Mass. 341.
----------------	----------------

1 SECTION 9. The plaintiff may proceed in the action against the de-
2 fendant if the writ has been served upon him or if he has had notice of the
3 action or has appeared and answered thereto, although all the trustees
4 have been discharged.

Proceedings
if trustees are
discharged.
1794, 65, § 4.
1798, 5, § 1.

R. S. 109, § 10.	R. L. 189, § 8.	6 Cush. 560.	119 Mass. 142.
G. S. 142, § 7.	1 Pick. 389.	5 Gray, 309.	139 Mass. 471.
P. S. 183, § 9.	13 Met. 471.		

APPEARANCE AND ANSWER OF TRUSTEE.

1 SECTION 10. A person summoned as trustee in the supreme judicial or
2 superior court shall appear and file his answer within ten days, or in the
3 municipal court of the city of Boston within two days, or in any other
4 district court within three days, after the return day of the writ, unless
5 further time is allowed by the court. The answer shall disclose plainly,
6 fully and particularly what goods, effects or credits, if any, of the defend-
7 ant were in the hands or possession of the trustee when the writ was
8 served upon him.

Answer of
trustee, filing,
contents
1851, 233, § 73.
1852, 312, § 56.
G. S. 142, § 8.
P. S. 183,
§§ 10, 11.
1885, 384, § 9.
R. L. 189, § 9.
1917, 326.
1922, 93.

12 Pick. 167.	12 Gray, 431.	97 Mass. 110.	220 Mass. 285.
3 Met. 297.	14 Gray, 453.	183 Mass. 455.	227 Mass. 7.
4 Cush. 267.	10 Allen, 160.		

1 SECTION 11. Such answer shall be signed and sworn to by the trustee,
2 or, in lieu of being sworn to, shall contain his written declaration, subject
3 to the penalty prescribed by section one A of chapter two hundred and
4 sixty-eight, that the answer is made under the penalties of perjury.

Answer to be
under oath,
etc
1794, 65, § 3.
R. S. 109, § 11.

1851, 233, § 73.	P. S. 183, §§ 11, 13.	1917, 326.
1852, 312, § 56.	R. L. 189, § 10.	1927, 216.
G. S. 142, §§ 8, 79.		

Interrogatories.
 1817, 148, § 2.
 R. S. 109, § 12.
 1851, 233, § 74.
 1852, 312, § 57.
 G. S. 142, § 9, 80.
 P. S. 183, § 12, 14.
 R. L. 189, § 11.
 6 Pick. 461.

SECTION 12. The plaintiff may from time to time examine the alleged trustee upon written interrogatories filed in the clerk's office. The answers thereto shall be signed, sworn to and filed in said office within seven days after notice to the trustee or his attorney of the filing of the interrogatories, unless the court otherwise orders. If the answers are not so filed, the court may make such order as the case may require.

21 Pick 21	131 Mass. 231.	220 Mass. 265.
3 Met 297	136 Mass. 407.	227 Mass. 7.
8 Cush. 518	194 Mass. 398.	229 Mass. 316.

Discharge of trustee.
 1794, 65, § 3.
 R. S. 109, § 11.
 G. S. 142, § 79.
 P. S. 183, § 13.
 R. L. 189, § 12.
 9 Cush 530
 220 Mass. 285.

SECTION 13. If the answer of the alleged trustee shows that at the time of service of the writ upon him he had not in his hands or possession any goods, effects or credits of the defendant, and the plaintiff declines to examine him, or if upon examination his answer appears to be true, he shall be discharged.

Admission of funds by trustees
 R. S. 109, § 13.
 1851, 233, § 73.
 1852, 312, § 57.
 G. S. 142, § 81.
 P. S. 183, § 15.
 R. L. 189, § 13.
 1917, 326.

SECTION 14. A person summoned as trustee who admits that he has in his hands any goods, effects or credits of the defendant, or who wishes to submit the question to the court whether he is chargeable upon the facts, may make a written statement, on oath, of such facts as are material. The plaintiff may then examine him, on oath, upon written interrogatories, and the statement, interrogatories and answers shall be filed in the clerk's office.

Answer by corporation.
 1832, 164, § 1.
 R. S. 109, § 6.
 G. S. 142, § 10.
 P. S. 183, § 16.
 R. L. 189, § 14.
 1917, 326.

SECTION 15. A corporation summoned as trustee may appear and answer by its cashier, treasurer, clerk or such other officer as it shall appoint or as the court shall require to attend for that purpose, and his answer and examination, on oath, shall be received as the answer and examination of the corporation.

Answer of trustee to be taken as true, etc.
 1817, 148, § 1.
 R. S. 109, § 15.

SECTION 16. The answer and statements of a trustee, on oath, shall be considered as true in determining how far he is chargeable; but either party may allege and prove any facts material in determining such question and not stated or denied by the trustee.

G. S. 142, § 11.	10 Cush 104.	145 Mass. 195.
P. S. 183, § 17.	7 Gray, 491.	166 Mass. 152.
R. L. 189, § 15.	11 Gray, 404.	189 Mass. 347.
3 Pick 1	97 Mass. 110	194 Mass. 398.
5 Pick 480	99 Mass 311, 469, 550.	211 Mass. 146.
6 Pick 474.	107 Mass 116	219 Mass. 495.
12 Pick 383	111 Mass 154	232 Mass. 493.
2 Met 376.	126 Mass 535	241 Mass. 295.
4 Cush 314.	127 Mass 136	244 Mass 425.
9 Cush. 530.	140 Mass 271	268 Mass 199.

Trial of questions of fact arising on answer
 1817, 148, § 1

SECTION 17. A question of fact arising upon such additional allegations may be tried and determined by the court, or it may be submitted to a jury in such manner as the court orders.

R. S. 109, § 16.	R. L. 189, § 16	189 Mass 296	244 Mass. 425
G. S. 142, § 12.	1917, 326	232 Mass 493.	268 Mass. 199.
P. S. 183, § 18	97 Mass. 110		

Default of trustee.
 1758-9, 10, § 4.
 1794, 65, § 5.

SECTION 18. A person who, being duly summoned as a trustee, neglects to appear and answer as hereinbefore provided shall be defaulted and adjudged a trustee.

R. S. 109, § 14.	G. S. 142, § 13.	10 Mass. 25.
1851, 233, § 73.	P. S. 183, § 19.	6 Allen, 582.
1852, 312, § 56.	R. L. 189, § 17.	

Penalty for false answer by trustee.

SECTION 19. If a person summoned as trustee, his executor or administrator, or if an officer, agent or other person who appears and answers for

3 a corporation so summoned, knowingly and wilfully swears falsely in his
 4 answer or upon his examination, he shall be liable in tort to the plaintiff
 5 in the trustee process, or to his executor or administrator, for the full
 6 amount due on the judgment recovered therein, with interest, to be paid
 7 out of his own goods and estate.

1794, 65, § 9.
 R. S. 109, § 78.
 G. S. 142, § 14.
 P. S. 183, § 20.
 R. L. 189, § 18.
 1 Cush. 457.
 8 Cush. 199.
 4 Allen, 391.

PROPERTY LIABLE TO ATTACHMENT BY TRUSTEE PROCESS.

1 SECTION 20. The goods, effects or credits of the defendant intrusted
 2 to, or deposited in the hands or possession of, a person summoned as
 3 his trustee shall, except as hereinafter provided, be attached and held
 4 to respond to the final judgment, as if they had been attached upon an
 5 original writ of attachment.

Effect of attachment by trustee process
 1708-9, 7, § 1.
 1728-9, 3, § 1.
 1748-9, 6.
 1758-9, 10, § 1.

1788, 16, § 4	8 Gray, 229.	129 Mass. 577.
1794, 65, § 1.	11 Gray, 18.	130 Mass. 86.
R. S. 109, § 4	12 Gray, 431, 437	132 Mass. 56.
G. S. 142, § 21	15 Gray, 532	134 Mass. 271.
P. S. 183, § 21	16 Gray, 69	149 Mass. 167.
R. L. 189, § 19	2 Allen, 466.	150 Mass. 234.
3 Mass. 319	3 Allen, 161.	151 Mass. 501.
4 Mass. 102.	6 Allen, 572.	152 Mass. 64.
2 Pick. 204.	9 Allen, 570.	153 Mass. 14.
5 Pick. 28, 178.	14 Allen, 15, 353.	161 Mass. 287.
8 Pick. 298	97 Mass. 302.	172 Mass. 132.
9 Pick. 435, 562.	100 Mass. 124, 239.	174 Mass. 208.
14 Pick. 550	103 Mass. 396, 410.	183 Mass. 455.
16 Pick. 41	104 Mass. 164	190 Mass. 219.
18 Pick. 451	113 Mass. 380.	206 Mass. 373.
20 Pick. 352	116 Mass. 308.	211 Mass. 146.
12 Met. 397.	120 Mass. 86.	220 Mass. 285.
1 Cush. 490.	121 Mass. 380, 422	237 Mass. 39.
4 Cush. 314	122 Mass. 296	273 Mass. 319.
7 Cush. 487	124 Mass. 98, 366.	
6 Gray, 116, 320		

1 SECTION 21. Debts, legacies, goods, effects or credits due from or in
 2 the hands of an executor or administrator as such may be attached in
 3 his hands by trustee process.

Liability of executors, etc., as trustees

R. S. 109, § 62	1 Met. 476	7 Cush. 406.	136 Mass. 501.
G. S. 142, § 22	3 Met. 507	2 Gray, 251.	150 Mass. 234
P. S. 183, § 22.	4 Met. 486	6 Allen, 397	151 Mass. 501
R. L. 189, § 20	10 Met. 459	104 Mass. 275.	218 Mass. 360.
19 Pick. 354	2 Cush. 111	122 Mass. 296.	225 Mass. 432.
20 Pick. 563.			

1 SECTION 22. After a dividend on the estate of an insolvent debtor has
 2 been declared, it may, unless it is upon a claim for wages which would
 3 have been exempt from attachment by trustee process in the hands of the
 4 insolvent debtor, be so attached in the hands of the assignee.

Liability as trustee of assignee in insolvency.
 1838, 49.
 G. S. 142, § 23.

P. S. 183, § 23. R. L. 189, § 21. 6 Cush. 558.

1 SECTION 23. Funds, credits or dividends due from or in the hands
 2 of receivers appointed by a court may be so attached after an order has
 3 been made for their distribution.

Liability of receivers.
 1881, 123.

P. S. 183, § 24. R. L. 189, § 22. 115 Mass. 67. 119 Mass. 155.

1 SECTION 24. Money or any other thing due to the defendant abso-
 2 lutely and without any contingency may be so attached before it has
 3 become payable, but the trustee shall not be compelled to pay or deliver
 4 it before the time appointed by the contract.

Attachment of money, etc., due but not payable.
 R. S. 109, § 34.

G. S. 142, § 24.	4 Met. 1.	149 Mass. 167.
P. S. 183, § 25.	99 Mass. 550	183 Mass. 455.
R. L. 189, § 23.	131 Mass. 363.	241 Mass. 295.

1 SECTION 25. A person summoned as trustee having goods, effects
 2 or credits of the defendant in his possession by a conveyance or title
 3 void as to the creditors of the defendant may be adjudged a trustee,

Trustee chargeable if conveyance to him fraudulent.

R. S. 109, § 35. although the defendant could not maintain an action therefor against 4
 G. S. 142, § 25. him. 5
 P. S. 183, § 26.

R. L. 189, § 24. 151 Mass. 501. 172 Mass. 132. 190 Mass. 219.

Mutual demands between defendant and trustee. SECTION 26. A trustee may retain or deduct from the goods, effects 1
 or credits in his hands all demands against the defendant of which, had 2
 he not been summoned as a trustee, he could have availed himself by way 3
 of set-off on a trial or by the set-off of judgments or executions between 4
 himself and the defendant, and he shall be liable for the balance only 5
 after all mutual demands, excluding therefrom any claim on either side 6
 for unliquidated damages for wrongs or injuries, between him and the 7
 defendant have been adjusted. 8

R. S. 109, § 36, 37.
 G. S. 142, § 26, 27.
 P. S. 183, § 27.
 R. L. 189, § 25.
 16 Mass. 473.
 7 Pick. 166.
 19 Pick. 20.
 5 Met. 263.
 12 Met. 567.

7 Gray, 153. 132 Mass. 56, 427. 213 Mass. 384. 233 Mass. 32.
 122 Mass. 296. 149 Mass. 14. 215 Mass. 403. 253 Mass. 169.

Trustee not chargeable for payment before knowledge of service. SECTION 27. If, after the service of process on the trustee, but before 1
 he has knowledge thereof, he makes any payment in good faith or be- 2
 comes liable to a third person by reason of the goods, effects or credits 3
 in his hands, or delivers such goods, effects or credits to the defendant or 4
 to any other person who may be entitled thereto, he shall be allowed there- 5
 for in the same manner as if the payment or delivery had been made, or 6
 as if the liability had been incurred, before the service of the writ. 7

R. S. 109, § 5.
 G. S. 142, § 28.
 P. S. 183, § 28.
 R. L. 189, § 26.
 3 Met. 301.
 5 Cush. 544.
 4 Allen, 485.

98 Mass. 142. 132 Mass. 56. 156 Mass. 1. 204 Mass. 55.

Wages exempt from attachment, when. SECTION 28. If wages for personal labor and services of a defendant 1
 are attached for a debt or claim, other than for necessaries furnished to 2
 him or to his family, an amount not exceeding twenty dollars shall be re- 3
 served in the hands of the trustee and shall be exempt from such attach- 4
 ment. If such wages are attached on a claim for such necessaries and 5
 the writ contains a statement to that effect, an amount not exceeding ten 6
 dollars shall be so reserved; but if the writ contains no such statement, 7
 an amount not exceeding twenty dollars shall be so reserved. 8

1842, 91.
 1855, 300, § 2.
 1857, 200, § 2.
 G. S. 142, § 29.
 1878, 260, § 3.
 P. S. 183, § 30.
 1900, 191.
 R. L. 189, § 27.
 14 Gray, 487.
 5 Allen, 210.
 6 Allen, 572.

7 Allen, 264. 9 Allen, 106. 142 Mass. 447. 160 Mass. 32.

Tender and offer of judgment. SECTION 29. If, after wages for personal labor or services have been 1
 attached and before the entry of the writ, the defendant tenders to the 2
 plaintiff or to his attorney the full amount due and recoverable in the 3
 action and the fees of the officer for serving the writ, the plaintiff shall 4
 recover no costs, except the fees of the officer; and if the defendant is 5
 defaulted without an appearance or if he files an offer of judgment on 6
 the return day of the writ under section seventy-four of chapter two 7
 hundred and thirty-one, and the plaintiff accepts such offer or fails to 8
 secure more than the amount thereof and of the interest thereon from 9
 its date, the plaintiff shall recover no costs, except the entry fee and 10
 the officer's fees. 11

P. S. 183, § 31.
 R. L. 189, § 28.

Penalty for attaching wages exempt from attachment. SECTION 30. Whoever wilfully causes, or aids and abets in causing, 1
 wages for personal services exempt from attachment to be attached by 2
 trustee process in order to unlawfully hinder or delay their payment to 3
 the person to whom they belong shall, on complaint of the person injured 4
 thereby or of the guardian or other person having the lawful custody of 5
 any such person incompetent to act, be punished by a fine of not more 6
 than fifty dollars, to the use of the person injured thereby. 7

1878, 260, § 2.
 P. S. 183, § 32.
 R. L. 189, § 29.

1 SECTION 31. If a savings bank is charged as trustee, and the court
 2 finds that the answer creates a doubt as to the identity of the defendant,
 3 it may require the plaintiff to give bond, with surety approved by the
 4 court, conditioned to indemnify such bank from any loss by reason of
 5 payment by it pursuant to the court's order.

Bond by
 plaintiff to
 indemnify
 savings bank.
 1850, 18.
 G. S. 142, § 30.
 P. S. 183, § 33.

R. L. 189, § 30.

164 Mass. 124

1 SECTION 32. No person shall be adjudged a trustee in the following
 2 cases:

Claims not
 attachable by
 trustee process.
 1794, 65, § 12.
 R. S. 109, § 30.
 1842, 91.
 G. S. 142,
 §§ 29, 31.
 1868, 95.

3 First, By reason of having drawn, accepted, made or endorsed a negoti-
 4 able bill, draft, note or other security which at the date of the writ was
 5 negotiable to a holder in due course under the provisions of chapter one
 6 hundred and seven.

P. S. 183, §§ 29, 34.
 1886, 191.
 1890, 289.

R. L. 189, § 31.
 1924, 151.
 2 Mass. 375, 524.

20 Pick. 132.
 22 Pick. 83.
 151 Mass. 383.

7 Second, By reason of having received or collected money or any other
 8 thing as a sheriff or other officer upon an execution or other legal process
 9 in favor of the defendant in the trustee process, although it may have been
 10 demanded of him by the defendant.

11 Third, By reason of having money in his hands as a public officer, for
 12 which he is accountable to the defendant merely as such officer.

3 Mass. 289.
 4 Met. 486.

6 Cush. 558.
 7 Cush. 257.
 14 Gray, 220.

5 Allen, 94.
 130 Mass. 86.
 153 Mass. 14.

218 Mass. 360.
 230 Mass. 475.

13 Fourth, By reason of money or any other thing due from him to the
 14 defendant, unless it is, at the time of service of the writ upon him, due
 15 absolutely and without any contingency.

1 Mass. 471.
 3 Mass. 33, 68.
 4 Mass. 235.

11 Mass. 488.
 16 Mass. 341.
 5 Pick. 28.
 6 Pick. 120.
 11 Pick. 473.
 12 Pick. 22.
 2 Met. 352.
 4 Met. 486.

12 Met. 12.
 6 Cush. 264.
 7 Gray, 153.
 13 Gray, 200.
 15 Gray, 532.
 1 Allen, 394.
 99 Mass. 187.

117 Mass. 238, 551.
 124 Mass. 98.
 128 Mass. 188.
 131 Mass. 363.
 135 Mass. 397.
 147 Mass. 287.
 157 Mass. 565.

16 Fifth, By reason of a debt due from him upon a judgment, so long as
 17 he is liable to an execution thereon.

2 Mass. 91.
 3 Mass. 121.

15 Gray, 532.

9 Allen, 570.

272 Mass. 413

18 Sixth, By reason of money or credits due for the wages of personal
 19 labor or services of the wife or minor children of the defendant.

20 Seventh, By reason of money or credits due or accruing to the de-
 21 fendant as wages or lay as a seaman; but this clause shall not apply to
 22 the wages or lay due or accruing to a fisherman.

132 Mass. 56.
 134 Mass. 271.

ADVERSE CLAIMANTS.

1 SECTION 33. If a person claiming, by assignment from the defendant
 2 or otherwise, goods, effects or credits in the hands of a supposed trustee
 3 enters an appearance, he shall be admitted as a party in order to de-
 4 termine his title to such goods, effects or credits, and may allege and
 5 prove any facts which have not been stated or denied by the supposed
 6 trustee. Such allegations shall be tried and determined as provided in
 7 section seventeen upon depositions or oral testimony as the court orders.

Proceedings
 if goods are
 claimed by
 third person.
 1817, 148, § 1.
 R. S. 109,
 §§ 17, 19.
 1839, 107, § 19.
 G. S. 142,
 §§ 15-17.
 P. S. 183,
 §§ 35-37.

R. L. 189, § 32.
4 Mass. 450.
8 Pick. 470.

If he does not voluntarily enter an appearance, the court may issue an order of notice to him. 8
9

- 24 Pick. 204.
- 3 Met. 297.
- 10 Met. 180.
- 7 Cush. 483.
- 11 Cush. 470.
- 5 Gray, 49.
- 7 Gray, 546.
- 11 Gray, 37, 225.
- 2 Allen, 541.
- 6 Allen, 582.
- 14 Allen, 353.
- 105 Mass. 111.
- 111 Mass. 281.
- 506, 532.
- 113 Mass. 382.
- 118 Mass. 406.
- 123 Mass. 358.
- 124 Mass. 453.
- 125 Mass. 475.
- 126 Mass. 535.
- 127 Mass. 34.
- 130 Mass. 316.
- 132 Mass. 161, 277.
- 133 Mass. 543.
- 137 Mass. 339.
- 142 Mass. 366.
- 143 Mass. 226.
- 147 Mass. 287.
- 162 Mass. 524, 562.
- 183 Mass. 455.
- 189 Mass. 296.
- 194 Mass. 398.
- 212 Mass. 108.
- 267 Mass. 112.
- 268 Mass. 199.
- 273 Mass. 319.

Proceedings upon assignment by defendant as security for debt.
1865, 43, § 1.
P. S. 183, § 38.
1888, 345.
R. L. 189, § 33.
123 Mass. 283.
142 Mass. 366.
273 Mass. 319.

SECTION 34. If it appears that the claimant holds a valid assignment from the principal defendant only as security for a debt, the court shall, at the request of the plaintiff, ascertain and determine the amount due upon such debt at the time of service of the writ upon the trustee, and the claimant shall have judgment and execution for the amount so found to be due him and for his costs; and after said judgment and execution have been satisfied, the residue, if any, of the goods, effects or credits in the hands of the trustee shall be subject to the attachment in the trustee process. If judgment by default has been rendered against the trustee and it appears that he has paid over, upon execution issued on the original judgment, any part of the goods, effects or credits in his hands liable to attachment, he shall be liable to the adverse claimant only for the residue in his hands. 1
2
3
4
5
6
7
8
9
10
11
12
13

PROCEEDINGS IF ACTION PENDING AGAINST TRUSTEE.

Proceedings if action pending by defendant against trustee.
R. S. 109,
§§ 31, 32.
G. S. 142,
§§ 18, 19.
P. S. 183, § 40.
R. L. 189, § 35.
6 Pick. 120.
97 Mass. 107.
99 Mass. 313.
132 Mass. 56.
161 Mass. 107.
269 Mass. 391.

SECTION 35. If, while an action is pending, the defendant is summoned in another action as trustee of the plaintiff, the earlier action may proceed so far as to ascertain by a verdict, award or otherwise the amount due from the defendant, and it shall not be delayed on account of the trustee process, unless the court continues it for judgment until the termination of the trustee process or until the attachment therein is dissolved by the discharge of the trustee, by the satisfaction of the judgment or otherwise. The court may, upon application of the plaintiff in the trustee process, so continue such pending action upon terms. 1
2
3
4
5
6
7
8
9

Judgment debtor not chargeable as trustee, when.
R. S. 109, § 32.
G. S. 142, § 19.
P. S. 183, § 41.

SECTION 36. If the action is not so continued and judgment is rendered against the defendant, he shall not afterward, while liable to an execution thereon, be adjudged a trustee on account of the demand so recovered against him. 1
2
3
4

R. L. 189, § 36.

Proceedings if defendant in pending action is adjudged trustee of plaintiff.
R. S. 109, § 33.
G. S. 142, § 20.
P. S. 183, § 42.
R. L. 189, § 37.

SECTION 37. If, before final judgment in such pending action, the defendant therein is adjudged a trustee in the trustee process, and pays thereon the money demanded in the pending action, or any part thereof, such fact shall be stated on the record of the action, and judgment therein shall be rendered for the costs due to the plaintiff and for the part of the debt or damages remaining due and unpaid. 1
2
3
4
5
6

- 7 Mass. 149.
- 119 Mass. 163.
- 125 Mass. 319.

Proceedings if defendant claims set-off in pending action by trustee.
1865, 155.
P. S. 183, § 43.
R. L. 189, § 38.

SECTION 38. If, while an action is pending, the plaintiff is summoned as trustee of the defendant on account of a demand filed in set-off therein, such pending action shall be subject to the three preceding sections in the same manner and with the same effect as if it were an action brought upon such demand in set-off by the defendant against the plaintiff. 1
2
3
4
5

JUDGMENT AND EXECUTION.

1 SECTION 39. If a person is adjudged a trustee, the amount for which
2 he is chargeable need not be specified in the judgment.

R. S. 109, § 42. P. S. 183, § 41. 11 Gray, 19. 136 Mass. 407.
G. S. 142, § 32. R. L. 189, § 39. 2 Allen, 566. 225 Mass. 432.

Form of judgment charging trustee.

1 SECTION 40. If the goods, effects and credits in the hands of a per-
2 son adjudged a trustee are not demanded of him by force of the execution
3 within thirty days after final judgment, they shall be liable to another
4 attachment, whether made before or after the judgment; or if there
5 has been no such second attachment, they may be recovered by the
6 defendant.

6 Gray, 241. 186 Mass. 574. 236 Mass. 93. Op. A. G. (1920) 93.

Further attachment of goods, when

1 SECTION 41. If no such second attachment of the goods, effects and
2 credits has been made, and no action has been brought therefor by the
3 defendant, and if they have not been paid or delivered to the defendant
4 before they are demanded of the trustee by the officer, the trustee shall
5 be liable to pay and deliver the same, when so demanded, although said
6 thirty days have expired.

186 Mass. 574. 236 Mass. 93.

Liability of trustee after thirty days, when

1 SECTION 42. If the trustee cannot be found in the commonwealth
2 by the officer to whom the execution is committed for service, a copy of
3 the execution left at his dwelling house or at his last and usual place of
4 abode, with a notice to him, endorsed thereon and signed by the officer,
5 that he is required to pay and deliver, toward satisfying the execution,
6 the goods, effects and credits for which he is liable shall be a sufficient
7 demand for the purposes of the two preceding sections.

Demand on absent trustee.

1 SECTION 43. The judgment against a trustee shall acquit and dis-
2 charge him from all demands by the defendant, his executor or adminis-
3 trator, for all goods, effects and credits paid, delivered or accounted for
4 by the trustee by force of such judgment.

1748-9, 6. R. L. 189, § 43. 1 Allen, 286. 111 Mass. 213.
1758-9, 10, § 7. 4 Met. 1. 2 Allen, 123. 116 Mass. 210.
1794, 65, § 8. 6 Gray, 568. 99 Mass. 530. 308.
R. S. 109, § 47. 7 Gray, 269, 505. 100 Mass. 453. 129 Mass. 322.
G. S. 142, § 37. 13 Gray, 51. 104 Mass. 164. 131 Mass. 518.
P. S. 183, § 48. 14 Gray, 487. 105 Mass. 340. 183 Mass. 455.

Effect of judgment against trustee.

1 SECTION 44. If a person summoned as trustee is discharged, the
2 judgment shall be no bar to an action brought against him by the defend-
3 ant for the same demand.

R. S. 109, § 48. G. S. 142, § 38. P. S. 183, § 49. R. L. 189, § 44.

Discharge of trustee no bar to action by defendant.

SCIRE FACIAS AGAINST TRUSTEE.

1 SECTION 45. If a person adjudged a trustee does not, upon demand,
2 pay over to the officer goods, effects or credits sufficient to satisfy the
3 execution and if the execution is not otherwise satisfied, the plaintiff may
4 sue out from the court where the judgment was rendered a writ of scire
5 facias against him or all, or a separate writ against each, of the trustees,
6 to show cause why judgment and execution should not be awarded against
7 them or him and their or his own goods and estate for the amount remain-
8 ing unsatisfied on the judgment against the defendant. Such writ may

Scire facias against trustee.

P. S. 183, § 50. be sued out at any time after thirty days from the date of judgment and 9
 R. L. 189, § 45. may be issued by the court where the judgment was rendered, although 10
 1925, 217, § 4. the amount of the debt and costs therein exceeds its jurisdiction. 11
 15 Mass. 473.
 21 Pick. 109.

4 Cush. 420.	122 Mass. 64.	186 Mass. 574.	229 Mass. 316.
9 Cush. 289.	135 Mass. 397.	206 Mass. 498.	233 Mass. 481.
2 Allen, 566.	151 Mass. 17.	228 Mass. 84.	261 Mass. 422.
99 Mass. 530.			

Proceedings upon default of trustee on scire facias. SECTION 46. If a trustee, duly served with the scire facias, neglects 1
 to appear and answer, he shall be defaulted; and if he did not answer, 2
 1708-9, 7, § 5. and was not examined in the original action, judgment shall be rendered 3
 1728-9, 3, § 3. against him upon such default for the whole amount remaining unsatisf- 4
 1748-9, 6. fied on the judgment against the defendant. 5
 1758-9, 10, § 5.
 1794, 65, § 7.

R. S. 109, § 39.	P. S. 183, § 51.	151 Mass. 17.
G. S. 142, § 40.	R. L. 189, § 46.	

Same subject. SECTION 47. If a trustee defaulted on the scire facias has been ex- 1
 R. S. 109, § 40. amined, or has answered and not been examined, in the original action, 2
 G. S. 142, § 41. judgment in the scire facias shall be rendered upon the facts stated upon 3
 P. S. 183, § 52. such examination or in such answer, respectively, for any part remaining 4
 R. L. 189, § 47. in his hands of the goods, effects or credits for which he was chargeable 5
 156 Mass. 166. as trustee, or for so much thereof as is necessary to satisfy the amount 6
 then remaining due on the original judgment. 7

Proceedings upon appearance of trustee. SECTION 48. If the trustee appears and answers to the scire facias, he 1
 1794, 65, § 6. may be examined therein; but if he has been examined in the original 2
 R. S. 109, action, he shall be examined anew only by order of the court. He may 3
 § 41, 42. prove any matter necessary or proper for his defence on the scire facias. 4
 G. S. 142, A judgment against a trustee on scire facias shall express the amount 5
 § 32, 42. for which he is chargeable. 6
 P. S. 183, § 53.
 R. L. 189, § 48.

1 Met. 426.	111 Mass. 154.	156 Mass. 1.	193 Mass. 479.
4 Cush. 431.	116 Mass. 299.	161 Mass. 287.	213 Mass. 384.
10 Gray, 164, 371.	134 Mass. 232.	173 Mass. 439.	229 Mass. 316.
9 Allen, 90.	149 Mass. 49.	186 Mass. 574.	

Limitation of action on scire facias. SECTION 49. A writ of scire facias shall not be maintained against 1
 1846, 40, § 1. a person adjudged a trustee, unless served upon him within two years 2
 G. S. 142, § 43. after judgment in the original action; or if the money or other thing is 3
 P. S. 183, § 54. not payable when the judgment is rendered, unless so served within one 4
 R. L. 189, § 49. year after such money or other thing becomes payable. 5
 4 Gray, 343.

DEATH OF PARTIES.

Death of trustee before judgment. SECTION 50. If a person summoned as trustee in his own right dies 1
 R. S. 109, § 63. before the judgment recovered by the plaintiff has been fully satisfied, 2
 G. S. 142, § 44. the goods, effects and credits in his hands at the time of the attachment 3
 P. S. 183, § 55. shall remain bound thereby, and his executor or administrator shall be 4
 R. L. 189, § 50. liable therefor as if the writ were originally served on him. 5

Proceedings. SECTION 51. If a person so summoned dies before judgment in the 1
 1794, 65, § 11. original action, his executor or administrator may appear voluntarily 2
 R. S. 109, § 64. or may be cited to appear, as in other cases. The further proceedings 3
 G. S. 142, § 45. shall then be conducted in the same manner as if the executor or adminis- 4
 P. S. 183, § 56. trator had been originally summoned as trustee, except that the examina- 5
 R. L. 189, § 51. tion of the deceased, if any has been filed, shall have the same effect as 6
 if he were living. 7

1 SECTION 52. If the executor or administrator does not appear, the
 2 plaintiff, instead of suggesting the death of the trustee, may take judg-
 3 ment against him by default or otherwise as if he were living, and the
 4 executor or administrator shall pay upon the execution the amount
 5 which the deceased would have been liable to pay to the defendant, and
 6 shall be thereby discharged for the amount so paid. If he does not
 7 voluntarily pay the amount in his hands, the plaintiff may proceed
 8 against him by scire facias.

Same subject.
 R. S. 109,
 §§ 65, 66
 G. S. 142,
 §§ 16, 17
 P. S. 183,
 §§ 57, 58
 R. L. 189, § 52
 119 Mass. 19.

1 SECTION 53. If a person summoned as trustee dies after judgment in
 2 the original action, his executor or administrator may pay upon the exe-
 3 cution the amount which the deceased would have been liable to pay
 4 were he living, and he shall be discharged from all further demands on
 5 account thereof in the manner before mentioned. If he refuses to make
 6 such payment, the plaintiff may proceed against him by scire facias.

Death of trust-
 ee, after judg-
 ment
 1794, 65, § 11
 R. S. 109, § 67
 G. S. 142, § 18
 P. S. 183, § 59
 R. L. 189, § 53
 15 Mass. 473

1 SECTION 54. If a person, against whom as trustee execution has been
 2 issued, is not living at the expiration of thirty days after final judgment
 3 in the trustee process, a demand, for the purpose of holding the attach-
 4 ment, may be made upon the executor or administrator of such deceased
 5 person within thirty days after his appointment, and shall have the
 6 same effect as if made within thirty days after the judgment.

Same subject.
 R. S. 109, § 68
 G. S. 142, § 49
 P. S. 183, § 60
 R. L. 189, § 54

PROCEEDINGS IF AN EXECUTOR IS CHARGED AS TRUSTEE.

1 SECTION 55. If an executor or administrator as such is adjudged a
 2 trustee, the execution shall not be served on his own goods or estate nor
 3 on his person, and he shall be liable for the amount in his hands only in
 4 like manner and to the same extent as he would have been liable to the
 5 defendant if there had been no trustee process.

Service of
 execution when
 executor or
 administrator
 is adjudged
 trustee.
 R. S. 109, § 69.
 G. S. 142, § 50

P. S. 183, § 61.

R. L. 189, § 55.

1 SECTION 56. If, after final judgment against an executor or adminis-
 2 trator for a sum certain due from him as trustee, he fails to pay the same,
 3 the original plaintiff in the trustee process shall have the same remedy for
 4 recovering the amount, either upon a suggestion of waste or by a suit on
 5 the administration bond, as the defendant in the trustee process would
 6 have had upon a judgment recovered by himself for the same demand
 7 against the executor or administrator.

Remedy
 against execu-
 tor failing to
 pay amount for
 which he is
 charged.
 R. S. 109, § 70.
 G. S. 142, § 51
 P. S. 183, § 62.
 R. L. 189, § 56.
 225 Mass. 432.

PROCEEDINGS IF TRUSTEE HAS SPECIFIC PROPERTY.

1 SECTION 57. If a person is charged as trustee by reason of personal
 2 property other than money, which he holds or is bound to deliver to
 3 the defendant, he shall deliver it, or so much thereof as may be neces-
 4 sary, to the officer holding the execution, who shall sell the property and
 5 apply and account for the proceeds in the same manner as if the property
 6 had been taken on execution.

Proceedings
 if trustee is
 charged for
 specific prop-
 erty
 1794, 65, § 10
 R. S. 109, § 22
 G. S. 142, § 52
 P. S. 183, § 63.

R. L. 189, § 57.

7 Cush. 457.

104 Mass. 164.

1 SECTION 58. The value of any property so delivered shall be ascer-
 2 tained and fixed, as between the trustee and defendant, in like manner
 3 and upon the same principles as if delivered to the defendant. Upon
 4 the application of either party, the court may, pending the original
 5 action or upon the scire facias, determine the value, and make any other

Same subject.
 1794, 65, § 10
 R. S. 109, § 23.
 G. S. 142, § 53.
 P. S. 183, § 64
 R. L. 189, § 58
 1917, 326
 6 Mass. 60.

order relative to such property and to the delivery thereof necessary or proper to protect the rights of the trustee and of the defendant.

Delivery by trustee of specific property according to contract. R. S. 109, § 24. G. S. 142, § 54. P. S. 183, § 65. R. L. 189, § 59. 6 Mass. 60. 6 Gray, 320. 104 Mass. 164.

SECTION 59. If a person summoned as trustee is bound by contract to deliver specific property to the defendant at a certain time and place within the commonwealth, he shall not be required by reason of the trustee process to deliver it at any other time or place; and he may, notwithstanding such process, tender or deliver it to the person entitled thereto under the contract at the time and place therein mentioned, unless he has been previously adjudged a trustee on account thereof.

187 Mass. 596.

211 Mass. 146.

Tender by plaintiff of amount for which trustee holds property as security. 1829, 124, § 1. R. S. 109, § 25. G. S. 142, § 55. P. S. 183, § 66. R. L. 189, § 60.

SECTION 60. If the court finds that property in the hands of a person summoned as trustee is mortgaged, pledged or in any way liable for the payment of a debt to the person so summoned, it may allow the attaching creditor to pay or tender the amount due to the trustee, who shall thereupon deliver the property, in the manner before provided, to the officer holding the execution.

9 Gray, 45.

11 Allen, 354.

173 Mass. 439.

188 Mass. 70.

Disposal if held for other purpose than as security. 1829, 124, § 1. R. S. 109, § 26. G. S. 142, § 56. P. S. 183, § 67. R. L. 189, § 61. 1 Met. 172.

SECTION 61. If the court finds that the property is held for any purpose other than to secure the payment of money and that the contract, condition or other thing to be performed is such that it can be performed by the attaching creditor without damage to the other parties, it may make an order for the performance thereof by him. Upon such performance, or upon a tender, the trustee shall deliver the property, in the manner before provided, to the officer holding the execution.

Disposal of property by officer. 1829, 124, § 12. R. S. 109, § 27. G. S. 142, § 57. P. S. 183, § 68. R. L. 189, § 62.

SECTION 62. Property received by an officer under either of the two preceding sections shall be sold and disposed of as if it had been taken on execution, except that from the proceeds of the sale the officer shall repay to the attaching creditor the amount paid by him to the trustee for the redemption of the property, with interest thereon, or shall indemnify the creditor for any other act or thing by him done or performed pursuant to the order of the court for the redemption of the property.

Sale by trustee of property held as security, etc. R. S. 109, § 28. G. S. 142, § 58. P. S. 183, § 69. R. L. 189, § 63.

SECTION 63. The preceding sections shall not prevent the trustee from selling the property in his hands for payment of the claim for which it is mortgaged, pledged or otherwise liable at any time before the amount due him is paid or tendered as provided in section sixty or sixty-one, if such sale would be valid as between him and the defendant.

Liability of trustee for neglect to deliver property for which he is charged. 1794, 65, § 6.

SECTION 64. If a trustee refuses or neglects to deliver any property in his hands when lawfully required by the officer serving the execution, he shall, after deducting the amount of any lien he has on such property, be liable to the plaintiff upon a scire facias.

1829, 124, § 1. R. S. 109, § 29.

G. S. 142, § 59. P. S. 183, § 70.

R. L. 189, § 64. 173 Mass. 439.

Liability of carrier if prevented by trustee process from making delivery. 1905, 324.

SECTION 65. When a common carrier, summoned as trustee in an action at law, has in his or its possession goods shipped by or consigned to a defendant in such action, such carrier, in the absence of collusion or fraud on his or its part, shall not, except as otherwise provided in

5 chapter one hundred and eight, be held liable to the owner or consignee
 6 by reason of his or its failure to transport and to deliver said goods, until
 7 the attachment is dissolved or the carrier is discharged as trustee.

206 Mass. 373.
 211 Mass. 146.
 214 Mass. 466.

DISSOLUTION OF ATTACHMENT BY TRUSTEE PROCESS.

1 SECTION 66. A person having an interest by assignment or other-
 2 wise in money or credits attached by the trustee process in an action
 3 against another may, at any time before final judgment, dissolve such
 4 attachment or a part thereof by giving bond, in a sum not exceeding the
 5 damages demanded, with sufficient sureties to be approved in writing by
 6 the plaintiff or his attorney, by a master in chancery or by a justice of
 7 a court, if the attachment is made within the jurisdiction thereof, con-
 8 ditioned to pay to the plaintiff, within thirty days after final judgment
 9 or after a special judgment entered under section twenty-five of chapter
 10 two hundred and thirty-five, the amount for which the trustee may
 11 be charged, not exceeding the value of the property in his hands, or so
 12 much thereof as will satisfy the amount which may be recovered by the
 13 plaintiff. If there are several trustees, such bonds may be made to apply
 14 to one or more. The provisions of sections one hundred and twenty-
 15 five and one hundred and twenty-six of chapter two hundred and twenty-
 16 three, relative to notice, hearing, fees and the filing of the bond, shall
 17 apply to bonds given under this section.

Person other than defendant may file bond, etc.
 1877, 97.
 §§ 1, 2.
 P. S. 183, § 71.
 R. L. 189, § 65.
 129 Mass. 589.
 136 Mass. 407.
 159 Mass. 166.
 226 Mass. 14.

1 SECTION 67. After the filing of such bond, the trustee may deliver to
 2 the person by whom or in whose behalf as principal the bond was given
 3 the money or other thing in his hands, or that part thereof to which the
 4 bond applies, and shall not after such delivery be liable to the plaintiff
 5 therefor, nor shall any execution therefor issue against him. No action on
 6 such bond shall be commenced after the expiration of six years from the
 7 date thereof.

Delivery of property by trustee. Limitation of action on bond.
 1877, 97, § 2.
 P. S. 183, § 72.
 R. L. 189, § 66.
 264 Mass. 481.

COSTS.

1 SECTION 68. A person summoned as a trustee in the supreme judicial
 2 or superior court, who appears and answers pursuant to this chapter,
 3 shall be allowed his costs for travel and term fees, and such further
 4 amount for counsel fees and other necessary expenses as the court may
 5 allow; if summoned in a district court, he shall be allowed the costs
 6 fixed by section twenty-seven of chapter two hundred and sixty-one. If
 7 there has been a trial between the plaintiff and the alleged trustee upon
 8 an issue of fact, the court may award costs to either party.

Costs of trustee.
 1798-9, 7, § 5.
 1728-9, 3, § 4.
 1748-9, 6.
 1758-9, 10, § 3.
 1794, 65, § 3.
 1829, 128, § 2.
 R. S. 109, § 49.
 G. S. 142, § 60, § 2.
 P. S. 183, § 73.
 R. L. 189, § 67.

1917, 326.	15 Gray, 70.	123 Mass. 319.
12 Pick. 407.	6 Allen, 122.	128 Mass. 20.
19 Pick. 354.	10 Allen, 160.	215 Mass. 234.
12 Met. 397.	99 Mass. 501, 551.	224 Mass. 253.
14 Gray, 453.	117 Mass. 91.	

1 SECTION 69. If a person is adjudged a trustee, his costs and charges
 2 shall be deducted from the goods, effects and credits in his hands, and he
 3 shall be chargeable for the balance only to be paid on the execution.
 4 If such goods, effects and credits are not of sufficient value to discharge
 5 the costs taxed in his favor, he shall have judgment and execution against
 6 the plaintiff for the balance of such costs, after deducting the amount
 7 disclosed, in the same manner as if he had been discharged.

Costs payable out of effects, when.
 1829, 128, § 2.
 1845, 188.
 R. S. 109, § 50.
 G. S. 142, § 61.
 P. S. 183, § 74.
 R. L. 189, § 68.
 10 Met. 580.
 12 Cush. 131.

Costs payable by plaintiff, when.
1708-9, 7, § 5.
1728-9, 3, § 1.

SECTION 70. If a person summoned as trustee is discharged, he shall have judgment and execution for his costs and charges against the plaintiff.

1
2
3

1748-9, 6. R. S. 109, § 51. R. L. 189, § 69. 11 Cush. 463.
1758-9, 10, § 3. G. S. 142, § 62. 3 Cush. 341. 224 Mass. 253
1794, 65, § 4 P. S. 183, § 75.

Costs of person absent from commonwealth.
R. S. 109, § 52.
G. S. 142, § 63.
P. S. 183, § 76.
R. L. 189, § 70.
1917, 326.
10 Mass. 25.

SECTION 71. If a person so summoned in an action pending in the supreme judicial or superior court is out of the commonwealth at the time of service of the original writ upon him, and appears and answers within ten days after his return, or if he is so summoned in an action pending in a district court, and appears and answers within three days after his return, he shall be allowed his costs and charges.

1
2
3
4
5
6

Costs of person summoned out of county.
1794, 65, §§ 3, 6.
R. S. 109, § 53.
1852, 287.
G. S. 142, § 64.

SECTION 72. If a person so summoned does not dwell or have a usual place of business in the county where the writ is returnable, he shall, if he appears at any time in the original action or upon a scire facias, be allowed his costs and charges, which shall be retained or recovered as before provided.

1
2
3
4
5

P. S. 183, § 77. R. L. 189, § 71. 12 Pick. 529.

Liability of trustee neglecting to appear.
1794, 65, § 3.
R. S. 109, § 54.
1852, 287.
G. S. 142, § 65.
P. S. 183, § 78.
R. L. 189, § 72.
193 Mass. 479.

SECTION 73. A person so summoned, who dwells or has a usual place of business in the county where the writ is returnable, and who neglects, without sufficient reason, to appear and answer within the time provided, shall be liable, if the plaintiff recovers judgment and does not otherwise receive his costs, for all costs for the plaintiff's travel and term fees until he appears.

1
2
3
4
5
6

Recovery of costs.
R. S. 109, § 55.
G. S. 142, § 66.
P. S. 183, § 79.
R. L. 189, § 73.

SECTION 74. If a person so summoned does not pay the costs when demanded by the officer serving the execution, the officer shall state the fact in his return, and if it also appears by the return that the costs have not been paid, the court shall award a new execution against him for the costs.

1
2
3
4
5

Liability of several trustees for plaintiff's costs.
1794, 65, § 3.
R. S. 109, § 56.
G. S. 142, § 67.
P. S. 183, § 80.
R. L. 189, § 74.

SECTION 75. If several persons are summoned as trustees who are liable for costs under any provision of the two preceding sections, the second execution shall be awarded against them jointly; and if any one pays more than his proportion, the others shall contribute equally to indemnify him for the excess.

1
2
3
4
5

Costs in action against trustee.
1883, 62.
R. L. 189, § 75.

SECTION 76. If, while an action by the trustee process is pending, the original defendant therein or any other person brings an action against the alleged trustee to recover the goods, effects or credits or any part thereof in his hands or possession, costs in the later action shall be in the discretion of the court.

1
2
3
4
5

Liability of trustee for costs on scire facias, when.
1794, 65, §§ 3, 6.
R. S. 109, § 57.
G. S. 142, § 68.
P. S. 183, § 81.
R. L. 189, § 76.
1 Pick. 164

SECTION 77. If a person summoned as trustee, who dwells or has a usual place of business in the county where the writ is returnable, is defaulted in the original action, and if a writ of scire facias issues against him, he shall be liable out of his own goods and estate for all costs on the scire facias, although he is not adjudged a trustee, except as provided in the following sections.

1
2
3
4
5
6

1 SECTION 78. He shall not be liable for costs on the scire facias, nor
 2 shall he be entitled to recover costs, if the court finds that he had goods,
 3 effects or credits in his hands liable to attachment, and has paid and
 4 delivered, on the execution issued on the original judgment, the full
 5 amount thereof.

Same subject.
 1794, 65, § 6.
 R. S. 109, § 58.
 G. S. 142, § 69.
 P. S. 183, § 82.
 R. L. 189, § 77.

1 SECTION 79. He shall not be liable for costs on the scire facias if he
 2 was prevented from appearing in the original action by his absence from
 3 the commonwealth or by any other sufficient cause, but the court may
 4 allow him his costs as if he had appeared in the original action.

Same subject.
 R. S. 109, § 59.
 1831, 233, § 75.
 1872, 312, § 58.
 G. S. 142, § 70.

P. S. 183, § 83. R. L. 189, § 78.

1 SECTION 80. If a person summoned as trustee is held liable to pay
 2 from his own estate the costs on the scire facias as before provided, and if
 3 he is at the same time liable for the plaintiff's costs in the original action,
 4 one execution shall be issued against him for both amounts.

Execution for
 costs against
 trustee.
 R. S. 109, § 60.
 G. S. 142, § 71.

P. S. 183, § 84. R. L. 189, § 79.

1 SECTION 81. If several trustees are liable on the scire facias, and the
 2 plaintiff, without sufficient reason, sues out two or more writs when he
 3 might have joined all the trustees in one writ, he shall recover no more
 4 costs than if he had sued out one writ, and the court may apportion the
 5 costs among all the trustees liable therefor.

Costs against
 several
 trustees.
 R. S. 109, § 61.
 G. S. 142, § 72.
 P. S. 183, § 85.
 R. L. 189, § 80.

1 SECTION 82. If an adverse claimant is admitted as a party, the court
 2 may award costs between him, the plaintiff and the supposed trustee, or
 3 any of them.

Costs in case
 of adverse
 claimant.
 1817, 148, § 1.

R. S. 109, § 21.	15 Gray, 70.	123 Mass. 319.
G. S. 142, § 73.	6 Allen, 122.	134 Mass. 249.
P. S. 183, § 86.	99 Mass. 501.	176 Mass. 124.
R. L. 189, § 81.	111 Mass. 281.	

1 SECTION 83. If the damages recovered in an action brought under
 2 trustee process do not exceed ten dollars, exclusive of all costs in any
 3 former action, the plaintiff shall recover no costs.

Costs if dam-
 ages do not
 exceed ten
 dollars.

1855, 300, § 1.	G. S. 142, § 74.	P. S. 183, §§ 87, 88.
1857, 200, § 1.	1881, 216, § 1.	R. L. 189, § 82.

CHAPTER 247.

REPLEVIN.

<p>SECT.</p> <p>REPLEVIN OF BEASTS DISTRAINED.</p> <p>1. Replevin of beasts distrained.</p> <p>2. Bond.</p> <p>3. Appraisal of property replevied.</p> <p>4. Return of writ, etc.</p> <p>5. Form of judgment for defendant.</p> <p>6. Form of judgment for plaintiff.</p> <p>REPLEVIN OF OTHER PROPERTY.</p> <p>7. Replevin of goods unlawfully taken or attached.</p> <p>8. Bond.</p> <p>9. Form of judgment for defendant.</p> <p>10. Damages, how assessed.</p> <p>11. Disposal of money recovered by officer after replevin of goods attached, etc.</p>	<p>SECT.</p> <p>12. Same subject.</p> <p>13. Form of judgment for plaintiff.</p> <p>GENERAL PROVISIONS.</p> <p>14. Approval of sureties on replevin bond</p> <p>15. Proceedings.</p> <p>16. Fees of master.</p> <p>17. Defects in bond not cause for dismissal.</p> <p>18. Limitation of actions against sureties on bonds.</p> <p>19. Assessment of damages.</p> <p>20. Proceedings upon judgment for return of goods attached, etc.</p> <p>21. Form of writ of return.</p> <p>22. Effect of foregoing provisions.</p>
---	---

REPLEVIN OF BEASTS DISTRAINED.

SECTION 1. A person whose beasts have been distrained or impounded in order to recover a penalty or forfeiture supposed to have been incurred by their going at large or to obtain satisfaction for damages alleged to have been done by them may cause them to be replevied.

Replevin of
beasts dis-
trained.
B. L. 32.
C. L. 18, § 3;
132, § 1.
1789, 26, § 1.

R. S. 113, § 17. P. S. 184, § 1. 2 Cush. 88.
G. S. 143, § 1. R. L. 190, § 1. 7 Cush. 355.

SECTION 2. Before the officer serving the writ delivers the beasts to the plaintiff, he shall take from the plaintiff or a person in his behalf a bond payable to the defendant in a sum equal to double the value of the beasts, with sufficient sureties, conditioned to prosecute the replevin to final judgment and to pay such damages and costs as the defendant shall recover and to return the beasts if such shall be the final judgment.

Bond.
C. L. 132, § 1;
162, § 4.
1701-2, 3.
1720-1, 13, § 2.
1789, 26, § 1.
R. S. 113, § 19.
G. S. 143, § 3.
P. S. 184, § 3.
R. L. 190, § 2.
100 Mass. 122.

104 Mass. 328. 105 Mass. 44 136 Mass. 515.

SECTION 3. The writ shall require that the bond be given for double the value of the beasts but shall not express the amount for which it shall be given. If the parties do not agree as to the value of the beasts, it shall be ascertained by three disinterested appraisers, who shall be appointed and sworn by the officer, and the penalty of the bond shall be double the value ascertained by such appraisers or by a majority of them.

Appraisal of
property
replevied.
1824, 106, § 1.
R. S. 113, § 20.
G. S. 143, § 4.
P. S. 184, § 4.
R. L. 190, § 3.
205 Mass. 64.

SECTION 4. The officer shall return such bond with the writ to the court to which the writ is returnable, for the use of the defendant; and he shall include in his return, endorsed on the writ, a certificate of the appointment of the appraisers, of the appraisal and of the expenses thereof.

Return of writ,
etc.
1789, 26, § 1.
1824, 106, § 1.
R. S. 113, § 21.
G. S. 143, § 5.
P. S. 184, § 5.
R. L. 190, § 4.
1917, 326.

12 Met. 516. 97 Mass. 316.

SECTION 5. If the court finds that the beasts were lawfully taken or distrained, the defendant shall have judgment for the amount found to be due from the plaintiff for the penalty or forfeiture or for the damages

Form of judg-
ment for
defendant.
1789, 26, § 2.
R. S. 113,
§§ 22, 23.

4 for which the beasts were impounded, with the legal fees, costs, charges
 5 and expenses incurred by reason of the distress, and with the costs of the
 6 action of replevin; or, instead thereof, the court may render a judgment
 7 for a return of the beasts, to be held by the defendant irrepleviable by
 8 the plaintiff, and for the damages for the taking of the beasts by the re-
 9 plevin and for the defendant's costs. If so returned, the beasts shall be
 10 held and disposed of as if they had not been replevied.

G. S. 113,
 §§ 6, 7,
 P. S. 184,
 §§ 6, 7,
 R. L. 190, § 5,
 1917, 326.

1 SECTION 6. If the court finds that the beasts were unlawfully taken
 2 or distrained, the plaintiff shall have judgment for damages caused by
 3 such taking and detaining and for costs.

Form of
 judgment
 for plaintiff.

1789, 26, § 2	G. S. 113, § 8.	R. L. 190, § 6.
R. S. 113, § 24	P. S. 184, § 8.	1917, 326, § 2.

REPLEVIN OF OTHER PROPERTY.

1 SECTION 7. If goods exceeding twenty dollars in value are unlawfully
 2 taken or detained from the owner or person entitled to their possession, or
 3 if goods of that value, which have been attached on mesne process or taken
 4 on execution, are claimed by a person other than the defendant in the
 5 action in which they have been so attached or taken, the owner or such
 6 other person may cause them to be replevied.

Replevin of
 goods unlaw-
 fully taken or
 attached
 C. L. 132, § 1.
 1789, 26, § 4
 R. S. 113, § 27
 G. S. 143, § 10.
 P. S. 184, § 10.

R. L. 190, § 8	9 Gray, 216.	115 Mass. 156.
15 Mass. 359.	16 Gray, 213.	116 Mass. 300.
16 Mass. 147.	6 Allen, 227.	371.
17 Mass. 606.	9 Allen, 116.	121 Mass. 107.
3 Pick. 255.	10 Allen, 211.	146 Mass. 329
2 Cush. 88.	14 Allen, 62.	155 Mass. 539
3 Cush. 261.	105 Mass. 113.	156 Mass. 141
9 Cush. 407.	306.	166 Mass. 146.
11 Cush. 218.	114 Mass. 570.	207 Mass. 407.

1 SECTION 8. Except as otherwise provided in section thirty-seven of
 2 chapter two hundred and fifty-five, before the officer serving the writ
 3 delivers the goods to the plaintiff, he shall take from the plaintiff or a
 4 person in his behalf a bond payable to the defendant in a sum equal to
 5 double the value of the goods, with sufficient sureties, conditioned to
 6 prosecute the replevin to final judgment and to pay such damages and
 7 costs as the defendant shall recover and to return the goods if such shall
 8 be the final judgment. The officer shall appraise the goods and return
 9 the writ in the manner provided in sections three and four; but if the
 10 writ is returnable to the superior court, the bond shall be left with the
 11 clerk of the court for the use of the defendant.

Bond.
 C. L. 132, § 1
 1789, 26, § 4
 R. S. 113, § 29.
 G. S. 143, § 12
 P. S. 184, § 12
 R. L. 190, § 9
 1920, 590, § 6
 8 Mass. 153
 11 Mass. 282
 14 Mass. 313.
 5 Pick. 226.
 1 Met. 508.
 12 Met. 516.
 8 Cush. 556.
 5 Gray, 27.
 6 Gray, 363.
 13 Gray, 159

3 Allen, 426.	105 Mass. 44	142 Mass. 519.	182 Mass. 575.
5 Allen, 348.	113 Mass. 268	165 Mass. 505	205 Mass. 61.

1 SECTION 9. If the court finds that the defendant is entitled to a re-
 2 turn of the goods, judgment shall be rendered therefor and for the dam-
 3 ages caused by the taking by the replevin and for costs.

Form of
 judgment for
 defendant
 1789, 26, § 4

R. S. 113, § 30.	3 Allen, 129	114 Mass. 458.
G. S. 143, § 13.	6 Allen, 227.	131 Mass. 26.
P. S. 184, § 13	14 Allen, 62	136 Mass. 128,
R. L. 190, § 10.	98 Mass. 343, 515.	515.
1917, 326.	103 Mass. 520.	139 Mass. 126.
7 Met. 590.	101 Mass. 328.	143 Mass. 416.
14 Gray, 449.	109 Mass. 265.	251 Mass. 447.

1 SECTION 10. If the goods when replevied had been taken on execu-
 2 tion, or if they had been attached and judgment is afterward rendered for
 3 the attaching creditor, and if in either case the service of the execution
 4 is delayed by reason of the replevin, the damages to be assessed for the

Damages, how
 assessed.
 1789, 26, § 4.
 R. S. 113, § 31.
 G. S. 143, § 14.
 P. S. 184, § 14

R. L. 190, § 11.
4 Mass. 614
12 Mass. 406.
11 Pick. 223.
205 Mass. 64.

defendant upon a judgment for a return shall be at the rate of not less than twelve per cent a year on the value of the goods for the time during which the service of the execution was so delayed.

Disposal of money recovered by officer after replevin of goods attached, etc.
R. S. 113, § 32.
G. S. 143, § 15.
P. S. 184, § 15.
R. L. 190, § 12.
105 Mass. 44.

SECTION 11. Money recovered by an officer in an action of replevin for goods attached or taken on execution by him or recovered by him in an action upon the replevin bond shall be applied as follows:

First, To pay the lawful fees and charges of the officer and the reasonable expenses of the action of replevin and of the action on the bond, so far as such expenses are not reimbursed by the costs recovered.

Second, To pay to the creditor at whose suit the goods were attached or taken on execution the amount recovered by him in that action, or so much thereof as remains unpaid, with interest thereon at the rate of twelve per cent a year for the time during which the money has been withheld from him, or the service of his execution has been delayed by reason of the replevin.

If the attaching creditor in such case does not recover judgment in the action in which the attachment was made, or if a balance remains of the money so recovered by the officer after paying what is due to the creditor, such money shall be applied in the same manner as the surplus, if any, of the proceeds of sale would and ought to have been applied had the goods been sold on execution.

Same subject.
R. S. 113, § 33.
G. S. 143, § 16.
P. S. 184, § 16.
R. L. 190, § 13.

SECTION 12. All amounts received by such creditor from the proceeds of the sale of goods attached or taken on execution and afterward returned, or received by him for the value of goods not returned, or recovered from the officer for the insufficiency of the sureties on the bond, shall be applied to the discharge of the judgment recovered by the creditor; and all amounts received as interest or damages for the delay of his execution shall be applied, one half to the sole use of the creditor, and the other half in discharge of the judgment.

Form of judgment for plaintiff.
R. S. 113, § 34.
G. S. 143, § 17.

SECTION 13. If the court finds that the goods were unlawfully taken or attached or unlawfully detained by the defendant, the plaintiff shall have judgment for his damages caused thereby and for costs.

P. S. 184, § 17. 1917, 326. 120 Mass. 543.
R. L. 190, § 14. S. Allen, 93.

GENERAL PROVISIONS.

Approval of sureties on replevin bond.
1870, 309, § 1.
P. S. 184, § 18.
1895, 388, § 2.
R. L. 190, § 15.

SECTION 14. Sureties on a replevin bond may be approved in writing by the officer who serves the writ or by the defendant or by a justice of a district court or by a master in chancery, and, if approved otherwise than by the officer, he shall not be responsible for their sufficiency.

142 Mass. 519. 144 Mass. 32.

Proceedings.
1870, 309, § 2.
P. S. 184, § 19.
1895, 388, § 2.
R. L. 190, § 16.
188 Mass. 600.

SECTION 15. If such sureties are to be approved by a justice of a district court or by a master in chancery, the officer who serves the writ shall give written notice to the defendant or to the person from whose custody the property has been taken, stating the time and place of hearing thereon and the names and residences of the proposed sureties, allowing not less than one hour before the time appointed for the hearing and at the rate of one hour additional for each mile of travel.

1 SECTION 16. The fee of the master for the hearing and decision shall
 2 be as prescribed in section twenty-three of chapter two hundred and
 3 sixty-two; and, if the bond is approved, such fee shall be taxed in the
 4 plaintiff's costs, if he prevails in the action.

Fees of master.
 1870, 309, § 3.
 P. S. 184, § 20.
 R. L. 190, § 17.

1 SECTION 17. An action of replevin shall not be dismissed by reason
 2 of a defect in the form or substance of the bond taken therein, if the
 3 court is satisfied that such bond was intended in good faith as a com-
 4 pliance with the law requiring a bond to be taken before service of the
 5 writ and if the plaintiff, within such time and upon such terms as the
 6 court orders, files a new bond such as is required by law, approved by
 7 the court or in the manner provided in section fourteen.

Defects in
 bond not cause
 for dismissal.
 1878, 273.
 P. S. 184, § 21.
 R. L. 190, § 18.
 1917, 326.
 219 Mass. 191.

1 SECTION 18. An action shall not be maintained against a surety on
 2 a replevin bond, unless the writ is served on him within one year after
 3 the final judgment in the action of replevin. If the writ of replevin is not
 4 entered, an action on the bond shall not be maintained against a surety
 5 unless it is entered within one year after the return day of the writ of
 6 replevin.

Limitation of
 actions against
 sureties on
 bonds.
 R. S. 113, § 19.
 G. S. 143, § 24.
 P. S. 184, § 22.
 R. L. 190, § 19.

1918, 257, § 440.

1919, 5.

1920, 2.

1 SECTION 19. Damages in replevin shall be assessed by the jury by
 2 which the cause is tried, if there is a trial by jury; otherwise, by the
 3 court or by a jury impanelled therefor.

Assessment
 of damages.
 R. S. 113, § 35.

G. S. 143, § 19.

P. S. 184, § 23.

R. L. 190, § 20.

1917, 326.

1 SECTION 20. If the goods replevied had been attached, they shall,
 2 upon a judgment for a return, be held liable to the attachment until
 3 final judgment in the action in which they were attached, and for thirty
 4 days thereafter, so that they may be taken on execution. If such final
 5 judgment is rendered before the return of the goods, or if the goods when
 6 replevied were seized and held on execution, they shall be held subject
 7 to the same attachment or seizure for thirty days after the return, in
 8 order that the execution may be served thereon, or the service thereof
 9 completed, in like manner as it might have been if the goods had not
 10 been replevied.

Proceedings
 upon judg-
 ment for return
 of goods
 attached, etc.
 1789, 26, § 4.
 R. S. 113, § 36.
 G. S. 143, § 24.
 P. S. 184, § 24.
 R. L. 190, § 21.

1 SECTION 21. The writ of return in actions of replevin shall be sub-
 2 stantially in the form heretofore established and used in like cases.

Form of writ
 of return.
 1789, 26,
 §§ 6, 7.

R. S. 113, § 38.
 G. S. 143, § 20.
 P. S. 184, § 26.

R. L. 190, § 23.
 1918, 257, § 442.

1919, 5.
 1920, 2.

1 SECTION 22. The foregoing provisions shall not preclude the de-
 2 fendant from his remedy on the replevin bond, nor, except as provided
 3 in section fourteen, from his remedy against the officer for the insuffi-
 4 ciency of the sureties on the bond, to recover the value of the goods and
 5 the loss or damage caused by the replevin, although he has endeavored
 6 to recover the same by the writ of return as before provided.

Effect of fore-
 going pro-
 visions.
 R. S. 113, § 39.
 G. S. 143, § 21.
 P. S. 184, § 27.
 R. L. 190, § 24.
 1918, 257,
 § 442.

1919, 5.

1920, 2.

S Met. 205.

CHAPTER 248.

HABEAS CORPUS AND PERSONAL LIBERTY.

SECT.

HABEAS CORPUS.

1. Writ of habeas corpus.
2. By whom issued.
3. Petition for the writ.
4. Issue of writ.
5. Form of writ.
6. How signed and served.
7. Description of custodian of prisoner.
8. Designation of prisoner.
9. Advances prior to service of writ.
10. Return of writ.
11. Contents of return.
12. Prisoner to be produced.
13. Provision if prisoner is ill, etc.
14. Return before justice of court.
15. Examination of causes of imprisonment.
16. Notice to person interested in detention of prisoner.
17. Notice to attorney general if prisoner held for crime.
18. Custody of prisoner pending examination.
19. Release of prisoner on bail.
20. Bail of prisoner committed in civil action for want of bail.
21. Bail of prisoner committed on criminal charge.

SECT.

22. Prisoner to be remanded, when.
23. Prisoner to be discharged, when.
24. Second imprisonment after discharge.
25. Limitation of scope of chapter.
26. Penalty on officer refusing copy of warrant.
27. Proceedings upon refusal to obey writ.
28. Same subject.
29. Same subject.
30. Penalty for refusing to obey writ.
31. Resistance, etc., of writ a contempt.
32. Penalty for removing or concealing prisoner.
33. Recovery of penalty not to bar action for false imprisonment, etc.
34. Person in custody of United States marshal.

PERSONAL LIBERTY.

35. Personal liberty, how secured.
36. Proceedings to obtain personal liberty.
37. Notice to custodians, etc.
38. Examination of witnesses.
39. Probate court may request the district attorney to conduct examination, etc.
40. Payment of expenses regulated.

HABEAS CORPUS.

Writ of habeas corpus.
 1784, 72, § 1.
 R. S. 111,
 §§ 1, 2.
 1855, 489,
 §§ 2, 20.
 G. S. 144,
 §§ 1, 2.
 P. S. 185,
 §§ 1, 2.
 R. L. 191, § 1.
 2 Pick. 165,
 172.
 12 Cush. 598.
 2 Gray. 406.
 167 Mass. 11.
 186 Mass. 301.
 254 Mass. 103.

SECTION 1. Whoever is imprisoned or restrained of his liberty may, if it proves to be unlawful, unless —

First, He has been committed for treason or felony, or on suspicion thereof, or as accessory before the fact to a felony, and the cause has been plainly expressed in the warrant of commitment.

Second, He has been convicted or is in execution upon legal process, civil or criminal.

Third, He has been committed on mesne process in a civil action in which he was liable to arrest and imprisonment, unless excessive and unreasonable bail was required.

By whom issued.
 1784, 72, § 1.
 R. S. 111,
 §§ 7, 8.
 1855, 489, § 3.
 G. S. 144, § 3.

SECTION 2. The writ may be issued, irrespective of the county in which the person is imprisoned or restrained, by the supreme judicial or the superior court, by a probate or a district court or by a judge of any of said courts.

P. S. 185, § 3.

R. L. 191, § 2.

1931, 423, § 73.

19 Pick. 339.

Petition for the writ.
 1784, 72, § 1.

SECTION 3. The petition for the writ shall be in writing, signed and sworn to by the person for whose release it is intended, or by a person

3 in his behalf, and shall state by whom and where the person is imprisoned
 4 or restrained, the name of the prisoner and of the person detaining him,
 5 if their names are known, or a description of them, if their names are
 6 not known, and the cause or pretence of such imprisonment or restraint,
 7 according to the knowledge and belief of the petitioner.
 8 If the imprisonment or restraint is by virtue of a warrant or other
 9 process, a copy thereof shall be annexed, unless it appears that such copy
 10 has been demanded and refused or that, for a sufficient reason, a demand
 11 therefor could not be made.

R. S. 111, § 3.
 G. S. 144, § 4.
 P. S. 185, § 4.
 R. L. 191, § 3.
 161 Mass. 46.

1 SECTION 4. The court or magistrate to whom the petition is presented
 2 shall, without delay, issue a writ of habeas corpus, substantially in the
 3 form heretofore established and used in the commonwealth, and return-
 4 able forthwith to the supreme judicial court, or a justice thereof, at such
 5 place as shall be designated in the writ.

Issue of writ.
 1784, 72, § 2.
 1808, 80.
 R. S. 111, § 4.
 1855, 489, § 3.
 1859, 291, § 2.
 G. S. 144, § 5.
 P. S. 144, § 5.
 1861, 91, § 1.

P. S. 185, § 5.

R. L. 191, § 4.

161 Mass. 46.

1 SECTION 5. If the imprisonment or restraint is not by a sheriff, deputy
 2 sheriff or jailer, the writ shall be in the following form:

Form of writ.
 1784, 72,
 §§ 1, 2.
 R. S. 111, § 5.
 1859, 291, § 2.
 G. S. 144, § 6.
 P. S. 185, § 6.
 R. L. 191, § 5.

COMMONWEALTH OF MASSACHUSETTS.

(SEAL.) *To the sheriffs of our several counties and to their respective deputies,*

Greeting.

We command you that the body of _____,
 by _____, of _____,
 imprisoned and restrained of his liberty, as it is said, you take and have before
 a justice of our supreme judicial court at _____
 immediately after the receipt of this writ, to do and
 receive what our said justice shall then and there consider concerning him in
 this behalf; and summon said _____ then and there
 to appear before our said justice to show the cause of the taking and detaining
 of said _____; and have you there this writ with
 your doings thereon.

Witness _____ at _____ this
 day of _____ in the year _____.

1 SECTION 6. If the writ is issued by the court when sitting for the
 2 transaction of business, it shall be signed by the clerk, otherwise by the
 3 magistrate issuing it, and may be served in any county by any sheriff or
 4 deputy sheriff.

How signed
 and served.
 R. S. 111, § 6.
 G. S. 144, § 7.
 P. S. 185, § 7.

R. L. 191, § 6.

1 SECTION 7. The person who has the custody of the prisoner may be
 2 designated by his office or by his own name, or, if they are unknown or
 3 uncertain, he may be described by a fictitious name and the person upon
 4 whom the writ is served shall be held to be the person intended.

Description
 of custodian
 of prisoner.
 R. S. 111, § 10.
 G. S. 144, § 8.
 P. S. 185, § 8.

R. L. 191, § 7.

1 SECTION 8. The person restrained shall be designated by name, if
 2 known; otherwise, he may be so described as to identify him.

Designation
 of prisoner.
 R. S. 111, § 11.

G. S. 144, § 9.

P. S. 185, § 9.

R. L. 191, § 8.

1 SECTION 9. If the person restrained is confined in jail or is in the
 2 custody of a civil officer, the court or magistrate granting the writ shall
 3 certify thereon the amount to be paid for the expense of transporting
 4 him from the place of imprisonment, and the officer shall not be bound
 5 to obey the writ unless that amount is paid or tendered to him.

Advances prior
 to service of
 writ.
 1784, 72, § 3.
 R. S. 111, § 12.
 G. S. 144, § 10.
 P. S. 185, § 10.
 R. L. 191, § 9.

Return of writ. SECTION 10. Any person to whom the writ is directed shall receive 1
 1784, 72, § 3. it, and, upon payment or tender of the charges demandable for its execu- 2
 R. S. 111, § 13. tion, shall make due return thereof within five days after receiving it. 3
 G. S. 144, § 11.
 P. S. 185, § 11.
 R. L. 191, § 10.

Contents of return SECTION 11. The person in whose custody the prisoner is found shall 1
 R. S. 111, state in writing, plainly and unequivocally, to the court or justice before 2
 §§ 14, 15, whom the writ is returnable — 3
 G. S. 144, First, Whether the prisoner is in his custody or power or under his 4
 §§ 12, 13, restraint. 5
 P. S. 185, Second, If the prisoner is in his custody or power or under his restraint, 6
 §§ 12, 13, his specific authority for and the true and whole cause of such imprison- 7
 R. L. 191, § 11. ment or restraint, with a copy of the writ, warrant or other process, if 8
 any, upon which the prisoner is detained. 9
 Third, If the prisoner has been in his custody or power or under his 10
 restraint, and has been transferred to that of another, particularly to 11
 whom, when, why and by what authority such transfer was made. 12
 The statement shall be signed by him and, unless he is a sworn public 13
 officer and makes the statement in his official capacity, shall be sworn 14
 to by him. 15

Prisoner to be produced. SECTION 12. The person who makes the statement shall at the same 1
 1784, 72, § 3. time produce the prisoner, if in his custody or power or under his re- 2
 R. S. 111, § 16. straint, according to the command of the writ, unless prevented by the 3
 G. S. 144, § 14. illness or infirmity of the prisoner. 4
 P. S. 185, § 14.
 R. L. 191, § 12.

Provision if prisoner is ill, etc. SECTION 13. If by reason of the illness or infirmity of the prisoner 1
 R. S. 111, § 17. he cannot without danger be taken to the place appointed for the return 2
 G. S. 144, § 15. of the writ, that fact shall be stated in the statement and, if proved, the 3
 P. S. 185, § 15. judge may proceed to the place where the prisoner is confined and there 4
 R. L. 191, § 13. make his examination; or he may postpone the examination or may 5
 make such other order in the case as law and justice require. 6

Return before justice of court. SECTION 14. If the court to which the writ is returnable is not sitting 1
 1784, 72, § 4. for the transaction of business when the writ is returned, the return 2
 R. S. 111, § 9. shall be made before a justice thereof. If the writ is returned before a 3
 G. S. 144, § 16. justice when the court is sitting for the transaction of business, he may 4
 P. S. 185, § 16. adjourn the case into the court, to be there heard and determined. 5
 R. L. 191, § 14.
 161 Mass. 46.
 219 Mass. 178.

Examination of causes of imprisonment. SECTION 15. After the writ has been returned, the prisoner may deny 1
 1784, 72, § 5. any of the facts set forth in the statement and may allege any other 2
 R. S. 111, material facts; and the court or justice shall examine summarily and 3
 §§ 18, 21. without delay the causes of the imprisonment or restraint, hear the 4
 G. S. 144, evidence produced by any persons interested or authorized to appear 5
 §§ 17, 18. and dispose of the prisoner as law and justice require, and may adjourn 6
 P. S. 185, the examination from time to time. 7
 §§ 17, 18.
 R. L. 191, § 15.
 238 Mass. 532.

Notice to person interested in detention of prisoner. SECTION 16. If it appears from the return of the writ or otherwise 1
 R. S. 111, § 19. that the prisoner is detained on a process under which another person 2
 G. S. 144, § 22. has an interest in continuing his imprisonment or restraint, he shall not 3
 P. S. 185, § 19. be discharged until notice has been given to such other person or his 4
 R. L. 191, § 16. attorney, if within the commonwealth. If such person or his attorney is 5

6 not within the commonwealth the court may order notice to be given
7 to him.

1 SECTION 17. If it appears from the return of the writ or otherwise
2 that the prisoner is imprisoned on a criminal accusation, he shall not be
3 discharged until notice has been given to the attorney general or other
4 attorney for the commonwealth.

Notice to attorney general if prisoner held for crime.

R. S. 111, § 20. G. S. 144, § 23. P. S. 185, § 20. R. L. 191, § 17.

1 SECTION 18. Until judgment is given, the court or justice may remand
2 the prisoner, bail him to appear from day to day, commit him to the
3 sheriff of the county, or place him under such other care and custody as
4 the circumstances of the case require.

Custody of prisoner pending examination

G. S. 144, § 24. P. S. 185, § 21. R. L. 191, § 18. 107 Mass. 172.

1 SECTION 19. If the prisoner is detained for a cause or crime for
2 which he is bailable, he shall be admitted to bail if sufficient bail is offered;
3 and if not, he shall be remanded with an order of the court or justice
4 expressing the amount in which he shall be held to bail and the court
5 at which he shall be required to appear; and any magistrate authorized
6 to admit to bail may, at any time before the sitting of said court, bail
7 the prisoner pursuant to such order.

Release of prisoner on bail
1784, 72, § 5.
R. S. 111, § 23.
G. S. 144, § 25
P. S. 185, § 22
R. L. 191, § 19

1 SECTION 20. If the prisoner has been committed on mesne process
2 in a civil action for want of bail, and it appears that the amount for which
3 bail was required is excessive and unreasonable, the court or justice shall
4 decide how much bail is reasonable, and shall order that on giving such
5 bail the prisoner shall be discharged.

Bail of prisoner committed in civil action for want of bail.
1784, 72, § 5.
R. S. 111, § 24

G. S. 144, § 26. P. S. 185, § 23. R. L. 191, § 20.

1 SECTION 21. If a person is committed to jail on a criminal accusa-
2 tion for want of bail, a justice of the superior court or of a district court
3 or a trial justice may issue a writ of habeas corpus and cause the prisoner
4 to be brought before him, when it is necessary for the purpose of admitting
5 him to bail pursuant to chapter two hundred and seventy-six.

Bail of prisoner committed on criminal charge.
1812, 30
1821, 109
R. S. 87, § 3;
111, § 36

G. S. 144, § 30. P. S. 185, § 27. R. L. 191, § 21. 2 Gray, 406.

1 SECTION 22. If the prisoner is lawfully imprisoned or restrained and
2 is not entitled to be admitted to bail, he shall be remanded to the person
3 from whose custody he was taken or any other person or officer author-
4 ized by law to detain him.

Prisoner to be remanded, when.
R. S. 111, § 25
G. S. 144, § 27

P. S. 185, § 24. R. L. 191, § 22. 238 Mass. 532.

1 SECTION 23. If no legal cause is shown for the imprisonment or re-
2 straint, the court or justice shall discharge the prisoner.

Prisoner to be discharged, when.

1784, 72, § 5. R. S. 111, § 22. G. S. 144, § 28. P. S. 185, § 25. R. L. 191, § 23. 10 Gray, 240.

1 SECTION 24. No person who has been discharged upon a habeas
2 corpus shall be again imprisoned or restrained for the same cause, unless
3 indicted therefor, convicted thereof, or committed for want of bail by a
4 court of record having jurisdiction of the cause; or unless, after a dis-
5 charge for defect of proof or for some material defect in the commitment
6 in a criminal case, he is again arrested on sufficient proof and committed
7 by legal process.

Second imprisonment after discharge.
1784, 72, § 12
R. S. 111, § 34
G. S. 144, § 29
P. S. 185, § 26
R. L. 191, § 24
107 Mass. 154
153 Mass. 154.

Limitation of scope of chapter.
1784, 72, § 2.
R. S. 111, §§ 35, 37.
G. S. 144, §§ 31, 32.
P. S. 185, §§ 28, 29.
R. L. 191, § 25.
107 Mass. 172, 187.

SECTION 25. This chapter shall not affect the power of the supreme judicial court, or of a justice thereof, to issue a writ of habeas corpus at discretion, and thereupon to bail a person for whatever cause he has been committed or restrained or to discharge him as law and justice require, unless he has been committed by the governor and council, the senate or the house of representatives, in the manner and for the causes mentioned in the constitution; nor affect the power of any court or magistrate to issue a writ of habeas corpus, when necessary to bring before it or him a prisoner for trial in a criminal case pending before it or him; or to bring in a prisoner to be examined as a witness in a suit or proceeding, civil or criminal, pending before it or him, if the personal attendance and examination of the witness is necessary for the attainment of justice.

Penalty on officer refusing copy of warrant.
1784, 72, § 6.
R. S. 111, § 27.
G. S. 144, § 33.

SECTION 26. An officer who refuses or neglects for six hours to deliver a true copy of the warrant or process by which he detains a prisoner to any person who demands such copy and tenders the fees therefor shall forfeit two hundred dollars to such prisoner.

P. S. 185, § 30.

R. L. 191, § 26.

Proceedings upon refusal to obey writ.
1784, 72, §§ 7, 8.
R. S. 111, §§ 28, 29.
G. S. 144, § 34.
P. S. 185, § 31.
R. L. 191, § 27.

SECTION 27. If a person to whom a writ of habeas corpus is directed refuses to receive it, or neglects to execute it according to the provisions of this chapter and no sufficient excuse is shown therefor, the court or justice before whom the writ was returnable shall forthwith by process of attachment, as for a contempt, compel obedience to the writ, and punish the person guilty of the contempt.

Same subject.
R. S. 111, § 29.
G. S. 144, § 35.
P. S. 185, § 32.
R. L. 191, § 28.

SECTION 28. If such attachment is issued against a sheriff or his deputy, it may be directed to a special sheriff or to some other person designated therein, who shall have full power to execute it; and if the sheriff or his deputy is to be committed upon such process, he may be committed to the jail of any county other than his own.

Same subject.
R. S. 111, § 30.
G. S. 144, § 36.
P. S. 185, § 33.
R. L. 191, § 29.

SECTION 29. Upon the refusal or neglect of the person to whom the writ of habeas corpus is directed to receive and execute it, the court or justice may issue a precept to any officer or other person designated therein, commanding him to bring the prisoner forthwith before such court or justice, who shall thereupon discharge, bail or remand the prisoner as if he had been brought in upon the writ of habeas corpus.

Penalty for refusing to obey writ.
1784, 72, § 7.
R. S. 111, § 31.

SECTION 30. Whoever refuses or neglects to receive and execute a writ of habeas corpus shall forfeit four hundred dollars to the party aggrieved thereby.

G. S. 144, § 37.

P. S. 185, § 34.

R. L. 191, § 30.

Resistance, etc., of writ a contempt.
1848, 254.
G. S. 144, § 38.

SECTION 31. Whoever resists the service of the writ of habeas corpus, or disobeys it when served, shall be liable to attachment as for a contempt of the court or justice before whom the writ is returnable.

P. S. 185, § 35.

R. L. 191, § 31.

Penalty for removing or concealing prisoner.
R. S. 111, § 32.

SECTION 32. Whoever, having in his custody or power a person entitled to a writ of habeas corpus, transfers him to the custody, or places him under the power or control, of another person, conceals him or changes

4 the place of his confinement, with intent to evade the service of such
 5 writ or to avoid the effect thereof, whether the writ has been issued or
 6 not, shall forfeit four hundred dollars to the party aggrieved thereby.

G. S. 144, § 39.
 P. S. 185, § 36.
 R. L. 191, § 32.

1 SECTION 33. The recovery of any penalty imposed by the foregoing
 2 provisions of this chapter shall not bar an action at common law for
 3 false imprisonment, or for a false return to the writ of habeas corpus, or
 4 for any other injury or damage sustained by the aggrieved party.

Recovery of
 penalty not to
 bar action for
 false imprison-
 ment, etc.
 R. S. 141, § 33.

G. S. 144, § 40.

P. S. 185, § 37.

R. L. 191, § 33.

1 SECTION 34. This chapter shall not authorize the taking of a person by
 2 writ of habeas corpus out of the custody of the United States marshal, or
 3 his deputy, who holds him by legal and sufficient process issued by any
 4 court or magistrate of competent jurisdiction; but this section shall not
 5 affect the authority of the supreme judicial court or of its justices, in
 6 accordance with the provisions of the constitution of the United States
 7 and of the commonwealth, to investigate and determine the validity and
 8 legal effect of any process which may be relied on to defeat the writ, or
 9 any other matter properly arising.

Person in
 custody of
 United States
 marshal.
 1861, 91, § 3.
 P. S. 185, § 39.
 R. L. 191, § 34.

PERSONAL LIBERTY.

1 SECTION 35. No person shall be deprived of his liberty or held in
 2 custody by any person or in any place against his will or, if he is a minor,
 3 against the will of his parents, guardian or other person entitled to his
 4 custody, except by due process of law; but this section shall not apply
 5 to persons who have been legally convicted of crime and are serving
 6 sentence therefor.

Personal lib-
 erty, how
 secured
 1894, 536, § 1.
 R. L. 191, § 48.

1 SECTION 36. Whoever has reason to believe that another person is
 2 deprived of his liberty or held in custody in violation of the preceding
 3 section may file a petition, on the oath of the petitioner, in the pro-
 4 bate court for the county where such person is believed to be detained,
 5 stating his name, age and general description, where, when and under
 6 what circumstances he was deprived of his liberty, where he is believed
 7 to be detained, the name of the person so depriving him of his liberty,
 8 if known, the name of his supposed custodian and any other material
 9 facts and circumstances.

Proceedings
 to obtain per-
 sonal liberty.
 1894, 536, § 2.
 R. L. 191, § 49.

1 SECTION 37. Upon the filing of such petition, the court shall cause
 2 notice to be served upon all the supposed custodians or persons alleged
 3 to be detaining or holding in custody said person, as stated in said petition,
 4 or as otherwise known, ordering them to appear before said court at a
 5 time and place named therein, to be examined as said court shall order;
 6 and may cause said person to be brought before it for examination as
 7 to his desire to be released and as to any other relevant matters.

Notice to cus-
 todians, etc.
 1894, 536, § 3.
 R. L. 191, § 50.

1 SECTION 38. The court may examine the witnesses separately and
 2 may permit the petitioner, parent, guardian or other person entitled to
 3 the custody of a person deprived of his liberty, in person or by counsel,
 4 to examine publicly his alleged custodian as to the condition of such per-
 5 son and the place where he is detained or held in custody; and may also
 6 examine separately and apart, or publicly, such person, and may make

Examination
 of witnesses.
 1894, 536, § 4.
 R. L. 191, § 51.

orders for his release or permitting correspondence or personal interviews between him and his friends or relatives, and may modify its orders upon notice to the parties.

Probate court may request the district attorney to conduct examination, etc. 1894, 536, § 5. R. L. 191, § 52.

SECTION 39. The probate court may request the district attorney for the district where it is held to attend the examination under the preceding section, and to conduct or assist in conducting the examination. If the court is unable to obtain satisfactory information, or to satisfactorily determine the questions involved or to furnish proper relief, it shall notify the district attorney, who may institute proceedings under sections one to thirty-four, inclusive, or such other proceedings as the case may require. The provisions of said sections shall apply to all proceedings under the four preceding sections so far as appropriate.

Payment of expenses regulated. 1894, 536, § 6. R. L. 191, § 53.

SECTION 40. The fees for the service of process and notices and for summoning witnesses shall, upon the approval of the court or district attorney, be paid by the county where such person is detained, if the petitioner is not able to pay them.

CHAPTER 249.

AUDITA QUERELA, CERTIORARI, MANDAMUS AND QUO WARRANTO.

SECT.

AUDITA QUERELA.

1. Writ of audita querela.
2. Damages, etc.
3. Release from imprisonment.

CERTIORARI.

4. Petition, writ, decree and costs.

MANDAMUS.

5. Writ of mandamus.

SECT.

QUO WARRANTO.

6. Application for information in nature of quo warranto.
7. Hearing on application, etc.
8. Injunction.
9. Attorney general may intervene.
10. Judgment.
11. Respondent's costs.
12. Informations against persons holding public office, etc.
13. Effect of chapter.

AUDITA QUERELA.

Writ of audita querela. 1780, 47, §§ 1, 3, 10, 11. R. S. 112, §§ 1-4, 6. G. S. 115, §§ 1-4. P. S. 186, §§ 1-3, 6. R. L. 192, § 1. 10 Mass. 101. 17 Mass. 153. 5 Met. 228.

SECTION 1. The writ of audita querela for the purpose of preventing, setting aside or annulling any proceedings upon a judgment or execution shall be sued out of and be returnable to the court in which the judgment was rendered. It shall be sued out and served like an original writ, the forms of process shall be the same as those heretofore established and used in the commonwealth, the proceedings so far as appropriate shall be the same as in personal actions and the court, after the writ has been sued out, may issue an injunction.

11 Cush. 35.
7 Gray, 206.
11 Gray, 380.

13 Gray, 1.
9 Allen, 572.
14 Allen, 172.

100 Mass. 244.
151 Mass. 390.
161 Mass. 327.

215 Mass. 72.
223 Mass. 467.

Damages, etc. 1780, 47, § 9. R. S. 112, § 5. G. S. 145, § 5. P. S. 186, § 4. R. L. 192, § 2.

SECTION 2. If the plaintiff prevails upon a writ sued out to set aside or annul proceedings upon an execution, he shall recover the damages sustained by said proceedings, and the judgment upon the audita querela shall be a bar to any other action thereafter brought for the same damages.

1 SECTION 3. If the plaintiff is imprisoned on the execution or other
 2 process complained of, the court may release him upon his giving bond
 3 to the defendant in such sum as the court orders, with two or more
 4 sureties approved by the court, conditioned that if final judgment upon
 5 the audita querela is rendered for the defendant, he will, within thirty
 6 days thereafter, surrender himself to the jailer or other officer by whom
 7 he was imprisoned to be detained in custody under the former execution
 8 or process or shall within that time pay the amount due on the former
 9 execution or process, with the costs. If the plaintiff so surrenders him-
 10 self, he shall be in custody under the execution or other process on which
 11 he was imprisoned as if the writ had not been sued out.

Release from imprisonment.
 1780, 17, § 12.
 R. S. 112,
 §§ 7-9.
 G. S. 145,
 §§ 6, 7.
 P. S. 186, § 5.
 R. L. 192, § 3.

CERTIORARI.

1 SECTION 4. A petition for a writ of certiorari to correct errors in
 2 proceedings which are not according to the course of the common law
 3 may be presented to a justice of the supreme judicial court, and he may,
 4 after notice, hear and determine the same. The writ shall not be issued
 5 unless the petition therefor is presented within six years next after the
 6 proceedings complained of. It may be issued from the clerk's office in
 7 any county and shall be returnable as the court orders. The court at
 8 any time after the petition is presented may impose costs upon any
 9 party, may issue an injunction and may order the proceedings brought
 10 up; and, after they are brought up, may quash or affirm them, or may
 11 make such order, judgment or decree as law and justice may require.

Petition, writ, clerks and costs.
 R. S. 112,
 §§ 21, 23.
 1878, 109,
 G. S. 145,
 §§ 8, 12,
 1870, 119,
 1873, 355.
 P. S. 186,
 §§ 7-12.
 R. L. 192, § 4.
 1902, 514, § 27.
 4 Mass. 536,
 565.
 11 Mass. 462.
 1 Met. 122.
 2 Met. 220.

10 Met. 217.	119 Mass. 556.	171 Mass. 338.
8 Cush. 529.	122 Mass. 290.	172 Mass. 28.
2 Allen, 463.	132 Mass. 42.	176 Mass. 22.
5 Allen, 13.	134 Mass. 313.	180 Mass. 288.
6 Allen, 131.	143 Mass. 589.	181 Mass. 6, 432,
98 Mass. 491.	144 Mass. 352.	463.
103 Mass. 120.	146 Mass. 298, 403.	183 Mass. 42, 119.
112 Mass. 206, 218.	147 Mass. 455.	198 Mass. 584.
113 Mass. 52.	153 Mass. 161.	205 Mass. 94.
114 Mass. 583.	154 Mass. 395.	209 Mass. 316.
116 Mass. 73, 84.	155 Mass. 467.	213 Mass. 17.
87, 189, 193.	160 Mass. 282.	222 Mass. 542.
117 Mass. 563.	166 Mass. 399.	255 Mass. 5.
118 Mass. 561.	168 Mass. 239.	267 Mass. 343.

MANDAMUS.

1 SECTION 5. A petition for a writ of mandamus may be presented to
 2 a justice of the supreme judicial court, and he may, after notice, hear
 3 and determine the same. Upon the return of the order of notice, the
 4 person required to appear shall file an answer showing cause why the
 5 writ should not issue, and the petitioner may traverse any material
 6 facts alleged in the answer or may demur thereto. The court may re-
 7 quire a third person who has or claims a right or interest in the subject
 8 matter to appear and answer and to stand as the real party. If the
 9 petitioner prevails, his damages shall be assessed and judgment shall be
 10 rendered therefor, with costs, and for a peremptory writ of mandamus;
 11 otherwise, the party answering shall recover costs of the petitioner. No
 12 action shall be maintained for a false answer. All writs and processes
 13 may be issued from the clerk's office in any county and shall be return-
 14 able as the court orders.

Writ of mandamus.
 1851, 233,
 §§ 51-54.
 1852, 312,
 §§ 38-41.
 G. S. 145,
 §§ 13-15.
 1873, 355.
 P. S. 186,
 §§ 13-16.
 R. L. 192, § 5.
 104 Mass. 498.
 193 Mass. 569.
 195 Mass. 222.
 196 Mass. 267.
 227 Mass. 142.
 229 Mass. 200,
 208.
 236 Mass. 336.
 241 Mass. 380.
 259 Mass. 329.
 270 Mass. 185.

QUO WARRANTO.

1 SECTION 6. A person whose private right or interest has been injured
 2 or is put in hazard, by the exercise of a franchise or privilege not conferred
 3 by law, by a private corporation or by persons claiming to be a private

Application for information in nature of quo warranto.

1851, 233, §§ 55, 56, 1852, 312, §§ 42, 43.

corporation, whether he is a member of such corporation or not, may apply to a justice of the supreme judicial court in any county for leave to file an information in the nature of a quo warranto. 4 5 6

G. S. 145, §§ 16, 17. 5 Allen, 221. 148 Mass. 285. 197 Mass. 194.
1871, 366. 103 Mass. 138. 149 Mass. 436. 236 Mass. 564.
P. S. 186, §§ 17, 18. 126 Mass. 300. 163 Mass. 446. 260 Mass. 239.
R. L. 192, § 6. 128 Mass. 308. 169 Mass. 229, 534. 261 Mass. 125.
9 Cush. 596. 132 Mass. 174. 170 Mass. 71. 266 Mass. 101.
1 Gray, 340. 133 Mass. 538. 194 Mass. 280. 1 Op. A. G. 81, 633
3 Gray, 116

Hearing on application, etc. 1851, 233, §§ 57, 58, 63. 1852, 312, §§ 44, 45, 49. G. S. 145, §§ 18, 19. P. S. 186, §§ 19, 20. R. L. 192, § 7. 266 Mass. 101.

SECTION 7. The court shall give a summary hearing and if it appears that there is probable cause to believe that the respondent has exercised a franchise or privilege not conferred by law, whereby the private right or interest of the complainant has been injured or is put in hazard, shall grant leave to file the information, which shall be filed in the county where the respondent has its principal place of business. A copy of the information, with an order of notice returnable and to be served when and as it directs, shall be served on the respondent and on the attorney general. 1 2 3 4 5 6 7 8 9

Injunction. 1851, 233, § 59. 1852, 312, § 46. G. S. 145, § 20. P. S. 186, § 21. R. L. 192, § 8.

SECTION 8. If leave is given to file such information, the court, at any time before final judgment, may issue a writ of injunction restraining the respondent from exercising the franchise or privilege in question until the further order of the court. 1 2 3 4

Attorney general may intervene. 1851, 233, § 63. 1852, 312, § 49. G. S. 145, § 21. P. S. 186, § 22. R. L. 192, § 9.

SECTION 9. If the attorney general believes that there has been a usurpation of a franchise or privilege not conferred by law, he may intervene, control the subsequent proceedings and demand a judgment of fine and forfeiture, and the complainant shall no longer be liable for costs. The court shall enter judgment according to the principles of the common law. 1 2 3 4 5 6

Judgment. 1851, 233, § 60. 1852, 312, § 47. G. S. 145, § 22. P. S. 186, § 23. R. L. 192, § 10. 266 Mass. 101.

SECTION 10. If the attorney general does not intervene, and the court finds that the respondent has exercised a franchise or privilege not conferred by law, judgment of forfeiture shall not be entered, but judgment shall be entered that the corporation, or the persons claiming to be such, be perpetually excluded from the exercise of such franchise or privilege, and that the directors, managers or agents, guilty of the usurpation, pay the costs of the complainant. 1 2 3 4 5 6 7

Respondent's costs. 1851, 233, §§ 61, 62.

SECTION 11. If the court finds that the respondent has not exercised a franchise or privilege not conferred by law, he shall recover costs. 1 2
1852, 312, § 48. G. S. 145, § 23. P. S. 186, § 24. R. L. 192, § 11.

Informations against persons holding public office, etc. 1899, 376. R. L. 192, § 12. 163 Mass. 446. 225 Mass. 372.

SECTION 12. The supreme judicial court shall have jurisdiction of informations in the nature of quo warranto filed by the attorney general against a person holding or claiming the right to hold an office or employment, the salary or compensation of which is payable by the commonwealth, a county, city or town. 1 2 3 4 5

260 Mass. 294.

Effect of chapter 1851, 233, § 64.

SECTION 13. This chapter shall not affect the duty of the attorney general to proceed in all cases in which he might otherwise act. 1 2

1852, 312, § 50. R. L. 192, § 13. 167 Mass. 424.
G. S. 145, § 24. 3 Gray, 116. 170 Mass. 71.
P. S. 186, § 25.

CHAPTER 250.

WRITS OF ERROR, VACATING JUDGMENT, WRITS OF REVIEW.

SECT.

WRITS OF ERROR.

- 1. Writs of error.
- 2. Proceedings.

CIVIL CASES.

- 3. Judgments reviewable on writ of error.
- 4. Judgments not reviewable on writ of error.
- 5. Limitation of time for writ of error.
- 6. Stay of execution.
- 7. Filing of bond, and its effect.
- 8. Costs and damages.

CRIMINAL CASES.

- 9. Judgments reviewable on writ of error.
- 10. Venue of writ.
- 11. Writ of error in capital case.
- 12. Proceedings upon reversal of judgment.
- 13. Validity of conviction not affected by age.

VACATING JUDGMENT.

- 14. Vacating judgment.
- 15. Petition to vacate judgment.

SECT.

- 16. Order of notice and supersedeas.
- 17. Bond.

- 18. Judgment vacated without security, when.
- 19. Terms on petitioner.
- 20. Discharge of attachment, bond, etc., after judgment vacated.

WRITS OF REVIEW.

- 21. Writ of review as of right.
- 22. Writ of review upon petition.
- 23. Order of notice and supersedeas.
- 24. Bond.
- 25. Supersedeas without security, when.
- 26. Terms.
- 27. Writ of review, how and when sued out.
- 28. Form of writ of review.
- 29. Service of writ.
- 30. Attachment on writ.
- 31. Procedure upon joinder of issue.
- 32. Procedure upon non-joinder of issue.
- 33. Judgment upon review.
- 34. Costs.
- 35. Procedure in replevin, etc.
- 36. One of several defendants may review.

WRITS OF ERROR.

SECTION 1. Writs of error in civil and criminal cases shall issue as of course from and be returnable to and be heard and determined by the supreme judicial court.

R. L. 193, § 1.

235 Mass. 304.

SECTION 2. The proceedings upon writs of error, as to the assignment of errors, the scire facias, pleadings, judgment and all other matters not expressly provided for, shall be according to the course of the common law as modified by practice and usage in the commonwealth and by the general rules of the supreme judicial court.

170 Mass. 152.

206 Mass. 408.

252 Mass. 224.

263 Mass. 440.

CIVIL CASES.

SECTION 3. A judgment in a civil action may be re-examined, reversed or affirmed upon a writ of error in the county where it was rendered for any error in law or in fact, except as hereinafter provided. If the judgment is reversed, such judgment shall be rendered as the court below should have rendered.

P. S. 187, § 2.
 R. L. 193, § 3.
 10 Met. 172.
 5 Cush. 610.

10 Cush. 415.
 9 Gray, 311.
 4 Allen, 94
 152 Mass. 585

154 Mass. 157.
 155 Mass. 86.
 164 Mass. 239.
 253 Mass. 122, 172.

260 Mass. 369.
 263 Mass. 440.
 272 Mass. 417.
 273 Mass. 225.

Writs of error.
 R. S. 112, § 10.
 G. S. 146, § 1.
 P. S. 187, § 1.

Proceedings.
 R. S. 112, § 15.
 G. S. 146, § 1.
 P. S. 187, § 15.
 R. L. 193, § 2.
 5 Met. 334
 141 Mass. 194.
 168 Mass. 297.

Judgments reviewable on writ of error.
 R. S. 82, § 20.
 1849, 87, § 4
 G. S. 146, § 2.

Judgments not
renewable on
writ of error.
R. S. 109, § 24.
1851, 233.
§§ 114, 115.
1852, 312.
§§ 77, 78.
G. S. 146,
§§ 3, 4.
P. S. 187, § 3.
R. L. 193, § 4.
3 Met. 372.
7 Met. 590.
13 Gray, 392.
171 Mass. 563.

SECTION 4. A judgment in a civil action shall not be reversed on a writ of error for error arising upon a plea or answer in abatement or for a defect of form which might by law have been amended: nor by reason of a mistake relative to the venue of the action; nor because the judgment is not in conformity with the pleadings, if it is in conformity with the verdict; nor for any error in law if the defendant appeared and a verdict was rendered, unless it occurred after verdict. This section shall not prevent either party from assigning an error affecting the jurisdiction of the court.

176 Mass. 48. 206 Mass. 408. 253 Mass. 464.

Limitation of
time for writ
of error.
1805, 35.
R. S. 112,
§§ 19, 20.
G. S. 146,
§§ 5, 6.
P. S. 187, § 4.

SECTION 5. A judgment in a civil action shall not be reversed upon a writ of error, unless the writ is sued out within six years after the entry thereof; but if an action of contract or writ of scire facias has been brought thereon, the writ of error may be sued out within six years after the bringing of such action or writ.

R. L. 193, § 5.

Stay of
execution.
R. S. 112,
§§ 11, 12.
G. S. 146,
§§ 7, 8.
P. S. 187, § 5.
R. L. 193, § 6.
1 Mass. 156.

SECTION 6. A writ of error shall not stay or supersede the execution, unless the plaintiff in error or a person in his behalf gives bond to the defendant, with one or more sureties, conditioned that the plaintiff shall prosecute his writ to effect, and shall pay and satisfy such judgment as may be rendered thereon. The sufficiency of the sureties and the amount of the bond shall be determined by a justice of the supreme judicial court or by the clerk from whose office the writ issued.

Filing of bond,
and its effect.
R. S. 112, § 13.
G. S. 146, § 9.
P. S. 187, § 6.
R. L. 193, § 7.

SECTION 7. Such bond shall be filed in the clerk's office for the use of the defendant in error and no execution shall be thereafter issued upon the judgment while the writ of error is pending. If execution has been already issued, the clerk shall make an entry of the issuing of the writ of error and of the filing of the bond, and issue a certificate thereof; and, after notice of such entry to the officer holding the execution, all further proceedings thereon shall be stayed.

Costs and
damages.
R. S. 112, § 14.
G. S. 146, § 10.
P. S. 187, § 7.
R. L. 193, § 8.
1 Mass. 81,
208, 411, 443.
4 Mass. 436.

SECTION 8. The prevailing party shall be entitled to costs, and, if the judgment is affirmed, the court shall award to the defendant in error damages for his delay at a rate of not less than six nor more than twelve per cent a year on the amount recovered by the former judgment, and may award him double costs.

6 Mass. 4

CRIMINAL CASES.

Judgments
reviewable on
writ of error.
1832, 130, § 5.

SECTION 9. A judgment in a criminal case may be re-examined and reversed or affirmed upon a writ of error for any error in law or in fact.

R. S. 82, § 31.	G. S. 146, § 11.	3 Cush. 212.	252 Mass. 224.
1840, 87, § 4.	P. S. 187, § 8.	158 Mass. 164.	260 Mass. 369.
1842, 54.	R. L. 193, § 9.	188 Mass. 443.	271 Mass. 21.

Venue of writ.
1842, 54,
§§ 1, 2.
G. S. 146, § 12.
P. S. 187, § 9.
R. L. 193, § 10.
5 Met. 334.

SECTION 10. Writs of error in such cases may be brought at any time after judgment and may be entered in any county. After the writ has been returned, the court shall examine the case without delay, but may adjourn the examination from time to time.

271 Mass. 21.

Writ of error
in capital case.
R. S. 112,
§§ 16-18.

SECTION 11. A writ of error upon a judgment for a capital crime, murder in the second degree or manslaughter, or any other felony made

3 subject to sections thirty-three A to thirty-three G, inclusive, of chapter
 4 two hundred and seventy-eight as provided in section thirty-one of said
 5 chapter, shall not issue, unless allowed by a justice of the supreme
 6 judicial court after notice to the attorney general or other attorney for the
 7 commonwealth; but a writ of error upon a judgment in any other criminal
 8 case shall issue as of course, but it shall not stay or delay the execution of
 9 the judgment or sentence, unless by an express order of a justice of the
 10 supreme judicial court, who may make a further order for the custody of
 11 the plaintiff in error or for releasing him on bail.

G. S. 146,
 §§ 13-15,
 P. S. 187,
 §§ 10-12,
 R. L. 193, § 11,
 1925, 279, § 3,
 1926, 329, § 7,
 261 Mass. 12,
 271 Mass. 21.

1 SECTION 12. If a final judgment is reversed by reason of error in the
 2 sentence, such judgment shall be rendered in the case as the court below
 3 should have rendered, or it may be remanded for that purpose to said
 4 court. If the plaintiff in error is discharged, the costs shall be paid by
 5 the county where he was convicted.

Proceedings
 upon reversal
 of judgment,
 1842, 54, § 3,
 1851, 87,
 G. S. 146,
 §§ 16, 17.

P. S. 187, §§ 13, 14.	167 Mass. 11.	271 Mass. 21.
R. L. 193, § 12.	172 Mass. 264.	177 U. S. 155.
1 Cush. 302.	224 Mass. 39.	1 Op. A. G. 459.
107 Mass. 194.	240 Mass. 465.	

1 SECTION 13. Upon a writ of error or other proceeding to reverse or
 2 avoid a conviction of a crime or to obtain the discharge of a person who
 3 is held in custody thereunder, the fact that he was under the age of seven-
 4 teen at the time of the conviction shall not affect the validity of the
 5 conviction nor entitle the person to be discharged.

Validity of
 conviction not
 affected by age,
 1892, 266,
 R. L. 193, § 13,
 149 Mass. 489,
 271 Mass. 21.

VACATING JUDGMENT.

1 SECTION 14. If final judgment has been rendered in a civil action,
 2 the court in which it was entered may, within three months thereafter,
 3 if the execution has not been satisfied in whole or in part, vacate it, upon
 4 the motion in writing of the prevailing party, and dispose of the case as
 5 if it had not been entered. Such motion shall be filed in the case and,
 6 except by special order of the court, no bond shall be required.

Vacating
 judgment,
 1875, 33,
 P. S. 187, § 17,
 1893, 396, § 33,
 1895, 234, § 1,
 R. L. 193, § 14,
 148 Mass. 61,
 145 Mass. 18.

151 Mass. 321.	226 Mass. 14.	239 Mass. 414.	263 Mass. 440.
154 Mass. 137.	235 Mass. 304.	242 Mass. 20.	269 Mass. 325.
182 Mass. 143.	236 Mass. 225.	246 Mass. 185.	272 Mass. 43.

1 SECTION 15. If a final judgment has been entered and the execution
 2 has not been satisfied in whole or in part, either party, or any one or more
 3 of several plaintiff's or defendants, within one year thereafter may file
 4 in the court in which such judgment was rendered a petition to vacate
 5 it. In the supreme judicial or the superior court, the petition shall be
 6 filed in the county where the judgment was entered.

Petition to va-
 cate judgment,
 1875, 33,
 P. S. 187,
 §§ 17, 18,
 1893, 396, § 33,
 1895, 234, § 2,
 R. L. 193, § 15,
 141 Mass. 20.

151 Mass. 321.	187 Mass. 468.	241 Mass. 582.	269 Mass. 173,
155 Mass. 581.	210 Mass. 578.	242 Mass. 20.	325.
158 Mass. 381.	223 Mass. 489.	244 Mass. 460.	271 Mass. 79.
165 Mass. 238.	233 Mass. 185.	245 Mass. 128.	272 Mass. 19, 43.
171 Mass. 292.	239 Mass. 414.	252 Mass. 423.	273 Mass. 125.
175 Mass. 558.	240 Mass. 46.	261 Mass. 261.	

1 SECTION 16. The court may thereupon order notice thereof return-
 2 able at such time and to be served in such manner as it may direct, and
 3 may issue a stay or supersedeas of an execution issued on such judgment
 4 and an order for a return thereof with a certificate of the proceedings
 5 thereon. Upon the hearing of such petition, the court may vacate such
 6 judgment, and dispose of the case as if the judgment had not been
 7 entered.

Order of notice
 and super-
 sedesas
 1875, 33,
 P. S. 187, § 18,
 1893, 396, § 33,
 1895, 234, § 3,
 R. L. 193, § 16,
 168 Mass. 445,
 171 Mass. 292.

239 Mass. 414.	244 Mass. 460.	269 Mass. 173, 325.
242 Mass. 20.	252 Mass. 423.	272 Mass. 19, 43.

Bond.
 1875, 33.
 P. S. 187, § 19, 39.
 1888, 405, § 3.
 1893, 396, § 33.
 1895, 234, § 4.
 R. L. 193, § 17.
 148 Mass. 596.
 151 Mass. 321.
 156 Mass. 359.
 161 Mass. 301.
 179 Mass. 107.
 187 Mass. 468.
 231 Mass. 409.
 239 Mass. 414.
 240 Mass. 240.
 242 Mass. 20.
 244 Mass. 460.
 269 Mass. 173, 325.
 272 Mass. 19, 43.

SECTION 17. Except as hereinafter provided, the petitioner shall, before judgment is vacated under such petition and before execution is stayed or superseded, give bond to the adverse party with security approved by the court, conditioned, if the obligor is the prevailing party, that if final judgment shall be thereafter rendered for the obligee, the obligor shall pay his costs and, if the obligee is the prevailing party, that if the judgment is not vacated on said petition, the obligor shall satisfy said judgment and all costs accrued on any execution issued thereunder, and that if it is so vacated, he shall satisfy the execution that shall issue in favor of the obligee on any judgment thereafter rendered in said action, or if a special judgment shall be entered in favor of the obligee in accordance with section twenty-six of chapter two hundred and thirty-five, he will pay to the plaintiff within thirty days after the entry of such judgment the amount for which it shall be entered.

Judgment vacated without security, when.
 1882, 249.
 1895, 234, § 5.
 R. L. 193, § 18.
 187 Mass. 468.
 231 Mass. 409.
 244 Mass. 460.
 269 Mass. 325.
 272 Mass. 19, 43.

SECTION 18. If the petitioner had no actual knowledge before the judgment was entered that the action was pending against him and there was no attachment of property in the original action, the judgment may be vacated and the execution stayed or superseded without security; but if there was such attachment, the amount of the bond shall be fixed at the actual value of the property attached, as agreed upon by the parties or as determined by the court upon a summary hearing after notice to the adverse party.

Terms on petitioner.
 1875, 33.

SECTION 19. The court may impose costs or terms upon either party to a motion or petition to vacate a judgment.

P. S. 187, § 19. R. L. 193, § 19. 269 Mass. 325.
 1895, 234, § 6. 244 Mass. 460. 272 Mass. 19, 43.

Discharge of attachment, bond, etc., after judgment vacated:
 1875, 33.
 P. S. 187, § 20.
 1895, 234, § 7.
 R. L. 193, § 20.
 161 Mass. 301.
 226 Mass. 14.
 244 Mass. 460.
 269 Mass. 325.

SECTION 20. The liability upon an attachment made, bond given or bail taken in the original action shall not continue after the original judgment has been vacated, except that if a judgment is vacated under section fourteen within thirty days after the entry thereof, such liability shall, if a subsequent judgment is rendered, continue during such time thereafter as it would have continued upon the original judgment had it not been vacated.

272 Mass. 19, 43.

WRITS OF REVIEW.

Writ of review as of right
 1758-9, 10, § 8.
 1786, 66.
 1817, 85.
 1820, 53.
 R. S. 192, § 4; 99, § 17.
 G. S. 146, § 20.
 P. S. 187, § 21.
 1895, 234, § 8.

SECTION 21. If judgment is rendered, as provided in chapter two hundred and twenty-seven, upon the default of a defendant upon whom service has not been made by reason of his being out of the commonwealth or by reason of his residence being unknown, he may, within one year after the judgment, as of right and without any petition therefor, take a writ of review out of the court in which the judgment was rendered.

R. L. 193, § 21. 4 Allen, 94. 165 Mass. 238.
 3 Gray, 508. 104 Mass. 367.

Writ of review upon petition.
 C. L. 152, § 1; 206, § 3.
 1701-2, 6, § 1.
 1753-4, 42, § 1.
 1756-7, 28, § 1.
 1786, 66, § 1.
 1788, 11.
 §§ 1-3.

SECTION 22. After the entry of final judgment in a civil action, the court in which the judgment was entered may, upon petition, grant a writ of review. If judgment was rendered in the absence of the petitioner and without his knowledge, the petition shall be filed within one year after the petitioner first had notice of the judgment; otherwise, within

6 one year after the judgment was rendered. In the supreme judicial ^{1791, 17,}
 7 or the superior court, the petition shall be filed in the county where the ^{§§ 2, 3,}
 8 judgment was entered. ^{1817, 85.}

1822, 61.	10 Gray, 92.	151 Mass. 17.
R. S. 92, § 5;	8 Allen, 23, 568.	155 Mass. 581.
99, §§ 18-20, 26-28.	104 Mass. 367.	157 Mass. 306.
1852, 126.	106 Mass. 514.	164 Mass. 239.
G. S. 146, §§ 21, 24.	111 Mass. 281.	165 Mass. 234, 238.
P. S. 187, §§ 22, 25.	114 Mass. 54.	169 Mass. 157.
1893, 396, § 33.	116 Mass. 313.	170 Mass. 360.
1895, 234, § 9.	117 Mass. 291.	182 Mass. 443.
R. L. 193, § 22.	126 Mass. 523.	218 Mass. 495.
1917, 326.	135 Mass. 122.	220 Mass. 137.
14 Mass. 360.	136 Mass. 416.	235 Mass. 114.
19 Pick. 60.	140 Mass. 421.	242 Mass. 302.
1 Met. 288.	146 Mass. 465.	251 Mass. 547.
3 Gray, 136, 415.	147 Mass. 240.	205 U. S. 141.

1 SECTION 23. After the filing of the petition for a writ of review, the
 2 court may order notice thereof returnable at such time and to be served
 3 in such manner as it directs, and may issue a stay or supersedeas of an
 4 execution on such judgment and an order for the return thereof to the
 5 court with a certificate of the proceedings thereon.

1875, 33.	P. S. 187, §§ 18, 23.	1895, 234, § 10.	R. L. 193, § 23.
-----------	-----------------------	------------------	------------------

Order of
 notice and
 supersedeas.
 1732-3, 13, § 1.
 1751-2, 13, § 1.
 R. S. 99, § 21.
 G. S. 146, § 22.

1 SECTION 24. Except as hereinafter provided, the petitioner for a
 2 writ of review shall, before execution is stayed or superseded, give bond
 3 to the adverse party with security approved by the court, conditioned
 4 that if a writ of review is not granted the obligor shall satisfy the judg-
 5 ment originally entered and all costs accrued on any execution issued
 6 thereon, and that if a writ of review is granted, he will forthwith prose-
 7 cute a review to final judgment and will satisfy such execution as may be
 8 issued against him on the review, or if a special judgment shall be entered
 9 against him under section twenty-six of chapter two hundred and thirty-
 10 five, he will pay to the plaintiff within thirty days after the entry of
 11 such judgment the amount for which it shall be entered.

108 Mass. 356.	111 Mass. 279.	118 Mass. 470.	148 Mass. 562.
----------------	----------------	----------------	----------------

Bond.
 1732-3, 13, § 1.
 1751-2, 13, § 1.
 1786, 66.
 § 1, 5, 6.
 1817, 85.
 R. S. 99,
 §§ 12, 22, 23.
 G. S. 146, § 38.
 1875, 33,
 68, § 4.
 P. S. 187,
 §§ 19, 39.
 1888, 405, § 3.
 1895, 234, § 11.
 R. L. 193, § 24.
 10 Allen, 346.
 14 Allen, 66.

1 SECTION 25. If the petitioner had no actual knowledge before the
 2 judgment was entered that the action was pending against him and
 3 there was no attachment of property in the original action, the execution
 4 may be stayed or superseded without security; but if there was such
 5 attachment, the amount of the bond shall be fixed at the actual value of
 6 the property attached, as agreed upon by the parties or as determined
 7 by the court upon a summary hearing after notice to the adverse party.
 8 Except as provided in this and the preceding section, the execution shall
 9 not be stayed or superseded by the writ of review.

Supersedeas
 without secu-
 rity, when
 1895, 234, § 12.
 R. L. 193, § 25.

1 SECTION 26. The court may grant a writ of review upon terms and if
 2 the review is not granted may impose costs.

R. S. 99, § 24.	1875, 33.	1895, 234, § 13.
G. S. 146, § 22.	P. S. 187, § 19.	R. L. 193, § 26.

Terms.
 1788, 11, § 5.

1 SECTION 27. The writ of review shall be sued out within three months
 2 after the order granting the petition; otherwise, such order and any
 3 stay or supersedeas previously ordered in the proceedings shall be thereby
 4 vacated and the original judgment shall be in full force.

Writ of re-
 view, how and
 when sued out.
 1701-2, 6, § 1.
 1788, 11,
 §§ 1, 3.

1791, 17, §§ 2, 3.	P. S. 187, § 26.	148 Mass. 562.
1822, 61.	1895, 234, § 14.	163 Mass. 528.
R. S. 99, § 2.	R. L. 193, § 27.	226 Mass. 126.
G. S. 146, § 25.		

Form of writ
of review.
R. S. 99, § 3.
G. S. 146, § 26.
P. S. 187, § 27.
1895, 234, § 15.
R. L. 193, § 28.

SECTION 28. It shall not be necessary to recite at length the declaration and other proceedings in the original action, but the form of writ of review shall be substantially as follows: 1
2
3

Summon A to answer B in the review of an action of contract (tort or replevin), brought by said A against said B, in which action said A by the consideration of the justices of our court, held at C within and for our said county of M on the _____ day of _____, recovered judgment against said B for the sum of _____ dollars, debt (or damages), _____ dollars, costs, which judgment said B says is wrong and erroneous.

Or the former judgment may be briefly described in any manner provided by the rules of the courts. 4
5

Service of writ
1732-3, 13, § 2.
1786, 66,
§§ 5, 7.
1797, 50, § 2.
R. S. 99, § 5.
G. S. 146, § 28.
P. S. 187, § 29.

SECTION 29. The writ shall be served in the same manner as an original writ, except that if the defendant is not an inhabitant of the commonwealth, or is not found therein, it may be served on the person who appeared as his attorney in the original action, and the court may continue the case to enable the absent party to appear and answer. 1
2
3
4
5

1895, 234, § 17.

R. L. 193, § 30.

Attachment on writ.
R. S. 99,
§§ 6, 12.
G. S. 146, § 29.
P. S. 187, § 30.
1895, 234, § 18.
R. L. 193, § 31.

SECTION 30. If the writ is sued out by the original plaintiff, the defendant's goods and estate may be attached as they might have been in the original action, and for this purpose the writ of review may be so framed as to require an attachment in the common form, and that the defendant be summoned. An attachment made, bond given or bail taken in the original suit shall not be held to satisfy the judgment on the review. 1
2
3
4
5
6
7

Procedure upon joinder of issue.
R. S. 99, § 7.
G. S. 146, § 30.
P. S. 187, § 31.
1895, 234, § 19.

SECTION 31. If an issue of fact was joined in the original action, the case shall be tried on the review upon the same issue, unless the court allows such amendments of the original pleadings by either party as might have been allowed in the original action. 1
2
3
4

R. L. 193, § 32.
7 Mass. 472.

3 Cush 381.
3 Gray, 415.

117 Mass. 291.
251 Mass. 547.

Procedure upon non-joinder of issue.
1701-2, 6, § 1.
1786, 66, § 2.
1817, 85.
R. S. 99,
§§ 8, 9.
G. S. 146, § 31.

SECTION 32. If judgment in the original action was rendered without a joinder of issue, the parties shall plead or answer upon the review in like manner as they might have done in the original action, and the cause shall be tried upon any issue of fact or law joined upon such pleadings or answer. 1
2
3
4
5

P. S. 187, § 32.
1895, 234, § 20.

R. L. 193, § 33.
8 Cush 299

251 Mass. 547.

Judgment upon review.
1720-1, 11.
1786, 66,
§§ 2, 3.
1788, 11, § 4.
1817, 85.
R. S. 99,
§§ 10, 13, 14.
G. S. 146,
§§ 32, 34.
P. S. 187,
§§ 33, 35.
1895, 234,
§§ 21, 23.
R. L. 193, § 34

SECTION 33. Judgment shall be given upon the review as the merits of the case upon the law and the evidence require. If the amount recovered by the plaintiff in the original action is reduced on the review, the original defendant shall have judgment and execution for the difference, with costs; or, if the former judgment has not been satisfied, one judgment may be set off against the other, and an execution issued for the balance. If the original plaintiff recovers a greater amount than was awarded to him in the original action, he shall have judgment and execution for the excess. 1
2
3
4
5
6
7
8
9

19 Pick. 60.
11 Met. 266.

3 Allen, 472.
5 Allen, 582.

117 Mass. 281.
133 Mass. 587.

151 Mass. 321.

1 SECTION 34. The prevailing party shall recover costs unless the
 2 court in granting the review otherwise orders.

1788, 11, § 5.	G. S. 146, § 33.	R. L. 193, § 35.
1817, 85.	P. S. 187, § 34.	11 Met. 266.
R. S. 99, § 11.	1895, 234, § 22.	133 Mass. 587.

Costs.
1786, 66, § 4.

1 SECTION 35. In actions of replevin and in actions in which a set-off
 2 is filed, the original defendant shall be considered, relative to everything
 3 contained in sections twenty-one to thirty-six, inclusive, as a plaintiff
 4 in other actions, so far as respects any damages awarded to him either
 5 in the original action or upon the review.

Procedure in
replevin, etc.
R. S. 99, § 15.
G. S. 146, § 35.
P. S. 187, § 36.
1895, 234, § 24.
R. L. 193, § 36.

1 SECTION 36. If judgment was recovered against several defendants
 2 in the original action, one or more of them may review in like manner as
 3 if he or they had been the only defendants, and if the amount recovered
 4 in the original action is increased or reduced, the court shall make such
 5 order as will carry into effect the two judgments according to the rights
 6 of all parties.

One of several
defendants
may review.
1786, 66,
§ 3-6.
1817, 85
R. S. 99, § 16.
G. S. 146, § 36.
P. S. 187, § 37.

1895, 234, § 25.

R. L. 193, § 37.

CHAPTER 251.

ARBITRATION.

SECT.

1. Submission of controversies to arbitration.
2. Form of agreement.
3. Statement of specific demands.
4. Effect of agreement to submit all demands.
5. Limit of time for making award.
6. Revocation of submission. Hearing ex parte.
7. Hearing by all the arbitrators, but award by majority. Court appointment of arbitrator in case of death, etc.
8. Award to be returned into court.
9. Proceedings upon such return.
10. Powers of court relative to award.
11. Payment of costs, expenses, etc.

SECT.

12. Appeal and writ of error.
13. Fees in court.
14. Arbitration of controversies between parties to contracts.
15. Naming of arbitrators.
16. Sections 14-22 not to apply if certain parties named.
17. Time of submission.
18. Proceeding in absence of party.
19. Judgment on award final.
20. Referring questions of law to court. Instructions.
21. Staying trial of certain suits, etc., upon application for arbitration.
22. Proceedings to be governed by certain laws.

1 SECTION 1. Controversies which might be the subject of a personal
 2 action at law or of a suit in equity may be submitted to the decision of
 3 one or more arbitrators, as provided in this chapter.

Submission of
controversies
to arbitration.
R. S. 114, § 1.

G. S. 147, § 1.	2 Gray, 407.	119 Mass. 490.	184 Mass. 534.
P. S. 188, § 1.	13 Gray, 298.	140 Mass. 508.	192 Mass. 517.
R. L. 194, § 1.	113 Mass. 67.	152 Mass. 416.	232 Mass. 267.
8 Mass. 1.			

1 SECTION 2. The parties in person or by their lawful agents or at-
 2 torneys shall sign an agreement in substance as follows:

Form of
agreement.
1786, 21, § 1.
R. S. 114, § 1.
G. S. 147, § 1.
1863, 157, § 2.
P. S. 188, § 5.
1899, 178, § 5.
R. L. 194, § 2.
1925, 294, § 1.
20 Pick. 480.

Know all men that
 of _____, and _____, of _____,
 hereby agree to submit the
 demand, a statement whereof is hereto annexed, (and all other demands between

6 Cush. 108.
10 Cush. 111.
8 Gray, 425.
4 Allen, 17.
100 Mass. 319.
101 Mass. 359.
113 Mass. 67.
179 Mass. 261.
239 Mass. 313.

them, as the case may be,) to the determination of _____ and _____, the award of whom, or of a majority of whom, being made and reported within one year from this day to the superior court for the county of _____, the judgment thereon shall be final; and if either of the parties neglects to appear before the arbitrators, after due notice given to him of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence.

Dated this _____ day of _____ in the year _____

.....
.....

Statement of specific demands.
R. S. 114, § 3.
G. S. 147, § 4.
P. S. 188, § 3.
R. L. 194, § 3.

SECTION 3. If a specific demand is submitted to the exclusion of others, it shall be set forth in the statement annexed to the agreement; otherwise it shall not be necessary to annex any statement of a demand, and the submission may be of all demands between the parties or of all demands which either has against the other. The submission may be varied in this respect in any other manner, according to the agreement of the parties.

1
2
3
4
5
6
7

Effect of agreement to submit all demands.
R. S. 114, § 4.

SECTION 4. An agreement to submit all demands shall include only such as might be the subject of a personal action at law or of a suit in equity.

1
2
3

G. S. 147, § 3. P. S. 188, § 4. R. L. 194, § 4.

Limit of time for making award.
R. S. 114, § 6.
G. S. 147, § 5.
P. S. 188, § 5.
R. L. 194, § 5.
13 Gray, 300.
4 Allen, 17.

SECTION 5. The time within which the award shall be made and reported may be varied according to the agreement of the parties, but no award made after the time fixed by the agreement shall have any legal effect, unless made upon a recommendation by the court to which it is reported.

1
2
3
4
5

144 Mass. 165. 153 Mass. 361.

Revocation of submission.
Hearing ex parte.
R. S. 114, § 5.
G. S. 147, § 6.

SECTION 6. Neither party may revoke the submission without the consent of the other; and if either neglects to appear after due notice, the arbitrators may hear and determine the cause ex parte.

1
2
3

P. S. 188, § 6. R. L. 194, § 6. 221 Mass. 518.

Hearing by all the arbitrators, but award by majority.
Court appointment of arbitrator in case of death, etc.

SECTION 7. All the arbitrators shall meet and hear the parties, but an award by a majority of them shall be valid, unless the concurrence of all is expressly required in the submission. In the case of the death of an arbitrator or of his inability or refusal to serve, the superior court shall, upon the application of either party, name an arbitrator in his stead.

1
2
3
4
5

R. S. 114, § 11. R. L. 194, § 7. 135 Mass. 26.
G. S. 147, § 7. 1925, 291, § 2. 118 Mass. 367.
P. S. 188, § 7. 113 Mass. 67. 221 Mass. 518.

Award to be returned into court.
1786, 21, § 3.
R. S. 114, § 7.
G. S. 147, § 8.
P. S. 188, § 8.

SECTION 8. The award shall be delivered by one of the arbitrators to the court designated in the agreement, or shall be enclosed and sealed by the arbitrators and transmitted to the court, and shall remain sealed until opened by the clerk.

1
2
3
4

R. L. 194, § 8. 119 Mass. 489. 158 Mass. 69.

Proceedings upon such return.
R. S. 114, § 10.
G. S. 147, § 9.
P. S. 188, § 9.
R. L. 194, § 9.

SECTION 9. The award may be returned at any time limited in the submission, and the parties shall attend without any express notice for that purpose; but the court may require actual notice to be given to either party before it acts upon the award.

1
2
3
4

5 Met. 287. 144 Mass. 165. 153 Mass. 361.

1 SECTION 10. The court shall have cognizance of the award in the
 2 same manner, and may proceed thereon, as if it had been made by
 3 referees appointed by a rule of court, and may accept, reject or recommit
 4 it to the same arbitrators for a rehearing. When accepted and con-
 5 firmed by the court, judgment shall be rendered thereon as upon a like
 6 award by referees.

Powers of
 court relative
 to award
 1786, 21, § 3.
 R. S. 114,
 §§ 8, 9.
 G. S. 147, § 10
 P. S. 188, § 10.

R. L. 194, § 10.	106 Mass. 365.	123 Mass. 129.	152 Mass. 416
1 Cush. 389.	109 Mass. 306	190, 552, 587.	179 Mass. 261.
11 Cush. 549.	115 Mass. 40.	130 Mass. 74	230 Mass. 313
4 Allen, 20.	119 Mass. 490.	143 Mass. 316.	257 Mass. 145
6 Allen, 333.	121 Mass. 159.	151 Mass. 279.	269 Mass. 160.

1 SECTION 11. If there is no provision in the submission relative to
 2 costs and expenses, the arbitrators may make an award relative thereto,
 3 including compensation for their own services; but the court may reduce
 4 the charge for compensation. All expenses of arbitration under this
 5 chapter shall be borne by the parties.

Payment of
 costs, ex-
 penses, etc
 R. S. 114, § 12.
 G. S. 147, § 11
 P. S. 188, § 11.
 R. L. 194, § 11.

1925, 294, § 3	135 Mass. 26	153 Mass. 361.
113 Mass. 67.	147 Mass. 282.	

1 SECTION 12. An appeal founded on matter of law apparent upon
 2 the record shall be allowed from any order or judgment of the superior
 3 court on an award made under this chapter; or a party aggrieved may
 4 bring a writ of error for any error in law or fact as in other cases. The
 5 supreme judicial court shall thereupon render such judgment as the
 6 court below ought to have rendered.

Appeal and
 writ of error.
 1791, 42.
 R. S. 114, § 13.
 G. S. 147, § 12.
 P. S. 188, § 12.
 R. L. 194, § 12.
 106 Mass. 365.

179 Mass. 261.	269 Mass. 190.
----------------	----------------

1 SECTION 13. Fees in court shall be the same as for like services relative
 2 to an award made under a rule of court.

Fees in court.
 1786, 21, § 2.

R. S. 114, § 14	P. S. 188, § 13.	R. L. 194, § 13.
G. S. 147, § 13.	1899, 178, § 6.	1925, 294, § 4.

1 SECTION 14. The parties to a contract may agree in writing that
 2 any controversy thereafter arising under the contract which might be
 3 the subject of a personal action at law or of a suit in equity shall be
 4 submitted to the decision of one or more arbitrators.

Arbitration of
 controversies
 between parties
 to contracts.
 1925, 294, § 5.

1 SECTION 15. Such an agreement may either name the arbitrator or
 2 arbitrators or may define the method by which an arbitrator or ar-
 3 bitrators are to be chosen. In case of the death, inability, or refusal
 4 to serve of any person so named, or in case the method of choosing
 5 arbitrators prescribed by the parties becomes impossible of performance
 6 because of the default of one of the parties or otherwise, or in case such
 7 agreement fails either to name or to provide a method for choosing an
 8 arbitrator or arbitrators, the superior court shall upon the application of
 9 either party, name an arbitrator or arbitrators.

Naming of
 arbitrators.
 1925, 294, § 5.

1 SECTION 16. If a party to the contract be named as arbitrator, or
 2 the agent or agents or employee or employees of any one party to the
 3 contract be named in the contract or selected by the method therein
 4 defined as sole arbitrator or as a majority of the arbitrators under such
 5 agreement, the provisions of sections fourteen to twenty-two, inclusive,
 6 shall not apply.

Sections 14-22
 not to apply if
 certain parties
 named
 1925, 294, § 5.

1 SECTION 17. The submission shall be made within six months, unless
 2 otherwise stipulated by the parties, but in no event within less than

Time of sub-
 mission
 1925, 294, § 5.

	a reasonable time, after due notice by any party to the contract claiming the arbitration of any controversy thereunder.	3 4
Proceeding in absence of party. 1925, 294, § 5.	SECTION 18. If any one of the parties neglects to appear before the arbitrators after due notice is given to him of the time and place appointed for hearing, the arbitrator or arbitrators shall proceed in his absence.	1 2 3 4
Judgment on award final. 1925, 294, § 5.	SECTION 19. The award of the arbitrator, or of a majority of the arbitrators, being made and reported to the superior court within one year from the date of the submission or within such further time as the court may upon the application of the arbitrator or arbitrators allow, the judgment thereon shall be final.	1 2 3 4 5
Referring questions of law to court. Instructions. 1925, 294, § 5.	SECTION 20. Any question of law may, and upon the request of all parties shall, be referred by the arbitrator or arbitrators to the court to which the report is to be made. Upon application by a party at any time before the award becomes final under section nineteen, the superior court may in its discretion instruct the arbitrator or arbitrators upon a question of substantive law.	1 2 3 4 5 6
Staying trial of certain suits, etc., upon application for arbitration. 1925, 294, § 5.	SECTION 21. If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of either the plaintiff or defendant stay the trial of the suit or proceeding until such arbitration has been had in accordance with the terms of the agreement; provided, that the applicant for the stay is ready and willing to submit to arbitration.	1 2 3 4 5 6 7 8
Proceedings to be governed by certain laws. 1925, 294, § 5.	SECTION 22. Proceedings under sections fourteen to twenty-one, inclusive, shall be governed by the provisions of sections six to thirteen, inclusive, not inconsistent therewith.	1 2 3

CHAPTER 252.

IMPROVEMENT OF LOW LAND AND SWAMPS.

SECT.	SECT.
	IMPROVEMENT OF LOW LAND.
1. Improvement of low land, etc. Eradication of mosquitoes.	5. Petition to the board; appointment of district commissioners and their compensation.
2. State reclamation board.	5A. Authorizing the undertaking of improvements without forming district and regulating the procedure.
3. Investigation by board; annual report.	5B. Determination of mosquito breeding areas as public nuisances by local boards of health. Abatement.
4. Employment of engineers, agents, etc. Expenses.	6. Organization of reclamation district.
4A. Authorizing the commonwealth, towns, etc., to institute proceedings under §§ 1-14C. Petition, etc.	

- SECT.
- 7. Surveys, etc. Estimating expense and determining percentages to be paid by proprietors. Recording description, etc., of benefited area.
 - 8. Payment by commonwealth of part of expense.
 - 9. Deciding method of financing. Petition to county commissioners to bear expense in the first instance. Provision for raising money therefor.
 - 10. Methods of financing.
 - 11. Assessments upon proprietors; collection.
 - 12. Powers and duties of the commissioners; acquiring or taking of land, etc.; recovery of damages.
 - 13. Proceedings when commissioners intend to do certain acts on land of person not a party.
 - 14. Approval and payment of expenses.

- SECT.
- 14A. Undertaking further improvements.
 - 14B. No prescriptive right to additional water power or water supply, etc. Vote, etc., necessary before developing water power.
 - 14C. Obstructing or injuring improvements penalized. Recovery of damages.

CONSTRUCTION OF ROADS, ETC., TO SWAMPS, ETC.

- 15. Roads to swamps and quarries.
- 16. Petition and security.
- 17. Notice of petition.
- 18. Laying out, taking and damages.
- 19. Assessment of benefits.
- 20. Repairs.
- 21. Petition to mayor and aldermen or selectmen.
- 22. Fees.
- 23. Appeal to county commissioners.

IMPROVEMENT OF LOW LAND.

SECTION 1. If it is necessary or useful (1) to drain or flow a meadow, swamp, marsh, beach or other low land held by two or more proprietors, or (2) to remove obstructions in rivers or streams leading thereto or therefrom, or (3) to eradicate mosquitoes in any area infested thereby, including, in respect to each such purpose, purposes incidental thereto, 6 such improvements may be made as provided in the following eighteen 7 sections, except as hereinafter otherwise provided.

Improvement of low land, etc.; Eradication of mosquitoes.
 1792, 11, § 1.
 1795, 62, § 1.
 R. S. 115, § 1.
 G. S. 148, § 1.
 P. S. 189, § 1.
 R. L. 195, § 1.

- 1918, 289, § 1.
- 1922, 349, § 1.
- 1923, 457, § 1.
- 1926, 393, § 1.
- 1929, 288, § 1.
- 16 Gray, 417.
- 148 Mass. 1.
- 154 Mass. 579.
- 114 U. S. 606.
- 3 Op. A. G. 538.

SECTION 2. One employee of the department of public health designated by it, one employee of the department of agriculture designated by it and a third member designated by the heads of said departments acting jointly and with the approval of the governor and council shall constitute the state reclamation board, in the fourteen following sections called the board. The designation of any member of said board may be revoked at any time, and in such case or in case of the resignation or disability of any member his successor shall be designated in the same manner as in the original designation. The board shall serve in the department of agriculture, and the members thereof shall receive no additional compensation for service on said board, but shall be entitled to their reasonable traveling and other expenses incurred in the performance of their duties.

State reclamation board.
 1918, 289, § 2.
 1919, 350.
 §§ 34, 96.
 1922, 349, § 2.
 1923, 457, § 1.
 1926, 393, § 2.

SECTION 3. The board may investigate the question of utilizing wet lands, including meadows, swamps, marshes, beaches and other low lands, and may ascertain what lands, if any, may advantageously be drained for agricultural or industrial uses, the protection of the public health, the utilization of deposits therein, or for other purposes. It may publish and disseminate facts of general interest ascertained in the conduct of any such investigation, and may make and publish surveys of tracts of land

Investigation by board; annual report.
 1917, 212, § 1.
 1918, 289, § 2.
 1919, 98.
 1923, 457, § 1.

in need of drainage, showing their situation, areas and outlets, the best methods and the cost of draining them, the uses to which they are best adapted, and such other details as it deems advisable. It shall make an annual report.

Employment of engineers, agents, etc. Expenses. 1917, 212, § 2. 1918, 289, § 3. 1919, 98. 1922, 349, § 3. 1923, 457, § 1.

SECTION 4. In carrying out the provisions of sections one to fourteen B, inclusive, the board may employ necessary engineers, assistants or other agents, who may enter on land which the board desires to survey or examine. The board shall also be allowed other necessary expenses incurred in the performance of its duties.

Authorizing the commonwealth, towns, etc., to institute proceedings under §§ 1-14C. Petition, etc. 1929, 288, § 2.

SECTION 4A. The commonwealth, acting through one or more state departments, or through the metropolitan district commission in respect to the metropolitan parks or water district or either metropolitan sewerage district, and any city, town or district, or any combination thereof, to the extent of their ownership of any area described in section one, may be parties, in their proprietary capacity, to proceedings under sections one to fourteen C, inclusive, in respect to any purpose set forth in said section one, to the same extent as individual proprietors. Said bodies politic, or any combination thereof, may also institute proceedings under said sections in their governmental capacity, in any case where it appears that the public health, safety or convenience will be promoted by improvements to effect any of said purposes, but in such proceedings no district shall be organized, and the improvements shall be constructed and maintained as provided in section five A. The petition in such a proceeding need cover only matters pertinent to the project therein set forth, and the provisions of section five requiring that the petitioners constitute a majority ownership of the lands affected shall not apply to such petition. Individuals and corporations qualifying as proprietors may join in any petition authorized in this section. Action by any such body politic hereunder shall be taken by the administrative head of the state department or commission, or by the mayor, selectmen, or prudential committee or other governing body, as the case may be. Notice of the hearing before said board on such a petition shall be given as provided in the first paragraph of section five to all petitioners and to the administrative heads of such state departments and commissions, mayors of such cities, selectmen of such towns, and the prudential committees or other governing bodies of such districts, as the said board may determine, and to all other known proprietors of lands to be affected by such improvements. Cities, towns and districts are hereby authorized to raise and appropriate money for such purposes.

Petition to the board; appointment of district commissioners and their compensation. 1702, 11, §§ 1, 2. 1795, 62, §§ 1, 3, 4. R. S. 115, §§ 2-4, 10, 13. G. S. 148, §§ 2, 3, 9, 12. 1869, 387. 1876, 228. P. S. 189, §§ 2, 3, 9, 12.

SECTION 5. The proprietors of any area described in section one or a majority in interest either in value or area may petition the board setting forth their desire to improve such area, the necessity or desirability of such improvements, the objects to be accomplished, a general description of the lands proposed to be affected and the names of known owners of said lands. Upon receipt of said petition and of a sum sufficient to meet its expenses therefor, the board shall proceed to make such investigations and such surveys of said lands as may be necessary to determine the approximate area and boundaries thereof, the need of the proposed improvements, the probable benefit, if any, to the public health, the agricultural or other uses to which the lands can be put and their probable

12 value for such uses after the improvements are completed, and in general
 13 the practicability and advisability of undertaking the proposed improve-
 14 ments. Any unexpended balance of the amount so received shall be reim-
 15 bursed to the contributors in proportion to their contributions. If such
 16 improvements appear to the board to be advisable and practicable, the
 17 board shall give notice of the petition therefor by publication in a news-
 18 paper published in the county where the greater part of the land lies and
 19 by registered mail to each known proprietor, stating the date of a hearing
 20 to be held by the board not less than seven days after the publication of
 21 said notice and the date of mailing notices to the proprietors. After the
 22 hearing, if the board approves the proposed improvements, it shall de-
 23 termine whether or not the organization of a reclamation district is neces-
 24 sary to construct and maintain said improvements.

25 If the board decides that a district should be organized, it shall issue a
 26 certificate appointing three, five or seven district commissioners, who shall
 27 be sworn to the faithful performance of their duties, and shall authorize
 28 said commissioners to form a reclamation district under the following
 29 section. The board shall fix the compensation of said commissioners,
 30 which shall not exceed five dollars for each day of actual service, and shall
 31 allow them their necessary traveling expenses incurred in the performance
 32 of their duties. Such compensation and expenses shall be paid by the
 33 district and the district shall reimburse the contributors to the expenses
 34 of the board the amounts of their several contributions less any unex-
 35 pended balances returned to them as hereinbefore provided, and said
 36 expenditures shall be a part of the total expense of the improvements.
 37 Any commissioner may be removed by the board for cause and the board
 38 may fill vacancies. The certificate of appointment of said commissioners
 39 shall be revoked by the board when the objects for which they were
 40 appointed have been accomplished. For the purpose of this and the
 41 eleven following sections, a mortgagor or mortgagee in possession shall be
 42 deemed a proprietor.

R. L. 195,
 §§ 2, 3, 9, 12,
 1918, 289,
 §§ 4, 16,
 1922, 349, § 4,
 1923, 457, § 1,
 1926, 393, § 3,
 149 Mass. 583.

1 SECTION 5A. If the board determines that the proposed improve-
 2 ments should be undertaken and that their construction and maintenance
 3 may be effected without the formation of a district, and in every such
 4 case where the board is petitioned by a body politic in its governmental
 5 capacity under section four A, it shall notify all persons and bodies politic
 6 to be benefited thereby of the estimated expense of constructing the pro-
 7 posed improvements, including land damages, if any, and of the main-
 8 tenance thereof. Upon receipt of sums of money sufficient to cover such
 9 estimated construction expense, or of any money which can be used for
 10 such purposes to the advantage of the contributors, the board shall desig-
 11 nate an identifying name under which said improvements shall be made
 12 and shall deposit the money so received with the state treasurer, who shall
 13 hold such money in a special fund or funds for such purpose, and shall
 14 disburse the same on warrants drawn by the board. The board shall
 15 thereupon issue a certificate appointing one or more commissioners, who
 16 shall be sworn to the faithful performance of their duties, and shall author-
 17 ize said commissioners to proceed to make the improvements, which may
 18 be made at such places, either within or without the commonwealth, as
 19 may be necessary or convenient to make the improvements effective;
 20 and said commissioners shall thereupon proceed so to do. The board
 21 shall fix the compensation of said commissioners and shall allow them
 22 their necessary travel and other expenses necessarily incurred in the per-

Authorizing the
 undertaking of
 improvements
 without form-
 ing district and
 regulating the
 procedure
 1929, 288, § 3.

formance of their duties. Such compensation and expenses shall constitute a part of the expense of making and maintaining such improvements. Any commissioner may be removed by the board for cause and the board may fill vacancies. The board may discharge the commissioners when the improvements are completed and may appoint others to care for maintenance. Any excess funds received under authority of this section shall be returned to the contributors thereof in proportion to the contributions. If the sums so estimated are not sufficient to complete such improvements, the board shall determine the amount of the estimated additional cost thereof and shall notify the original contributors of their shares of such additional cost. The board shall instruct the commissioners not to continue with such improvements until such additional funds are received by the board, and such commissioners, after receipt of such instructions, shall incur no further expense in connection with such improvements until authorized so to do by the board. If one or more, but less than all, of several petitioners provide their respective proportions of the fund estimated as necessary to make such improvements, the board may appoint commissioners to make such portion of such improvements as, in its opinion, will benefit the contributors. For the purpose of effecting such improvements and providing for their maintenance as provided in this section, the board shall have all the powers conferred by sections two, three, four, five, except the last paragraph thereof, and eight, and the commissioners by it appointed shall have all the powers conferred upon district commissioners under sections twelve and thirteen, provided that in taking by eminent domain or acquiring by purchase, gift or otherwise, land or other property or any interest therein, the commissioners so appointed shall take or acquire the same in the name and on behalf of the city or town wherein the land or other property or interests are situated, but not until such city or town has duly authorized such taking, has assumed all liability for damages therefor and has complied with all provisions of law applicable to land takings by cities or towns. All amounts for which a city or town may be liable hereunder, together with interest and costs, may be contributed by persons or bodies politic benefited by such improvements in proportion to their respective benefits or otherwise.

Determination of mosquito breeding areas as public nuisances by local boards of health. Abatement. 1931, 181.

SECTION 5B. The board of health of a city or town, not then included in an area designated by an identifying name for the purposes of section five A, or the commissioners appointed to make improvements on behalf of a mosquito control project under such a name as provided in said section, may determine any mosquito breeding area within the limits of such city or town or of such a project, to be a public nuisance, and the board of health or the commissioners, as the case may be, may abate such nuisance, in such manner as may be approved by the board, and may maintain such works as may be necessary to prevent its recurrence. Before proceeding with such abatement, the board of health or the said commissioners shall notify the owners of such breeding area of the intended abatement, by publication in a newspaper published in the town wherein such area is situated, and shall appoint in the notice a time and place for hearing, and shall at such time and place hear all interested parties. In case an owner of any such area whereon it is proposed to undertake such an abatement objects thereto, he may appeal, not later than fourteen days after the date of said hearing, to the county commis- 17

18 sioners, who shall, not later than fourteen days after receipt of notice of
 19 such appeal, hear the party or parties aggrieved, the board of health or the
 20 said commissioners, and the board or its agent. If the county commis-
 21 sioners shall, within two weeks thereafter, determine that the proposed
 22 abatement is required for the promotion of the public health, safety or
 23 convenience, the abatement may proceed, but not otherwise. A person
 24 damaged in his property by any work undertaken under this section may
 25 recover his damages in the manner provided in chapter seventy-nine from
 26 the city or town whose board of health undertakes such work, or from
 27 the county or counties wherein any city or town included in the mosquito
 28 control project is situated, in case such work is undertaken by the com-
 29 missioners under section five A; provided, that the petition to recover
 30 said damages shall be filed within thirty days after the right to the same
 31 has vested. All damages paid as aforesaid by the county commissioners
 32 shall be assessed upon the cities and towns included in the project on the
 33 basis of their taxable valuations as an addition to their respective quotas
 34 of the county tax.

1 SECTION 6. The district commissioners, in this and the ten following
 2 sections called the commissioners, after being sworn, shall call a meeting
 3 of the proprietors of the lands to be improved, by giving in such manner
 4 as the board may order, a notice to each known proprietor, signed by the
 5 commissioners and setting forth the time and place of a meeting for the
 6 purpose of organizing a reclamation district to carry out the proposed
 7 improvements and maintain the same after they are completed. The
 8 notice shall be in the form of a warrant specifying the matters upon which
 9 action is to be taken at the meeting. The chairman of the commissioners
 10 or another commissioner designated by him shall call the meeting to
 11 order and shall determine whether or not proprietors constituting a
 12 majority in interest, in either value or area, are present or represented
 13 by proxies duly executed and placed in the hands of other proprietors
 14 prior to said meeting. Lacking such a majority, the meeting shall have
 15 no power to act, but the commissioners may, in the manner above pro-
 16 vided, call additional meetings for the same purpose. The meeting shall
 17 elect a temporary clerk, who shall be sworn, and a moderator. The
 18 moderator shall submit to the proprietors present the question of accept-
 19 ing sections one to fourteen B, inclusive, and of organizing a reclamation
 20 district, and if a majority of those present in person or by proxy and
 21 voting on the question, vote to accept and to organize such district the
 22 provisions of said sections shall take full effect. The vote shall be re-
 23 corded and a copy thereof shall be filed with the board. The meeting
 24 may then proceed to act upon the other articles, if any, contained in the
 25 warrant. Such district shall at the same meeting elect by ballot a district
 26 clerk and a district treasurer, who may be the same person, to hold office
 27 until one year from the next succeeding annual meeting and at each
 28 annual meeting after the first a clerk and treasurer shall be elected by
 29 ballot for one year. There shall also be elected by ballot a prudential
 30 committee of three members who shall hold office, one for three years,
 31 one for two years, and one for one year, from the next succeeding annual
 32 meeting. At each annual meeting after the first a member of said com-
 33 mittee shall be elected by ballot for three years. The aforesaid officers
 34 of the district shall hold office until their successors are elected and quali-
 35 fied. The district may also, at the first or any subsequent meeting,

Organization
 of reclamation
 district.
 1918, 280, § 5.
 1922, 319, § 5.
 1923, 457, § 4.
 1924, 93,
 §§ 1, 2.
 1926, 393, § 4.

borrow for preliminary or current expenses such sums as may be necessary and may issue therefor notes payable in not more than two years from their dates. Notes issued under this provision shall be subject to the provisions of chapter forty-four and to the other requirements for district notes imposed by section ten. The proceeds of such notes shall be held by the treasurer of the district, and payments therefrom shall be made only on vouchers duly approved by a majority of the prudential committee.

Subsequent meetings of the district shall be called by the clerk at the request of the commissioners or any two or more proprietors, or, in case the clerk neglects or refuses to call a meeting when so requested such meeting may upon application by said commissioners or two or more proprietors be called upon a warrant from a justice of the peace directed to one of the applicants and requiring him to give notice of said meeting as hereinafter provided. Notices of meetings shall be given by posting copies of the warrant in two or more public places within the district or by mailing copies of said warrant to each known proprietor at least seven days before the time set for the meeting. At each meeting a moderator shall be chosen who shall have the powers of the moderator of a town meeting so far as may be necessary. The clerk shall preside at each meeting after the first until a moderator is chosen.

The officers of the district shall be sworn to the faithful performance of their duties. Any vacancy occurring in the office of clerk, treasurer, or member of the prudential committee may be filled by the district for the remainder of the unexpired term at any legal meeting called for the purpose, or in case of a vacancy in the office of clerk or treasurer or disability affecting either of said officers the prudential committee may appoint a person to fill said vacancy until an election can be held or the disability is removed. Such temporary appointee shall be sworn and shall perform the duties of the office to which he is appointed during his tenure thereof.

The prudential committee shall have charge of expenditures on account of the district for maintenance of the improvements made under sections one to fourteen B, inclusive, and shall exercise the authority conferred upon the district by law except as otherwise expressly provided, and subject to the by-laws of the district and such instructions, rules and regulations as the district may impose by its vote.

The treasurer shall give bond for the faithful performance of his official duties in a sum and with sureties approved by the prudential committee. He shall receive all money belonging to the district except as otherwise specified in this and the ten following sections and shall make payments and account for the same in accordance with the requirements of sections one to fourteen B, inclusive, and of chapter forty-four so far as applicable, under direction of the district or of the prudential committee. A temporary treasurer appointed to fill a vacancy, as above provided, shall give bond in the same manner as the treasurer.

A district organized under the provisions of this section may adopt by-laws consistent with the laws applicable to such district and subject to the approval of the board. Such by-laws may provide for proxy voting by the members at any or all meetings of the district. The district shall have such rights and powers as may be necessary and proper for operating and maintaining the improvements made by the commissioners, and for making, operating and maintaining such further improvements as may be authorized under section fourteen A. The members of the district shall be the proprietors from time to time of lands lying within its limits.

90 No such district shall dissolve without specific authorization by the
 91 general court, which shall not be given until provision has been made for
 92 payment of the obligations of said district.

1 SECTION 7. As soon as the district shall have been organized under
 2 the provisions of the preceding section the commissioners shall, under
 3 direction of the board, cause the necessary surveys and investigations to
 4 be made and shall prepare a plan showing in detail the boundaries of the
 5 district and the improvements to be effected. On the basis of such
 6 surveys and investigations the commissioners shall prepare an esti-
 7 mate of the total expense of the proposed improvements and shall
 8 determine the percentage of such expense to be paid by each pro-
 9 prior, based on the estimated special benefit to his land in excess of
 10 the damage thereto by the use thereof for the proposed improvements.
 11 If such damage to the land of any proprietor exceeds the special benefit
 12 thereto they shall award him damages for such excess. They shall report
 13 their plan, estimate and determination to the board, which shall approve,
 14 disapprove or modify such plan and estimate. The commissioners shall
 15 also notify each proprietor of such determination by delivering a copy
 16 thereof at his residence or by sending the same by registered mail to his
 17 last known address and shall certify to the board the date on which such
 18 notice is given. If any proprietor is aggrieved by the determination of
 19 the commissioners he may, within fifteen days after notice thereof, file
 20 with the board his objections thereto and if no such objections are filed by
 21 any proprietor within the fifteen days above specified then the determina-
 22 tion of the commissioners shall be final. The board shall, within thirty
 23 days after receiving notice of objections by any proprietor against the
 24 determination, notify all the proprietors that such objections have been
 25 received and shall hold a hearing thereon, but such hearing shall not be
 26 held within seven days after notice is given to all the proprietors that
 27 objections have been filed. If objections are made by more than one
 28 proprietor all such objections shall be considered in one hearing. After
 29 such hearing the board may confirm or modify the determination and shall
 30 notify the proprietors of its decision. If any proprietor is dissatisfied
 31 with the action of the board he may petition the superior court in the
 32 county in which the greater part of the land included within the district
 33 is situated, making all the proprietors who have not joined in his petition
 34 parties respondent and praying for a revision of such decision, provided
 35 that such petition shall be entered not later than thirty days after notice
 36 of the decision. The court sitting without jury shall hear the petition
 37 and shall confirm or alter the percentages previously determined to be
 38 payable by any or all said proprietors, as justice may require. Such
 39 petition shall not operate to suspend or delay other proceedings by the
 40 board or commissioners on the land to be improved. The expenses in-
 41 curred under this section shall constitute a part of the total expense of the
 42 improvements and shall be paid by the district in the same manner as the
 43 remainder of such expense.

44 As soon as the percentages payable as aforesaid by said proprietors in
 45 the case of original and of further improvements have been finally deter-
 46 mined in accordance with this section the board shall on behalf of the
 47 reclamation district cause to be recorded in the registry of deeds of every
 48 county or district in which the benefited area is situated a description
 49 sufficiently accurate for identification of such area, a copy of a plan to
 50 which reference shall be made and also an estimate of the total amount to

Surveys, etc.
 Estimating
 expense and
 determining
 percentages
 to be paid by
 proprietors.
 Recording,
 description,
 etc., of benef-
 ited area
 1923, 457, § 1.
 1924, 93, § 3.
 1926, 393, § 5.

be assessed on each parcel of land within such area, all as set forth in section two of chapter eighty. No original or further improvements shall be approved by the board until after such recording.

Payment by
commonwealth
of part of
expense.
1918, 289, § 6.
G. L. (ed. of
1920) 252, § 7.
1922, 349, § 6.
1923, 457, § 1.
1926, 393, § 6.
1929, 288, § 4.

SECTION 8. Should the board be of the opinion that a part of the expense of the improvements made under sections one to fourteen B, inclusive, should be paid by the commonwealth for the benefit of the public health of said commonwealth as a whole it shall estimate the amount which in its opinion should be so paid and shall include the same in its estimates under section four of chapter twenty-nine.

Deciding
method of
financing.
Petition to
county com-
missioners to
bear expense
in the first
instance.
Provision for
raising money
therefor.
1918, 289, § 10.
1920, 336.
G. L. (ed. of
1920) 252, § 7.
1922, 349, § 6.
1923, 457, § 1.
1926, 393, § 7.

SECTION 9. As soon as possible after the recording of the description, plan and estimate as provided in section seven, the commissioners shall request the clerk to call a meeting of the district for the purpose of deciding upon a method of financing such improvements in accordance with this or the following section; provided, that the commissioners may in their discretion insert an article covering this question in the warrant for the meeting called to organize the district and the district at said meeting or any adjournment thereof may decide upon a method of financing. Any action under this chapter which involves expenditure by the district shall require a vote of proprietors representing a majority in interest both in acreage and value of the area included in the district. The commissioners shall, if the district so votes, petition the county commissioners of the county where the greater part of the land lies, annexing a certified copy of the petition under section five and of the determination of the board thereon, and a statement of the estimated expense of the proposed improvements and shall request the county commissioners to vote to pay in the first instance the total expense involved in making the improvements approved by the board, and the said county commissioners may so vote. To defray any expense incurred by said county commissioners under such vote, the county treasurer, with the approval of the county commissioners, may issue bonds or notes of the county to an amount not exceeding such expense, payable in such period, not exceeding twenty-five years from their dates of issue, as the county commissioners may determine. Such bonds or notes shall be signed by the county treasurer and countersigned by a majority of the county commissioners. The county may sell the said securities at public or private sale upon such terms and conditions as the county commissioners may deem proper, but not for less than their par value. The first payment on account of the principal may, if the county commissioners so decide, be deferred for not more than five years after the date of issue of the bonds or notes, but such bonds or notes shall be subject to the provisions of chapter thirty-five except as otherwise provided herein. Payments on account of principal and interest shall be made by the county and repaid to the county by the district.

Methods of
financing.
1923, 457, § 1.
1926, 393, § 8.

SECTION 10. The district may vote to adopt any of the three methods of financing hereinafter specified. (1) If all the members of the district agree, the district may raise by assessments upon the proprietors or by voluntary contributions and deposit with the state treasurer the total sum required to meet the estimated expense of the improvements. Such deposits shall be held by the state treasurer to the credit of the district,

7 and payments shall be made therefrom as provided in section fourteen.
 8 (2) The district may pay the whole expense of the improvements from
 9 time to time as the work is performed and for this purpose may incur debt
 10 by a temporary loan in anticipation of the collection of assessments from
 11 the members of the district during the calendar year in which said debt
 12 is incurred or during the next succeeding calendar year. (3) The district
 13 may incur debt to the amount necessary to pay the estimated expense of
 14 the proposed improvements and may issue therefor notes or bonds, and
 15 may, if the board approves, issue notes or bonds on the condition that the
 16 first payment on account of the principal shall be deferred for a period of
 17 not more than five years from the date of issue of such notes or bonds
 18 and that the whole amount of such debt shall be payable within a period
 19 of not more than twenty-five years after such notes or bonds are issued.
 20 Indebtedness incurred by the district under the provisions of this sec-
 21 tion or of section fourteen A shall be subject to chapter forty-four and to
 22 other provisions of the General Laws applicable to notes and bonds of dis-
 23 tricts except as otherwise provided in sections one to fourteen B, inclu-
 24 sive. Money received from the sale of notes or bonds issued under this
 25 section shall be deposited with the state treasurer and held by him to the
 26 credit of the district. If the district issues notes or bonds and thereafter
 27 the general court makes an appropriation to cover such part, if any, of
 28 the expenses of the improvements as it shall deem to be for the benefit of
 29 the public health of the commonwealth as a whole, the state treasurer
 30 may, in his discretion, make all or any part of such appropriation avail-
 31 able to redeem notes or bonds of the district and shall hold the balance,
 32 if any, to the credit of the district to be used for payment of the expense
 33 of the improvements. If, after payment of the total expense of the im-
 34 provements, money remains in the hands of the state treasurer to the
 35 credit of the district the same shall be paid to the treasurer of the district
 36 and shall be used to redeem outstanding notes or bonds which shall be
 37 cancelled by said district treasurer and not reissued. Bonds or notes
 38 issued under this section shall be the general obligations of the district by
 39 which they are issued.

1 SECTION 11. The clerk of the district shall certify to the assessors
 2 of the town or towns in which the land of the district lies all sums of money
 3 voted to be raised and all sums payable annually on account of the prin-
 4 cipal and interest due on bonds or notes issued under the provisions of
 5 section nine or ten, together with the amount to be paid by each pro-
 6 prietor according to the determination made under section seven, and
 7 said clerk shall also file an attested copy of such certification with the
 8 board. The amounts so certified shall be assessed upon the lands of the
 9 several proprietors within the area, and be committed to the collector of
 10 taxes of the town wherein the land assessed is situated, who shall have and
 11 exercise the same powers and duties in relation to the collection of such
 12 assessments as he has and exercises relative to the collection of town taxes.
 13 The collector shall remit weekly to the district treasurer all sums collected
 14 by him on account of such assessments. An assessment made hereunder
 15 shall be a lien upon the land assessed therefor, and such lien shall take
 16 effect upon the recording of the description, plan and estimate under
 17 section seven, and shall continue for a period of two years from July first
 18 of the year of assessment.

Assessments
 upon pro-
 prietors;
 collection.
 1702, 11,
 §§ 1, 4,
 1745-6, 16,
 § 4,
 1795, 62,
 §§ 2, 3, 6,
 R. S. 115,
 §§ 7-9, 11,
 16, 17,
 G. S. 148,
 §§ 6-8, 10,
 15, 16,
 P. S. 189,
 §§ 6-8, 10,
 16, 17,
 1885, 384, § 5,
 R. L. 195,
 §§ 6-8, 10, 16,
 1918, 289,
 §§ 6-8, 13, 19,
 G. L. ed. of
 1920, 252,
 §§ 12-14,
 1923, 457, § 1,
 1926, 393, § 9,
 1931, 482,
 5 Met. 360.

Powers and duties of the commissioners; acquiring or taking of land, etc.; recovery of damages. 1702, 11, § 4. 1745-6, 16, §§ 2, 4. 1795, 62, §§ 1, 5, 6. R. S. 115, §§ 5, 6, 15-17. G. S. 148, §§ 4, 5, 14-16. P. S. 189, §§ 4, 5, 14, 16, 17. 1885, 384, § 5. R. L. 195, §§ 4, 5, 14, 16. 1918, 289, §§ 9, 12. G. L. (ed. of 1920) 252, § 8.

SECTION 12. If sections one to seven, inclusive, have been complied with, and payment of the expense of the improvements has been arranged under section nine or ten, the commissioners shall carry out said improvements in such manner as the board may approve. The commissioners may employ suitable persons to perform the work under their direction. So far as may be necessary to effect the improvements as approved by the board, the commissioners may take on behalf of the district, in the manner provided by chapter seventy-nine, lands, easements and rights in lands, if the improvements are for a public use, and may purchase and convey real and personal property both within and beyond the limits of the commonwealth. Any person damaged in his property by any action under this or the following section may recover his damages from the district in the manner provided by said chapter seventy-nine and such damages shall constitute a part of the total expense of the improvements.

1922, 349, § 7. 11 Met. 321. 3 Op. A. G. 538.
1923, 457, § 1. 111 Mass. 454.

Proceedings when commissioners intend to do certain acts on land of person not a party. 1745-6, 16, §§ 1, 4. 1795, 62, § 5. R. S. 115, §§ 14, 18. G. S. 148, §§ 13, 17. P. S. 189, §§ 13, 15. 1885, 384, § 5. R. L. 195, §§ 13, 15. 1918, 289, §§ 17, 18. G. L. (ed. of 1920) 252, § 10. 1923, 457, § 1.

SECTION 13. If the commissioners find it necessary or expedient to lower or raise the water to obtain a view of the land or for the more convenient or expeditious removal of obstructions, they may open the flood gates of any mill or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of a person not a party to the proceedings, and may maintain such dam or passages as long as necessary for such purposes; but before so doing, they shall give to such person reasonable written notice of their intention. If such person appeals from their decision and gives reasonable written notice thereof to any commissioner, the commissioners shall suspend all proceedings upon his land until such appeal is determined; provided, that the petition therefor is entered in the superior court for the county where the greater part of the land improved lies not later than thirty days after the time of giving such notice.

Approval and payment of expenses. 1795, 62, § 3. R. S. 115, § 11. G. S. 148, § 10. P. S. 189, § 10. R. L. 195, § 10. 1918, 289, § 14. G. L. (ed. of 1920) 252, § 11. 1922, 349, § 9. 1923, 457, § 1. 1926, 393, § 10.

SECTION 14. The commissioners shall at least once a month at such time as the board may require submit to it the accounts and vouchers for expenses incurred in meeting the cost of required improvements under sections one to fourteen B, inclusive. Such accounts and vouchers shall be inspected by the board and if it approves the same it shall forward them to the county treasurer or to the state treasurer, as the case may be, for payment from any funds which may be available for the purpose. Expenses for maintenance or for further improvements incurred under the direction of the prudential committee of the district as provided in section fourteen A shall be paid by the district treasurer on presentation by the prudential committee of accounts and vouchers for such expenses; provided, that accounts and vouchers for expenses incurred in connection with further improvements shall be subject to the approval of the board before payment. The commissioners appointed under section fourteen A to make further improvements shall present their accounts and vouchers to the board for approval in the same manner as the commissioners appointed under section five to make the original improvements.

Undertaking further improvements. 1922, 349, § 10. 1923, 457, § 1. 1926, 393, § 11.

SECTION 14A. A reclamation district organized under this chapter may from time to time at a legal meeting called for the purpose, vote to undertake further improvements within the district, to raise money by assessment to meet the expense thereof and to incur debt therefor in the

5 manner provided by section ten. Such vote shall not be passed until after
 6 completion of the original improvements. The district may also vote to
 7 request the board to appoint commissioners to carry out the proposed
 8 further improvements. Such commissioners shall be appointed by certifi-
 9 cate of the board as provided in section five. The district may, however,
 10 authorize its prudential committee to carry out such further improve-
 11 ments. The commissioners or prudential committee acting under this
 12 section shall have and exercise, so far as necessary, the powers of commis-
 13 sioners appointed under section five to make original improvements.
 14 The clerk of the district shall notify the board of the vote taken and the
 15 commissioners or prudential committee shall submit to the board within
 16 a reasonable time the plan or plans for such improvements, which shall
 17 not be undertaken until the board approves the same. The district may
 18 assess upon its members such sums as may be necessary to pay for im-
 19 provements so voted and for the maintenance of all improvements made
 20 under sections one to fourteen B, inclusive, in the manner provided in
 21 section eleven for assessment of the expense of the original improvements.
 22 Such assessment shall be subject to the same provisions as the assessment
 23 authorized in said section eleven, shall be collected in the same manner
 24 and shall be paid to the treasurer of the district.

1 SECTION 14B. No person obtaining an additional water power or
 2 water supply by the doing of any work contemplated by sections one to
 3 fourteen B, inclusive, shall gain a prescriptive right to the use thereof,
 4 nor be entitled to any compensation for the taking thereof under said
 5 sections by the removal of any dam or flashboards or by the changing of
 6 the height or dimensions of any dam. No water power may be developed
 7 in a reclamation district organized under this chapter except by vote of
 8 the district and approval by the board.

No prescriptive right to additional water power or water supply, etc. Vote, etc., necessary before developing water power. 1918, 289, § 11. G. L. ed. of 1920 252, § 9.

1922, 349, § 8

1923, 457, § 1.

1 SECTION 14C. Whoever obstructs or injures any ditch, tide gate,
 2 dike or other structure constructed or used for any purpose authorized
 3 by any provision of sections one to fourteen B, inclusive, shall be punished
 4 by a fine of not less than ten dollars. The state reclamation board may
 5 also recover, in the name of the commonwealth, for any such obstruction
 6 or injury, in an action of contract, the amount of the damages sustained
 7 by reason thereof, and the provisions of section five A, relative to the dis-
 8 position of money therein referred to, shall govern the disposition of
 9 money recovered in such action.

Obstructing or injuring improvements penalized. Recovery of damages. 1929, 288, § 5

CONSTRUCTION OF ROADS, ETC., TO SWAMPS, ETC.

1 SECTION 15. A town or person owning low land, ponds, swamps,
 2 quarries, mines or mineral deposits, which, on account of adjacent lands
 3 belonging to other persons or occupied as a highway, cannot be ap-
 4 proached, worked, cultivated, drained or used to advantage in the
 5 ordinary manner without crossing such land or highway, may construct
 6 roads, drains, ditches, tunnels and railways thereto and, when the con-
 7 struction of such improvements is required by public convenience and
 8 necessity, may take the land of such other persons for the location of
 9 such improvements as hereinafter provided.

Roads to swamps and quarries. 1855, 104, § 1. G. S. 148, § 19. P. S. 189, § 19. R. L. 195, § 17. 1918, 257, § 196. 1919, 5. 1920, 2. 3 Allen, 7. 185 Mass. 186.

Petition and security.
1855, 104, § 2.
G. S. 148, § 20.
P. S. 189, § 20.
R. L. 195, § 18.
1918, 257, § 197.
1919, 5.
1920, 2.

SECTION 16. A party desiring to make such improvements shall file a petition therefor with the county commissioners for the county where the greater part of the land lies, setting forth the names of the persons interested, if known to the petitioner, and also in detail the nature of the proposed improvement and the situation of the adjoining land. The petitioner shall give such county security satisfactory to the commissioners that he will indemnify such county from all damages and charges which it is obliged to pay by reason thereof.

1
2
3
4
5
6
7
8

Notice of petition.
1855, 104, § 3.
G. S. 148, § 21.
P. S. 189, § 21.
R. L. 195, § 19.
1918, 257, § 198.
1919, 5.
1920, 2.

SECTION 17. The commissioners at their first meeting after the filing of the petition shall order notice of the time and place of meeting, to be published once in each of three successive weeks in a newspaper, if any, published in the county; otherwise, in a newspaper published in an adjacent county. They shall also give notice thereof to the clerk of each town where the land lies.

1
2
3
4
5
6

Laying out, taking and damages.
1855, 104, § 4.
G. S. 148, § 22.
P. S. 189, § 22.
R. L. 195, § 20.
1918, 257, § 199.
1919, 5.
1920, 2.

SECTION 18. If, after examination, inspection and a hearing, they find that the improvements prayed for are required by the public convenience and necessity they shall so lay out and establish the same as to do as little injury as practicable, and if it is necessary to take private property for such improvements may take it on behalf of such county under chapter seventy-nine. Any person sustaining damage in his property by the laying out or establishment of such improvements shall be entitled to recover the same under said chapter.

1
2
3
4
5
6
7
8

Assessment of benefits.
1855, 104, § 6.
G. S. 148, § 23.
P. S. 189, § 23.
R. L. 195, § 21.
1918, 257, § 200.
1919, 5.
1920, 2.

SECTION 19. The commissioners shall assess the amount awarded as damages upon the persons for whose use the improvements are to be made, in proportion to the benefit to be received by each; but no person shall be assessed an amount greater than the benefit to be received by him. The provisions of chapter eighty relative to the abatement and collection of betterments shall apply to assessments made under this section.

1
2
3
4
5
6
7

Repairs.
1855, 104, § 5.
G. S. 148, § 24.
P. S. 189, § 24.
R. L. 195, § 22.
1918, 257, § 201.
1919, 5.
1920, 2.

SECTION 20. If it is necessary to repair an improvement so made, a majority of the persons benefited by it may cause such repairs to be made, and may by bill in equity compel contribution on the basis of the award from the owner of each parcel of land for the use of which the improvement was made.

1
2
3
4
5

Petition to mayor and aldermen or selectmen.
1857, 292, § 1.
G. S. 148, § 25.
P. S. 189, § 25.
R. L. 195, § 23.

SECTION 21. If the land mentioned in section fifteen lies entirely in one town, the petition may be made to the mayor and aldermen or selectmen thereof, who shall proceed thereon in all respects as above provided for county commissioners, except that they need not give notice to their town. Such petition shall be filed in the office of the town clerk before proceedings are had thereon; and the petition with the order thereon shall be recorded in said office within two months after the order has been made.

1
2
3
4
5
6
7
8

Fees.
1857, 292, § 3.
G. S. 148, § 27.
P. S. 189, § 27.
R. L. 195, § 24.

SECTION 22. The mayor and aldermen or selectmen shall each receive two dollars for each day's services upon such petition, and the town clerk shall receive for recording a petition or order thereon the same fees as are provided for registers of deeds by section thirty-eight of chapter two hundred and sixty-two.

1
2
3
4
5

1 SECTION 23. A party aggrieved by the refusal of the mayor and
 2 aldermen or selectmen to make such order, may, within one year there-
 3 after, petition the county commissioners, who shall thereupon proceed
 4 in all respects as though the petition had been originally filed with them.

1918, 237, § 202.

1919, 5.

1920, 2.

Appeal to
 county com-
 missioners
 1857, 292, § 2
 G. S. 148, § 28
 P. S. 189, § 28
 R. L. 195, § 25

CHAPTER 253.

MILLS, DAMS AND RESERVOIRS.

SECT.

MILLS AND MILL DAMS.

1. Erection of mill and dam.
2. Dam not to injure existing mill, etc.
3. Height of water, etc.
4. Petition for overflow, etc., of land.
5. Notice.
6. Pleadings and trial.
7. Jury.
8. Assessment of damages; judgment.
9. Jury to determine height of dam, etc.
10. Jury to assess annual and gross dam-
ages.
11. Petitioner may elect to take gross
amount.
12. Such amount to be paid within three
months.
13. Annual compensation if no election.
14. Lien on mill, etc., for payment of dam-
ages.
15. Action to recover damages and enforce
lien.
16. Sale on execution.
17. Right of redemption.
18. Costs, etc.
19. Other remedies prohibited.
20. Existing mills and dams not affected,
except, etc.
21. Claim of new assessment.
22. Same subject.
23. Costs avoided by offer to pay increased
compensation.
24. Costs avoided by offer to accept smaller
compensation.
25. Offer to tenants.
26. Effect of acceptance of offer.
27. Verdict not to bar new petition, when.
28. Tender to stop costs.
29. Judgment upon acceptance of tender.
30. Who may join in petition.
31. Pleas in abatement.
32. New petition after abatement.
33. Petition when public way is to be
overflowed.
34. Notice.
35. Commissioners may order change of
grade, etc., of ways.
36. Commissioners to assess damages.

SECT.

37. Costs.
38. Order to be protection to petitioner.

CRANBERRY LAND AND ICE PONDS.

39. Dam to flow cranberry land.
40. Apportionment of expense.
41. Ice ponds.

DAMS OF RESERVOIR CORPORATIONS.

42. Land flowed by reservoir corporation.
43. Security.

SAFETY OF RESERVOIRS AND DAMS.

44. Reservoir, etc., not to be constructed
or altered, until.
45. Examination of reservoir or dam.
46. Alterations or repairs.
47. Proceedings upon failure to comply
with order for alterations, etc.
48. Costs.
49. Acts of commissioners not to impair
liability, etc.
50. Jurisdiction.

REPAIRING AND REBUILDING MILLS AND
MILL DAMS.

51. Power of majority to repair, etc.
52. Meeting of proprietors.
53. Notice.
54. Proceedings.
55. Apportionment of expense of work.
56. Lien for such payment.
57. Proprietor under guardianship.
58. Apportionment of expenses between
tenant for life or years and re-
mainderman.
59. If proprietor has mortgaged his interest.
60. Tenant in tail.
61. Recovery of amount paid for repairs.
62. Contracts between parties.

MILLERS.

63. [Repealed.]
64. [Repealed.]

MILLS AND MILL DAMS.

Erection of mill and dam. 1795, 74, § 1. R. S. 116, § 1. G. S. 149, § 1.

SECTION 1. A person may, as hereinafter provided, erect and maintain a water mill and a dam to raise water for working it, upon and across any stream not navigable. 1 2 3

P. S. 190, § 1.	12 Allen, 89.	154 Mass. 579.
R. L. 196, § 1.	100 Mass. 241.	225 Mass. 155.
8 Cush. 113.	111 Mass. 454.	113 U. S. 9.

Dam not to injure existing mill, etc. R. S. 116, § 2. 1841, 18. G. S. 149, § 2. P. S. 190, § 2. R. L. 196, § 2. 17 Mass. 289. 10 Pick. 348. 22 Pick. 312. 23 Pick. 216. 10 Met. 359. 2 Allen, 350, 355. 12 Allen, 89. 13 Allen, 10. 99 Mass. 480, 486, 488. 102 Mass. 463. 162 Mass. 422. 177 Mass. 46.

SECTION 2. Such dam shall not be erected to the injury of a mill lawfully existing above or below it on the same stream, nor to the injury of a mill site on the same stream on which a mill or mill dam has been lawfully erected and used, unless the right to maintain a mill on such last mentioned site has been lost by abandonment or otherwise; nor shall a mill dam be erected or raised to the injury of any such mill site which has been occupied as such by the owner thereof, if, within a reasonable time after commencing such occupation, he completes and puts in operation a mill for the working of which the water of such stream is applied; nor shall a mill or dam be placed on the land of any person without such grant, conveyance or authority from the owner as would be necessary to convey land. 1 2 3 4 5 6 7 8 9 10 11 12

186 Mass. 89.	226 Mass. 586.
---------------	----------------

Height of water, etc. 1795, 74, § 4. R. S. 116, § 3. G. S. 149, § 3.

SECTION 3. The height to which the water may be raised and the period of time for which it may be kept up in each year may be determined by jury. 1 2 3

P. S. 190, § 3.	4 Cush. 549.	113 Mass. 238.
R. L. 196, § 3.	7 Gray, 294.	142 Mass. 482.
12 Met. 142.		

Petition for overflow, etc., of land. 1713-14. 15, § 2. 1795, 74, § 2. 1825, 109, § 2. R. S. 116, §§ 4, 5. G. S. 149, § 2. 1840, 87, § 2. P. S. 190, §§ 4, 5. R. L. 196, § 4. 1905, 259, § 1.

SECTION 4. The owner or occupant of land which has been overflowed or otherwise injured by such dam may obtain compensation therefor if, within three years thereafter, he files a petition in the superior court for the county where the land or any part thereof lies describing the land alleged to have been overflowed or injured and stating the damages sustained so that the record will show with sufficient certainty the matter heard and determined. If the land overflowed or injured is outside the commonwealth such petition shall be filed in the superior court for the county where the dam or any part thereof is maintained. 1 2 3 4 5 6 7 8 9

9 Pick. 62.	16 Gray, 43.	129 Mass. 292.
3 Met. 357.	2 Allen, 350.	131 Mass. 337.
10 Met. 203.	10 Allen, 420.	177 Mass. 46.
11 Met. 570.	12 Allen, 89, 455.	190 Mass. 143.
12 Met. 182.	102 Mass. 458.	225 Mass. 155.
6 Cush. 170, 303.	108 Mass. 160.	237 Mass. 54.
13 Gray, 146, 442.	116 Mass. 138.	

Notice. 1797, 63, § 1. 1824, 153, § 1. R. S. 116, §§ 6, 7. G. S. 149, §§ 6, 7. P. S. 190, §§ 6, 7. R. L. 196, § 5.

SECTION 5. Notice of the filing of such petition shall be given by an officer qualified to serve civil process by delivering, fourteen days at least before the return day thereof, to the owner or occupant of such mill or dam, or leaving at his place of abode, or, if he is not found within the commonwealth and has no place of abode therein, at the mill, an attested copy of the petition. 1 2 3 4 5 6

Pleadings and trial. 1797, 63, § 2. R. S. 116, §§ 8, 9. G. S. 149, §§ 8, 9.

SECTION 6. The respondent may answer in bar that he has a right to maintain such dam, that the petitioner has no interest in the land alleged to be flowed or injured or any other matter which may show that the petitioner cannot maintain the petition; but he shall not answer 1 2 3 4

5 that the land described is not injured by the dam. If a plea or answer is P. S. 190,
6 filed, the subsequent pleadings and the trial shall be conducted as in an §§ 8, 9
7 action at law. R. L. 196, § 6.

3 Mass. 184. 12 Cush. 259. 9 Gray, 177.
6 Mass. 398. 4 Gray, 581. 16 Gray, 187.
10 Met. 37. 7 Gray, 294. 123 Mass. 301.

1 SECTION 7. If the respondent is defaulted or if the issue is decided Jury.
2 in favor of the petitioner, the case shall be tried by a jury; and, if either 1713-14,
3 party requires it, the jury shall, under the direction of the court, view the 15, § 2.
4 land alleged to be injured. 1795, 74, § 2.
1797, 63, § 3.
1817, 173.

1824, 153, § 2. G. S. 149, §§ 11, 13-15. R. L. 196, § 7.
R. S. 116, §§ 11, 13, 14. P. S. 190, §§ 11-13. 2 Cush. 341.

1 SECTION 8. The jury shall assess the amount of damages sustained Assessment
2 within three years last preceding the filing of the petition and to the date of damages;
3 of their verdict, taking into consideration any damage caused by the judgment.
4 dam to other land of the petitioner as well as the damage caused thereby 1713-14,
5 to the land overflowed; and they shall also allow by way of set-off any 15, § 3.
6 benefit caused thereby to the petitioner's land. Upon the acceptance 1795, 74, § 2.
7 and recording of their verdict, judgment and execution shall be issued in 1824, 153, § 3.
8 accordance therewith. 1825, 109, § 2.
R. S. 116, § 11.
§§ 15-17.
G. S. 149, § 11.
§§ 16-18.
P. S. 190, § 19.
§§ 14-16.

R. L. 196, § 8. 102 Mass. 458. 131 Mass. 572.
17 Pick. 58. 108 Mass. 160. 162 Mass. 422.
16 Gray, 46. 113 Mass. 88. 177 Mass. 46.
2 Allen, 436.

1 SECTION 9. If it is alleged in the petition that the dam has been Jury to deter-
2 raised to an unreasonable height, or that it ought not to be kept up and mine height of
3 closed during the whole year, the jury shall determine by their verdict dam, etc.
4 how much the dam shall be lowered and whether it shall be left open, and, 1795, 74, § 4
5 if so, during what part of the year. 1829, 122, § 1
R. S. 116, § 18
G. S. 149, § 19.
P. S. 190, § 17.

R. L. 196, § 9. 113 Mass. 238. 142 Mass. 482.

1 SECTION 10. They shall also determine by their verdict what amount, Jury to assess
2 if any, to be paid annually to the petitioner, would be a just and reason- annual and
3 able compensation for the damages that may be thereafter caused by the gross damages.
4 dam, so long as it is used in conformity with the verdict; and also what 1713-14,
5 amount in gross would be a just and reasonable compensation for all 15, § 2.
6 damages thereafter to be caused by such use of the dam and for the right 1795, 74, § 2.
7 to maintain and use it forever as aforesaid. 1829, 122, § 1
R. S. 116, § 19.
G. S. 149, § 20.
P. S. 190, § 18.
R. L. 196, § 10.

110 Mass. 298. 131 Mass. 337.

1 SECTION 11. The petitioner may, within three months after the Petitioner may
2 verdict has been allowed and recorded, elect, by a writing filed in the elect to take
3 clerk's office, to take the amount so awarded in gross, instead of such gross amount.
4 annual compensation. 1829, 122, § 2.
R. S. 116, § 20.

G. S. 149, § 21. R. L. 196, § 11. 126 Mass. 458.
P. S. 190, § 19. 4 Met. 603. 131 Mass. 337, 572.

1 SECTION 12. The owner or occupant of the mill or dam shall, within Such amount
2 three months after such election, pay to the petitioner or secure to his to be paid
3 satisfaction said amount with interest from the date of the verdict. within three
4 After the expiration of said three months, and until payment of said months.
5 damages and interest, such owner or occupant shall lose all benefit of 1829, 122, § 2.
6 the provisions of this chapter. R. S. 116, § 21.
G. S. 149, § 22.
P. S. 190, § 20.
R. L. 196, § 12.

4 Cush. 245.

Annual compensation if no election.
 1795, 74, § 3.
 R. S. 116, § 22.
 G. S. 149, § 23.
 P. S. 190, § 21.
 R. L. 196, § 13.

SECTION 13. If the petitioner does not within said three months make his election, as aforesaid, he and all persons claiming under him shall, so long as the dam is kept up and maintained, be entitled to receive from the owner or occupant of the mill the annual compensation so established by the jury, unless the amount is increased or diminished upon a new petition, as hereinafter provided.

Lien on mill, etc., for payment of damages.
 R. S. 116, § 23.
 G. S. 149, § 24.
 P. S. 190, § 22.
 R. L. 196, § 14.

SECTION 14. The person who is entitled to receive said annual compensation or gross damages shall have a lien therefor, from the time of the filing of the original petition, on the mill and mill dam with their appurtenances and on the land under and adjoining the same and used therewith; but such lien shall not extend to any amount due more than three years before the commencement of an action therefor.

Action to recover damages and enforce lien.
 1713-14, § 3.
 1795, 74, § 3.
 R. S. 116, § 24.
 G. S. 149, § 25.

SECTION 15. Such person may recover, in contract in the superior court from the person who owns or occupies the mill when the action is brought, the whole amount due and unpaid for the three years last preceding, and costs, although the amount recovered is less than one hundred dollars.

P. S. 190, § 23.	4 Met. 426.	4 Cush. 245.
R. L. 196, § 15.	10 Met. 359.	2 Gray, 407.
1931, 426, § 305.	13 Met. 172.	108 Mass. 160.

Sale on execution.
 R. S. 116, §§ 25, 26.
 G. S. 149, §§ 26, 27.
 P. S. 190, § 24.
 R. L. 196, § 16.
 123 Mass. 183.

SECTION 16. The execution issued on such judgment, if not otherwise satisfied, may, within thirty days after judgment, be levied on the land so subject to the lien; and the officer may thereupon sell, in the manner provided for the sale of land on execution, such land or so much thereof as is necessary to satisfy the execution and the expenses of the levy. Such sale shall be valid against any claim which has accrued within the time covered by the lien.

Right of redemption.
 R. S. 116, § 27.
 G. S. 149, § 28.
 P. S. 190, § 25.
 R. L. 196, § 17.

SECTION 17. A person who is entitled to the land so sold may redeem the same within one year after the sale, upon paying to the purchaser or to the person holding under him the amount paid therefor, with interest at the rate of twelve per cent a year.

Costs, etc.
 1713-14, § 4.

SECTION 18. The party prevailing upon such petition shall be entitled to costs, except as otherwise provided.

1795, 74, §§ 2, 3.	G. S. 149, §§ 10, 32, 33.	2 Met. 506.
1797, 63, § 4.	P. S. 190, §§ 10, 27.	2 Gray, 497.
R. S. 116, §§ 10, 31, 32.	R. L. 196, § 18.	2 Allen, 136.

Other remedies prohibited.
 R. S. 116, § 30.
 G. S. 149, § 31.
 P. S. 190, § 28.

SECTION 19. No action shall be maintained at common law for the recovery of damages for the erection, maintenance or use of a mill or mill dam, if a remedy therefor is provided in this chapter.

R. L. 196, § 19.	2 Allen, 350.	113 Mass. 235, 238.
12 Met. 142.	12 Allen, 80.	225 Mass. 155.

Existing mills and dams not affected, except, etc.
 R. S. 116, § 28.
 G. S. 149, § 29.
 P. S. 190, § 29.
 R. L. 196, § 20.
 97 Mass. 402.
 113 Mass. 235, 238.

SECTION 20. This chapter shall not, except as herein expressly provided, affect the right to keep up, maintain and use any lawfully existing water mill and mill dam; but if the owner or occupant thereof makes any material change by raising the dam or by altering the machinery or the manner of using the water, so as to cause additional damage to the land of another, it shall be considered a new mill or dam, in respect to such additional damage, and the remedy for compensation therefor shall be substantially the same as in the case of a new dam.

1 SECTION 21. If either party is dissatisfied with the annual compen-
 2 sation established by proceedings upon a petition under this chapter or
 3 corresponding provisions of earlier laws, a new petition may be filed for
 4 the increase or diminution of such compensation or for ascertaining the
 5 gross amount of the damages, and the proceedings shall be conducted
 6 substantially in the manner provided for an original petition; but if a
 7 petitioner has declined to accept gross damages which have been awarded
 8 to him, they shall not be again assessed within ten years thereafter.

Claim of new
 assessment
 R. S. 116, § 33.
 G. S. 149, § 34
 P. S. 190, § 30.
 R. L. 196, § 21
 9 Mass. 293.
 2 Met. 507
 3 Met. 357
 12 Cush. 200
 126 Mass. 503.

1 SECTION 22. Such new petition may be maintained by and against
 2 either of the parties to the original petition or by and against a person
 3 lawfully holding under either of them, but it shall not be brought until
 4 the expiration of one month after the payment of the year last preceding
 5 was due.

Same subject.
 1795, 74, § 3.
 1799, 78, § 3.
 R. S. 116,
 §§ 34, 35.
 G. S. 149,
 §§ 35, 36.

P. S. 190, § 31.

R. L. 196, § 22.

1 SECTION 23. The owner of the mill or dam may, within said month,
 2 offer in writing to the owner of the land any increase of said annual com-
 3 pensation; and if the owner of the land does not agree to accept it, but
 4 files a new petition to obtain an increase, he shall pay the costs, unless
 5 he recovers a greater annual compensation than was so offered.

Costs avoided
 by offer to
 pay increased
 compensation.
 1799, 78, § 1.
 R. S. 116, § 36.
 G. S. 149, § 37.

P. S. 190, § 32.

R. L. 196, § 23.

1 SECTION 24. The owner of the land may, within said month, offer in
 2 writing to the owner of the mill or dam to accept a smaller amount than
 3 that established as said annual compensation; and if the owner of the
 4 mill or dam does not agree to pay such reduced compensation, but files
 5 a new petition to obtain a diminution thereof, he shall pay the costs,
 6 unless the annual compensation is reduced by the verdict to an amount
 7 less than the offer.

Costs avoided
 by offer to
 accept smaller
 compensation.
 1799, 78, § 2
 R. S. 116, § 37
 G. S. 149, § 38
 P. S. 190, § 33
 R. L. 196, § 24.

1 SECTION 25. Such offers may be made by or to the respective tenants
 2 or occupants of the land and of the mill or dam, in like manner and with
 3 like effect as if made by or to the respective owners, except that no
 4 agreement founded thereon shall bind said owners unless made with their
 5 consent.

Offer to
 tenants.
 1799, 78,
 §§ 1, 2
 R. S. 116, § 38
 G. S. 149, § 39
 P. S. 190, § 34

R. L. 196, § 25.

1 SECTION 26. If the offer so made by either party is accepted by the
 2 other, it shall establish the annual compensation to be thereafter paid,
 3 as if it had been established by a judgment upon a new petition, if a mem-
 4 orandum of such offer and acceptance and of the agreement, signed by the
 5 respective parties or by persons authorized by them, is filed and recorded
 6 in the office of the clerk of the court in which the former judgment was
 7 rendered, with a note of reference on the record of the former judgment
 8 to the book in which the agreement is recorded.

Effect of
 acceptance
 of offer
 R. S. 116, § 39
 G. S. 149, § 40
 P. S. 190, § 35
 R. L. 196, § 26

1 SECTION 27. If, upon a petition by the owner of the land, the jury
 2 return a verdict that he is not entitled to any annual compensation, the
 3 judgment thereon shall not bar a new petition for damages alleged to
 4 have arisen after such verdict and for compensation for damages there-
 5 after sustained.

Verdict not to
 bar new peti-
 tion, when
 R. S. 116, § 40
 G. S. 149, § 41
 P. S. 190, § 36
 R. L. 196, § 27

Tender to stop costs.
 1824, 153, § 4.
 1825, 109, § 1.
 R. S. 116, § 41.
 G. S. 149, § 42.
 P. S. 190, § 37.
 R. L. 196, § 25.
 7 Gray, 186.

SECTION 28. In every original petition brought by the owner of land alleged to be injured by a mill dam, the respondent may bring into court and there tender any amount which he considers proper to be paid to the petitioner for the damages incurred up to the time of such tender, and may also offer to pay any certain annual compensation for the damages which may be thereafter caused by the dam. If the petitioner does not accept the amount so tendered with his costs to that time, he shall, unless he recovers greater damages or greater annual compensation than was so offered, be entitled to his costs to the time of the tender, and the respondent shall be entitled to his costs after said time.

Judgment upon acceptance of tender.
 R. S. 116, § 42.
 G. S. 149, § 43.
 P. S. 190, § 38.
 R. L. 196, § 29.

SECTION 29. If the petitioner accepts the amount so offered for the past damage and for future annual compensation, he shall have judgment therefor and for costs to that time; or the petitioner may accept either the amount tendered for past damages or the offer for future annual compensation, and proceed to trial on the residue of the petition under the same liability for costs.

Who may join in petition.
 1841, 86.
 G. S. 149, § 44.
 P. S. 190, § 39.
 R. L. 196, § 30.

SECTION 30. Two or more persons who are jointly or separately interested in the land injured may join in a petition, and the jury may assess joint or several damages as the interest and title of the petitioners may require; and judgment and execution shall conform thereto.

Pleas in abatement.
 R. S. 116, § 43.
 1839, 151, § 5.
 G. S. 149, § 45.
 § 45, 46.
 P. S. 190, § 40.
 R. L. 196, § 31.
 9 Gray, 177.
 16 Gray, 187.

SECTION 31. The provisions of chapter two hundred and thirty-one relative to pleas in abatement shall apply to petitions under this chapter; and if new respondents are summoned in pursuance of said provisions, the petitioner may have a verdict against such of the respondents as he proves are liable, although he fails as to the rest. A petition shall not be abated by the death of any party, but it may be prosecuted or defended by the surviving petitioners or respondents, or by the executor or administrator of the deceased.

New petition after abatement.
 R. S. 116, § 43.
 G. S. 149, § 46.
 P. S. 190, § 41.
 R. L. 196, § 32.

SECTION 32. If a petition is abated or defeated for any matter of form, or if a judgment for the petitioner is reversed for error, the petitioner, or any person claiming under him, may file a new petition for the same cause within one year after the abatement or other determination of the original petition or after the reversal of the judgment, and recover all damages sustained during the three years last preceding or at any time after the filing of the first petition.

Petition when public way is to be overflowed.
 1873, 144, § 1.
 P. S. 190, § 42.
 R. L. 196, § 33.
 119 Mass. 356.

SECTION 33. If a person who owns, erects or maintains a water mill or a dam to raise water for working such mill upon or across a stream not navigable desires to raise, erect or maintain a dam at such a height or in such a manner as to overflow or otherwise injure an existing public way, he may apply by petition to the county commissioners of the county where such way is located, stating the height at which it is desired to maintain such dam and the ways which may be injured thereby, and asking for the alteration, change of grade or specific repairs of such ways.

Notice.
 1873, 144, § 2.
 P. S. 190, § 43.
 R. L. 196, § 34.

SECTION 34. Notice of the hearing upon such petition shall be given to the towns where the ways are situated, and to the owners or occupants of the land affected thereby, in like manner as notice of the laying out of highways is given.

1 SECTION 35. Said commissioners may, after a hearing, order such
 2 alteration, repairs or change of grade of such ways as will in their judg-
 3 ment enable the petitioner to raise, erect and maintain such dam with-
 4 out overflowing or otherwise injuring such ways, and they may give
 5 written direction and authority to the petitioner to make at his own ex-
 6 pense such alterations, changes of grade and repairs within a reasonable
 7 time. They shall record all such orders and shall cause certified copies
 8 thereof to be filed and recorded in the office of the clerk of each town in
 9 which such alterations, changes of grade or repairs are ordered.

Commissioners
 may order
 change of
 grade, etc., of
 ways.
 1873, 144, § 1
 P. S. 190, § 44
 R. L. 196, § 35.

1 SECTION 36. The commissioners shall assess and order the petitioner
 2 to pay all damages sustained by any person or town by reason of the
 3 alterations, changes of grade or repairs ordered by them, and any person
 4 or town aggrieved by such assessment may, on application within one
 5 year from the entry of such order, have the damages assessed by a jury
 6 in the manner provided in chapter seventy-nine.

Commissioners
 to assess
 damages
 1873, 144, § 2.
 1876, 117.
 P. S. 190, § 45
 R. L. 196, § 36.
 119 Mass. 356.

1 SECTION 37. The costs of proceedings under the four preceding sec-
 2 tions shall be paid by the petitioners, who may be required by the county
 3 commissioners to give bond with sufficient sureties for the payment
 4 thereof.

Costs.
 1873, 144, § 3.
 P. S. 190, § 46
 R. L. 196, § 37.

1 SECTION 38. The order of the county commissioners, duly issued
 2 under section thirty-five, shall authorize the petitioner to do all acts
 3 necessary to be done in compliance therewith; and if it is shown that
 4 the petitioner has substantially complied with such order, no indictment
 5 shall be maintained for the flowage of, or injury to, the ways mentioned in
 6 such order, which may be caused by the dam.

Order to be
 protection to
 petitioner.
 1873, 144, § 4.
 P. S. 190, § 47.
 R. L. 196, § 38.

CRANBERRY LAND AND ICE PONDS.

1 SECTION 39. An owner or lessee of land appropriated or which he
 2 desires to appropriate to the cultivation and growth of cranberries may
 3 erect and maintain a dam upon and across a stream to flow and irrigate
 4 said land, subject to this chapter so far as applicable; but he shall not
 5 erect and maintain a dam across a navigable stream or across the outlet
 6 of a great pond, without a license therefor from the department of public
 7 works.

Dam to flow
 cranberry land.
 1866, 206
 P. S. 190, § 48.
 1892, 55
 R. L. 196, § 39.
 1916, 288.
 1919, 350.
 §§ 111-116.
 1931, 394,
 § 108

117 Mass. 213.
 126 Mass. 458.
 131 Mass. 207.

154 Mass. 579.
 190 Mass. 143.

210 Mass. 128.
 226 Mass. 586.

1 SECTION 40. If a dam has been so erected or maintained or if a
 2 person has at his own expense made, kept open or repaired any ditches
 3 or drains for the improvement or cultivation of such tract of land, any
 4 owner or lessee of a like tract, who uses such dam, ditches or drains or
 5 who by more remote means receives benefit thereby for the flowing,
 6 irrigating or draining of such last mentioned tract, shall pay to the
 7 person who has erected or maintained such dam or incurred such ex-
 8 pense his proportionate part thereof, which shall be determined by the
 9 aldermen of the city or the selectmen of the town and certified to such
 10 owner or lessee. Any person aggrieved by such determination may
 11 within three months after notice thereof appeal therefrom to the superior
 12 court for the county where the dam, ditches or drains are situated, and
 13 shall be entitled to a jury trial; but before taking his appeal he shall

Apportionment
 of expense.
 1871, 163.
 P. S. 190, § 49.
 R. L. 196, § 40.

give one month's notice, in writing, to the aldermen or selectmen of his 14
intention so to appeal, and shall therein specify particularly his objec- 15
tions to the determination, to which specification he shall be confined upon 16
the hearing by jury. If such owner or lessee fails to pay to the person 17
entitled such proportionate part as finally determined, within said three 18
months if there is no appeal, otherwise within seven days after final 19
determination, he shall pay double the amount so determined with all 20
expenses arising from such failure; and such person may recover the 21
same in contract in his own name. But no covenants or agreements by 22
or between the owners or lessees of such land shall be affected by this 23
section. 24

Ice ponds.
1898, 480.
R. L. 196, § 41.
267 Mass. 285.

SECTION 41. An owner or lessee of land used for an ice pond may erect 1
and, between November first and March first, maintain a dam across a 2
stream not navigable, for the purpose of making an ice pond by flowing 3
adjoining land, subject to this chapter so far as applicable, if he annually 4
pays to the owner of land which may be overflowed or injured thereby 5
the amount of the tax which may from time to time be assessed on such 6
land; but such dam shall not be erected without the consent of all of the 7
owners of the land which would be flowed by it, unless the person propos- 8
ing to erect it shall furnish to such owners as do not consent to the erec- 9
tion security, satisfactory to them or approved by a justice of a court of 10
record or by a master in chancery, for the payment of any damages which 11
may be caused by flowing the land of such owners. 12

DAMS OF RESERVOIR CORPORATIONS.

Land flowed
by reservoir
corporation.
1869, 383, § 1.
P. S. 190, § 50.
R. L. 196, § 42.

SECTION 42. A domestic reservoir corporation may flow the land 1
of other persons by its reservoir dam, and a person whose land or prop- 2
erty has been flowed or injured by such dam, unless compensation has 3
been otherwise made, may obtain compensation therefor as provided 4
in this chapter. 5

Security.
1869, 383, § 2.
P. S. 190, § 51.
R. L. 196, § 43.

SECTION 43. The court in which a petition for such compensation 1
is pending shall, if requested by the petitioner, require such corporation 2
to give satisfactory security for the payment of all damages and costs 3
which may be awarded thereon, and if, upon petition and notice to 4
the corporation, the court finds that the security has become insuffi- 5
cient, it shall require the corporation to give further security. If the 6
corporation neglects for one month or for such further time as the court 7
allows to comply with any such order, it shall lose all rights under this 8
chapter, and the court may restrain it from flowing or injuring such 9
land or property until such security has been given. 10

SAFETY OF RESERVOIRS AND DAMS.

Reservoir, etc.,
not to be
constructed or
altered, until.
1875, 178, § 1.
P. S. 190, § 52.
R. L. 196, § 44.
1924, 178, § 1.

SECTION 44. A reservoir, reservoir dam or mill dam shall not be con- 1
structed or materially altered until plans and specifications of the pro- 2
posed work have been filed with and approved by the county com- 3
missioners of the county where it is situated. Said commissioners shall 4
retain and record such plans and specifications and shall inspect the work 5
during its progress; and if at any time it appears that the plans and 6
specifications are not faithfully adhered to, they may appoint an in- 7
spector to be constantly engaged at the expense of the owners in the 8
supervision of the work. Upon a refusal of the owners or of their agents 9

10 to adhere to said plans and specifications, said inspector may order the
 11 discontinuance of the work. This and the six following sections shall
 12 not apply to small dams, constructed for irrigation or for other purposes,
 13 the breaking of which would involve no risk to life or property, nor to
 14 standpipes or tanks, nor to a dam where the area draining into the pond
 15 formed thereby does not exceed one square mile, unless the dam is more
 16 than ten feet in height above the natural bed of the stream at any point
 17 or unless the quantity of water which the dam impounds exceeds one
 18 million gallons.

1 SECTION 45. The county commissioners shall, as often as once in
 2 two years, cause a thorough examination to be made of every reservoir,
 3 reservoir dam and mill dam by the breaking of which loss of life or
 4 damage to a road or bridge is likely to be caused, and they shall at any
 5 time cause such examination to be made upon written application by
 6 the mayor and aldermen of a city or the selectmen of a town where such
 7 damage is likely to be caused. Any party whose property is likely to
 8 be damaged by the breaking of any such structure may make a written
 9 application to the commissioners, setting forth the facts and the owner-
 10 ship of such structure which is believed to be unsafe, and the commis-
 11 sioners may thereupon cause said structure to be examined. If upon
 12 examination the structure is deemed safe, the costs of such application
 13 and examination may be ordered paid by the party making the applica-
 14 tion. The commissioners shall cause every examination to be made
 15 by a competent engineer who shall report to them in writing whether
 16 he considers the structure safe and in good condition, and if not, its
 17 condition in detail and the work or the changes required for safety and
 18 the public good. The engineer shall be allowed by the commissioners a
 19 reasonable compensation for his services which shall be paid by the
 20 county in the first instance. Ownership of the structure shall be ascer-
 21 tained and, so far as possible, examinations shall be made in co-operation
 22 with the owner or his agent.

Examination
of reservoir or
dam
1854, 327, § 1.
G. S. 149, § 47.
1875, 178, § 3.
P. S. 190, § 53.
1893, 99, § 2.
§ 1, 3.
R. L. 196, § 45.
1923, 334, § 2.
1924, 178, § 2.

1 SECTION 46. If, upon such examination, the structure is not, in the
 2 judgment of the commissioners, sufficiently strong to resist the action
 3 of the water under any circumstances which may reasonably be expected
 4 to occur, they shall, with the advice of an engineer, determine and
 5 direct what alterations or repairs are required to make the structure
 6 permanent and secure, and shall in writing order the owners thereof to
 7 make such alterations or repairs within a reasonable time, and the re-
 8 sults of such examination and the orders thereon shall be duly recorded
 9 by said commissioners.

Alterations or
repairs.
1854, 327, § 1.
G. S. 149, § 48.
1875, 178, § 3.
P. S. 190, § 54.
1893, 99, § 2.
R. L. 196, § 46.

1 SECTION 47. If, after notice in writing to the owner of a reservoir or
 2 dam which has been so examined and adjudged to be unsafe, the said
 3 owner refuses or neglects to make such alterations or repairs as the
 4 commissioners order, they may, at the expense of the county, cause
 5 such reservoir or dam to be altered and repaired or any part thereof
 6 removed or the water drawn off, whichever they may consider necessary
 7 for the safety of life, property, roads or bridges on the stream below.
 8 After such removal, no structure shall be erected except in compliance
 9 with the three preceding sections, and after the water has been drawn
 10 off, the reservoir shall not be filled again until the orders of the com-
 11 missioners have been complied with.

Proceedings
upon failure
to comply with
order for
alterations, etc.
1854, 327,
§ 2, 3.
G. S. 149,
§ 49, 50.
1875, 178, § 4.
P. S. 190, § 55.
R. L. 196, § 47.
1924, 178, § 3.

Costs.
 1854, 327, § 4.
 G. S. 149, § 51.
 1875, 178, § 5.
 P. S. 190, § 56.
 R. L. 196, § 48.
 1924, 178, § 4.

SECTION 48. The commissioners shall make such orders as they may deem just as to the payment by the owner, county or other party of the costs and expenses incurred by them under the three preceding sections, and if the reservoir or dam was adjudged to be unsafe, said costs and expenses may be ordered paid by the owner, with interest, from the time they were paid by the county. Notice shall be given the county treasurer and the owner or other party of the amount due the county.

Acts of commissioners not to impair liability, etc.
 1875, 178, § 6.
 P. S. 190, § 57.
 R. L. 196, § 49.

SECTION 49. No order, approval, request or advice of the county commissioners shall impair the legal duties and obligations of the owners of reservoirs, reservoir dams or mill dams or their liability for the consequences of their illegal acts or of the neglect or mismanagement of their servants or agents.

Jurisdiction
 1857, 163.
 G. S. 149, § 52.

SECTION 50. The supreme judicial and the superior courts shall have jurisdiction in equity to enforce the six preceding sections.

1875, 178, § 7. P. S. 190, § 58. R. L. 196, § 50.

REPAIRING AND REBUILDING MILLS AND MILL DAMS.

Power of majority to repair, etc.
 1709-10, 3, § 1.
 1795, 74, § 6.
 R. S. 116, § 44.
 G. S. 149, § 53.
 P. S. 190, § 59.
 R. L. 196, § 51.

SECTION 51. If a mill which is owned by joint tenants or tenants in common, or the dam or appurtenances of such mill, require repairs or rebuilding in whole or in part, and all the proprietors do not agree to join therein, a majority in interest of the proprietors may cause the work to be done at the expense of the whole in proportion to their respective interests.

Meeting of proprietors
 1709-10, 3, § 1.
 1795, 74, § 5.
 R. S. 116, § 45.
 G. S. 149, § 54.
 P. S. 190, § 60.
 R. L. 196, § 52.

SECTION 52. One or more of the proprietors may call a meeting by a notice signed by the person or persons who call it, addressed to each of the other proprietors, stating that the mill, dam or appurtenances require repairs or rebuilding and that their attendance is requested at a meeting of the proprietors thereof at the mill at a time named to consult and agree upon the measures to be taken for such purpose.

Notice
 1709-10, 3, § 1.
 1795, 74, § 5.
 R. S. 116, §§ 46, 47.
 G. S. 149, § 55.
 P. S. 190, § 61.
 R. L. 196, § 53.

SECTION 53. The notice shall be served by an officer qualified to serve civil process by delivering an attested copy thereof to each proprietor, or by leaving such copy at his last and usual place of abode, not less than seven nor more than thirty days before the day appointed for the meeting, and such officer's return, specifying the persons on whom he has served the notice and the time and manner of the service on each, shall be sufficient evidence thereof.

Proceedings.
 1709-10, 3, § 2.
 1795, 74, § 6.
 R. S. 116, § 48.
 G. S. 149, § 56.
 P. S. 190, § 62.
 R. L. 196, § 54.

SECTION 54. At such meeting, or at any adjournment thereof, the majority in interest of the proprietors of the mill may take measures to cause the mill or the dam or appurtenances thereof to be repaired or rebuilt, as they shall consider most for the interest of all concerned therein.

Apportionment of expense of work
 1709-10, 3, § 2.
 1795, 74, § 6.
 R. S. 116, § 49.
 G. S. 149, § 57.

SECTION 55. Each proprietor shall, upon demand, after the work is completed, pay to the proprietors by whom it has been advanced his just and equal part of the expense of such repair or rebuilding, in proportion to his share or interest in the mill, with interest from the time of the advance.

P. S. 190, § 63. R. L. 196, § 55.

1 SECTION 56. The proprietors who advance the money so expended
 2 shall have a lien therefor on the rents and profits of the mill and may re-
 3 tain so much thereof as belongs to any proprietor indebted to them for
 4 such advance, to be applied to the payment of his debt; or they may
 5 maintain an action for the debt or for as much thereof as has not been
 6 received from the rents and profits.

Lien for such
 payment
 1795, 74, § 6
 R. S. 116, § 50
 G. S. 149, § 58.
 P. S. 190, § 64.
 R. L. 196, § 56.

1 SECTION 57. The guardian of a proprietor may act for him in calling
 2 or attending a meeting of the proprietors, and may there vote and do all
 3 such other acts as the ward could do if competent to act.

Proprietor
 under guard-
 ianship.

1795, 74, § 7. G. S. 149, § 59. R. L. 196, § 57.
 R. S. 116, § 51. P. S. 190, § 65.

1 SECTION 58. If part of the mill is held by a tenant for life or years,
 2 the amount due for the repairs and other expenses on that part of the
 3 mill shall be apportioned on the tenant for life or years and on the re-
 4 mainderman or reversioner in proportion to the value of their respective
 5 interest; and the person to whom the money is due from such remainder-
 6 man or reversioner shall have a lien on the rents and profits belonging
 7 to him after his estate comes into possession, if not sooner paid, notwith-
 8 standing any limitation by lapse of time.

Apportionment
 of expenses
 between tenant
 for life or years
 and remainder-
 man
 1795, 74, § 7.
 R. S. 116, § 53.
 G. S. 149, § 60.
 P. S. 190, § 66.
 R. L. 196, § 58.

1 SECTION 59. A mortgagee in possession shall be considered a pro-
 2 prietor for the purposes of this chapter; but if the action is brought
 3 against the mortgagor before his right of redemption has been foreclosed,
 4 he shall also be liable for all amounts so due on account of his share
 5 of the mill, so far as the same have not been recovered from the mort-
 6 gagee. All amounts paid on this account by the mortgagee shall be
 7 allowed, between him and the mortgagor, as so much paid for repairs or
 8 improvements.

If proprietor
 has mortgaged
 his interest.
 1795, 74, § 7.
 R. S. 116, § 54.
 G. S. 149, § 61.
 P. S. 190, § 67.
 R. L. 196, § 59.

1 SECTION 60. A tenant in tail of a part of a mill shall, for the purposes
 2 of this chapter, be considered the proprietor thereof in fee simple.

Tenant in tail
 1795, 74, § 7.

R. S. 116, § 55. G. S. 149, § 62. P. S. 190, § 68. R. L. 196, § 60.

1 SECTION 61. All amounts due from one proprietor to another for
 2 money advanced under this chapter may be recovered in contract; and
 3 if two or more proprietors are so indebted, by a suit in equity. The
 4 amount so recovered shall be apportioned by the court among the
 5 plaintiffs, if more than one, according to their respective rights.

Recovery of
 amount paid
 for repairs.
 R. S. 116, § 56.
 G. S. 149, § 63.
 P. S. 190, § 69.
 R. L. 196, § 61.

1 SECTION 62. This chapter shall not affect any contract or agreement
 2 by or between the proprietors of a mill as to the repair or rebuilding
 3 thereof.

Contracts be-
 tween parties.
 1709-10, 3, § 4.

1795, 74, § 6. G. S. 149, § 64. R. L. 196, § 62.
 R. S. 116, § 58. P. S. 190, § 70. 4 Mass. 559.

MILLERS.

1 SECTION 63. [REPEALED, 1931, 426, § 39.]

1 SECTION 64. [REPEALED, 1931, 426, § 39.]

CHAPTER 254.

LIENS ON BUILDINGS AND LAND.

SECT.

1. Lien for labor.
2. Lien in case of written contract with owner. Notice.
3. Labor or material subsequently furnished or performed.
4. Same subject. Sub-contractor's lien. Notice of contract.
5. Bill in equity to enforce lien.
6. Public property exempted.
7. Lien invalid against prior mortgage.
8. Lien dissolved unless statement is filed.
9. Recording and inspection of statement.
10. Dissolution by notice.
11. When bill to be filed. Inaccuracy in statement, etc.
12. Dissolution by bond in case of personal labor.
13. When attachments do and do not prevail. Attaching creditors, how paid, as between themselves.
14. Dissolution by bond of creditor.
15. Dissolution by decree of court.
16. Trial.
17. Claims allowed.

SECT.

18. Sale.
19. Notice of sale.
20. Redemption.
21. Distribution.
22. Costs.
23. Bill against heirs or assigns of original owner.
24. Bill by executor or administrator of creditor.

GENERAL PROVISIONS.

25. Sale of estate less than a fee simple.
26. Action at law not barred.

LIENS ON LAND RAISED OR RECLAIMED BY BREEDING.

27. Lien in case of written contract with owner. Notice.
28. Sub-contractor's lien. Notice of contract.
29. Provisions of chapter relative to building liens to apply to two preceding sections.

Lien for labor.
 1820, 281
 R. S. 117, § 1.
 1851, 343, § 1
 1852, 307, § 1
 1855, 431, § 1
 G. S. 150, § 1.
 1872, 318, § 1
 P. S. 191,
 §§ 1, 2
 1900, 256
 R. L. 197,
 §§ 1, 2
 1915, 292,
 §§ 1, 13
 5 Cush. 119.
 1 Gray, 297,
 576.

SECTION 1. A person to whom a debt is due for personal labor performed in the erection, alteration, repair or removal of a building or structure upon land, by virtue of an agreement with, or by consent of, the owner of such building or structure, or of a person having authority from or rightfully acting for such owner in procuring or furnishing such labor, shall, under the provisions of this chapter, other than sections three and four, have a lien upon such building or structure and upon the interest of the owner thereof in the lot of land upon which it is situated, for not more than eighteen days' work actually performed during the forty days next prior to his filing a statement as provided in section eight. 1
 2
 3
 4
 5
 6
 7
 8
 9
 10

3 Gray, 233	136 Mass. 314	171 Mass. 294
13 Gray, 311, 414	140 Mass. 256, 526	179 Mass. 153.
31 Allen, 444	143 Mass. 105.	182 Mass. 150.
105 Mass. 345	147 Mass. 493.	189 Mass. 53.
106 Mass. 228, 528, 531	148 Mass. 104	191 Mass. 458.
112 Mass. 18	155 Mass. 549	199 Mass. 480.
115 Mass. 429	156 Mass. 205, 355.	204 Mass. 494
117 Mass. 167, 176	160 Mass. 48	211 Mass. 169.
120 Mass. 58	162 Mass. 593.	216 Mass. 41.
123 Mass. 45, 570	163 Mass. 7	219 Mass. 463.
124 Mass. 404	164 Mass. 146.	227 Mass. 446.
126 Mass. 148.	165 Mass. 113, 429	233 Mass. 112, 150.
129 Mass. 570.	169 Mass. 351	234 Mass. 210.
131 Mass. 177.	170 Mass. 50	239 Mass. 448.

Lien in case of written contract with owner. Notice.
 1855, 431,
 §§ 1, 4
 G. S. 150,
 §§ 2, 4
 1872, 318, § 3.
 P. S. 191,
 §§ 1-4.
 1898, 562, § 77.
 R. L. 128, § 70;
 197, §§ 1, 3, 4

SECTION 2. A person entering into a written contract with the owner of land for the whole or any part of the erection, alteration, repair or removal of a building or structure upon land, or for furnishing material therefor, shall have a lien upon said building or structure and upon the interest of the owner in said lot of land as appears of record at the date when notice of said contract is filed or recorded in the registry of deeds for the county or district where such land lies, to secure the payment of all labor and material which shall thereafter be furnished by virtue 1
 2
 3
 4
 5
 6
 7
 8

9 of said contract. Said notice may be filed or recorded by any person
10 entitled under this chapter to enforce a lien, and shall be in substantially
11 the following form:

Notice is hereby given that by virtue of a written contract, dated _____,
between _____, owner, and _____, contractor, said contractor is to
furnish labor and material for the erection, alteration, repair or removal of a
building on a lot of land described as follows:

Said contract is to be completed on or before _____.

12 A notice of any extension of such contract, stating the date to which
13 it is extended, shall also be filed or recorded in the said registry prior to
14 the date stated in the notice of the contract for the completion thereof,
15 and may be filed by any party entitled to file the original notice.

155 Mass. 519.	188 Mass. 401.	219 Mass. 463.
158 Mass. 71, 468, 552.	190 Mass. 168.	226 Mass. 148.
159 Mass. 124, 206.	192 Mass. 175.	227 Mass. 446.
168 Mass. 467.	198 Mass. 56.	233 Mass. 264, 314.
172 Mass. 597.	199 Mass. 480.	234 Mass. 210.
173 Mass. 332.	201 Mass. 484.	237 Mass. 434.
178 Mass. 163, 238.	204 Mass. 122, 494.	240 Mass. 4.
260, 288.	213 Mass. 159, 156.	257 Mass. 453.
182 Mass. 150, 180.	216 Mass. 81.	

1915, 292.
§§ 2, 13.
1916, 306, § 1.
7 Gray, 129.
2 Allen, 424.
5 Allen, 493,
540.
7 Allen, 412.
8 Allen, 513,
573.
11 Allen, 152.
101 Mass. 435.
106 Mass. 528.
112 Mass. 309.
116 Mass. 374.
124 Mass. 516.
126 Mass. 169,
271, 309.
128 Mass. 108.
141 Mass. 280,
523.
144 Mass. 534.
147 Mass. 493.

16 Such notices, and all other instruments hereinafter required to be
17 filed or recorded in the registry of deeds, affecting registered land shall
18 be filed and registered in the manner prescribed by section seventy-
19 eight of chapter one hundred and eighty-five. Such notices, and all
20 other instruments hereinafter required to be filed or recorded in the
21 registry of deeds, affecting unregistered land shall be indexed in a separate
22 book to be kept for that purpose.

Notices, etc.,
affecting
registered land.

23 If registered land is included with unregistered land in any such notice
24 or other instrument, an attested copy thereof shall be filed with the
25 assistant recorder and registered.

1 SECTION 3. If the notice aforesaid shall have been filed or recorded
2 in the registry of deeds, as hereinbefore provided, any person who shall,
3 subsequent to the date of filing or recording notice of said contract, furnish
4 labor or material, or perform labor, under a contract with the contractor
5 or with any sub-contractor of said contractor, shall be entitled to enforce
6 a lien on the premises therein described for any labor performed, or labor
7 or material furnished, subsequent to the filing or recording of said notice
8 and prior to the date of the termination of said contract as stated in said
9 notice or notices.

Labor or
material sub-
sequently
furnished or
performed
1915, 292, § 3
1916, 306, § 2
234 Mass. 210
237 Mass. 434
240 Mass. 4
257 Mass. 453.

1 SECTION 4. Whoever, subsequent to the date of the original con-
2 tract, furnishes labor or material, or both labor and material, or per-
3 forms labor, under a written contract with a contractor, or with a sub-
4 contractor of such contractor, may file in the registry of deeds for the
5 county or district where such land lies a notice of his contract substan-
6 tially in the following form:

Same subject.
Sub-contract-
or's lien.
Notice of
contract.
1918, 265, § 1.
261 Mass. 117.
Op. A. G.
(1919) 112.

Notice is hereby given that by virtue of a written contract dated _____,
between _____, contractor (or sub-contractor), and _____, said
_____ is to furnish labor or material, or both labor and material, or per-
form labor in the erection, alteration, repair or removal of a building or structure
by _____, contractor, for _____, owner, on a lot of land described
as follows:

Said contract is to be completed on or before _____.

A notice of any extension of such contract, stating the date to which it is extended, shall also be filed or recorded in said registry prior to the date stated in the notice of the contract for the completion thereof.

Upon filing a notice, as hereinbefore provided, and giving actual notice to the owner of such filing, the sub-contractor shall have a lien to secure the payment of all labor and material, which he shall thereafter furnish upon the building or structure, and upon the interest of the owner, as appears of record at the time of such filing, in the lot of land on which said building or structure is situated. But such lien shall in no event exceed the amount due or to become due under the original contract when notice of the filing of the sub-contract is given by the sub-contractor to the owner; and the time for the performance of the contract of the sub-contractor shall not be extended beyond the time for the performance of the original contract and any extension thereof, if the objection thereto of the owner is filed in the registry of deeds and actual notice of such objection is given by the owner to the sub-contractor within five days after the owner received notice of the filing of the contract as provided in this section.

Bill in equity to enforce lien. 1819, 156. §§ 1-3. R. S. 117. §§ 3-5, 7-10, 30, 31. 1851, 343, § 4. 1852, 307, § 2. 1855, 431, §§ 5, 6. 1858, 55. G. S. 150. §§ 7-9, 11-17, 37, 38. 1871, 343, § 3. P. S. 191. §§ 9-11, 13, 15-20, 39, 40. 1888, 344, § 1-3. 1893, 396, § 12. 1894, 431. R. L. 197, §§ 9-14, 24. 1908, 127. 1915, 292, § 4, 13. 1916, 306, § 3. 4 Cush. 532. 5 Cush. 119. 3 Allen, 458. 103 Mass. 227. 118 Mass. 595. 129 Mass. 570.

SECTION 5. All proceedings to enforce a lien upon land for the erection, alteration, repair or removal of a building or other structure, shall be begun by bill in equity filed in the superior court for the county where the land lies. The petitioner shall bring his bill in his own behalf and in behalf of all other persons in interest who shall become parties. The subpoena shall be returnable not more than sixty days subsequent to the entry of the bill and shall contain a brief description of the property, sufficient to identify it, and a statement of the amount alleged to be due. An attested copy thereof shall be filed in the registry of deeds and recorded as provided in section nine. All other parties in interest may appear and have their rights determined in such bill, and at any time before a final decree, upon the suggestion of any party in interest that any other person is or may be interested in the suit, or of its own motion, the court may issue a subpoena to such person, or a precept directing him to appear in said cause on or before a day certain or be forever barred from any rights thereunder. The court may in its discretion provide for notice to absent parties in interest. The terms "party in interest" and "person in interest", as used in this chapter, shall include mortgagees and attaching creditors.

- 141 Mass. 273. 170 Mass. 449. 187 Mass. 513. 161 Mass. 462. 175 Mass. 34. 191 Mass. 133. 164 Mass. 144. 176 Mass. 164. 217 Mass. 33. 168 Mass. 435. 178 Mass. 163. 240 Mass. 4.

Public property exempted. 1915, 292, § 5. 3 Allen, 307. 114 Mass. 476.

SECTION 6. No lien shall attach to any land, building or structure thereon owned by the commonwealth, or by a county, city, town, water or fire district.

204 Mass. 494.

226 Mass. 118.

Lien invalid against prior mortgage. 1852, 307, § 1. G. S. 150, § 3. P. S. 191, § 5. R. L. 197, § 5. 1915, 292, § 6, 13. 1916, 306, § 4. 5 Cush. 119.

SECTION 7. No lien, except under section one, shall avail as against a mortgage actually existing and duly registered or recorded prior to the filing or recording in the registry of deeds of the notice required by this chapter, and no lien under section one shall avail as against such a mortgage unless the work or labor performed is in the erection, alteration, repair or removal of a building or structure which erection, alteration,

7 repair or removal was actually begun prior to the recording of the 103 Mass. 470.
 8 mortgage. 109 Mass. 411.

117 Mass. 167, 176.	160 Mass. 48.	177 Mass. 506.	214 Mass. 92,
120 Mass. 408.	161 Mass. 492.	182 Mass. 150.	121
121 Mass. 418.	168 Mass. 538.	191 Mass. 424.	Op. A. G. (1919)
136 Mass. 314.	170 Mass. 311.	192 Mass. 175.	112.
155 Mass. 549.	172 Mass. 553.		

1 SECTION 8. Liens under sections two and three shall be dissolved
 2 unless the contractor, or some person claiming by, through or under him,
 3 shall, within thirty days after the date on which the principal contract
 4 is to be performed, file in the registry of deeds in the county or district
 5 where the land lies a statement, signed and sworn to by him, or by some
 6 person in his behalf, giving a just and true account of the amount due
 7 him, with all just credits, a brief description of the property, and the
 8 names of the owners as set forth in the notice of contract. A lien under
 9 section four shall be dissolved unless the sub-contractor, or some person
 10 claiming by, through or under him, shall, within thirty days after the
 11 date on which the contract of said sub-contractor is to be performed, file
 12 in the registry of deeds in the county or district where the land lies
 13 a statement, signed and sworn to by him, or by some person in his behalf,
 14 giving a just and true account of the amount due him, with all just credits,
 15 a brief description of the property, and the names of the owners as set
 16 forth in the notice of contract. A lien under section one shall be dissolved
 17 unless a like statement, giving the names of the owners of record at the
 18 time the work was performed or at the time of filing the statement, is filed
 19 within the forty days provided in said section.

Lien dissolved unless statement is filed.
 1851, 343, § 2.
 1855, 431, § 2.
 G. S. 150, § 5.
 1872, 318, § 2.
 1874, 321, § 4.
 1877, 93, § 1.
 P. S. 191, § 6.
 1892, 191.
 R. L. 197, § 6.
 1915, 292, § 7, 13.
 1918, 265, § 3.
 7 Gray, 429.
 13 Gray, 311.
 8 Allen, 590.
 109 Mass. 395.
 110 Mass. 116.
 116 Mass. 375.
 117 Mass. 167, 179.
 119 Mass. 459.
 120 Mass. 58, 510.
 124 Mass. 104, 548.
 126 Mass. 276.
 128 Mass. 534.
 129 Mass. 205.
 142 Mass. 80.
 143 Mass. 380.

145 Mass. 565.	163 Mass. 7.	183 Mass. 375.	213 Mass. 456.
148 Mass. 289.	167 Mass. 136.	187 Mass. 417.	215 Mass. 582.
151 Mass. 129.	168 Mass. 435.	198 Mass. 56.	217 Mass. 33.
154 Mass. 590.	171 Mass. 231.	204 Mass. 122.	231 Mass. 418.
156 Mass. 317.	175 Mass. 167, 175.	205 Mass. 407.	234 Mass. 210.
159 Mass. 202, 206.	176 Mass. 164.	208 Mass. 583.	239 Mass. 448.
161 Mass. 338, 462.	179 Mass. 360.	211 Mass. 169.	263 Mass. 27.

1 SECTION 9. Any statement provided for in section eight shall remain
 2 in the custody of the register and be open to public inspection. He shall
 3 record it in a book kept therefor, but the items of the account, except the
 4 total amount claimed due, may be omitted from the record.

Recording and inspection of statement.
 1855, 431, § 2.
 G. S. 150, § 5.

1875, 29.	1877, 93, § 2.	P. S. 191, § 7.	R. L. 197, § 8.
-----------	----------------	-----------------	-----------------

1 SECTION 10. The lien of any person may, so far as his interest is
 2 concerned, be dissolved by a notice signed by him, stating that his lien
 3 is dissolved, filed in the registry of deeds where the notice of the contract
 4 is filed under which contract the lien is claimed.

Dissolution by notice.
 1819, 156, § 6.
 R. S. 117, § 35.
 1843, 343, § 5.

G. S. 140, § 41.	1891, 244.	1915, 292, § 13.
P. S. 191, § 45.	R. L. 197, § 31.	1918, 265, § 2.

1 SECTION 11. The lien shall be dissolved unless a bill in equity to
 2 enforce it is filed within sixty days after the filing of the statement re-
 3 quired by section eight. The validity of the lien shall not be affected by
 4 an inaccuracy in the description of the property to which it attaches, if
 5 the description is sufficient to identify the property, or by an inaccuracy
 6 in stating the amount due for labor or material unless it is shown that
 7 the person filing the statement has wilfully and knowingly claimed more
 8 than is due him.

When bill to be filed. Inaccuracy in statement, etc.
 1855, 431, § 3.
 G. S. 150, § 6.
 P. S. 191, § 8.
 1892, 191.
 R. L. 197, § 7, 9.
 1915, 292, § 8, 13.

6 Gray, 531.	141 Mass. 273.	164 Mass. 410.	205 Mass. 407.
7 Gray, 429.	148 Mass. 280.	168 Mass. 435.	211 Mass. 169.
13 Gray, 109.	154 Mass. 590.	176 Mass. 83, 164.	216 Mass. 41.
2 Allen, 424.	161 Mass. 462.	178 Mass. 288.	217 Mass. 33.
3 Allen, 464.	162 Mass. 432.	189 Mass. 53.	234 Mass. 210.
8 Allen, 590.	163 Mass. 7.	199 Mass. 480.	239 Mass. 448.
108 Mass. 103.			

Dissolution by bond in case of personal labor.
 1874, 321, §§ 1-3.
 1877, 93, §§ 1, 3.
 P. S. 191, §§ 42, 43.
 1895, 404
 R. L. 197, § 28.
 1906, 223.
 1909, 237.
 1915, 292, §§ 9, 13.
 120 Mass. 346.
 165 Mass. 415.
 213 Mass. 463.
 228 Mass. 581, 598.
 230 Mass. 259.
 245 Mass. 14.
 263 Mass. 295.

SECTION 12. Any person in interest may cause to be recorded in the registry of deeds in the county or district where the land lies a bond having as surety a company or corporation authorized to do a surety business in the commonwealth or individual sureties as herein provided, in which bond the register of deeds and his successors in office shall be obligees, in a penal sum fixed by the building commissioner or other officer performing like duties under any statute, ordinance or by-law of a town where the land in question lies, or, if there is no such officer, by a justice or clerk of a court having jurisdiction in the locality where the land lies. The bond shall describe the land in such detail as is required in a common conveyance of land, and shall be in form substantially as follows:

Know all Men by these Presents.

That we _____ of _____ in the County of _____ and Commonwealth of Massachusetts, as principal, and _____ in the Commonwealth, as surety or sureties, are holden and stand firmly bound and obliged unto _____, Register of Deeds for the _____ County of _____, in the full and just sum of _____ Dollars to be paid unto said Register and his successors in said office, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

The condition of this obligation is such, that whereas said _____ is interested in the erection, alteration, repair or removal of a building on a certain lot of land situated within the _____ Registry District in the Commonwealth, bounded and described as follows _____ and desires under the provisions of chapter two hundred and fifty-four of the General Laws and acts in amendment thereof and in addition thereto to free said land from claims for personal labor in accordance with the provisions of said chapter and amendments thereto;

Now, therefore, if the above bounden _____ shall pay or cause to be paid for any and all personal labor performed in the erection, alteration, repair or removal of said building on said land, under the contract stated in the certificate on the back hereof, irrespective of any agreement made between him and the owner or any other persons now interested or who may hereafter be interested therein, then the above written obligation shall be null and void; otherwise to remain in full force and virtue.

Signed, sealed and delivered in presence of _____

(Seal)
 (Seal)
 (Seal)

(CERTIFICATE ON BACK OF BOND.)

(Date)

I, _____, principal in the within bond, hereby certify that the proposed work on the lot of land described in said bond is the erection — alteration — repair — removal of a building, that a fair estimate of the cost of the labor on said building will not exceed _____ dollars. The work is to be done under a contract made _____ (date) the parties thereto being _____ of _____ and _____ of _____ . Said work is to be completed on or before _____ .

(Signed.)

If individual sureties are given on said bond, the sureties shall be not less than three in number, each of whom shall have owned real estate for at least one year next prior to the date of the bond, of a value not less than the penal sum of the bond, and said bond shall not be recorded unless the bond and sureties shall have been approved by a justice or clerk of a court having jurisdiction in the locality where the land lies, after an examination on oath of all the sureties by said justice or clerk.

20 After the recording of said bond no lien shall thereafter attach for
21 personal labor performed under the contract in respect to which the
22 bond is given.

23 The register of deeds may refuse to record the said bond if it be de-
24 fective in form or substance, but no party to any such bond shall be dis-
25 charged by any defect therein as against any party who has in good faith
26 allowed his lien to be dissolved by lapse of time in reliance on the bond.
27 The bond may be enforced by a bill in equity in the superior court brought
28 by any party in interest. The petitioner shall bring his bill in his own
29 behalf and in behalf of all other persons in interest who shall become
30 parties. A copy of the subpoena shall be filed and recorded in the registry
31 of deeds.

1 SECTION 13. The rights of an attaching creditor shall not prevail
2 as against a lien under section one, nor against the claim of a lienor where
3 notice or notices of contract have been filed or recorded in the registry of
4 deeds under sections two and four prior to the recording of the attach-
5 ment. An attachment recorded prior to the filing or recording of the
6 notice of contract shall prevail against a lien, other than for personal
7 labor, to the extent of the value of the buildings and land as they were
8 at the time when the labor was commenced or the material furnished for
9 which the lien is claimed, and in case of a sale under section eighteen the
10 court shall determine, in the manner provided in section sixteen, what
11 proportion of the proceeds of the sale, as derived from the value of the
12 property at such time, shall be held subject to the attachment. If the
13 attaching creditor recovers judgment, the proceeds so held subject to
14 his attachment, or as much thereof as may be necessary, shall be applied
15 upon his execution, and the residue, if any, shall be disposed of in the
16 same manner as if there had been no such attachment. If the interest
17 of the owner of the property is attached after the filing of the notice, the
18 proceeds of any sale of the property under said section eighteen, after dis-
19 charging all prior liens and claims, shall be applied to satisfy the execu-
20 tion of the attaching creditor, provided the lienor or the officer making
21 the sale has actual notice of the attachment. Several attaching credi-
22 tors as between themselves shall be paid according to the order of their
23 attachments.

When attach-
ments do and
do not prevail.
Attaching
creditors, how
paid, as
between
themselves.
1819, 156, § 4.
R. S. 117.
§§ 21-23, 25.
G. S. 150.
§§ 28-30, 32.
1861, 131
P. S. 191.
§§ 31-33, 35.
1900, 466.
R. L. 197.
§§ 25-27.
1915, 292.
§§ 10, 13.
1916, 306, § 5.
1918, 257.
§ 444; 265, § 4.
1919, 5.
1920, 2.

1 SECTION 14. In a bill in equity under section five, the court may,
2 in its discretion, accept a bond, with sufficient surety or sureties, to dis-
3 solve the lien of any creditor or all liens, as to the whole or any part of
4 the property, or any interest therein. Such bond shall be filed by the
5 obligor in the registry of deeds within ten days after its approval, and
6 shall not dissolve the lien unless so filed. It shall be recorded, and may
7 then be taken from the registry by the obligee.

Dissolution
by bond of
creditor
1874, 321,
§§ 1-3
1877, 93,
§§ 1, 3, 4.
P. S. 191.
§§ 42-44.
1890, 383.

1805, 404	181 Mass. 181	215 Mass. 582
R. L. 197, §§ 28-30	187 Mass. 300, 306.	228 Mass. 581, 598.
1906, 223.	190 Mass. 439	230 Mass. 259
1909, 237	213 Mass. 463	245 Mass. 14.
1915, 292, §§ 11, 13.		

1 SECTION 15. If it appears to the court that no person is entitled to
2 a lien, or that every lien has been discharged by payment thereof, the
3 court shall forthwith cause a decree to be entered to the effect that the
4 lien is dissolved, and a certificate to that effect shall be sent forthwith
5 by the clerk to the register of deeds. Such certificate shall be filed and
6 recorded in the manner provided in sections eight and nine.

Dissolution by
decree of court.
1915, 292, § 12.

Trial.
1819, 156,
§§ 3, 7.
R. S. 117,
§§ 10, 11.

SECTION 16. The court shall determine all claims in a summary manner according to equity procedure but without abridging the right of jury trial.

G. S. 150, §§ 17, 18. R. L. 197, § 15. 179 Mass. 214.
P. S. 191, §§ 19, 21. 170 Mass. 1. 213 Mass. 456.

Claims allowed.
1819, 156, § 4.
R. S. 117,
§§ 12, 13.
G. S. 150,
§§ 19, 20.
P. S. 191,
§§ 22, 23.
R. L. 197, § 16.
172 Mass. 597.
192 Mass. 175.
239 Mass. 448.

SECTION 17. A claim due absolutely and without condition, although not payable at the time of determination, shall be allowed with a rebate of interest to the time when it would become payable. If the owner has failed to perform his part of the contract and by reason of such failure the other party is, without his own default, prevented from completely performing his part thereof, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole.

Sale.
1819, 156, § 3.
R. S. 117,
§§ 14, 15.
G. S. 150,
§§ 21, 22.
P. S. 191,
§§ 24, 25.
R. L. 197, § 17.

SECTION 18. If a lien is established the court shall order a sale of the property to be made by an officer qualified to serve civil process. The court may order a sale of a part of the property sufficient to satisfy the claims allowed, if such part can be set off from the residue and sold without damage to the whole.

215 Mass. 582. 230 Mass. 259.

Notice of sale.
1819, 156, § 5.
R. S. 117, § 16.

SECTION 19. The officer shall give notice of the time and place of sale as provided for sales of land on execution or as ordered by the court.

G. S. 150, § 23. P. S. 191, § 26. R. L. 197, § 18.

Redemption.
1819, 156, § 3.
R. S. 117, § 17.

SECTION 20. An interest in land sold under this chapter may be redeemed, as provided for sales of land on execution.

G. S. 150, § 24. P. S. 191, § 27. R. L. 197, § 19.

Distribution.
1819, 156, § 5.
R. S. 117,
§§ 18-20.
G. S. 150,
§§ 25-27.
P. S. 191,
§§ 28-30.
R. L. 197, § 20.
116 Mass. 196.
141 Mass. 280.
175 Mass. 34.
206 Mass. 585.

SECTION 21. If all the claims against the property covered by the lien were ascertained at the time of ordering the sale and if the proceeds of the sale are sufficient therefor, the court may order the officer to distribute them, after deducting all lawful charges and expenses, to and among the several creditors to the amount of their respective debts, with interest, or, if insufficient, to distribute the same among the creditors in proportion to the amount due to each. If all the claims were not ascertained at the time of ordering the sale or other sufficient cause is shown, the court may order the officer to bring the proceeds of the sale into court to be disposed of according to its decree. If the whole cannot be conveniently distributed at one time, the court may make successive orders of distribution. If there is a surplus of the proceeds of the sale after making all payments before mentioned, it shall be paid over to the owner of the property; but, before it is so paid over, it may be attached or taken on execution in like manner as proceeds from a sale on execution.

Costs.
R. S. 117, § 32.
G. S. 150, § 39.
P. S. 191, § 41.
R. L. 197, § 21.

SECTION 22. Costs shall be in the discretion of the court and shall be paid from the proceeds of the sale or by any of the parties, as it may order.

Bill against heirs or assigns of original owner.
R. S. 117, § 27.
G. S. 150, § 34.
P. S. 191, § 37.
R. L. 197, § 22.
5 Cush. 119

SECTION 23. If the person for whom the labor has been performed or furnished or the material has been furnished dies or conveys away his estate or interest before the filing of the bill, it may be filed and prosecuted against his heirs or against the persons holding the estate or interest which he had in the land at the time when the labor or material was

6 performed or furnished. If the bill was filed in the lifetime of such per- 181 Mass. 181.
 7 son, it may be prosecuted against his executor, administrator, heirs or 187 Mass. 513.
 8 assigns as if the estate or interest had been mortgaged to secure the debt.

1 SECTION 24. If the creditor dies without having filed such bill, it Bill by execu-
 2 may be filed and prosecuted by his executor or administrator; or if he tor or adminis-
 3 dies after having filed it, it may be so prosecuted. trator of
 creditor.

R. S. 117, § 28. P. S. 191, § 38. 1915, 151, § 7.
 G. S. 150, § 35. R. L. 197, § 23.

GENERAL PROVISIONS.

1 SECTION 25. If the person for whom the labor has been performed Sale of estate-
 2 or with whom the original contract has been entered into for the whole less than a fee
 3 or any part of the erection, alteration, repair or removal of a building or simple.
 4 structure upon land, or for furnishing material therefor, has an estate less R. S. 117, § 26.
 5 than a fee simple in the land or if the property is subject to a mortgage G. S. 150, § 33.
 6 or other encumbrance, the lien shall bind such person's whole estate and P. S. 191, § 36.
 7 interest in the property, and such estate or interest may be sold and the R. L. 197, § 32.
 8 proceeds applied according to this chapter. 13 Met. 149.
 103 Mass. 470.
 177 Mass. 506.
 214 Mass. 92.
 216 Mass. 81.

1 SECTION 26. This chapter shall not prevent a person entitled to a lien Action at law
 2 under it from maintaining an action at law as if he had no lien. not barred.

R. S. 117, § 33. P. S. 191, § 46. 200 Mass. 406.
 G. S. 150, § 40. R. L. 197, § 33.

LIENS ON LAND RAISED OR RECLAIMED BY DREDGING.

1 SECTION 27. A person entering into a written contract with the Lien in case of
 2 owner of land or flats for reclaiming or raising the level thereof by suc- written con-
 3 tion, hydraulic or any other form of dredging, or for furnishing material tract with
 4 therefor, shall have a lien upon the interest of the owner in said land or owner.
 5 flats as appears of record at the date when notice of said contract is filed Notice.
 6 or recorded in the registry of deeds for the county or district where such 1931, 282.
 7 land or flats lie, to secure the payment of all labor and material which
 8 shall thereafter be furnished by virtue of said contract. Said notice
 9 shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated _____,
 between _____, owner, and _____, contractor, said contractor is to furnish
 labor and material for reclaiming or raising the level of land or flats described
 as follows:

Said contract is to be completed on or before _____.

1 SECTION 28. Whoever, subsequent to the date of the original con- Sub-contract-
 2 tract, furnishes labor or material, or both labor and material, under a tor's lien.
 3 written contract with a contractor contracting as provided in section Notice of
 4 twenty-seven, or with a sub-contractor of such contractor, may file in contract
 5 the registry of deeds for the county or district where such land or flats 1931, 282.
 6 lie a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated _____,
 between _____, contractor (or sub-contractor), and _____, said _____ is to
 furnish labor or material, or both labor and material, in the reclaiming or raising
 the level, by _____, contractor, for _____, owner, of land or flats described as
 follows:

Said contract is to be completed on or before _____.

Upon filing a notice, as hereinbefore provided, and giving actual notice to the owner of such filing, the sub-contractor shall have to secure the payment of all labor and material, which he shall thereafter furnish, upon the interest of the owner, as appears of record at the time of such filing, in the lot of land or flats reclaimed or improved in the manner described in section twenty-seven.

Provisions of chapter relative to building liens to apply to two preceding sections. 1931, 282.

SECTION 29. All the provisions of this chapter relative to liens for the erection, alteration, repair or removal of a building or structure or for furnishing material therefor, attaching under the provisions of section two or four, shall apply, so far as apt, to liens attaching under section twenty-seven or twenty-eight.

CHAPTER 255.

MORTGAGES, CONDITIONAL SALES AND PLEDGES OF PERSONAL PROPERTY, AND LIENS THEREON.

<p>SECT.</p> <p style="text-align: center;">MORTGAGES.</p> <p>1. Mortgages of personal property to be recorded.</p> <p>2. Mortgage of vessel or goods at sea exempt.</p> <p>3. Town clerk to record mortgages, etc.</p> <p>4. Redemption.</p> <p>5. Notice of intention to foreclose.</p> <p>6. Notice of foreclosure to be recorded.</p> <p>7. Foreclosure.</p> <p style="text-align: center;">PLEDGES.</p> <p>8. Notice of intention to sell.</p> <p>9. Sale.</p> <p>10. Contract rights not affected.</p> <p style="text-align: center;">CONDITIONAL SALES.</p> <p>11. Redemption in case of default.</p> <p>12. Conditional sales of furniture, etc.</p> <p>13. Foreclosure of right of redemption.</p> <p style="text-align: center;">LIENS ON VESSELS.</p> <p>14. Liens on vessels.</p> <p>15. Lien dissolved unless statement is filed in clerk's office.</p> <p>16. Inaccuracies not fatal.</p> <p>17. Liens on vessels may be enforced by petition, etc.</p> <p>18. Form of petition.</p> <p>19. Who may join in petition.</p> <p>20. Distribution of proceeds of sale.</p>	<p>SECT.</p> <p>21. Payment by owner of vessel.</p> <p>22. Other liens not affected.</p> <p style="text-align: center;">OTHER LIENS.</p> <p>23. Lien of boarding and lodging house keepers.</p> <p>24. Lien for pasturing, boarding and keeping domestic animals.</p> <p>25. Lien of garage keepers.</p> <p>26. Enforcement.</p> <p>27. Notice.</p> <p>28. Notice if owner is unknown or out of commonwealth.</p> <p>29. Order for sale and distribution of proceeds.</p> <p>30. [Repealed]</p> <p>31. Preceding sections not restrictive.</p> <p>31A. Lien of spinners, etc.</p> <p>31B. Same subject. Enforcement.</p> <p>31C. Lien of jewelers.</p> <p>32. Dissolution of liens on personal property.</p> <p>33. Same subject.</p> <p>34. Dissolution of certain liens of bailees.</p> <p>35. Priority between lien of vendee's or lessee's bailie and vendor or lessor.</p> <p>36. Recovery of certain personal property held under a lien.</p> <p>37. Bond. Hearing on sufficiency of sureties.</p> <p>38. Trial of claim under which lien is claimed.</p> <p>39. Costs.</p>
--	---

MORTGAGES.

Mortgages of personal property to be recorded 1832, 157, § 1.

SECTION 1. Mortgages of personal property shall, within fifteen days from the date written in the mortgage, be recorded on the records of the town where the mortgagor resides when the mortgage is made,

4 and on the records of the town where he then principally transacts his
 5 business. If the mortgagor resides out of the commonwealth, and the
 6 property mortgaged is within the commonwealth when the mortgage is
 7 made, the mortgage shall be recorded on the records of the town where
 8 the property then is. If a record in two different places is required and
 9 the mortgage is recorded in one within said fifteen days, it may be re-
 10 corded in the other within ten days after the date of the first record.
 11 The mortgage shall not be valid against a person other than the parties
 12 thereto until so recorded; and a record made subsequently to the time
 13 limited shall be void. This section shall apply to bills of sale given for
 14 security, but shall not apply to assignments which transfer the title of
 15 a lessor or conditional vendor to a lease or other instrument containing
 16 a conditional sale agreement and to the personal property therein de-
 17 scribed. If the condition for redemption of the property included in
 18 such bill of sale is in writing, it shall be recorded with and as a part of
 19 the bill of sale; if the condition for redemption is oral, a written state-
 20 ment of such condition signed by the mortgagee shall be so recorded.

R. S. 74, § 5.
 1843, 72, § 2
 G. S. 151, § 1.
 1874, 111, § 1.
 1875, 14.
 P. S. 192,
 §§ 1, 2
 1883, 73
 R. L. 198, § 1.
 1913, 656
 1915, 226, § 1.
 1921, 233
 2 Peck 607.
 1 Met 436.
 8 Met 19
 10 Met 481.
 13 Met 209,
 304, 358.
 6 Cush 199.
 12 Cush 199.
 6 Gray, 109.
 7 Gray, 239
 12 Gray, 154.
 16 Gray, 379.
 1 Allen, 373.
 2 Allen, 264.
 11 Allen, 231.
 97 Mass. 452
 99 Mass. 397.
 103 Mass. 482.

104 Mass. 249.	179 Mass. 120.	215 Mass. 13.	248 Mass. 83, 436.
121 Mass. 435.	181 Mass. 75.	156	251 Mass. 323.
134 Mass. 48.	185 Mass. 123.	222 Mass. 587.	558.
137 Mass. 460.	184 Mass. 361.	224 Mass. 448.	254 Mass. 274
142 Mass. 379.	190 Mass. 219.	225 Mass. 491	263 Mass. 505
144 Mass. 207.	194 Mass. 493.	232 Mass. 124	271 Mass. 285, 556.
151 Mass. 300.	203 Mass. 46.	236 Mass. 435	273 Mass. 130.
173 Mass. 88.	213 Mass. 210.	244 Mass. 210.	236 U. S. 97.

1 SECTION 2. The preceding section shall not apply to a mortgage of,
 2 or other instrument relative to, a ship or vessel of the United States, or
 3 to goods at sea or abroad if the mortgagee takes possession of such goods
 4 as soon as may be after their arrival in the commonwealth.

Mortgage of
 vessel or goods
 at sea exempt
 1832, 157, § 1.
 R. S. 74, § 6.

1851, 57.	R. L. 198, § 2.	225 Mass. 491.
G. S. 151, § 2.	5 Allen, 280.	55 Me. 76.
P. S. 192, § 3.		

1 SECTION 3. Town clerks shall, upon payment of their fees, record in
 2 books kept for the purpose mortgages of personal property, bills of sale
 3 given for security and assignments of future earnings delivered to them,
 4 noting in such books and on each such instrument the time when it is
 5 received; and it shall be held to be recorded at the time when it is left
 6 for that purpose in the clerk's office. The fees for recording and for all
 7 other services relative thereto shall be the same as are allowed to registers
 8 of deeds for like services.

Town clerk
 to record
 mortgages, etc.
 1832, 157, § 2.
 R. S. 74, § 7
 G. S. 151, § 3.
 1865, 47,
 §§ 2, 3
 P. S. 183, § 39;
 192, § 4.
 R. L. 198, § 3.
 1913, 656.

1915, 226, §§ 1, 2	105 Mass. 442.	141 Mass. 117
--------------------	----------------	---------------

1 SECTION 4. The mortgagor or a person lawfully claiming under him
 2 may, after breach of condition, redeem the mortgaged property at any
 3 time before it is sold in pursuance of the contract between the parties,
 4 or before the right of redemption is foreclosed. The person entitled to
 5 redeem shall pay or tender to the mortgagee or to the person claiming
 6 under him the amount due on the mortgage, or shall perform or offer
 7 performance of the condition, and shall pay all reasonable and lawful
 8 charges and expenses incurred in the care and custody of the property
 9 or otherwise arising from the mortgage; and if upon such payment
 10 or performance, or upon tender thereof, the property is not forthwith
 11 restored, the person entitled to redeem may recover it in replevin, or
 12 may recover damages for its conversion.

Redemption.
 R. S. 107,
 §§ 40, 41.
 G. S. 151,
 §§ 4, 5.
 P. S. 192,
 §§ 5, 6
 R. L. 198, § 4.
 142 Mass. 519.
 152 Mass. 20.
 190 Mass. 326.
 231 Mass. 391.

1 SECTION 5. The mortgagee or his assigns may, after breach of con-
 2 dition and subject to section ninety-three of chapter one hundred and

Notice of
 intention to
 foreclose.

1843, 72, § 1.
1856, 174.
G. S. 151, § 6.
P. S. 192, § 7.
R. L. 198, § 5.
10 *Cush.* 119.
2 *Gray*, 203.
190 *Mass.* 326.
231 *Mass.* 357.

forty, give to the mortgagor, or to the person in possession of the prop- 3
erty claiming the same, written notice of his intention to foreclose the 4
mortgage for breach of the condition thereof, which shall be served by 5
leaving a copy with the mortgagor or person in possession of the property 6
claiming the same, or by publishing it at least once in each of three suc- 7
cessive weeks in one of the principal newspapers, if any, published in the 8
town where the mortgage is properly recorded or where the property is 9
situated; otherwise, in one of the principal newspapers published in the 10
county. 11

Notice of
foreclosure to
be recorded.
1858, 3.
G. S. 151, § 7.
P. S. 192, § 8.
R. L. 198, § 6

SECTION 6. The notice, with an affidavit of the service thereof, shall 1
be recorded wherever the mortgage is recorded, and such notice and 2
affidavit, if so recorded, or a copy of the record thereof, shall be evidence 3
of the giving of the notice. 4

97 *Mass.* 489. 122 *Mass.* 129. 190 *Mass.* 326. 211 *Mass.* 320.

Foreclosure.
1843, 72, § 1.
G. S. 151, § 8.
P. S. 192, § 9.
R. L. 198, § 7.

SECTION 7. If the condition is not performed or tender of perform- 1
ance made within sixty days after such notice is so recorded, the right to 2
redeem shall be foreclosed. 3

122 *Mass.* 129. 190 *Mass.* 326. 211 *Mass.* 320.

PLEDGES.

Notice of in-
tention to sell.
G. S. 151, § 9.
P. S. 192, § 10.
R. L. 198, § 8.
7 *Allen*, 23.
175 *Mass.* 320.

SECTION 8. The holder of personal property in pledge for the pay- 1
ment of money or for the performance of any other thing may, after 2
failure to pay or perform, give written notice to the pledgor that he 3
intends to enforce payment or performance by a sale of the pledge, and 4
such notice shall be served and, with an affidavit of the service, be re- 5
corded in the office of the clerk of the town where the pledgee resides, 6
in the manner and with the effect provided in sections five and six for 7
notices of foreclosure. 8

Sale.
G. S. 151, § 10.
P. S. 192, § 11.
R. L. 198, § 9.
175 *Mass.* 320.

SECTION 9. If the money to be paid or thing to be done is not paid 1
or performed, or tender thereof made, within sixty days after such notice 2
has been so recorded, the pledgee may sell the pledge by public auction 3
and apply the proceeds to the satisfaction of the debt or demand and of 4
the expenses of the notice and sale. Any surplus shall be paid on demand 5
to the party entitled thereto. 6

Contract rights
not affected.
G. S. 151, § 11.
P. S. 192, § 12.
R. L. 198, § 10.
162 *Mass.* 527.
226 *Mass.* 39.

SECTION 10. The two preceding sections shall not authorize the 1
pledgee to dispose of the pledge contrary to the terms of the contract 2
under which it is held, nor shall they limit his right to dispose of it in 3
any other manner allowed by the contract or by law. 4

CONDITIONAL SALES.

Redemption
in case of
default.
1881, 222.
P. S. 192, § 13.
R. L. 198, § 11.
234 *Mass.* 141.

SECTION 11. Except as otherwise provided in chapter one hundred 1
and fifty-nine, if a contract for the sale of personal property is made 2
on condition that the title thereto shall not pass until the purchase 3
money has been fully paid and the vendor upon default takes from the 4
vendee possession of the property, the vendee may, within fifteen days 5
after such taking, redeem the property so taken by paying to the vendor 6
the full amount then unpaid, with interest and all lawful charges and 7
expenses due to the vendor. 8

1 SECTION 12. Such contracts for the sale of furniture or other house- Conditional
 2 hold effects in the form of a lease or otherwise shall be in writing and a sales of
 3 copy thereof shall be furnished to the vendee by the vendor at the time furniture, etc.
 4 of such sale; and all payments made by or in behalf of the vendee and 1884, 313, § 1.
 5 all charges in the nature of interest or otherwise, as they accrue, shall, if R. L. 198, § 12.
 6 the vendee so requests, be endorsed by the vendor or his agent upon such 165 Mass. 130.
 7 copy. A failure of the vendor through negligence to comply with any 182 Mass. 31.
 8 provision of this section shall suspend his rights under the contract while 266 Mass. 583
 9 the failure continues. His refusal or wilful or fraudulent failure so to
 10 comply shall be a waiver by him of the condition of the sale.

1 SECTION 13. Thirty days at least before taking possession of said Foreclosure
 2 furniture or effects for default of the vendee, the vendor shall demand in of right of
 3 writing of the vendee or other person in charge of said furniture or effects redemption
 4 the balance then due, and shall furnish to said vendee or other person an 1884, 313, § 2.
 5 itemized statement of the account showing the amount due thereon. 1892, 111.
 6 If said vendee or other person can by the exercise of reasonable care and 1898, 515.
 7 diligence be found by the vendor, the fifteen days during which his right R. L. 198, § 13.
 8 of redemption exists under section eleven shall not begin to run until 182 Mass. 31.
 9 said demand has been made, said statement furnished and said thirty 186 Mass. 51
 10 days have expired. If seventy-five per cent or more of the contract price 187 Mass. 486
 11 has been paid by a vendee whose right of redemption has expired, the 218 Mass. 112.
 12 furniture or effects shall, if the vendee or his legal representative in writ-
 13 ing so requests the vendor, be sold by public auction after due advertise-
 14 ment, which shall be published at least three days prior to the sale in one
 15 of the principal newspapers, if any, published in the town, otherwise in
 16 one of the principal newspapers published in the county, where the fur-
 17 niture or effects are situated. If the vendor refuses or neglects to make
 18 the sale as provided herein, the right of redemption shall not be fore-
 19 closed. If a balance of the proceeds of the sale remains after deducting
 20 the actual expenses of the sale by auction and paying from said proceeds
 21 to the vendor the balance of the contract price due him, it shall be paid
 22 to the vendee or his legal representative.

LIENS ON VESSELS.

1 SECTION 14. If by virtue of a contract, express or implied, with the Liens on
 2 owners of a vessel or with the agents, contractors or sub-contractors of vessels
 3 such owners, or with any of them, or with a person who has been em- 1848, 290, § 1
 4 ployed to construct, repair or launch a vessel or to assist therein, money 1855, 231, § 1
 5 is due for labor performed, materials used or labor and materials furnished G. S. 151, § 12.
 6 in the construction, launching or repairs of, or in the construction of the P. S. 102, § 14
 7 launching ways for, or for provisions, stores or other articles furnished R. L. 198, § 14.
 8 for or on account of such vessel in the commonwealth, the person to whom 13 Gray, 129,
 9 such money is due shall have a lien upon the vessel, her tackle, apparel 134
 10 and furniture to secure the payment of such debt, and such lien shall be 15 Gray, 234.
 11 preferred to all others on such vessel, except that for mariners' wages, and 2 Allen, 605.
 12 shall continue until the debt is satisfied. 7 Allen, 287.
 100 Mass. 409
 103 Mass. 227.
 115 Mass. 170.
 119 Mass. 179
 134 Mass. 186.
 137 Mass. 360.

157 Mass. 525
 159 Mass. 60.

167 U. S. 606
 217 Fed. Rep. 617

220 Fed. Rep. 281.
 230 Fed. Rep. 1017.

* [See U. S. Comp. Sts. §§ 7783-7787.]

1 SECTION 15. Such lien shall be dissolved unless the person claiming Lien dissolved
 2 it within thirty days after the vessel departs from the port at which she unless state-
 3 was when the debt was contracted, files in the office of the clerk of the ment is filed in
 clerk's office
 1848, 290, § 2.

1855, 231, § 2. town where the vessel was at such time, a statement, subscribed and 4
 G. S. 151, § 13. sworn to by him or by a person in his behalf, giving a true account of the 5
 P. S. 192, § 15. demand claimed to be due to him, with all just credits, the name of the 6
 1896, 401. person with whom the contract was made, the name of the owner of the 7
 R. L. 198, § 15. 15 Gray, 234. vessel, if known, and the name of the vessel or a description thereof suffi- 8
 8 Allen, 35. cient for identification. The statement shall be recorded by such clerk 9
 98 Mass. 320. in a book kept by him for that purpose, and the fees therefor shall be the 10
 119 Mass. 179. same as for recording mortgages. 11
 191 Mass. 133.
 167 U. S. 606.
 217 Fed. Rep. 617.
 220 Fed. Rep. 281.

230 Fed. Rep. 1017.

[See U. S. Comp. Sts. §§ 7783-7787.]

Inaccuracies not fatal. SECTION 16. A place in which the vessel is wholly or partly con- 1
 G. S. 151, § 14. structed shall be held to be the port where she was when the debt was 2
 P. S. 192, § 16. contracted. The lien shall not be affected by any inaccuracy in the de- 3
 R. L. 198, § 16. scription of the vessel, if she can be recognized thereby, nor in stating 4
 119 Mass. 179. the amount due for labor or materials, unless it is found that the person 5
 137 Mass. 360. filing the statement has knowingly claimed more than is due. 6
 167 U. S. 606.
 217 Fed. Rep. 617.
 220 Fed. Rep. 281.

230 Fed. Rep. 1017.

[See U. S. Comp. Sts. §§ 7783-7787.]

Liens on vessels may be enforced by petition, etc. SECTION 17. A person having such lien, unless the contract described 1
 1855, 231, § 3. in section fourteen is a maritime contract and the enforcement of the lien 2
 G. S. 151, § 15, 17. is within the exclusive jurisdiction of the courts of the United States, may 3
 P. S. 192, §§ 17, 20. enforce the lien by a bill in equity in the superior court for the county 4
 R. L. 198, § 17. where the vessel was at the time when the debt was contracted or 5
 1915, 292, § 4, 13. where she is at the time of filing the bill. The subsequent proceedings 6
 1916, 306, § 3. shall, except as hereinafter provided, be as prescribed in chapter two hun- 7
 3 Allen, 207. dred and fifty-four so far as applicable. Upon the filing of the petition, 8
 103 Mass. 227. a process of attachment against such vessel, her tackle, apparel and fur- 9
 109 Mass. 576. niture, shall issue, and the attachment may be dissolved as in a civil ac- 10
 191 Mass. 133. tion, but such dissolution shall not dissolve the lien. 11
 235 Mass. 471.
 167 U. S. 606.
 217 Fed. Rep. 617.

220 Fed. Rep. 281.

230 Fed. Rep. 1017.

[See U. S. Comp. Sts. §§ 7783-7787.]

Form of petition. SECTION 18. The bill shall contain a brief statement of the labor, 1
 G. S. 151, § 16. materials or work done or furnished, or of the stores, provisions or other 2
 P. S. 192, § 18. articles furnished, and of the amount due therefor, with a description of 3
 R. L. 198, § 18. the vessel which is subject to the lien, and all other material facts and 4
 167 U. S. 606. circumstances, and shall pray that the vessel may be sold and the proceeds 5
 217 Fed. Rep. 617. of the sale applied to the discharge of the debt. 6
 220 Fed. Rep. 281.
 230 Fed. Rep. 1017.

[See U. S. Comp. Sts. §§ 7783-7787.]

Who may join in petition. SECTION 19. Two or more persons having such liens upon the same 1
 1855, 231, § 4. vessel may join in one bill in equity to enforce them, and the proceed- 2
 G. S. 151, § 18. ings shall be the same and the respondent may defend as to each petitioner 3
 P. S. 192, § 19. as if each had filed a separate bill. 4
 R. L. 198, § 19.
 167 U. S. 606.

217 Fed. Rep. 617.

220 Fed. Rep. 281.

230 Fed. Rep. 1017.

[See U. S. Comp. Sts. §§ 7783-7787.]

Distribution of proceeds of sale. SECTION 20. If money is due to more than one person holding such 1
 1855, 231, § 5. lien and all parties interested have been cited to appear and answer, the 2
 G. S. 151, § 19. claims of all shall be marshalled, and the court shall make such order or 3
 P. S. 192, § 21. decree as may be necessary to prevent the enforcement of a double lien 4
 R. L. 198, § 20. for the same labor, materials, stores, provisions or other articles, and to 5
 167 U. S. 606.
 217 Fed. Rep. 617.

6 secure the rights of each. The proceeds from the sale of the vessel, after
 7 deducting all costs and expenses, shall be distributed among the several
 8 claimants according to the amount of their respective debts, except that,
 9 if such proceeds are insufficient to satisfy the liens of all, those who have
 10 liens for labor shall receive a percentage on their respective claims one
 11 third greater, as near as may be, than those who have liens for materials,
 12 stores or other articles.

220 Fed. Rep.
 281
 230 Fed. Rep.
 1017
 [Sec U. S.
 Comp. Sts.
 §§ 7783-7787.]

1 SECTION 21. If a contractor or sub-contractor unreasonably neglects
 2 or refuses to pay for labor procured by him to be performed in construct-
 3 ing, repairing or launching a vessel upon which a lien exists therefor and
 4 the owner or other person who made the agreement with such contractor
 5 or sub-contractor pays the debt secured by the lien, he shall have the
 6 same claim against such contractor or sub-contractor as if the lien had
 7 been enforced by judgment.

Payment by
 owner of
 vessel.
 1862, 185.
 P. S. 192, § 22
 R. L. 198, § 21.
 167 U. S. 600.
 217 Fed. Rep.
 617
 220 Fed. Rep.
 281.

230 Fed. Rep. 1017
 [See U. S. Comp. Sts. §§ 7783-7787.]

1 SECTION 22. The eight preceding sections shall not affect any lien
 2 on foreign vessels which exists independent of statute.

Other liens not
 affected.

1855, 231, § 6.	R. L. 198, § 22.	220 Fed. Rep. 281.
G. S. 151, § 20	167 U. S. 606	230 Fed. Rep. 1017.
P. S. 192, § 23	217 Fed. Rep. 617.	

[See U. S. Comp. Sts. §§ 7783-7787.]

OTHER LIENS.

1 SECTION 23. Boarding house or lodging house keepers shall have a
 2 lien on the baggage and effects brought to their houses and belonging to
 3 their guests, boarders or lodgers, except mariners, for all proper charges
 4 due for fare and board or lodging, which may be enforced as provided
 5 in sections twenty-six to thirty, inclusive.

Lien of board-
 ing and lodg-
 ing house
 keepers
 1859, 229
 G. S. 151, § 29
 P. S. 192, § 31.

1897, 292.	10 Allen, 360.	115 Mass. 70.
R. L. 198, § 28	110 Mass. 158.	

1 SECTION 24. Persons having proper charges due them for pasturing,
 2 boarding or keeping horses or other domestic animals which are brought
 3 to their premises or placed in their care by or with the consent of the
 4 owners thereof shall have a lien on such animals for such charges.

Lien for pas-
 turing, board-
 ing and keep-
 ing domestic
 animals.

1877, 96.	R. L. 198, § 29.	146 Mass. 76.
1878, 208.	136 Mass. 543.	155 Mass. 481.
P. S. 192, §§ 32, 33.	139 Mass. 126.	161 Mass. 512.

1 SECTION 25. Persons maintaining public garages for the storage
 2 and care of motor vehicles brought to their premises or placed in their
 3 care by or with the consent of the owners thereof shall have a lien upon
 4 such motor vehicles for proper charges due them for the storage and care
 5 of the same.

Lien of garage
 keepers.
 1913, 300, § 1.
 223 Mass. 332.
 247 Mass. 292.
 268 Mass. 582.

1 SECTION 26. A person who has a lien, which is not described in sec-
 2 tions fourteen to twenty-two, inclusive, or in chapter two hundred and
 3 fifty-four, for money due to him on account of work and labor, storage,
 4 care and diligence, or money expended on or about personal property
 5 under a contract express or implied, if such money is not paid, in the
 6 case of a lien described in section twenty-four or twenty-five within ten
 7 days, or in other cases within sixty days, after a demand in writing
 8 delivered to the debtor or left at his usual place of abode, if within

Enforcement.
 G. S. 151, § 21.
 P. S. 192, § 24.
 1888, 46.
 R. L. 198,
 §§ 23, 29.
 1913, 300, § 2.
 1917, 326
 14 Allen, 139.
 154 Mass. 105.
 268 Mass. 582.

the commonwealth, or mailed postpaid to him at his usual place of abode 9
without the commonwealth, may file a petition in the superior court or 10
in a district court within the jurisdiction of which the petitioner resides 11
or has his usual place of business for an order for the sale of the prop- 12
erty in satisfaction of the debt. 13

Notice,
G. S. 151, § 22.
P. S. 192, § 25.
R. L. 198,
§§ 24, 29,
1917, 326,
170 Mass. 210.

SECTION 27. The court shall thereupon issue a notice to the owner 1
of the property to appear at a time and place designated, which shall be 2
served by an officer qualified to serve civil process or by a disinterested 3
person by delivering to the owner or by leaving at his usual place of 4
abode, if within the commonwealth, a copy thereof seven days before 5
the hearing in proceedings to enforce liens described in section twenty- 6
four or twenty-five or fourteen days before the hearing in other cases. 7
The return, if not made by an officer, shall be on oath. 8

Notice if owner
is unknown or
out of com-
monwealth.
G. S. 151,
§§ 23, 24.
P. S. 192, § 26.
1893, 173
R. L. 198, § 25.

SECTION 28. If the owner or his usual place of abode is unknown, the 1
petition may be filed sixty days after the money becomes due, and the 2
notice describing the property may be issued "to the unknown owner", 3
or to the owner, naming him, "whose usual place of abode is unknown". 4
If the owner resides out of the commonwealth or he or his usual place 5
of abode is unknown, the notice may be given by publication, as pro- 6
vided in section five. 7

Order for sale
and distribu-
tion of pro-
ceeds.
G. S. 151,
§§ 25, 26, 28.
P. S. 192,
§§ 27, 28, 30.
R. L. 198, § 26.
1917, 326.

SECTION 29. If, upon default or a hearing, it is found that a lien 1
exists upon the property and that the property ought to be sold for the 2
satisfaction of the debt, the court may make an order for such sale, de- 3
termine and record the amount then due and award costs to the prevailing 4
party. Any proceeds of the sale remaining after satisfying the debt, costs 5
and charges, shall be paid to the owner upon demand. 6

SECTION 30. [REPEALED, 1931, 426, § 123.]

Preceding
sections not
restrictive.
G. S. 151, § 30.
P. S. 192, § 34.

SECTION 31. The eight preceding sections shall not restrict the right 1
of a person who has a lien upon property to hold or dispose of it in any 2
other lawful manner. 3

R. L. 198, § 30.

Lien of spin-
ners, etc.
1925, 175, § 1.

SECTION 31A. A lien on account of work, labor and materials fur- 1
nished in the spinning, throwing, manufacturing, bleaching, mercerizing, 2
dyeing, printing, finishing or otherwise processing of cotton, wool, silk 3
or artificial silk, or of goods of which cotton, wool, silk or artificial silk 4
forms a component part, as against goods in the lienor's possession, shall 5
extend to any unpaid balance of account for work, labor and materials 6
furnished in the course of any such process in respect of any other such 7
goods of the same owner whereof the lienor's possession has terminated. 8
The word "owner", as used in this and in the following section, shall in- 9
clude a factor, consignee or other agent intrusted with the possession of 10
the goods held under said lien or of a bill of lading consigning the same 11
to him with authority to sell the same, and delivered by such factor, 12
agent or consignee to the lienor for the purposes aforesaid. 13

Same subject.
Enforcement.
1925, 175, § 1.

SECTION 31B. If any part of the amount for which goods are held 1
under said lien remains unpaid for a period of three months after the 2

3 earliest item of said amount became due and payable, the lienor may sell
 4 said goods at public auction, first publishing a notice of the time and place
 5 of said sale once in each of two successive weeks in a newspaper published
 6 in the town, if any, otherwise in the county, in which said goods are
 7 situated, the last publication to be not less than five days prior to the
 8 sale, and also giving five days' notice of said sale by posting in five or
 9 more public places in said county, one whereof shall be in the town or
 10 city ward in which said goods are situated, and, if the residence or busi-
 11 ness address of the owner of said goods is known or can be ascertained,
 12 sending by registered mail a copy of such notice to said owner at such
 13 address at least five days before the day of sale; provided, that if said
 14 goods are readily divisible, no more thereof shall be so sold than is
 15 necessary to discharge the underlying indebtedness and cover the ex-
 16 penses of the sale. The proceeds of said sale shall be applied to the
 17 payment of said indebtedness and said expenses, and the balance, if
 18 any, shall be paid to the owner or person entitled thereto. The remedy
 19 herein provided to enforce said lien shall be in addition to any other
 20 provided by law.

1 SECTION 31C. A person engaged in performing work upon any watch, Lien of
 2 clock, silverware or jewelry for a price shall have a lien upon such watch, jewelers,
 3 clock, silverware or jewelry for the amount of any account that may be 1927, 210, § 1.
 4 due for such work: provided, that he gives to the person delivering to
 5 him such watch, clock, silverware or jewelry a receipt for the same having
 6 printed thereon in clear legible type a copy of this section. Such lien
 7 shall also include the value or agreed price, if any, of all materials furnished
 8 by the lienor in connection with such work, whether added to such
 9 article or articles or otherwise. If any such account remains unpaid for
 10 one year after the completion of the work, the lienor may, upon thirty
 11 days' notice in writing to the owner specifying the amount due and in-
 12 forming him that payment of such amount within thirty days will
 13 entitle him to redeem the article or articles covered by such lien, sell the
 14 same at public or bona fide private sale to satisfy the account. The
 15 proceeds of the sale, after paying the expenses thereof, shall be applied
 16 in satisfaction of the indebtedness secured by such lien and the balance,
 17 if any, shall be paid over to the owner. Such notice may be served by
 18 mail, directed to the owner's last known address, or, if the owner or his
 19 address be unknown, it may be posted in two public places in the town
 20 where the property is located. The remedy herein provided to enforce
 21 such lien shall be in addition to any other provided by law.

1 SECTION 32. Liens claimed by public warehousemen and others Dissolution of
 2 upon personal property for storage thereof, by innkeepers, boarding house liens on per-
 3 keepers and lodging house keepers upon the baggage and effects of guests, sonal property,
 4 boarders or lodgers, by stable keepers and others for the boarding, keeping 1907, 490, § 2.
 5 or pasturage of horses or other domestic animals, by persons maintaining 1913, 300.
 6 public garages for the storage and care of motor vehicles, by agents, con-
 7 signees and factors for advances, disbursements or expenses upon mer-
 8 chandise, by attorneys at law upon books, papers, documents or other
 9 personal property, and by any other persons for money due to them on
 10 account of work and labor, care and diligence, or money expended on or
 11 about personal property under a contract express or implied, may, ex-
 12 cept as otherwise provided in section thirty-four, be dissolved as pro-
 13 vided in the following section.

Same subject.
1907, 490, § 1.
265 Mass. 372.

SECTION 33. A person who owns or has an interest in any personal property upon which such a lien has been claimed may, at any time after a petition is brought for its enforcement and before the property is lawfully sold to satisfy said lien, dissolve the lien upon his interest in the whole or any part of said property by giving bond to the person claiming the lien, with sufficient sureties, who shall be approved in writing by the claimant or by his attorney, or by a justice of a district court or master in chancery, conditioned to pay to such person within thirty days after the final judgment or order of sale of said property or the interest therein or part thereof for which said bond may be given, an amount fixed as the value of said interest or such part thereof as may be necessary to satisfy the amount for which said interest or part thereof may be subject to said lien. The property upon which the lien is to be dissolved shall be described in the bond. If the parties do not agree as to the value of the property or of the part to be released from said lien, the value may be determined in accordance with the provisions of sections one hundred and twenty-five and one hundred and twenty-six of chapter two hundred and twenty-three. If the said property, or the part to be released from said lien, consists of books, papers, documents or other similar property and the parties do not agree upon the amount for which said bond shall be given, it may be fixed in like manner at such amount as may be reasonable, giving due consideration to the amount for which said lien is claimed, and upon the delivery of the bond in accordance with the provisions hereof the lien upon the property described therein shall be dissolved. The person claiming a lien upon said personal property shall, upon demand therefor, furnish the person owning or having an interest in said property with a statement of the amount and reasons, or other considerations, for which the lien is claimed.

Dissolution of
certain liens
of bailees.
1920, 590,
§§ 5, 6.
265 Mass. 372.

SECTION 34. The lien of a bailee of personal property exceeding twenty dollars in value to secure a claim for which he has a lien, shall, if the amount of such claim has been agreed upon or otherwise established, terminate upon tender, at any time before the property is lawfully sold to satisfy the lien, by the bailor or upon his behalf, or by any other person otherwise having the right of possession, of a bond in a penal sum equal to twice the amount of such claim, signed by a surety company qualified to act in the commonwealth, or by sureties approved by a justice of a district court or a master in chancery in the county where the property is held, and conditioned to pay the amount found due on such claim to the bailee within thirty days after final judgment, or order of sale of such property. In any suit to replevy any such property held to secure such a claim, a bond as described herein shall satisfy the requirements of section eight of chapter two hundred and forty-seven.

Priority
between lien of
vendee's or
lessee's bailee
and vendor or
lessor.
1920, 590, § 7.
247 Mass. 292.
265 Mass. 399.

SECTION 35. As against a conditional vendor or lessor, or person claiming under him, the lien of a bailee of the vendee or lessee or person claiming under him on property exceeding twenty dollars in value, for consideration furnished, without actual notice of the conditional sale or lease, shall prevail; provided, that the property was delivered to the bailee prior to the breach of any condition of the sale or lease.

Recovery of
certain personal
property held
under a lien.

SECTION 36. If personal property exceeding twenty dollars in value is detained from the owner, or person otherwise entitled to its posses-

3 sion, under the claim of a lien, and the contract under which the alleged
 4 claim arose did not specifically state in writing the aggregate amount of
 5 charges to accrue for the services or materials to be furnished, the owner
 6 or such other person may cause the said property to be replevied in the
 7 manner and subject to the provisions set forth in sections seven to twenty-
 8 two, inclusive, of chapter two hundred and forty-seven, so far as the
 9 same may be applicable, except as is otherwise provided in the three
 10 following sections.

1 SECTION 37. Before the officer serving the writ delivers the goods to
 2 the plaintiff he shall take from the plaintiff, or from a person acting in
 3 his behalf, a bond payable to the defendant in such sum and with such
 4 surety or sureties as may be satisfactory to the defendant, or as may be
 5 approved by a justice of a district court or a master in chancery in the
 6 county where the action is brought. If the sureties are to be so approved,
 7 the officer who serves the writ shall give written notice to the defendant
 8 or to the person from whose custody the property has been taken, stating
 9 the time and place of hearing thereon and the names and residences of the
 10 proposed sureties, allowing not less than one hour before the time ap-
 11 pointed for the hearing and at the rate of one hour additional for each
 12 mile of travel. The amount of the bond required shall not exceed twice
 13 the sum for which a lien is claimed by the defendant. If the defendant
 14 or his agent or attorney does not appear in person, and does not state in
 15 writing the amount of his claim, no bond shall be required.

Bond. Hear-
 ing on suffi-
 ciency of
 sureties
 1920, 590, § 3.

1 SECTION 38. If the court finds that the defendant has a lien on the
 2 property but that the defendant is not otherwise entitled to possession
 3 of the property, judgment shall be rendered for the defendant for the
 4 amount due under the contract, together with, or deducting, costs as
 5 determined by the following section. Upon payment of this amount
 6 to the defendant the bond provided for in the preceding section shall be
 7 held satisfied, and shall be delivered up to the plaintiff.

Trial of claim
 under which
 lien is claimed.
 1920, 590, § 2.

1 SECTION 39. In actions of replevin brought under section thirty-six,
 2 costs shall be taxed against the plaintiff in cases where the court decides
 3 that the claim of the defendant for which he asserted a lien was no greater
 4 than the amount due under the contract. In all other cases costs shall be
 5 taxed against the defendant.

Costs.
 1920, 590, § 4

CHAPTER 256.

RECOGNIZANCES FOR DEBTS.

SECT.

- 1. Recognizance for debt.
- 2. Record of recognizance.
- 3. Execution.
- 4. Same subject.
- 5. Death of conusee.
- 6. Death of conusor.

SECT.

- 7. Death of one of several conusors or conusees.
- 8. Limitation of time for issue of original execution.
- 9. Remedy for wrongful execution.

Recognizance for debt.
 1781, 36.
 1782, 21, § 1.
 R. S. 118, §§ 1-3.
 G. S. 152, §§ 1-3.
 P. S. 193, §§ 1-3.
 R. L. 199, § 1.
 134 Mass. 525.
 151 Mass. 392.

SECTION 1. A person who is competent to contract by bond may subject his person and property to be taken on execution by entering into a recognizance before the superior court in any county, substantially as follows:

Be it remembered that on this _____ day of _____ of _____ personally appeared before _____ and acknowledged himself to be indebted to _____ of _____ in the sum of _____ to be paid to said _____ on the _____ day of _____ (or in _____ years, or in _____ months, from this day) with interest from this day; and, if not then paid, to be levied upon his goods, chattels, lands and tenements, and, for want thereof, upon his body. In witness whereof said _____ hath hereto set his hand.

The clause as to the payment of interest may be altered or omitted according to the agreement of the parties; but, unless the recognizance otherwise expressly provides, interest shall be allowed for any delay after the time for payment.

Record of recognizance.
 1781, 36.
 1782, 21, § 2.
 R. S. 118, §§ 4, 5.
 G. S. 152, § 4.
 P. S. 193, § 4.
 R. L. 199, § 2.

SECTION 2. The recognizance shall be attested by the clerk of the court, shall be recorded at length in a book kept for the purpose and the original shall then be delivered to the conusee. It shall not be taken unless the justice who takes it knows or has satisfactory evidence that the person offering to enter into it is the person whom he represents himself to be and who is described as the conusor.

Execution.
 1781, 36.
 1782, 21, § 2.
 R. S. 118, §§ 6, 12, 16.
 G. S. 152, §§ 5, 8, 12.
 P. S. 193, §§ 6, 8, 12.
 R. L. 199, § 3.

SECTION 3. If the debt is not paid at the time named in the recognizance, the court may issue an execution in favor of the conusee for the amount due, which shall be directed, served and returned in like manner and have like effect as an execution issued upon a judgment of said court. Such execution may be levied and shall be obeyed in any county to which it is directed. The conusee shall be entitled to an alias and other successive executions as in a civil action.

Same subject.
 1781, 36.
 1782, 21, § 2.
 R. S. 118, §§ 7, 8.
 G. S. 152, § 6.
 P. S. 193, § 7.
 R. L. 199, § 4.
 8 Mass. 79.

SECTION 4. Before such execution issues, the original recognizance shall be filed with the clerk, who shall compute the amount, deducting any payments endorsed, and shall issue an execution therefor in common form except that it shall recite the recognizance and state the amount then due. Such execution may be issued by the clerk without a special order of the court.

1 SECTION 5. If the conusee dies before the debt is paid, his executor
 2 or administrator may, upon exhibiting to the clerk his letters testamen-
 3 tary or of administration, take out the execution and the form thereof
 4 shall be altered accordingly.

G. S. 152, § 9

P. S. 193, § 9.

R. L. 199, § 5

Death of
 conusee.
 1781, 36.
 1782, 21, §§ 2, 3.
 R. S. 118, § 13.

1 SECTION 6. If the conusor dies before the debt is fully paid, no exe-
 2 cution therefor shall issue as of course, but his estate shall be liable for the
 3 debt in like manner as if judgment therefor had been rendered against him
 4 in his lifetime; and the conusee or his executor or administrator may
 5 recover the same from the executor, administrator, heirs or devisees of
 6 the conusor in contract or by a scire facias.

Death of
 conusor.
 R. S. 118, § 14.
 G. S. 152, § 10
 P. S. 193, § 10
 R. L. 199, § 6.

1 SECTION 7. If one or more of several conusees or conusors dies before
 2 the debt is fully satisfied, the rights and obligations of the survivors and
 3 the proceedings for the recovery of the debt shall be substantially the
 4 same as in the case of the death of one or more joint judgment creditors
 5 or debtors.

P. S. 193, § 13.

R. L. 199, § 7.

Death of one
 of several
 conusors or
 conusees.
 1782, 21, § 2.
 R. S. 118, § 17
 G. S. 152, § 13.

1 SECTION 8. No original execution shall issue as of course upon such
 2 recognizance after the expiration of three years from the time therein
 3 named for payment of the debt or from the time of the last payment en-
 4 dorsed thereon, but the conusee or his executor or administrator may
 5 after that time have a scire facias or an action of contract on it against
 6 the party liable, in like manner and with like effect as upon a judgment.

Limitation of
 time for issue
 of original
 execution.
 1781, 36.
 1782, 21, § 5.
 R. S. 118, § 15
 G. S. 152, § 11.
 P. S. 193, § 11
 R. L. 199, § 8.

1 SECTION 9. A person who is injured by the wrongful issue or levy of
 2 an execution under this chapter may have a writ of audita querela or
 3 other remedy as if the execution had been issued upon a judgment; and,
 4 except as otherwise expressly provided, the parties to such recognizance
 5 and their representatives shall be entitled and liable to the remedies
 6 provided for judgment creditors and debtors.

Remedy for
 wrongful
 execution.
 1781, 36.
 1782, 21, § 4
 R. S. 118, § 18.
 G. S. 152, § 14
 P. S. 193, § 14
 R. L. 199, § 9.

CHAPTER 257.

SEIZURE AND LIBELLING OF FORFEITED PROPERTY.

- SECT.
1. Seizure of forfeited property.
 2. Libel by person making seizure.
 3. Jurisdiction and venue of libel.
 4. Notice if libel is filed in superior court.
 5. Notice if libel is filed in district court.
 6. Proceedings.
 7. Decree.
 8. Disposition of proceeds.

- SECT.
9. Seizure without probable cause.
 10. Costs.
 11. Delivery of property to claimant.
 12. Appraisal on application of claimant.
 13. Appraisal on application of person making seizure.
 14. [Repealed.]
 15. Sale of perishable goods.

1 SECTION 1. Property which has been forfeited for an offence may,
 2 if no other provision is made, be seized by a person entitled to enforce
 3 the forfeiture or, except as otherwise provided, by a police officer or

Seizure of for-
 feited property.
 1793, 43, § 1.
 R. S. 118, § 20.
 G. S. 153, § 1

P. S. 194, § 1. constable of the town where the forfeited property is found, and shall 4
 R. L. 200, § 1. be safely kept by him until it is disposed of as hereinafter provided. 5
 14 Gray, 375. 103 Mass. 456. 155 Mass. 10.

Libel by per- SECTION 2. The person who makes the seizure shall, within fourteen 1
 son making 1793, 43, § 2. days thereafter, file a libel in the superior court or in a district court, 2
 seizure R. S. 118, § 21. stating briefly the cause of the seizure without the details, and praying 3
 1793, 43, § 2. for a decree of forfeiture. 4
 G. S. 153, § 2. P. S. 194, § 2. R. L. 200, § 2. 1917, 326. 15 Gray, 166.

Jurisdiction and venue of libel 1793, 43, § 2, 3. SECTION 3. A libel may be brought either in the superior court in the 1
 county where the offence was committed, or in a district court having 2
 jurisdiction of the offence. 3
 R. S. 118, §§ 22, 34. R. L. 200, § 3. 1919, 5.
 G. S. 153, §§ 2, 3. 1917, 326. 1920, 2.
 P. S. 194, § 3. 1918, 257, § 445. 1931, 426, § 102.

Notice if libel is filed in superior court. 1793, 43, § 2. SECTION 4. Upon the filing of a libel in the superior court, the clerk 1
 R. S. 118, § 23. shall issue an order of notice, stating briefly the substance of the libel, 2
 G. S. 153, § 4. which the libellant shall cause to be published twice at least in a news- 3
 P. S. 194, § 4. paper published in the county, the first publication to be not less than 4
 1885, 384, § 1. fourteen days before the return day. 5
 R. L. 200, § 1.

Notice if libel is filed in district court. 1793, 43, § 3. SECTION 5. If the libel is filed in a district court the court shall issue 1
 R. S. 118, §§ 31, 32, 34. an order of notice, stating briefly the substance of the libel and the time 2
 G. S. 153, §§ 13, 14. and place appointed for the hearing, which the libellant shall cause to be 3
 P. S. 194, §§ 5, 6. posted in a public place within the jurisdiction of such court not less than 4
 §§ 12, 13. seven days before the time appointed for the hearing. 5
 R. L. 200, § 5. 1917, 326.

Proceedings. 1793, 43, § 2. SECTION 6. The libel shall be entered and conducted as a civil action; 1
 R. S. 118, §§ 24, 25. and if after notice no claimant appears, the court shall, upon a hearing, 2
 G. S. 153, §§ 5, 6. decree a forfeiture, restoration or other appropriate disposition of the 3
 P. S. 194, §§ 5, 6. property. If a claimant appears, he may allege and answer any matter 4
 R. L. 200, § 6. material for his defence, and either party shall be entitled to claim a jury 5
 1917, 326. trial upon issues of fact as in other civil actions. 6

Decree. 1793, 43, § 2. SECTION 7. If the libellant maintains his action, the court shall decree 1
 R. S. 118, § 26. a forfeiture and sale of the property and a distribution of the proceeds, 2
 G. S. 153, § 7. or other appropriate disposition thereof. If he fails to maintain it, the 3
 P. S. 194, § 7. court shall decree a restitution of the property to the claimant. 4
 R. L. 200, § 7.

Disposition of proceeds. G. S. 153, § 8. SECTION 8. If property is sold under such decree, the proceeds shall 1
 P. S. 194, § 8. be applied under the direction of the court to the payment of the expenses 2
 R. L. 200, § 8. of the seizure, prosecution and sale; and in default of any other provi- 3
 sion for the disposition of the residue, it shall be paid to the person who 4
 made the seizure. 5

Seizure without probable cause. 1793, 43, § 2. SECTION 9. If it is found that the seizure was groundless and without 1
 R. S. 118, § 27. probable cause, reasonable damages shall be assessed for the claimant, 2
 G. S. 153, § 9. P. S. 194, § 9. R. L. 200, § 9. and the court shall render judgment for such damages with costs. 3

1 SECTION 10. In all other cases the court shall award costs to the pre- Costs.
 2 vailing party or may order the costs and charges of keeping and selling R. S. 1793, 43, § 2.
 3 the property or any part thereof to be paid out of the proceeds. R. S. 118, § 28.
 G. S. 153, § 10.
 P. S. 194, § 10. R. L. 200, § 10.

1 SECTION 11. Property which is alleged to have been forfeited may Delivery of
 2 after its seizure be delivered to the owner or a person entitled to claim claimant.
 3 the same, upon his giving to the person who made the seizure a bond 1793, 43, § 1
 4 in double the value of the property, with sufficient surety, conditioned R. S. 118, § 36
 5 to restore the property, or pay the appraised value thereof if it is decreed G. S. 153, § 17
 6 forfeited, and to abide by and perform the final order, decree or judgment. P. S. 194, § 16
 R. L. 200, § 11

1 SECTION 12. The value of the property shall be determined by three Appraisal on
 2 disinterested persons appointed by the parties or by a justice of the application of
 3 peace to whom the claimant applies therefor, or, if the appraisal is made claimant
 4 after the libel has been filed, by the court before whom it is pending. 1793, 43, § 1
 R. S. 118, § 37
 G. S. 153, § 18
 P. S. 194, § 17. R. L. 200, § 12. 1917, 326.

1 SECTION 13. The person who makes the seizure shall forthwith, Appraisal on
 2 unless an application for an appraisal has been made by a claimant, application of
 3 apply to a justice of the peace, who shall appoint three disinterested person making
 4 persons to make an inventory and appraisal of the property seized. Such seizure
 5 appraisers shall be sworn and shall return their inventory and appraisal 1793, 43, § 1
 6 to the court before whom the libel is pending. R. S. 118, § 38
 G. S. 153, § 19
 P. S. 194, § 18
 R. L. 200, § 13. 1917, 326.

1 SECTION 14. [REPEALED, 1931, 426, § 103.]

1 SECTION 15. If appraisers appointed under section thirteen certify Sale of perish-
 2 that property so seized is perishable and likely to depreciate in value by able goods.
 3 being kept, any district court may order a sale by auction of such prop- R. S. 118,
 4 erty at such time and after such notice as the order, which shall be en- §§ 40, 41
 5 dorsed on the inventory, shall direct; but this section shall not affect G. S. 153,
 6 the power of the court in which the libel is pending to order a sale of §§ 21, 22
 7 the property for sufficient cause at any time during the pendency of the P. S. 194,
 8 libel. §§ 20, 21
 R. L. 200, § 15
 1917, 326

CHAPTER 258.

CLAIMS AGAINST THE COMMONWEALTH.

SECT.

1. Jurisdiction of claims against the commonwealth, etc.
2. Certain cases to be tried without a jury, etc.

SECT.

3. Decision in favor of petitioner.
4. Judgment in favor of commonwealth.
5. Statutes of limitation applicable.

Jurisdiction of claims against the commonwealth, etc.
 1879, 255, §§ 1-3.
 P. S. 195, §§ 1, 2.
 1887, 246.
 R. L. 201, § 1.
 1905, 370, § 1.
 152 Mass. 28.
 174 Mass. 335.
 181 Mass. 315.
 193 Mass. 387.

SECTION 1. The superior court, except as otherwise expressly provided, shall have jurisdiction of all claims at law or in equity against the commonwealth. Such claims may be enforced by petition stating clearly and concisely the nature of the claim and the damages demanded, and such petition shall be served by the sheriff of Suffolk county or any of his deputies by leaving an attested copy thereof in the hands or in the office of the attorney general, and a like copy in the hands or in the office of the state secretary, thirty days at least before the return day thereof.

197 Mass. 137.
 204 Mass. 482.

205 Mass. 523.
 212 Mass. 534.

224 Mass. 28.
 236 Mass. 599.

Certain cases to be tried without a jury, etc.
 1879, 255, §§ 2, 3.
 P. S. 195, § 3.
 1887, 246.
 R. L. 201, § 2.
 1905, 370, § 2.
 1908, 288.
 1909, 204, § 1.
 1910, 555, § 3;
 645.
 174 Mass. 335.
 197 Mass. 137.

SECTION 2. The laws relative to tender, offer of judgment, set-off and recoupment shall apply to the said petition, and the case shall be tried by the court without a jury. All hearings shall be in open court, except that on motion by the attorney general or the petitioner an auditor or master may be appointed, and questions of law may be taken to the supreme judicial court, as in other cases. If the amount claimed exceeds two thousand dollars, the petition shall be brought in Suffolk county, otherwise in Suffolk county or in the county where the petitioner resides. If the petition is to recover damages for injuries sustained while traveling on a state highway, it may be brought in Suffolk county or in the county where the petitioner resides or where the injuries were sustained.

Decision in favor of petitioner.
 1879, 255, § 4.
 P. S. 195, § 4.
 R. L. 201, § 3.
 1 Op. A. G. 556.

SECTION 3. If the final decision is in favor of the petitioner, the chief justice of the superior court shall certify to the governor the amount found due, with the legal costs; and the governor shall draw his warrant for such amount on the state treasurer, who shall pay the same from any appropriations made for the purpose by the general court.

Judgment in favor of commonwealth.
 1879, 255, § 4.
 P. S. 195, § 5.
 R. L. 201, § 4.

SECTION 4. If the decision is in favor of the commonwealth, judgment for costs and execution thereon shall issue in its favor against the petitioner; and if such judgment is final, the claim shall be forever barred.

Statutes of limitation applicable.

SECTION 5. Laws relative to the limitation of actions shall apply to claims against the commonwealth and to the remedy herein provided.

1879, 255, § 5.

P. S. 195, § 6.

R. L. 201, § 5.

TITLE V.

STATUTES OF FRAUDS AND LIMITATIONS.

- CHAPTER 259. Prevention of Frauds and Perjuries.
- CHAPTER 260. Limitation of Actions.

CHAPTER 259.

PREVENTION OF FRAUDS AND PERJURIES.

SECT.

1. Certain contracts actionable only if in writing.
2. Consideration need not be in writing.
3. New promise by insolvent debtor to be in writing.

SECT.

4. Representation as to another's credit to be in writing.
5. Agreement to make a will, etc., to be in writing.
6. Contracts for sale of stocks, etc., void, when.

1 SECTION 1. No action shall be brought:

2 First, To charge an executor or administrator, or an assignee under
3 an insolvent law of the commonwealth, upon a special promise to answer
4 damages out of his own estate;

Certain con-
tracts action-
able only if in
writing.
29 Car. 11, c. 3,
§ 4.

1692-3, 15, § 2.
1783, 37, § 1.
1788, 16, § 1.
R. S. 74, § 1.

1848, 252.
G. S. 105, § 1.
P. S. 78, § 1.
R. L. 74, § 1.

12 Cush. 282.
12 Gray, 357.
205 Mass. 472.

5 Second, To charge a person upon a special promise to answer for the
6 debt, default or misdoings of another;

17 Mass. 229
6 Pick. 509.

7 Pick. 229
9 Pick. 306.
15 Pick. 159.
17 Pick. 558.
18 Pick. 369, 467.
20 Pick. 467.
3 Met. 396.
13 Met. 539.
5 Cush. 488.
6 Cush. 549.
7 Cush. 133.
1 Gray, 391.
5 Gray, 45.
8 Gray, 233.
9 Gray, 76.
13 Gray, 613.
1 Allen, 405.
2 Allen, 117.
3 Allen, 540.
5 Allen, 379.

11 Allen, 365.
13 Allen, 114, 136.
98 Mass. 296.
100 Mass. 327.
105 Mass. 443.
106 Mass. 109.
107 Mass. 272.
108 Mass. 246.
111 Mass. 501.
116 Mass. 541.
118 Mass. 137, 521.
120 Mass. 322.
121 Mass. 105.
129 Mass. 373.
130 Mass. 437.
131 Mass. 47, 93.
134 Mass. 27, 149.
160 Mass. 166, 225.
172 Mass. 355.
174 Mass. 511.

176 Mass. 570.
181 Mass. 345.
189 Mass. 48.
191 Mass. 469.
192 Mass. 204.
201 Mass. 318, 469.
206 Mass. 472.
207 Mass. 109.
208 Mass. 399.
209 Mass. 421, 570.
217 Mass. 15.
218 Mass. 5.
230 Mass. 21, 248.
231 Mass. 392.
232 Mass. 566.
238 Mass. 129.
241 Mass. 10.
247 Mass. 25, 241.
255 Mass. 99.
263 Mass. 554.

7 Third, Upon an agreement made upon consideration of marriage;

132 Mass. 359.
154 Mass. 593.

233 Mass. 468.

4 Mass. 400,
488.
5 Mass. 133.

Fourth, Upon a contract for the sale of lands, tenements or hereditaments or of any interest in or concerning them; or,

11 Mass. 342.	8 Allen, 540.	133 Mass. 414.	208 Mass. 300.
12 Mass. 543	9 Allen, 387.	134 Mass. 109.	210 Mass. 328.
16 Mass. 39.	10 Allen, 82.	135 Mass. 590.	211 Mass. 37.
17 Mass. 249.	11 Allen, 141, 361.	137 Mass. 309.	213 Mass. 380.
1 Pick. 328.	99 Mass. 354.	139 Mass. 3.	216 Mass. 416.
17 Pick. 538.	102 Mass. 24.	141 Mass. 368.	218 Mass. 483.
20 Pick. 134.	103 Mass. 468, 481.	145 Mass. 69.	220 Mass. 186.
1 Met. 313, 483.	104 Mass. 309.	153 Mass. 268.	225 Mass. 341.
2 Met. 423.	107 Mass. 290.	162 Mass. 566, 579.	226 Mass. 156.
6 Met. 319.	109 Mass. 130.	165 Mass. 273.	229 Mass. 87.
7 Met. 57.	110 Mass. 92.	173 Mass. 580.	231 Mass. 324.
8 Met. 34.	111 Mass. 250.	176 Mass. 566.	234 Mass. 17.
1 Cusb. 79.	113 Mass. 31, 372.	181 Mass. 401.	237 Mass. 518.
6 Cusb. 549.	115 Mass. 256.	189 Mass. 285.	239 Mass. 569.
8 Cusb. 223.	116 Mass. 416, 515.	193 Mass. 444.	247 Mass. 207.
5 Gray, 492.	118 Mass. 521.	195 Mass. 124.	248 Mass. 288.
6 Gray, 500.	119 Mass. 526.	196 Mass. 395, 509.	249 Mass. 59.
9 Gray, 313.	123 Mass. 185, 506.	201 Mass. 596.	259 Mass. 546.
13 Gray, 86.	124 Mass. 478.	204 Mass. 346.	264 Mass. 18, 166.
2 Allen, 439.	130 Mass. 388.	205 Mass. 396, 517.	

3 Pick. 83.
13 Pick. 1.
18 Pick. 569.

Fifth, Upon an agreement that is not to be performed within one year from the making thereof;

19 Pick. 364.	16 Gray, 448.	151 Mass. 433.	230 Mass. 248.
22 Pick. 97.	9 Allen, 8.	167 Mass. 544.	232 Mass. 239,
7 Met. 46.	11 Allen, 123.	175 Mass. 427,	566.
8 Met. 59.	97 Mass. 268.	536.	234 Mass. 516.
11 Met. 411.	99 Mass. 461.	181 Mass. 256.	243 Mass. 160.
4 Cusb. 42.	105 Mass. 443.	208 Mass. 399.	249 Mass. 503.
1 Gray, 131.	106 Mass. 56.	209 Mass. 570.	258 Mass. 65.
5 Gray, 41.	118 Mass. 279.	218 Mass. 483, 542.	264 Mass. 166.
11 Gray, 168.	145 Mass. 361.	220 Mass. 324.	271 Mass. 213.

7 Mass. 233
13 Mass. 87.
2 Pick. 64
3 Pick. 83
7 Pick. 301
8 Pick. 9, 252.
15 Pick. 159.

Unless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized.

16 Pick. 227.	102 Mass. 204.	175 Mass. 349.
19 Pick. 592.	104 Mass. 407.	176 Mass. 287, 425.
20 Pick. 9.	107 Mass. 290.	178 Mass. 172.
2 Met. 283.	112 Mass. 15, 19.	179 Mass. 427.
3 Met. 486.	114 Mass. 16.	180 Mass. 377.
12 Met. 333.	115 Mass. 413.	197 Mass. 325.
13 Met. 385, 453, 520.	116 Mass. 223, 515.	204 Mass. 346.
2 Cusb. 355.	117 Mass. 96.	208 Mass. 300.
4 Cusb. 497.	119 Mass. 482.	210 Mass. 500.
6 Cusb. 508.	121 Mass. 491.	213 Mass. 380.
8 Cusb. 223.	132 Mass. 129.	216 Mass. 57, 416.
9 Cusb. 31.	134 Mass. 127.	229 Mass. 95.
11 Cusb. 1, 127.	135 Mass. 590.	234 Mass. 17.
2 Gray, 387, 476.	141 Mass. 368.	237 Mass. 161.
5 Gray, 492.	142 Mass. 130, 232.	240 Mass. 215, 221.
6 Gray, 25, 500.	143 Mass. 386.	241 Mass. 286.
7 Gray, 33.	144 Mass. 296, 465.	243 Mass. 210.
9 Gray, 397.	153 Mass. 308, 321.	244 Mass. 1.
10 Gray, 609.	154 Mass. 257.	251 Mass. 38.
16 Gray, 292, 436.	157 Mass. 439.	252 Mass. 354.
9 Allen, 412, 419, 174.	158 Mass. 113.	254 Mass. 429.
10 Allen, 322, 326.	161 Mass. 161, 248.	256 Mass. 47.
11 Allen, 122, 361.	165 Mass. 273.	260 Mass. 15, 494.
12 Allen, 139.	167 Mass. 426.	263 Mass. 168.
13 Allen, 353.	169 Mass. 595.	264 Mass. 102.
14 Allen, 242, 407, 487.	170 Mass. 164.	266 Mass. 583.
98 Mass. 545.	171 Mass. 152.	267 Mass. 533.
101 Mass. 291, 409, 449.	174 Mass. 296.	270 Mass. 167, 392.

Consideration need not be in writing.
R. S. 74, § 2.
G. S. 105, § 2.

SECTION 2. The consideration of such promise, contract or agreement need not be set forth or expressed in the writing signed by the party to be charged therewith, but may be proved by any legal evidence.

P. S. 78, § 2.	18 Pick. 467.	159 Mass. 451.	210 Mass. 560.
R. L. 74, § 2.	5 Cusb. 488.	191 Mass. 565.	216 Mass. 57.
17 Mass. 122.	1 Gray, 391.	193 Mass. 444.	239 Mass. 228.
15 Pick. 159.	4 Gray, 318.	208 Mass. 399.	247 Mass. 207.

New promise by insolvent debtor to be in writing.
1856, 18.
G. S. 105, § 3.
P. S. 78, § 3.

SECTION 3. No promise for the payment of a debt, made by an insolvent debtor who has obtained his discharge from such debt under proceedings in bankruptcy or insolvency, shall be evidence of a new or continuing contract whereby to deprive the debtor of the benefit of

5 relying upon such discharge in bar of the recovery of a judgment
 6 upon such debt, unless such promise is made by or contained in some
 7 writing signed by him, or by some person thereunto by him lawfully
 8 authorized.

7 Gray, 460.	130 Mass. 14.	161 Mass. 16.
8 Gray, 230.	136 Mass. 102.	171 Mass. 347.
7 Allen, 463.	139 Mass. 12, 297, 345.	193 Mass. 576.
124 Mass. 361.	141 Mass. 14, 16.	266 Mass. 583.

R. L. 74, § 3.
 1 Cush. 77.
 5 Cush. 484.
 6 Cush. 210.
 7 Cush. 462.

1 SECTION 4. No action shall be brought to charge a person upon or
 2 by reason of a representation or assurance made concerning the char-
 3 acter, conduct, credit, ability, trade or dealings of any other person,
 4 unless such representation or assurance is made in writing and signed
 5 by the party to be charged thereby, or by some person thereunto by
 6 him lawfully authorized.

Representation
 as to another's
 credit to be in
 writing
 1834, 182, § 5.
 R. S. 74, § 3.
 G. S. 105, § 4.
 P. S. 78, § 4.
 R. L. 74, § 4.

6 Met. 246.	2 Allen, 386.	179 Mass. 174.	260 Mass. 15.
4 Gray, 156.	8 Allen, 207.	186 Mass. 69.	263 Mass. 199.
13 Gray, 285.	122 Mass. 189.	206 Mass. 318.	264 Mass. 102.
14 Gray, 508.	142 Mass. 120.	222 Mass. 504.	266 Mass. 583.
15 Gray, 362.	157 Mass. 1.	251 Mass. 91.	

1 SECTION 5. No agreement to make a will of real or personal property
 2 or to give a legacy or make a devise shall be binding unless such agree-
 3 ment is in writing signed by the person whose executor or administrator
 4 is sought to be charged, or by some person by him duly authorized.
 5 This section shall not apply to any agreement made prior to May
 6 seventeenth, eighteen hundred and eighty-eight.

Agreement to
 make a will,
 etc., to be in
 writing
 1888, 372
 R. L. 74, § 6
 145 Mass. 69
 154 Mass. 454
 163 Mass. 326.

179 Mass. 30.	230 Mass. 428.	251 Mass. 218.
191 Mass. 579.	233 Mass. 468.	252 Mass. 162.
198 Mass. 441.	238 Mass. 356.	266 Mass. 583.
218 Mass. 105.	242 Mass. 129.	

1 SECTION 6. Every contract, written or oral, for the sale or transfer
 2 of a certificate or other evidence of debt due from the United States or
 3 from an individual state, or of stock or a share or interest in the stock
 4 of a bank, company, city or village, incorporated under a law of the
 5 United States or of an individual state, shall be void, unless the party
 6 contracting to sell or transfer the same is, at the time of making the
 7 contract, the owner or assignee thereof, or authorized by the owner or
 8 assignee or his agent to sell or transfer the certificate or other evidence
 9 of debt, share or interest so contracted for.

Contracts for
 sale of stocks,
 etc., void,
 when
 1836, 279.
 G. S. 105, § 6.
 P. S. 78, § 6.
 R. L. 74, § 7.
 12 Met. 428.
 3 Cush. 137.
 7 Gray, 160.
 3 Allen, 238.
 10 Allen, 245
 337.

98 Mass. 161.	139 Mass. 492, 531.	195 Mass. 419.
103 Mass. 313.	141 Mass. 225.	199 Mass. 242.
107 Mass. 49.	149 Mass. 171.	200 Mass. 209.
127 Mass. 476.	151 Mass. 564.	269 Mass. 451.
135 Mass. 431.		

CHAPTER 260.

LIMITATION OF ACTIONS.

SECT.

LIMITATION OF PERSONAL ACTIONS.

- 1. Limitation of twenty years.
- 2. Limitation of six years.
- 3. Limitation of four years.
- 4. Limitation of two years. Limitation of one year for certain actions.
- 5. Actions for penalties.
- 6. Mutual current account.
- 7. Disabilities.
- 8. Same subject.
- 9. Suspension in case of non-resident defendant.
- 10. Extension of time in case of death.
- 11. Suits against executors, etc., on their contracts, etc.
- 12. Extension of time in case of fraudulent concealment.
- 13. Acknowledgment or new promise.
- 14. Effect of part payment.
- 15. Promise or payment by joint contractor, etc.
- 16. Judgment in such case.
- 17. Plea in abatement.

SECT.

- 18. Actions by commonwealth.
- 19. Special limitations.
- 20. Presumption of satisfaction of judgment.

LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

- 21. Actions for recovery of land.
- 22. When the twenty years begin to run.
- 23. Same subject.
- 24. Corporation sole.
- 25. Disabilities.
- 26. Death during disability.
- 27. Successive disabilities.
- 28. Requisites of effectual entry.
- 29. Estates tail.
- 30. Same subject.
- 31. Actions by the commonwealth.

PROCEEDINGS UPON FAILURE OF ORIGINAL ACTION.

- 32. Extension of time in case of abatement.

LIMITATION OF PERSONAL ACTIONS.

Limitation of twenty years. 1770-1, 9, § 8.

SECTION 1. The following actions shall be commenced only within twenty years next after the cause of action accrues: 1 2

1786, 52, § 5.	R. L. 202, § 1.	6 Cush. 493.
R. S. 120, §§ 1, 4, 7.	1926, 281.	8 Cush. 365.
G. S. 155, §§ 1, 4, 7.	3 Met. 390.	254 Mass. 294.
P. S. 197, §§ 1, 6, 7.	11 Met. 210.	273 Mass. 424.

4 Met. 164.
9 Cush. 365.

First, Actions upon contracts under seal. 3

170 Mass. 286.	215 Mass. 552.	217 Mass. 120.	240 Mass. 562.
----------------	----------------	----------------	----------------

215 Mass. 18.

Second, Actions upon bills, notes or other evidences of indebtedness issued by a bank. 4 5

16 Mass. 290.
8 Pick. 246.
17 Pick. 386.
19 Pick. 43
23 Pick. 282.

Third, Actions upon promissory notes signed in the presence of an attesting witness, if brought by the original payee or by his executor or administrator. 6 7 8

1 Met. 21.	10 Cush. 92.	134 Mass. 245.
4 Met. 219, 587.	1 Gray, 261.	142 Mass. 12.
13 Met. 128.	115 Mass. 584, 594, 599.	150 Mass. 166.
1 Cush. 276.	123 Mass. 559.	167 Mass. 74.
4 Cush. 176.	124 Mass. 149.	205 Mass. 376.
5 Cush. 442.	125 Mass. 446.	213 Mass. 330.
6 Cush. 139, 172.	126 Mass. 342.	259 Mass. 46.

6 Cush. 493.
194 Mass. 241.

Fourth, Actions upon contracts not limited by the following section or by any other law. 9 10

Fifth, Actions under section ninety-six of chapter one hundred and twenty-three to recover for the support of inmates in state institutions. 11 12 13

1 SECTION 2. The following actions shall, except as otherwise pro- Limitation of
2 vided, be commenced only within six years next after the cause of six years.
3 action accrues: 1718-19,
10, § 1.

1740-1, 4, §§ 1, 2.	2 Cush 92	168 Mass. 133.
1748-9, 17, § 1.	110 Mass. 345,	170 Mass. 63.
1770-1, 9, § 2.	451	173 Mass. 233
1786, 52, § 1.	117 Mass. 359	177 Mass. 212
R. S. 120, § 1.	132 Mass. 486	237 Mass. 312
G. S. 155, § 1.	112 Mass. 383.	238 Mass. 279.
P. S. 197, § 1.	145 Mass. 503.	254 Mass. 65.
R. L. 202, § 2.	116 Mass. 118.	256 Mass. 125.
13 Pick 418.	150 Mass. 158.	259 Mass. 46.
7 Met. 116, 227.	151 Mass. 46.	265 Mass. 182.

4 First, Actions of contract founded upon contracts or liabilities, express 22 Pick 430.
5 or implied, except actions limited by the preceding section or actions 9 Met 182.
6 upon judgments or decrees of courts of record of the United States or of 4 Gray, 385.
7 this or of any other state of the United States. 6 Gray, 515.
3 Allen, 42.

7 Allen, 499	194 Mass. 214.	218 Mass. 425.
106 Mass 563.	200 Mass. 599.	219 Mass. 23.
130 Mass. 373.	213 Mass. 330.	230 Mass. 49.
159 Mass 17.	215 Mass. 18, 552.	232 Mass. 38.
168 Mass. 234	216 Mass. 156.	233 Mass. 591.
189 Mass 104.	289	234 Mass. 467.
193 Mass. 488.	217 Mass. 120.	2 Op. A. G 502.

8 Second, Actions of tort. 7 Pick 152.
162 Mass. 412. 200 Mass. 293. 201 Mass. 502. 156 Mass. 21.

9 Third, Actions of replevin.

1 SECTION 3. Actions against sheriffs for the misconduct or negligence Limitation of
2 of their deputies shall be commenced only within four years next after four years.
3 the cause of action accrues. 1796, 71.

R. S. 14, § 78;	P. S. 197, § 2.	12 Cush. 161.
120, § 3	R. L. 202, § 3.	4 Gray, 295.
G. S. 155, § 3.	10 Met. 244.	

1 SECTION 4. Actions for assault and battery, false imprisonment, Limitation of
2 slander, actions against sheriffs, deputy sheriffs, constables or assignees two years.
3 in insolvency for the taking or conversion of personal property, actions Limitation of
4 of tort for injuries to the person against counties, cities and towns, and one year for
5 actions of contract or tort for malpractice, error or mistake against certain actions.
6 physicians, surgeons, dentists, optometrists, hospitals and sanitarium 1740-1, 4,
7 shall be commenced only within two years next after the cause of action §§ 1, 2, 9, § 2.
8 accrues; and actions for libel and actions of tort for bodily injuries or 1770-1, 9, § 2.
9 for death the payment of judgments in which is required to be secured 1786, 52, § 1.
10 by chapter ninety and also such actions against officers and employees R. S. 120, § 2.
11 of the commonwealth, of the metropolitan district commission, and of G. S. 155, § 2.
12 any county, city or town, arising out of the operation of motor vehicles 1861, 177,
13 owned by the commonwealth, including those under the control of said §§ 1, 2.
14 commission, or by any such county, city or town, suits by judgment P. S. 197, § 3.
15 creditors in such actions of tort under section one hundred and thirteen R. L. 202, § 4.
16 of chapter one hundred and seventy-five and clause (10) of section three 1902, 406.
17 of chapter two hundred and fourteen and suits on motor vehicle liability 1913, 435.
18 bonds under section thirty-four G of said chapter ninety shall be com- 1921, 319, § 1.
19 menced only within one year next after the cause of action accrues. 1925, 346, § 10.
1929, 29,
§§ 1, 2
1931, 458, § 5.
4 Gray, 295.
156 Mass. 21.
197 Mass. 178.
243 Mass 101.
266 Mass. 578.
269 Mass. 503.
271 Mass. 94.

1 SECTION 5. Actions for penalties or forfeitures under penal statutes, Actions for
2 if brought by a person to whom the penalty or forfeiture is given in penalties.
3 whole or in part, shall be commenced only within one year next after 1788, 12, § 1.
4 the offense is committed. But if the penalty or forfeiture is given in R. S. 120,
5 whole or in part to the commonwealth, an action therefor by or in behalf §§ 21, 22,
G. S. 155,
§§ 20, 21.
P. S. 197,
§§ 4, 5.

R. L. 202, § 5.
11 Cush. 512.
6 Gray, 338.

of the commonwealth may be commenced only within two years next after the offence is committed.

134 Mass. 471. 145 Mass. 311. 216 Mass. 156. 237 Mass. 312.

Mutual current account.
R. S. 120, § 5.
G. S. 155, § 5.
P. S. 197, § 5.

SECTION 6. In an action of contract brought to recover the balance due upon a mutual and open account current, the cause of action shall be held to have accrued at the time of the last item proved in the account.

R. L. 202, § 6. 97 Mass. 476. 169 Mass. 285.
2 Mass. 217. 118 Mass. 486. 173 Mass. 233.
3 Pick. 96. 121 Mass. 300. 201 Mass. 135.
3 Met. 216. 136 Mass. 30. 217 Mass. 120.
11 Cush. 258. 144 Mass. 35. 230 Mass. 49.
4 Allen, 108. 154 Mass. 472.

Disabilities.
1718-19,
10, § 2.
1740-1, 4, § 4.
1748-9, 17, § 2.
1770-1, 9, § 6.
1786, 52, § 4.

SECTION 7. If the person entitled thereto is a minor, or is insane or imprisoned when a right to bring an action first accrues, the action may be commenced within the time hereinbefore limited after the disability is removed.

R. S. 120, § 6. P. S. 197, § 9. 199 Mass. 109.
G. S. 155, § 6. R. L. 202, § 7. 271 Mass. 94.
1880, 13. 136 Mass. 564.

Same subject.
R. S. 120, § 8.
G. S. 155, § 8.
P. S. 197, § 10.
R. L. 202, § 8.
271 Mass. 94.

SECTION 8. If a person is disabled from commencing an action because he is a subject or citizen of a country which is at war with the United States, the time of the continuance of such war after the cause of action accrues shall be excluded in determining the period herein limited for the commencement of the action.

Suspension in case of non-resident defendant.
1748-9, 17, § 3.
1770-1, 9, § 7.
1786, 52, § 4.
R. S. 120, § 9.
G. S. 155, § 9.
1880, 98.
P. S. 197, § 11.
R. L. 202, § 9.
3 Mass. 271.
14 Mass. 203.
17 Mass.
55, 180.

SECTION 9. If, when a cause of action hereinbefore mentioned accrues against a person, he resides out of the commonwealth, the action may be commenced within the time herein limited after he comes into the commonwealth; and if, after a cause of action has accrued, the person against whom it has accrued resides out of the commonwealth, the time of such residence shall be excluded in determining the time limited for the commencement of the action; but no action shall be brought by any person upon a cause of action which was barred by the laws of any state or country while he resided therein.

1 Pick. 263. 6 Allen, 322, 423. 125 Mass. 574.
11 Pick. 36. 10 Allen, 433. 128 Mass. 219.
16 Pick. 359. 99 Mass. 504. 145 Mass. 370.
7 Met. 435. 100 Mass. 167. 146 Mass. 20.
11 Met. 210. 109 Mass. 40, 239. 147 Mass. 81.
5 Gray, 397. 416. 217 Mass. 548.
6 Gray, 427, 517. 111 Mass. 526. 246 Mass. 235.
15 Gray, 349. 118 Mass. 337. 250 Mass. 479.

Extension of time in case of death.
1793, 75, § 3.
R. S. 120, § 10.
G. S. 155, § 10.
P. S. 197, § 12.
R. L. 202, § 10.
11 Met. 445.
5 Allen, 27.
109 Mass. 416.
145 Mass. 489.
146 Mass. 20.
188 Mass. 380.
200 Mass. 293.
218 Mass. 425.
219 Mass. 23.
252 Mass. 188.

SECTION 10. If a person entitled to bring or liable to any action before mentioned dies before the expiration of the time hereinbefore limited, or within thirty days after the expiration of said time, and the cause of action by law survives, the action may be commenced by the executor or administrator at any time within the period within which the deceased might have brought the action or within two years after his giving bond for the discharge of his trust and against the executor or administrator in accordance with the limitations provided by chapter one hundred and ninety-seven, relative to the limitation of actions against the executor or administrator by creditors of the deceased.

271 Mass. 94.

Suits against executors, etc., on their contracts, etc.
1911, 147.

SECTION 11. An action founded on any contract made or act done, if made or done by any person acting as the executor, administrator or other legal representative of the estate of a deceased person, shall

4 be brought within one year, or, if made or done by any person acting
 5 as trustee, guardian or conservator, shall be brought within two years,
 6 after the right of action accrues; provided, that this section shall not
 7 apply to actions upon probate bonds, or to actions in favor of the estate
 8 of which such person shall have been such legal representative, or to
 9 actions in favor of a beneficiary or ward, or to actions brought by the
 10 commonwealth.

1914, 699, § 3.
 235 Mass. 171.
 241 Mass. 155.
 248 Mass. 323.
 272 Mass. 499.

1 SECTION 12. If a person liable to a personal action fraudulently con-
 2 ceals the cause of such action from the knowledge of the person entitled
 3 to bring it, the period prior to the discovery of his cause of action by the
 4 person so entitled shall be excluded in determining the time limited for
 5 the commencement of the action.

Extension of
 time in case
 of fraudulent
 concealment.
 R. S. 120, § 12.
 G. S. 155, § 12.
 P. S. 197, § 14.

R. L. 202, § 11.	134 Mass. 372.	180 Mass. 334.
3 Pick. 74.	138 Mass. 570.	201 Mass. 242, 502.
9 Pick. 212.	144 Mass. 313.	203 Mass. 159.
4 Cush. 208.	145 Mass. 484.	210 Mass. 35.
8 Allen, 130.	162 Mass. 412.	222 Mass. 147.
118 Mass. 147.	178 Mass. 397.	265 Mass. 413.

1 SECTION 13. No acknowledgment or promise shall be evidence of a
 2 new or continuing contract whereby to take an action of contract out of
 3 the operation of this chapter or to deprive a party of the benefit thereof,
 4 unless such acknowledgment or promise has been made by, or is contained
 5 in, a writing signed by the party chargeable thereby.

Acknowledg-
 ment or new
 promise.
 1834, 182, § 1.
 R. S. 120, § 13.
 G. S. 155, § 13.
 P. S. 197, § 15.

R. L. 202, § 12.	7 Gray. 274, 387.	178 Mass. 417.
13 Pick. 206.	116 Mass. 529.	222 Mass. 314.
22 Pick. 291.	136 Mass. 326.	233 Mass. 591.
1 Met. 394.	137 Mass. 504.	254 Mass. 294.
8 Met. 132.	159 Mass. 245, 248.	256 Mass. 125.
9 Met. 482.	168 Mass. 133, 134.	266 Mass. 583.
3 Cush. 355.	249.	270 Mass. 565.
6 Cush. 151.	177 Mass. 321.	

1 SECTION 14. The preceding section shall not alter or impair the
 2 effect of a payment of principal or interest made by any person; but no
 3 endorsement or memorandum of any such payment, written or made
 4 upon a promissory note, bill of exchange or other writing by or on behalf
 5 of the party to whom such payment has been or purports to have been
 6 made, shall be sufficient proof of the payment to take the case out of the
 7 provisions of this chapter.

Effect of part
 payment.
 1834, 182,
 §§ 1, 3.
 R. S. 120, § 17.
 G. S. 155, § 17.
 P. S. 197, § 16.
 R. L. 202, § 13.
 2 Met. 168.
 6 Met. 553.

8 Met. 352.	122 Mass. 558.	178 Mass. 417.
9 Met. 482.	123 Mass. 588.	180 Mass. 27.
6 Cush. 172.	124 Mass. 174.	197 Mass. 347.
7 Gray, 274, 387.	130 Mass. 199.	200 Mass. 599.
11 Allen, 323.	132 Mass. 30, 273.	247 Mass. 514.
97 Mass. 8.	154 Mass. 472.	

1 SECTION 15. A joint contractor or his executor or administrator shall
 2 not lose the benefit of this chapter so as to be chargeable by reason only
 3 of an acknowledgment or promise made or signed, or by reason of a pay-
 4 ment made, by any other joint contractor or his executor or administrator.

Promise or
 payment by
 joint con-
 tractor, etc.
 1834, 182, § 1.
 R. S. 120,
 §§ 14, 18.

G. S. 155, § 14.	14 Pick. 387.	156 Mass. 34.
P. S. 197, § 17.	2 Allen, 245.	200 Mass. 599.
R. L. 202, § 14.	123 Mass. 388.	235 Mass. 249.
4 Pick. 382.	134 Mass. 507.	269 Mass. 387.

1 SECTION 16. If, in actions against two or more joint contractors or
 2 against the executor or administrator of a joint contractor, it appears
 3 that the plaintiff is barred by this chapter as to one or more of such con-
 4 tractors, but is entitled to recover against any other or others of them by
 5 virtue of a new acknowledgment or promise or otherwise, judgment shall
 6 be given for the plaintiff as to the defendants against whom he is entitled
 7 to recover, and for the defendants not liable.

Judgment in
 such case.
 1834, 182,
 R. S. 120, § 15.
 G. S. 155, § 15.
 P. S. 197, § 18.
 R. L. 202,
 § 15.

Plea in abatement. SECTION 17. An answer in abatement alleging the non-joinder of a party defendant to an action of contract shall be overruled if it appears, upon issue joined, that the action as against him was barred by limitation.

1834, 182, § 2.
R. S. 120, § 16.
G. S. 155, § 16.

P. S. 197, § 19. R. L. 202, § 16.

Actions by commonwealth. SECTION 18. The limitations of the preceding sections of this chapter, and of section thirty-two so far as applicable to personal actions, shall apply to actions brought by or for the commonwealth.

R. S. 120, § 20.
G. S. 155, § 19.
P. S. 197, § 21.

R. L. 202, § 17. 189 Mass. 104. 2 Op. A. G. 502.

Special limitations. SECTION 19. If a special provision is otherwise made relative to the limitation of any action, any provision of this chapter inconsistent therewith shall not apply.

1786, 52, § 5.
1788, 12, § 1.
R. S. 120, § 4, 23.

G. S. 155, § 22. R. L. 202, § 18. 199 Mass. 109.
P. S. 197, § 22. 136 Mass. 564. 271 Mass. 94.

Presumption of satisfaction of judgment. SECTION 20. A judgment or decree of a court of record of the United States or of any state thereof shall be presumed to be paid and satisfied at the expiration of twenty years after it was rendered.

R. S. 120, § 24.
G. S. 155, § 23.

P. S. 197, § 23. 134 Mass. 353. 173 Mass. 433.
R. L. 202, § 19. 136 Mass. 280. 194 Mass. 244.
22 Pick 533.

LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

Actions for recovery of land. SECTION 21. An action for the recovery of land shall be commenced, or an entry made thereon, only within twenty years after the right of action or of entry first accrued, or within twenty years after the demandant or the person making the entry, or those under whom they claim, have been seized or possessed of the premises, except as hereinafter provided.

1786, 13.
1807, 75, § 1.
R. S. 119, § 1.
G. S. 154, § 1.
P. S. 196, § 1.
R. L. 202, § 20.
7 Met. 24.
8 Met. 87.

156 Mass. 280. 172 Mass. 395. 198 Mass. 91. 229 Mass. 374.

When the twenty years begin to run. SECTION 22. If such right or title first accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any other person under whom he claims, the twenty years shall be computed from the time when the right or title so first accrued.

R. S. 119, § 2.
G. S. 154, § 2.
P. S. 196, § 2.
R. L. 202, § 21.

Same subject. SECTION 23. In the construction of sections twenty-one to thirty-one, inclusive, the right of entry or of action to recover land shall be held to have first accrued at the times, respectively, hereinafter mentioned:

R. S. 119, § 3.
G. S. 154, § 3.
P. S. 196, § 3.
R. L. 202, § 22.

10 Cush 241.
15 Gray, 322.

14 Allen, 516. 110 Mass. 161. 119 Mass. 414. 178 Mass. 356, 524.

130 Mass. 121. Second, If he claims as heir or devisee of a person who at his death was seized, at the time of such death; but if a tenancy by the curtesy or other estate intervened after the death of such ancestor or deviser, at the time when such intermediate estate expired or would have expired by its own limitation.

150 Mass. 297.
235 Mass. 348.

9 Mass. 508. Third, If there has been such intermediate estate or if a person claims under a remainder or reversion, so far as his right is affected by the limitation prescribed in said sections, at the time when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time. This clause shall not prevent a person from entering if entitled so to do by reason of any forfeiture or breach of condition; but

15 Mass. 471.
150 Mass. 297.

17 in such case, his right shall be held to have accrued when the forfeiture
18 was incurred or the condition was broken.

19 Fourth, In all cases in which no other express provision is made, at the 8 Met. 87.
20 time when the claimant or the person under whom he claims first became
21 entitled to the possession of the premises under the title upon which the
22 entry or the action is founded.

1 SECTION 24. If a corporation sole is disseized, any of its successors Corporation
sole
2 may enter upon the premises, or commence an action for the recovery 1828, 137, § 1.
3 thereof, within five years after the death, resignation or removal of the R. S. 119, § 4.
4 disseisee. G. S. 154, § 4.

P. S. 196, § 4.

R. L. 202, § 23.

1 SECTION 25. If, when such right of entry or of action first accrues, Disabilities.
2 the person entitled thereto is a minor, or is insane, imprisoned or absent 1697, 22, § 1.
3 from the United States, he, or a person claiming under him, may make 1786, 13, § 4.
4 the entry or commence the action within ten years after such disability R. S. 119, § 5.
5 is removed. G. S. 154, § 5.
P. S. 196, § 5.
R. L. 202, § 24.

4 Mass. 182.
16 Pick. 161.

2 Allen, 306.
3 Allen, 328.

10 Allen, 557.
190 Mass. 449.

1 SECTION 26. If the person first entitled to such right of entry or of Death during
disability.
2 action dies while under any of the disabilities mentioned in the preceding R. S. 119, § 6.
3 section and there has been no determination of, or judgment upon, the G. S. 154, § 6.
4 title, right or action which accrued to him, the entry may be made or P. S. 196, § 6.
5 the action commenced by his heirs, or by any other person claiming R. L. 202, § 25.
6 under him, within ten years after his death.

1 SECTION 27. If, when such right of entry or of action first accrues, the Successive
disabilities.
2 person entitled thereto is under any of such disabilities and dies without R. S. 119, § 7.
3 having recovered the premises, no further time for making such entry G. S. 154, § 7.
4 or commencing such action than is hereinbefore prescribed shall be P. S. 196, § 7.
5 allowed by reason of the disability of any other person. R. L. 202, § 26.

1 SECTION 28. No person shall be held to have been in possession of Requisites of
effectual entry.
2 land within the meaning of this chapter merely by reason of having made R. S. 119, § 8.
3 an entry thereon, unless he has continued in open and peaceable posses- G. S. 154, § 8.
4 sion thereof for one year next after such entry or unless an action has P. S. 196, § 8.
5 been commenced upon such entry and seisin within one year after he R. L. 202, § 27.
6 was ousted or dispossessed. 2 Met. 583.
5 Met. 599.

1 SECTION 29. If the right of entry or of action of a tenant in tail, or Estates tail.
2 of a person entitled to a remainder in tail, is barred by this chapter, R. S. 119, § 9.
3 the estate tail and all remainders and reversions expectant thereon shall G. S. 154, § 9.
4 also be barred, as fully as they might have been by a conveyance made P. S. 196, § 9.
5 by the tenant in tail in the manner provided in chapter one hundred and R. L. 202, § 28.
6 eighty-three.

1 SECTION 30. If a person entitled to recover land as a tenant in tail or Same subject.
2 as a remainderman dies before the expiration of the period hereinbefore R. S. 119, § 10.
3 limited for making an entry or commencing an action therefor, no per- G. S. 154, § 10.
4 son claiming any estate which the tenant in tail or remainderman might P. S. 196, § 10.
5 have barred shall make an entry or commence an action to recover R. L. 202, § 29.

such land, except within the period during which the tenant in tail or remainderman, if he had so long lived, might have made such entry or commenced such action.

Actions by the
commonwealth.
R. S. 119, § 12.
G. S. 154, § 12.
1867, 275.
P. S. 196, § 11.
1893, 470, § 4.
R. L. 202, § 30.
4 Mass. 522.
9 Met. 155.
98 Mass. 39.
152 Mass. 444.
172 Mass. 395.
185 Mass. 205.
204 Mass. 173.
236 Mass. 87.

SECTION 31. No action for the recovery of land shall be commenced by or in behalf of the commonwealth, except within twenty years after its right or title thereto first accrued, or within twenty years after it or those under whom it claims have been seized or possessed of the premises; but this section shall not apply to the province lands in the town of Provincetown lying north and west of the line fixed by section twenty-five of chapter ninety-one, to the Back Bay lands, so called, in Boston, or to any property, right, title or interest of the commonwealth below high water mark or in the great ponds.

1 Op. A. G. 53.

PROCEEDINGS UPON FAILURE OF ORIGINAL ACTION.

Extension of
time in case of
abatement.
1770-1, 9, § 3.
1793, 75, § 2.
R. S. 119, § 15;
120, § 11.
G. S. 154, § 15;
155, § 11.
P. S. 196, § 12;
197, § 13.
R. L. 202, § 31.
12 Met. 15.
6 Cush. 417.
1 Gray, 580.
7 Gray, 165.
130 Mass. 419.
174 Mass. 171.
180 Mass. 317.
190 Mass. 513.
268 Mass. 329.

SECTION 32. If, in an action duly commenced within the time limited in this chapter, the writ fails of a sufficient service or return by reason of an unavoidable accident or of a default or neglect of the officer to whom it is committed, or if the writ is abated or if the action is otherwise avoided or defeated by the death of a party thereto or for any matter of form, or if, after a verdict for the plaintiff or demandant, the judgment is arrested, or if a judgment for the plaintiff or demandant is reversed, the plaintiff or demandant or any person claiming under him may commence a new action for the same cause within one year after the abatement or other determination of the original action, or after the reversal of the judgment; and if the cause of action by law survives, the executor or administrator of the plaintiff or the heir or devisee of the demandant may commence such new action within said year.

TITLE VI.

COSTS AND FEES.

CHAPTER 261. Costs in Civil Actions.

CHAPTER 262. Fees of Certain Officers.

CHAPTER 261.

COSTS IN CIVIL ACTIONS.

SECT.	SECT.
1. Prevailing party to recover costs.	16. Judgments for costs against the commonwealth.
2. Costs if defendant insolvent.	17. No travel for attorney general.
3. [Repealed.]	18. Powers of arbitrators and courts.
4. Costs in superior court.	19. By whom costs shall be taxed; notice, etc.
5. Costs if defendant brings money into court.	20. Appeal from taxation.
6. Costs in real actions and in replevin.	21. Costs, execution for, pending appeal.
7. Costs in unnecessary actions.	22. Costs of such appeal, allowance of, etc.
8. Costs in cases tried together.	23. Items of costs in supreme judicial court and superior court.
9. Costs if plaintiff prevails on certain counts only.	24. Costs when place for trial is designated.
10. Second action for same cause stayed, when.	25. Expenses of printing briefs.
11. Taxation of double or treble costs.	25A. Expenses of plans, drawings, photographs and certified copies.
12. Costs in suits for discovery.	26. Items of costs in district courts.
13. Costs in discretion of court, when.	27. Items of costs in actions by trustee process in district courts.
14. Costs in actions by the commonwealth.	28. [Repealed.]
15. Costs in such actions brought in behalf of private person.	

1 SECTION 1. In civil actions the prevailing party shall recover his
 2 costs, except as otherwise provided. Prevailing party to recover costs.

1781, 28, § 9.	2 Cush. 325.	129 Mass. 135.
R. S. 121, § 1.	4 Gray, 201.	139 Mass. 210.
G. S. 156, § 1.	1 Allen, 212.	143 Mass. 192.
P. S. 198, § 1.	3 Allen, 467, 468.	187 Mass. 421.
R. L. 203, § 1.	102 Mass. 116.	208 Mass. 195.
7 Met. 590.	103 Mass. 580.	232 Mass. 124.
8 Met. 272, 343.	126 Mass. 232, 287, 290.	247 Mass. 543.

1 SECTION 2. If a discontinuance or a nonsuit is entered in an action
 2 solely in consequence of an answer of the defendant which alleges his
 3 discharge in bankruptcy or insolvency, the defendant shall recover no
 4 costs. If issue is joined upon such defence solely and judgment is ren-
 5 dered for the defendant, he shall recover only his costs accruing after
 6 the joinder of such issue. Costs if defendant insolvent
 1841, 124, § 4.
 1843, 55.
 1848, 267.
 G. S. 156.
 §§ 2, 3.
 P. S. 198.
 §§ 2, 3.

R. L. 203, § 2.

4 Cush. 500

SECTION 3. [REPEALED, 1931, 426, § 124.]

1

Costs in superior court. 1740-1, 4, § 3. 1770-1, 9, § 5. 1786, 52, § 3. 1807, 123, § 2. R. S. 121, §§ 3, 11. 1838, 165, § 2. G. S. 156, § 5, 6. 1862, 36. P. S. 198, §§ 5-7. R. L. 203, § 5. 1925, 132, § 3.

SECTION 4. If, in a personal action, except an action of replevin or an action under section fifteen of chapter two hundred and fifty-three, which is commenced in the superior court, the plaintiff does not recover final judgment for more than one hundred dollars as damages, he shall recover no costs, unless the right to an easement or the title to land is drawn in question and the justice before whom the action is tried so certifies, or unless the plaintiff's claim, as established on the trial, exceeds one hundred dollars and is reduced to that amount or less by set-offs which could not have been proved in payment.

1
2
3
4
5
6
7
8
9

- | | | |
|---------------|---------------|----------------|
| 13 Met. 144. | 2 Gray, 336. | 11 Allen, 352. |
| 2 Cush. 325. | 11 Gray, 486. | 100 Mass. 191. |
| 6 Cush. 275. | 2 Allen, 268. | 133 Mass. 470. |
| 8 Cush. 289. | 4 Allen, 400. | 134 Mass. 14. |
| 12 Cush. 457. | 6 Allen, 243. | 192 Mass. 600. |
| 1 Gray, 625. | 10 Allen, 68. | |

Costs if defendant brings money into court. R. S. 121, § 14.

SECTION 5. If a defendant brings money into court and offers it in satisfaction of the damages, the plaintiff shall in all cases recover the costs which had previously accrued.

1
2
3

- | | | |
|-----------------|-----------------|-----------------|
| G. S. 156, § 8. | P. S. 198, § 9. | R. L. 203, § 6. |
|-----------------|-----------------|-----------------|

Costs in real actions and in replevin.

SECTION 6. The prevailing party in a real action or in replevin shall recover costs irrespective of the amount of damages recovered.

1
2

- | | | | |
|------------------|-----------------|------------------|-----------------|
| R. S. 121, § 13. | G. S. 156, § 9. | P. S. 198, § 10. | R. L. 203, § 7. |
|------------------|-----------------|------------------|-----------------|

Costs in unnecessary actions. 1743-4, 23. 1784, 28, § 12. R. S. 121, § 15. G. S. 156, § 10. 1879, 226, § 2. P. S. 198, § 11. R. L. 203, § 8.

SECTION 7. A plaintiff who brings several actions in the same or in different courts against the same defendant upon causes of action which might have been joined in one action, or who brings separate actions against defendants who might have been joined, shall recover costs in one action only, unless the court, after a hearing, otherwise orders.

1
2
3
4
5

- | | |
|---------------|----------------|
| 10 Cush. 303. | 248 Mass. 170. |
|---------------|----------------|

Costs in cases tried together. 1892, 231. R. L. 203, § 9. 188 Mass. 363. 203 Mass. 596. 228 Mass. 591. 248 Mass. 170.

SECTION 8. If two or more cases are tried together in the supreme judicial court, in the superior court or in a district court, the presiding justice may reduce the witness fees and other costs; but not less than the ordinary witness fees and other costs recoverable in one of the cases which are so tried together shall be allowed.

1
2
3
4
5

Costs if plaintiff prevails on certain counts only. R. S. 121, § 16. G. S. 156, § 11. P. S. 198, § 12. R. L. 203, § 10. 1 Met. 291. 2 Met. 599. 13 Met. 436. 2 Cush. 180.

SECTION 9. If a verdict is rendered for the plaintiff upon one or more counts upon several and distinct causes of action, and for the defendant upon any others, each party shall recover costs for the travel and attendance of witnesses, for depositions and for other evidence produced, examined or used on the trial of the counts upon which the verdict is in his favor, but shall not recover for the like charges incurred on the trial of the other counts.

1
2
3
4
5
6
7

- | | | |
|--------------|----------------|----------------|
| 4 Cush. 148. | 170 Mass. 162. | 222 Mass. 581. |
|--------------|----------------|----------------|

Second action for same cause stayed, when. 1829, 128, § 3. R. S. 121, § 17. G. S. 156, § 12. P. S. 198, § 13. R. L. 203, § 11. 272 Mass. 39.

SECTION 10. If a judgment for costs upon a nonsuit or discontinuance remains unsatisfied, the court in which a subsequent action for the same cause is brought may order proceedings therein to be stayed until such costs have been paid, and may further order that the action be dismissed unless they are paid within a time fixed by the order.

1
2
3
4
5

Taxation of double or treble costs.

SECTION 11. If double or treble costs are allowed, the witness fees, the costs of taking depositions, of procuring evidence and of copies and all

1
2

3 court dues, shall be taxed and recovered singly, and the remainder only
4 of the taxable costs shall be doubled or trebled.

G. S. 156, § 13. P. S. 198, § 14. R. L. 203, § 12.

1 SECTION 12. In suits in equity in which, as to one or more of the
2 defendants, the plaintiff seeks merely for a discovery of facts which are
3 material to his rights and interests in a pending or anticipated suit, and
4 not for a decree against them, the court shall allow such defendants all
5 their reasonable costs and expenditures, according to the usual course of
6 proceedings in equity in like cases, and likewise although the plaintiff
7 prays for a decree, if the court is satisfied that the prayer is frivolous, a
8 mere pretence, or is not essentially connected with the subject matter of
9 the discovery.

Costs in suits for discovery.
1841, 129.
G. S. 156, § 15.
P. S. 198, § 16.
R. L. 203, § 13.
1 Met. 237.
225 Mass. 500.
256 Mass. 125.

1 SECTION 13. In suits in equity and in other civil actions and pro-
2 ceedings in which no provision is expressly made by law, the costs shall
3 be wholly in the discretion of the court, but no greater amount shall be
4 taxed therein than is allowed for similar charges in actions at law.

G. S. 156, § 16. 104 Mass. 363. 223 Mass. 325.
P. S. 198, § 17. 126 Mass. 290. 252 Mass. 258.
R. L. 203, § 14. 206 Mass. 28. 264 Mass. 230.
1 Allen, 212. 214 Mass. 121. 273 Mass. 283.
102 Mass. 80.

Costs in discretion of court, when.
1826, 109, § 5.
R. S. 121, § 20.

1 SECTION 14. In civil actions and in proceedings which are instituted
2 by, or in the name of, the commonwealth, and not at the relation, in
3 behalf, or for the use, of a private person, the commonwealth shall be
4 liable for costs as is an individual.

P. S. 198, § 18. R. L. 203, § 15. 4 Gray, 25.

Costs in actions by the commonwealth.
R. S. 121, § 22.
G. S. 156, § 17.

1 SECTION 15. A private person at whose relation, for whose use or
2 in whose behalf an action or proceeding is commenced in the name of the
3 commonwealth or of the attorney general shall be liable for costs, as if
4 it had been begun in his own name.

G. S. 156, § 18. P. S. 198, § 19. R. L. 203, § 16.

Costs in such actions brought in behalf of private person.
R. S. 121, § 23.

1 SECTION 16. If a judgment for costs is rendered against the com-
2 monwealth, the treasurer of the county to which the costs in such case
3 would have been paid had the judgment been in favor of the common-
4 wealth shall pay it upon the production of an attested copy thereof;
5 but if the costs would have been paid to the commonwealth had the
6 judgment been in favor of the commonwealth, the state treasurer shall
7 pay it upon the production of an attested copy thereof.

Judgments for costs against the commonwealth.
R. S. 121, § 24.
G. S. 156, § 19.
1862, 114.
P. S. 198, § 20.
R. L. 203, § 17.

1 SECTION 17. If costs are taxed for the commonwealth, no fees shall
2 be taxed or allowed for the travel of the attorney general or any at-
3 torney for the commonwealth.

1813, 182, § 2. G. S. 156, § 20. R. L. 203, § 18.
R. S. 121, § 25. P. S. 198, § 21.

No travel for attorney general.

1 SECTION 18. This chapter shall not affect the power of arbitrators
2 or referees to award costs; nor the power of a court to require costs to
3 be paid by either party as the condition of an amendment, continuance
4 or other order which is passed upon his motion, or to withhold and
5 refuse costs on like occasions.

P. S. 198, § 22. 2 Cush. 325. 103 Mass. 580.
R. L. 203, § 19. 3 Allen, 431. 108 Mass. 232.

Powers of arbitrators and courts.
1786, 52, § 3.
R. S. 121, § 21, 26.
G. S. 156, § 21.

By whom costs shall be taxed; notice, etc. 1728-9, 2, § 1. 1829, 52, § 1. R. S. 121, § 27. G. S. 156, § 22. P. S. 198, § 23. R. L. 203, § 20. 1917, 326. 9 Met. 316.

SECTION 19. Costs shall be taxed by the clerk of the court. No costs shall be taxed without notice to an adverse party who gives reasonable notice in writing to the clerk of his desire to be present at the taxation or causes such notice to be entered on the docket. Notice given by or to the attorney in the action shall be equivalent to notice by or to the party.

6 Allen, 514.

272 Mass. 39.

Appeal from taxation. 1829, 52, § 1.

SECTION 20. Either party may appeal from the taxation by the clerk to the court in which the action is pending, or to a justice thereof.

R. S. 121, § 28. G. S. 156, § 23. P. S. 198, § 24.

R. L. 203, § 21. 8 Cush. 236. 1 Gray, 420.

104 Mass. 363. 272 Mass. 39. 273 Mass. 283.

Costs, execution for, pending appeal. 1829, 52, § 1. R. S. 121, § 30. G. S. 156, § 25. P. S. 198, § 26. R. L. 203, § 22.

SECTION 21. If the appellant is liable for the costs, the appellee may take out execution and cause it to be satisfied, if he first gives bond with sufficient surety, who shall be approved by the clerk, in a sum equal to the costs, payable to the appellant, conditioned to repay such part of the costs as may be disallowed upon the appeal, and to perform such other order as the court or justice shall make thereon.

Costs of such appeal, allowance of, etc. 1829, 52, § 2. R. S. 121, § 31. G. S. 156, § 26. P. S. 198, § 27.

SECTION 22. The costs incurred by the appeal may be allowed to either party by the court or justice before whom such appeal is heard, and they may be added to or deducted from the costs awarded in the principal action or may be collected upon a separate execution.

R. L. 203, § 23. 102 Mass. 116.

126 Mass. 287. 135 Mass. 570.

158 Mass. 274. 174 Mass. 67.

Items of costs in supreme judicial court and superior court. 1701-2, 7, § 3. 1786, 73. 1795, 41, § 1. R. S. 121, §§ 32-34, 36. 1842, 67. 1851, 233, § 118. 1852, 312, § 81. 1855, 449, § 7. 1856, 246. G. S. 156, § 27. 1861, 163. P. S. 198, § 28. 1882, 264, § 1. R. L. 168, § 79; 203, § 24. 1924, 108, § 1. 1 Met. 293. 16 Gray, 287. 119 Mass. 83. 137 Mass. 138. 225 Mass. 75. 252 Mass. 258. 273 Mass. 283.

SECTION 23. There shall be allowed, in a civil action in the supreme judicial court or in the superior court, in addition to other disbursements allowed by law, the following costs:

- For the entry fee, three dollars.
- For the declaration, fifty cents.
- For an attorney's fee, if an issue in law or fact is joined, two dollars and fifty cents; if not, one dollar and twenty-five cents.
- For a term fee, five dollars for each sitting while the action is pending, not exceeding three sittings, except by an order of the court. If an action or question of law therein is carried to the full court, two additional term fees may be allowed. If the defendant is defaulted without having appeared, only one term fee shall be allowed.
- For travel, such sum as the court may allow.

If the defendant was arrested on mesne process, and the plaintiff shall recover more than twenty dollars, exclusive of costs, the plaintiff shall have taxed in his costs against the defendant the costs paid by the plaintiff upon and after the arrest and all lawful charges paid by him for the defendant's support in jail.

If the defendant was arrested on mesne process and final judgment is rendered in his favor, he shall have taxed in his costs against the plaintiff all costs paid by the defendant on account of the arrest.

Costs when place for trial is designated. 1882, 264, § 2. R. L. 203, § 25.

SECTION 24. If the shire town where a case shall be tried has been designated under section eighty-two of chapter two hundred and thirty-one, no costs shall be allowed for sittings held in any other town unless the action is actually tried in such other town by agreement of the parties.

1 SECTION 25. The prevailing party shall be allowed such sum, not
 2 exceeding fifty dollars, for expenses actually incurred in printing the
 3 briefs which may be required for the argument of the case at the law
 4 sitting of the supreme judicial court, but the court in which the costs
 5 are taxed may allow a larger sum in its discretion.

Expenses of
 printing briefs.
 1863, 33.
 P. S. 198, § 29.
 R. L. 203, § 26.
 1904, 413.
 1924, 108, § 2.

273 Mass. 283.

1 SECTION 25A. Unless the court shall otherwise determine, the pre-
 2 vailing party shall be allowed a sum not exceeding twenty-five dollars
 3 for expenses actually incurred for plans, drawings, photographs and
 4 certified copies of public and court records, necessary and used at the
 5 trial. Except by order of court, no such allowance shall be made unless
 6 an affidavit by the prevailing party or his attorney of record is filed with
 7 the clerk before final judgment, setting out fully such expenditures, and
 8 that said plans, drawings, photographs and copies were actually used
 9 at the trial.

Expenses of
 plans, draw-
 ings, photo-
 graphs and cer-
 tified copies.
 1924, 108, § 6.
 273 Mass. 283.

1 SECTION 26. There shall be allowed, in a civil action in a district
 2 court, except actions by the trustee process, in addition to other dis-
 3 bursements allowed by law, the following costs:

Items of costs
 in district
 courts.
 1786, 73.
 1795, 41, § 1.
 R. S. 121.
 §§ 32-54, 36.
 G. S. 156, § 27.
 1870, 151, § 3.
 1876, 227, § 5.
 P. S. 198, § 30.
 R. L. 168, § 79;
 203, § 27.
 1917, 326
 1924, 108, § 3

- 4 To the plaintiff or complainant, —
- 5 For a writ and declaration, petition or complaint, one dollar.
- 6 For an attorney's fee, if there is an appearance for the defendant, two
 7 dollars and fifty cents; if not, one dollar and twenty-five cents.
- 8 For a term fee, three dollars, if there is an appearance for the de-
 9 fendant; and if not, one dollar.
- 10 For travel, such sum as the court may allow.
- 11 For attendance, such sum as the court may allow.
- 12 If the defendant was arrested on mesne process, and the plaintiff shall
 13 recover more than twenty dollars, exclusive of costs, the costs paid by
 14 him upon and after the arrest and lawful charges paid by him for the
 15 defendant's support in jail.
- 16 To the defendant, —
- 17 For travel, such sum as the court may allow.
- 18 For attendance, such sum as the court may allow.
- 19 For a term fee, three dollars.
- 20 For an attorney's fee, two dollars and fifty cents.
- 21 If the defendant was arrested on mesne process and final judgment is
 22 rendered in his favor, he shall have taxed in his costs against the plain-
 23 tiff all costs paid by the defendant on account of the arrest.

1 SECTION 27. There shall be allowed, in an action by the trustee
 2 process in a district court, in addition to other disbursements allowed
 3 by law, the following costs:

Items of costs
 in actions by
 trustee process
 in district
 courts.
 G. S. 156, § 27.
 1877, 177, § 1.
 P. S. 198, § 31.
 R. L. 203, § 28.
 1917, 326.
 1924, 108, § 4.

- 4 To the plaintiff, —
- 5 For a writ and declaration, one dollar.
- 6 For an attorney's fee, one dollar and fifty cents.
- 7 For a term fee, if there is an appearance, one dollar; and if not,
 8 seventy-five cents.
- 9 For travel and attendance, such sum as the court may allow.
- 10 To the defendant, —
- 11 For an attorney's fee, one dollar and fifty cents.
- 12 For travel and attendance, such sum as the court may allow.

To the trustee, —	13
For an attorney's fee, fifty cents.	14
For an answer in writing, twenty-five cents.	15
For travel and attendance, such sum as the court may allow.	16
For an answer to interrogatories, such sum as the court may allow.	17
To an adverse claimant, —	18
Such sum as the court may allow.	19

SECTION 28. [REPEALED, 1924, 108, § 5.]

1

CHAPTER 262.

FEES OF CERTAIN OFFICERS.

SECT.	SECT.
	JURORS, WITNESSES, APPRAISERS, COMMISSIONERS, ETC.
JUSTICES OF THE PEACE.	25. Jurors' fees, etc.
1. Justices of the peace.	26. Service of process relative to inquests.
	27. Officer in cases against juvenile offenders.
DISTRICT COURTS.	28. Arrests for drunkenness.
2. District courts.	29. Witness fees.
3. Special justices.	30. Witnesses held in jail.
	31. Appraisers, etc.
CLERKS OF COURTS.	32. Interpreters, and witnesses from without the commonwealth.
4. Clerks of courts.	33. Witnesses in neglect and delinquent cases.
5. Copies.	
6. Additional fees for record of judgment.	TOWN CLERKS.
7. Fees collected in advance.	34. Fees.
	FOR MARRIAGES.
SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES.	35. Marriages.
8. Sheriffs, etc.	
9. Processes returned by mail, etc.	STATE SECRETARY.
10. Use of conveyance.	36. State secretary.
11. Leaving copy of writ, etc.	37. Examination of the records, etc.
12. Deputy sheriff for attendance upon county commissioners.	
13. Serving precepts for elections, etc.	REGISTERS OF DEEDS.
14. In supplementary process, etc., proceedings.	38. Registers of deeds.
15. Copies of writs, etc.	
16. Service of process issued by land court.	LAND COURT.
17. Service of execution of ejectment, etc.	39. Certain fees of land court.
18. Officer to specify items if required.	
19. Endorsement of fees on writ. Certificate of use of conveyance.	REGISTERS OF PROBATE AND INSOLVENCY.
20. Making search for person, etc., named in writ, etc.	40. Registers of probate and insolvency.
21. Allowance of expense in criminal cases.	
22. Attendance upon certain courts.	NOTARIES PUBLIC.
	41. Notaries public.
MAGISTRATES.	
23. Examination of sureties, etc.	
24. Certain bail fees limited.	

SECT.
 COMMISSIONERS IN OTHER STATES,
 42. Commissioners in other states, etc.

GENERAL PROVISIONS.
 43. Cases not specified.
 44. Copies.
 45. "Page" defined.
 46. List of fees to be posted in public offices.
 47. Return of expense in criminal cases under oath.
 48. Single fees only for service, etc., of processes at same time.
 49. No fee for issuing or serving more than one mittimus, etc.
 50. Salaried officers not to be paid fees, except, etc.
 51. Fees and expenses of officers in criminal cases.

SECT.
 52. Payment of fees and expenses.
 53. Certain officers.
 54. Compensation of officers for attending superior court in criminal cases.
 55. Railroad police.
 56. Certain public officers not entitled to witness fees, etc.
 57. Officers may be allowed expenses.
 58. Penalty.
 59. Witnesses' fees apportioned in certain cases.
 60. Witnesses' fees to be refused in certain cases.
 61. Officers not to purchase orders, etc.
 62. Penalty for false certificates of witnesses, etc.
 63. Refusal of fees to delinquent magistrate.
 61. Refusal of fees to complainant.

JUSTICES OF THE PEACE.

1 SECTION 1. The fees of justices of the peace shall be as follows:
 2 For a subpoena for one or more witnesses, ten cents.
 3 For taking a deposition, fifty cents; for writing the deposition and
 4 caption, at the rate of twelve cents a page; for notice to the adverse
 5 party, twenty cents. The justice shall certify his fees and the deponent's
 6 fees on the deposition.
 7 For administering an oath required by law, except on a trial or ex-
 8 amination before him, to one or more persons at one time, twenty-five
 9 cents.
 10 For the acknowledgment of a deed by one or more grantors, if taken
 11 at one time, twenty-five cents.
 12 For issuing a summons, process or warrant under section thirty-six
 13 of chapter two hundred and eighteen, two dollars.
 14 For taking a deposition to perpetuate testimony, each justice shall be
 15 entitled to the fees prescribed for all services which are personally ren-
 16 dered by him.

Justices of the
 peace.
 1795, 41, § 1.
 R. S. 122, § 1.
 G. S. 157, § 1.
 §§ 1, 2.
 1860, 191, § 1.
 1896, 193, § 2.
 1879, 254.
 P. S. 199, § 1.
 R. L. 204, § 1.
 1925, 81.

DISTRICT COURTS.

1 SECTION 2. The fees of district courts shall be as follows:
 2 In civil actions, —
 3 For a blank writ of original summons or attachment and summons,
 4 five cents.
 5 For the entry of an action, or for the filing of a petition, including
 6 filing of papers, entering up and recording judgment, one dollar.
 7 For each order of notice and rule of reference, fifty cents.

District
 courts.
 1795, 41, § 1.
 R. S. 122, § 2.
 1853, 369.
 1855, 419, § 14.
 1859, 241.
 G. S. 157, § 2.
 1870, 330, § 2.
 1877, 177, § 2.
 240.
 1879, 226, § 1.

P. S. 199, § 2. 1904, 350, § 1. 1913, 38, § 1.
 R. L. 204, § 2. 1909, 186.

1 SECTION 3. A special justice, when not holding court, shall be paid
 2 by the county two dollars for each summons, process or warrant issued
 3 by him.

Special justices.
 1879, 254.
 P. S. 199, § 3.

CLERKS OF COURTS.

Clerks of courts.	SECTION 4. The fees of clerks of courts shall be as follows:	1
1795, 41, § 1.	For a blank writ of attachment and summons or an original summons,	2
R. S. 122, § 2.	five cents.	3
1853, 369.	For a subpoena for one or more witnesses, ten cents.	4
1856, 246.	For a venire facias for jurors, six cents.	5
G. S. 157, § 3.	For a writ of review or other writ in civil proceedings, not before men-	6
P. S. 199, § 4.	tioned, five cents.	7
1888, 257, §§ 3, 5.	For entry of an action or suit, or of a petition in the supreme judicial	8
1890, 209, § 2;	or superior court or for filing a petition to the county commissioners, three	9
256; 360.	dollars, and for entry in the superior court of a libel for divorce or for	10
1891, 87.	affirming or annulling marriage, five dollars, each of which fees shall be	11
1891, 91;	paid by the party entering the same, and no other fee shall be charged for	12
333, § 1.	taxing costs, for issuing any subpoena, injunction or execution or for	13
1900, 372, § 3.	issuing any order of notice or other mesne, interlocutory or final order,	14
R. L. 204, § 6.	rule, decree or process authorized by law.	15
1904, 350.	Upon the commencement of supplementary proceedings under chapter	16
1926, 363, § 1.	two hundred and twenty-four there shall be paid to the clerk an entry fee	17
161 Mass. 593.	of three dollars. The entry fee and the fees of witnesses and officers shall	18
168 Mass. 304.	be allowed the creditor as costs. The plaintiff or creditor making affi-	19
236 Mass. 326.	davit to the court as provided in section two or six of said chapter shall	20
252 Mass. 154.	pay a fee of one dollar, which fee, together with any sums paid under	21
1862, 162, § 9.	section twelve of said chapter shall be taxed in the plaintiff's or creditor's	22
P. S. 102, § 14.	costs. The only other fees under said chapter, except as provided in	23
1891, 313.	section nine of said chapter and except those of officers, shall be payable	24
1897, 466, § 2.	in advance by the defendant or debtor as follows:—	25
R. L. 168, §§ 14, 74.	For notice to the plaintiff or creditor of the desire of the defendant or	26
1913, 471, § 7.	debtor to submit to an examination under said chapter, three dollars;	27
1927, 334, § 3.	For approving or disapproving sureties, two dollars;	28
1931, 426, § 306.	For a writ of habeas corpus, one dollar.	29
	For the entry, record and transmission of papers of each question or	30
	cause in the supreme judicial court for the commonwealth, three dollars.	31
	For a certificate of the proof of a deed in court, twenty cents.	32
	For the warrant for a county tax, twenty cents.	33
1781, 36.	For taking and recording a recognizance under chapter two hundred	34
1782, 21, § 8.	and fifty-six, fifty cents.	35
R. S. 118, § 19.	G. S. 152, § 15.	P. S. 193, § 15.
		R. L. 199, § 10.
	In civil actions which are entered by the commonwealth or by a county	36
	no entry fee shall be paid; but, if the commonwealth or the county pre-	37
	vals, the entry fee shall be taxed against the other party.	38
	In civil actions in which Boston is a party no fee or expense shall be	39
	paid to any clerk of a court of Suffolk county by or on behalf of the city;	40
	but, if the city prevails, the fees allowed by law shall be taxed.	41
Copies.	SECTION 5. When clerks cause copies to be printed which they are	1
1879, 300, § 2.	required to furnish, they shall make no charge for such printed copies	2
P. S. 199, § 5.	in excess of the amount actually paid for the printing thereof. They	3
R. L. 204, § 7.	may require the estimated cost of said printing to be paid in advance,	4
1 Op. A. G. 522.	and they shall supervise the printing and correct the proofs without	5
	charge. All written copies, including such as are prepared for printing,	6
	shall be charged for at the rate of twenty cents a page.	7

1 SECTION 6. When a judgment or decree is entered up, and upon
 2 inspection it appears that the record thereof or the record of the pro- Additional
 3 ceedings will be of unusual length, the court may order the prevailing fees for record
 4 party to pay such amount, in addition to the entry fee, as may be just of judgment.
 5 and equitable. 1888, 257, § 7.
 R. L. 204, § 8.

1 SECTION 7. Clerks of the courts shall collect all fees in advance. Fees collected
 1888, 257, § 8. R. L. 204, § 9. 168 Mass. 304. in advance.

SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES.

1 SECTION 8. The fees of sheriffs, deputy sheriffs and constables for Sheriffs, etc.
 2 the service of civil process shall be as follows:

3 For service of an original summons or scire facias, either by reading
 4 it or by leaving a copy thereof, one dollar for each defendant upon
 5 whom service is made, except as herein otherwise provided.

6 For service of a libel for divorce, including copy, five dollars.

7 For service of a capias, of an attachment with summons or of a Fees for serv-
 8 trustee process, one dollar for each service upon each defendant or ice of writs, etc.
 9 trustee. 1795, 41, § 1.
 R. S. 122, § 5.
 G. S. 157,
 §§ 4, 7.

10 For service of subpoena in a bill in equity under chapter two hun- 1860, 101, § 1.
 11 dred and fifty-four, fifty cents for each defendant upon whom service 1865, 101.
 12 is made; for each copy of such subpoena, thirty cents; for filing an at- 1877, 177, § 1.
 13 tested copy of such subpoena at the registry of deeds, fifty cents. 1878, 272, § 1.
 P. S. 199, § 6.
 R. L. 204, § 10.
 1913, 611,
 §§ 1, 18.

14 For each copy of a supreme judicial, superior, probate or land court 1917, 326.
 15 writ, precept or process, except as herein otherwise provided, one dollar. 1921, 259.
 162 Mass. 514.
 139 Mass. 296.

16 For each copy of a district court writ, precept or process, fifty cents.

17 If the officer by the direction of the plaintiff or his attorney makes a
 18 special service of a writ or precept, either by attaching personal property
 19 or arresting the body, he shall be entitled to one dollar for each de-
 20 fendant upon whom the writ is so served, and four dollars additional for
 21 custody of the body arrested, and at the same rate for each day during
 22 which he has such custody. If the officer employs an assistant in the
 23 arrest of the body, he shall be entitled to two dollars a day for such
 24 assistant.

25 For the custody of personal property attached, replevied or taken on Custody of
 26 execution, not more than three dollars for each day of not more than personal
 27 eight hours for the keeper while he is in charge, and not more than one property, etc.
 28 dollar a day for the officer for a period not longer than ten days; but the 182 Mass. 144.
 235 Mass. 258.

29 officer may be allowed a greater compensation for himself or for his
 30 keeper, or compensation for a longer period, by the written consent of
 31 the plaintiff and the defendant whose property has been attached, re-
 32 plevied or taken on execution, or by order of the court upon a hearing.
 33 He shall also be entitled to expenses for packing, labor, teaming, storage
 34 and taking and preparing a schedule of property attached, replevied or
 35 taken on execution, if he certifies that such expenses were necessary and
 36 are reasonable.

37 For an attachment on mesne process of land or of any leasehold Attachment of
 38 estate, one dollar for each defendant against whom an attachment is real estate, etc.
 39 made, five cents a mile each way for travel from the place of service to 1838, 186.
 40 the registry, and his fee for the copy deposited in the registry of deeds 1839, 80.
 41 or land court, together with the recording fees actually paid. 1847, 267, § 3.
 G. S. 123, § 52.
 1870, 264, § 1.
 1873, 267, § 1.
 P. S. 161, § 63.
 R. L. 167, § 60.
 1913, 611,
 §§ 1, 18.

42 For a special attachment of real estate, one dollar additional for each
 43 person against whom an attachment is made.

Service of writ of replevin, etc.	For the service of a writ of replevin: for seizure of property, one dollar	44
	for each defendant; securing and swearing appraisers, two dollars, and	45
	the actual amount paid to appraisers, as hereinafter provided; examin-	46
	ing and approving sureties, one dollar; delivery of property replevied,	47
	one dollar; for each service, one dollar; for each copy, at the rate herein-	48
	before provided for copies of writs, precepts or other processes.	49
Levy on real estate, etc.	For a levy on real estate: for preparing and serving notice of sale,	50
	including copy and travel, three dollars for each debtor.	51
	For preparing and posting notices of sale, six dollars.	52
	The necessary expenses of advertising.	53
1862, 190, § 3. P. S. 172, § 6. R. L. 178, § 6. 1913, 611, §§ 1, 18.	For the sale of land or of any leasehold estate, five dollars.	54
	For preparing, executing and acknowledging deed, five dollars.	55
	For travel, five cents a mile each way from the place where he receives	56
	the execution to the office of the register of deeds, and his fee for the	57
	copy.	58
Sale of personal property on mesne process, etc.	For a sale of personal property on mesne process or on execution the	59
	following:	60
	For service of a copy of notice to appoint appraisers, one dollar for	61
	each person upon whom service is made.	62
	The necessary expenses of taking and preparing a schedule of property	63
	proposed to be sold.	64
	For attendance upon and swearing appraisers, two dollars.	65
	The amount actually paid to appraisers as hereinafter provided.	66
	For preparing and posting notice of a proposed sale, one dollar.	67
	The necessary expenses of keeper, labor and advertising.	68
	For custody of property, one dollar a day.	69
	For services as auctioneer, or for services of an auctioneer in selling	70
	property, a fair and reasonable amount.	71
	If the sale is made on execution, poundage may be charged as herein-	72
	after provided.	73
	The fair compensation for the services of an appraiser shall not be	74
	more than three dollars for each day's service, but the officer may be	75
	allowed a greater compensation for the appraisers by an order of the	76
	court.	77
	For each adjournment of sale of real or personal property, two dollars.	78
Taking bail, etc.	For taking bail and furnishing and writing the bail bond, one dollar,	79
	which shall be paid by the defendant, and taxed in his bill of costs, if	80
	he prevails.	81
Serving executions, poundage.	For serving an execution in a personal action by copy and demand	82
	on debtor or on trustee, one dollar and travel, if the execution is not	83
	collected in whole or in part; for serving an execution in a personal	84
	action, and collecting damages or costs on an execution, warrant of	85
	distress or other like process, for an amount not exceeding one hundred	86
	dollars, four cents for every dollar; all above one hundred dollars, and	87
	not exceeding five hundred dollars, two cents for every dollar; and all	88
	above five hundred dollars, one cent for every dollar; but such per-	89
	centage shall be allowed only upon the amount actually collected. A	90
	levy of the execution upon his body shall be considered, so far as the	91
	fees of the officer are material, a full satisfaction of the execution if	92
	the debtor has recognized with surety or sureties as required by law.	93
Serving writ of seisin, etc. 102 Mass. 514.	For serving a writ of seisin or possession in a real action, five dollars	94
	for each parcel.	95
Serving execution upon judgment, etc.	For serving an execution upon a judgment for partition, or for assign-	96
	ment of dower or curtesy, one dollar a day.	97

- 98 For serving a writ of *capias* in a civil proceeding, five dollars. Serving writ of *capias*.
- 99 For serving a writ of *habeas corpus*, five dollars, together with the Serving writ of *habeas corpus*.
- 100 fee for service and copy.
- 101 For serving a *venire* or notice to jurors for attendance upon any Serving a *venire*.
- 102 court, civil or criminal, fifty cents for each person upon whom the serv-
- 103 ice is made.
- 104 For summoning witnesses, fifty cents for each person upon whom serv- Summoning
- 105 ice is made, and twenty-five cents for each copy served, together with witnesses.
- 106 the fee paid to the witness.
- 107 For dispersing treasurer's warrants and proclamations of all kinds, Dispersing
- 108 eight cents each, without allowance for travel. warrants, &c.
- 109 For travel in the service of original writs, executions, warrants, sum- Travel
- 110 monses, subpoenas, notices and like processes, five cents a mile each 1862, 216, §§ 3,
- 111 way, to be computed from the place of service to the court or place of 6, 7
- 112 return; and if the same precept or process is served upon more than 1865, 101,
- 113 one person, the travel shall be computed from the most remote place of 1882, 215.
- 114 service, with such further travel as was necessary in serving it; if the
- 115 distance from the place of service to the place of return exceeds twenty
- 116 and does not exceed fifty miles, five cents a mile one way only shall be
- 117 allowed for all travel exceeding twenty miles, and, if it exceeds fifty
- 118 miles, only one cent a mile one way shall be allowed for all travel ex-
- 119 ceeding that distance.
- 120 For travel in the service of *venires* and notices to jurors, five cents a
- 121 mile for the distance actually traveled.
- 122 For serving criminal process, as follows: Serving
- 123 For serving a warrant of *capias* in a criminal proceeding, fifty cents, criminal
- 124 and of a summons upon the defendant, ten cents, for each person upon process
- 125 whom the same is served. 1862, 216, § 1,
- 126 1881, 127, § 2.
- 127 For a copy of a *mittimus*, warrant or other precept required by law Copies
- 127 in criminal cases, twenty-five cents. 1862, 216, § 8.

1865, 259, § 1.

128 For travel in summoning witnesses in criminal cases, ten cents a mile
 129 each way for a distance of not more than twenty miles, and for any
 130 excess over twenty miles, five cents a mile each way, and no more.
 131 The distance shall be computed from the most remote place of service
 132 to the place of return, but upon a subpoena the court shall reduce the
 133 fee for travel to a reasonable amount for the service performed if the
 134 travel charged has not been actually performed by the officer who made
 135 the service.

1 SECTION 9. If the person who delivers or forwards a process to an Processes
 2 officer for service requests him to return it by mail or express, com- returned by
 3 pensation shall not be allowed for more than twenty miles' travel in mail, &c.
 4 the service, unless the officer actually and necessarily travels more than 1878, 272, § 1.
 5 that distance in serving the same, exclusive of travel from the place of P. S. 199, § 7.
 6 service to the place of return, and an officer in such case, who properly R. L. 204, § 11.
 7 directs such process to the place of return and sends it by mail, postage 1913, 611,
 8 prepaid, or delivers it to an express company, shall not be liable for §§ 2, 18.
 9 damages if it fails to reach its destination.

1 SECTION 10. If it is necessary in the service of civil process for an Use of convey-
 2 officer to use a conveyance for a distance exceeding two miles one way, ance
 3 he may be allowed therefor fifteen cents a mile for the distance traveled 1864, 274, § 1.
P. S. 199, § 8.
R. L. 204, § 12.

1905, 336. one way, not exceeding thirty miles. If he uses the conveyance of another 4
 1912, 184. person he shall be allowed the amount actually expended by him therefor; 5
 1913, 611, §§ 3, 18. but no allowance for the actual amount so expended by him shall be made 6
 1931, 426, § 40. unless the officer certifies that it was necessary for him to use a convey- 7
 102 Mass. 514. ance, and that he actually used it for the distance, and paid therefor the 8
 110 Mass. 123. amount stated in his certificate. 9

Leaving copy SECTION 11. Where the officer is by law directed to give or leave a 1
 of writ, etc. copy of any process, he may charge for each copy at the rate prescribed 2
 1913, 611, § 5. by section fifteen, except as otherwise provided. 3

Deputy sheriff SECTION 12. A deputy sheriff shall be allowed five dollars a day for 1
 for attendance upon county attendance upon a meeting of the county commissioners by their order, 2
 commissioners. and five cents a mile for travel out and home once a week during the 3
 1795, 41, § 1. attendance, to be paid by the county. 4
 R. S. 122, § 5.
 1843, 75, § 2. 1856, 185 G. S. 157, § 4. 1866, 190. P. S. 199, § 11. R. L. 204, § 15. 1913, 611, §§ 6, 18.

Serving pre- SECTION 13. Sheriffs and other officers shall be paid by the common- 1
 cepts for wealth, for serving precepts for the election of representatives in con- 2
 elections, etc. G. S. 6, § 10. gress, fifty cents each, and for the service of subpoenas issued by order 3
 1849, 208. of the general court or either branch thereof the same fees as are allowed 4
 1859, 257, § 4. of the service of subpoenas issued by a court. 5
 G. S. 157, § 4. P. S. 199, § 12. R. L. 204, § 16. 1913, 611, § 7.
 1899, 218.

In supple- SECTION 14. The fees of sheriffs, deputy sheriffs and constables in 1
 mentary proceedings under the provisions of chapter two hundred and twenty- 2
 process, etc., four shall be as follows: 3
 proceedings. 1888, 419, § 13. For the service of the summons, or any other process, the fee for which 4
 1889, 415, § 6. is not otherwise provided by this section, for copies and for travel in 5
 R. L. 168, § 76. serving the same, the same fees as for serving an original summons in an 6
 1913, 611, § 8, 18. action at law. 7
 1927, 334, § 4. For the commitment of a defendant or debtor under the provisions of 8
 1931, 426, § 11. said chapter two hundred and twenty-four, one dollar for each commit- 9
 10
 11 For each day's attendance at court on the examination of a defendant 11
 12 or debtor in his custody, or in the service of a writ of habeas corpus under 12
 13 section twenty-two of said chapter, including the fee for custody, five 13
 14 dollars. 14
 15 The necessary expense of a conveyance to and from the jail in the 15
 16 service of such a process. 16

Copies of writs, SECTION 15. The fee for copies of any process of more than one page 1
 etc. shall be at the rate of fifty cents a page, except as provided in section 2
 1913, 611, § 10. eight. 3

Service of proc- SECTION 16. In the service of any process issued by the land court, 1
 ess issued by the fees shall be one dollar for posting a copy on each parcel of land, 2
 land court. and the same fees for copy, service and travel as are hereinbefore pro- 3
 1913, 611, § 11. vided for the service of writs. 4

Service of SECTION 17. In the service of an execution of ejection the fees 1
 execution of shall be: for demand, one dollar; for delivery, one dollar; for all neces- 2
 ejection, etc. sary expenses, including packing, teaming and labor; and the officer 3
 1913, 611, § 12.

4 may be allowed additional compensation by an order of the court from
5 which the execution issued.

1 SECTION 18. An officer receiving fees for any official duty or service,
2 who, upon request of the person paying them, refuses or neglects to
3 make out in writing in his return a particular account of such fees,
4 specifying for what they respectively accrued, shall forfeit to such person
5 three times the amount so paid.

Officer to
specify items
if required.
1795, 41, § 5.
R. S. 122, § 18.
G. S. 157, § 17.
P. S. 199, § 27.

1893, 469, § 2.

R. L. 204, § 37.

1913, 611, §§ 14, 18.

1 SECTION 19. No fees for the service of any process of which the
2 officer is required to make a return shall be allowed, unless itemized and
3 endorsed on the process; and no allowance for the use of a conveyance
4 in the service of a civil process shall be made, unless the officer certifies
5 that it was necessary for him to use a conveyance, and that he actually
6 used such conveyance for the distance set forth in his certificate. An
7 officer who makes a false certificate under this section or section ten
8 shall forfeit thirty dollars for each offence, to the use of the common-
9 wealth.

Endorsement
of fees on writ.
Certificate of
use of con-
veyance.
1795, 41, § 1.
R. S. 122, § 9.
G. S. 157, § 18.
1864, 274.
§§ 2, 3.
P. S. 199, §§ 28,
29.
R. L. 204, § 38.
1905, 336.

1913, 611, §§ 15, 18.

1931, 426, § 42.

110 Mass. 423.

1 SECTION 20. An officer shall not be allowed any fees for making a
2 diligent search for any person named in a process, except the amount
3 actually expended by him in making such search and stated in his
4 return.

Making
search for
person, etc.,
named in
writ, etc.

1913, 611, § 17.

1 SECTION 21. In the service of precepts in criminal cases, the officer
2 shall be allowed the actual, reasonable and necessary expenses incurred
3 in going or returning with the prisoner, and if he necessarily uses his
4 own conveyance, he shall be allowed therefor twenty cents a mile for
5 the distance traveled one way, and if he uses the conveyance of an-
6 other person, he shall be allowed the amount actually expended by him
7 therefor; but no allowance for the use of a conveyance shall be made
8 unless the officer certifies that it was necessary for him to use a con-
9 veyance and that he actually used it for the distance, and, if the con-
10 veyance of another was used, that he paid therefor the amount, stated
11 in his certificate. If, in the service of a mittimus, the journey from
12 the town where the prisoner is held to the town where he is to be com-
13 mitted can be made by railroad, no allowance shall be made for the
14 use of any other conveyance, unless the court from which the mittimus
15 is issued by general or special order has authorized the use thereof.

Allowance of
expense in
criminal cases.
1860, 191, § 3.
1862, 216, § 1.
P. S. 199, § 9.
1885, 254.
R. L. 204, § 13.
1930, 370.

1 SECTION 22. The fee for attending before a district court or trial
2 justice shall be one dollar a day, upon one warrant only, if there are
3 two or more against the same defendant at the same time. If the
4 defendant in a criminal case is brought in by a summons, the fee for
5 attendance shall be the same as that taxed upon a warrant.

Attendance
upon certain
courts.
R. S. 122, § 5.
1843, 75, § 2.
1856, 187.
G. S. 157, § 4.
1876, 227, § 4.

1881, 127, § 2.

P. S. 199, § 10.

R. L. 204, § 14.

1910, 317.

MAGISTRATES.

1 SECTION 23. The fees of magistrates for the examination of sureties
2 and approval of bonds or for the taking of recognizances shall be in
3 each case two dollars for the citation, if any, and the first day's hearing,

Examination of
sureties, etc.
1817, 186, § 1.
R. S. 98, § 41.
1848, 320, § 2.

1850, 27, § 2
1855, 249, § 1;
276, § 6.

and two dollars in addition for each adjournment thereof. These fees shall be paid in advance. 4
5

1857, 141, §§ 22, 29
G. S. 123, § 106; 124,
§ 48; 125, § 4.
1866, 193, § 1.
1867, 137, § 2.
1870, 291, § 4; 309, § 3.

1877, 97, § 2.
P. S. 161, §§ 124, 127;
162, § 68, 163, § 4; 183,
§ 71; 184, § 20.
1888, 419, § 13.

1889, 415, § 6
R. L. 167, §§ 118, 122;
168, § 75; 169, § 4.
189, § 65; 190, § 17.
1911, 150.

Certain bail fees limited.
1907, 327.

SECTION 24. The maximum fee to be charged by any person authorized to take bail in the case of a person arrested for any misdemeanor shall be two dollars. 1
2
3

JURORS, WITNESSES, APPRAISERS, COMMISSIONERS, ETC.

Jurors' fees, etc.
1795, 41, § 1.
1805, 63, § 1.
1807, 140, § 16.
R. S. 122, § 10.
1848, 271.
1855, 120, § 1.
G. S. 157, § 8.
1866, 121.
1869, 73.
1873, 36.
1879, 182.
P. S. 199, § 13.
1899, 383.
R. L. 204, § 17.
1903, 256.
1908, 353.
1919, 112.
1924, 111.
Op. A. G. (1919) 78.

SECTION 25. The compensation of traverse jurors impanelled to try cases of murder in the first degree shall be seven dollars, and that of all other traverse jurors and of grand jurors six dollars, for each day's service. All jurors shall receive for each day of actual attendance five cents a mile for travel out and home. If the expense of a juror who attends court, necessarily and actually incurred for transportation out and home once in each day, exceeds the amount of the said allowance for travel, he shall be allowed the amount of such expense in lieu of the said travel allowance. If a grand or traverse juror is required to be in attendance for five or more consecutive days he shall receive his fees not later than the end of every fifth day of such attendance. 1
2
3
4
5
6
7
8
9
10
11

Service of process relative to inquests.
1898, 204, § 1.
R. L. 204, § 18.

SECTION 26. Officers who serve subpoenas or other processes in connection with inquests held by district courts shall be paid their fees and expenses by the county as in criminal cases, in the same manner as the fees of witnesses are paid in criminal cases in said courts. 1
2
3
4

Officer in cases against juvenile offenders.
1889, 469.
R. L. 204, § 19.

SECTION 27. In cases against juvenile offenders, an officer who attends as a witness at a place other than that of his residence may be allowed by the court or justice his increased necessary expenses, not exceeding the witness fee before such court or justice, and the reasonable necessary expense of serving a mittimus. 1
2
3
4
5

Arrests for drunkenness.
1892, 200,
§§ 1, 2.
R. L. 204, § 20.
1 Op. A. G. 597.

SECTION 28. If an officer, whose compensation for services in criminal proceedings is derived from taxable fees, makes an arrest for drunkenness and the person arrested is discharged without being taken into court or before a trial justice, he shall be entitled to the same fees as if a complaint had been made against the person arrested. If the arrest is made without a warrant, the officer shall make a sworn statement of his fees, in the nature of a return upon a precept, and shall send it to the court or trial justice having jurisdiction of the offence. Special police officers who make arrests for drunkenness in towns where the police officers or constables receive salaries shall be entitled to no fees under this section. 1
2
3
4
5
6
7
8
9
10
11

Witness fees.
1795, 41, § 1.
1805, 63, § 2.
1817, 88.
R. S. 122, § 10.
1848, 123.
1849, 208.
1855, 120, § 2.
G. S. 157, § 8.
1860, 191, § 1.
1868, 87.

SECTION 29. The fees for attending as a witness before the general court, the supreme judicial court, the superior court, the land court, a probate court or court of insolvency, a district court, county commissioners, a trial justice, a referee, an arbitrator, the department of industrial accidents or the board of conciliation and arbitration, or on any other occasion for which no express provision is made, or allowed to 1
2
3
4
5
6

7 persons, except the debtor, who are examined under section eighty-two
 8 of chapter two hundred and sixteen, unless fraudulent conduct is charged
 9 and proved against them, shall be one dollar and fifty cents a day, and
 10 five cents a mile for travel out and home; provided, that if the witness
 11 has a usual place of business or employment in the city or town where
 12 the court trial or hearing is held, travel shall be reckoned out and to
 13 such place of business or employment, and not out and home. Each
 14 witness shall certify in writing the amount of his travel and attendance.

1870, 151.
 P. S. 199, § 14.
 1890, 277.
 R. L. 204, § 21.
 1909, 514, § 15.
 1912, 571, § 8.
 1913, 444.
 1915, 123; 275.
 1920, 207.
 1929, 298, § 1.
 1 Mass. 295.
 145 Mass. 203.
 176 Mass. 48.

1 SECTION 30. A witness who is detained in jail under section forty-
 2 nine of chapter two hundred and seventy-six because of his inability
 3 to furnish sureties shall be allowed as a witness fee such sum as the
 4 court shall order, but not less than one dollar and fifty cents for each
 5 day of his detention.

Witnesses held
 in jail
 1891, 406, § 2.
 R. L. 204, § 22.

1 SECTION 31. The court shall determine the compensation of private
 2 persons who perform service required by law, or in the execution of
 3 legal process, if no other provision is made therefor.

Appraisers,
 etc.
 1795, 41, § 1.

R. S. 122, § 10. P. S. 199, § 15. R. L. 204, § 23.
 G. S. 157, § 8. 1886, 135.

1 SECTION 32. District courts and trial justices may allow reasonable
 2 compensation to interpreters and to witnesses from without the com-
 3 monwealth in criminal proceedings before them, which shall be paid by
 4 the county in the same manner as witness fees.

Interpreters,
 and witnesses
 from without
 the common-
 wealth.

1893, 385. R. L. 204, § 24.

1 SECTION 33. All laws in relation to the payment of witness fees and
 2 to the payment of expenses of officers in criminal cases shall apply in
 3 cases arising under sections forty-two to sixty-four, inclusive, of chapter
 4 one hundred and nineteen.

Witnesses in
 neglect and
 delinquent
 cases.
 1907, 158.

TOWN CLERKS.

1 SECTION 34. The fees of town clerks shall be as follows:
 2 For entering notice of an intention of marriage and issuing the certifi-
 3 cate thereof, and for entering the certificate of marriage which is filed by
 4 persons married out of the commonwealth, one dollar, which shall be
 5 paid at the time of such entry or filing.
 6 For a certificate of a birth or death, twenty-five cents.

Fees.
 1795, 41, § 1.
 R. S. 122, §§ 11,
 12.
 1849, 202, § 2.
 1850, 121, § 4.
 G. S. 157, § 9.
 P. S. 199, § 16.
 R. L. 204, § 25.
 1908, 121.

1911, 736, § 5. 1919, 168, § 2.

FOR MARRIAGES.

1 SECTION 35. The fee for lawfully solemnizing and certifying a mar-
 2 riage shall be one dollar and twenty-five cents.

Marriages.
 1795, 41, § 1.

R. S. 122, § 11. P. S. 199, § 17. 201 Mass. 261.
 G. S. 157, § 10. R. L. 204, § 26.

STATE SECRETARY.

1 SECTION 36. The fee for copies of any official papers certified by
 2 the state secretary shall be fifty cents for the first page and forty cents
 3 for each additional page. The fee for the state secretary's certificate on
 4 copies or otherwise shall be fifty cents each.

State secretary.
 1795, 41, § 1.
 R. S. 122, § 13.
 G. S. 157, § 11.
 1863, 231, § 1.

1865, 259, § 1. P. S. 199, § 18. 1920, 598, § 8.
 1870, 224, § 59. R. L. 204, § 27. 1928, 360, § 3.

Examination of the records, etc. 1863, 231, § 3. P. S. 199, § 19. R. L. 204, § 28. 2 Op. A. G. 610.

SECTION 37. Every person upon whose application an examination of records or papers is made by direction of the state secretary shall pay to the secretary therefor the actual expense thereof, and of copying the manuscript or record required; but any person whom the secretary considers to be entitled to exemption from said fees shall receive such service and copies for such reduced fees, or without fee, as the secretary may determine.

REGISTERS OF DEEDS.

Registers of deeds. 1795, 41, § 1. R. S. 90, § 30; 122, § 15. 1859, 311, § 1. G. S. 123, § 53; 157, § 12. P. S. 161, § 24; 199, § 20. 1896, 443, § 7. R. L. 22, § 22; 167, § 61; 178, § 6; 201, § 29. 1908, 365. 1909, 160. 1910, 273. 1912, 502, § 25. 1915, 120, § 3. 1920, 495, § 87. 1927, 63, § 2. 1928, 386, § 3. 1930, 253, § 1, 2. 266 Mass. 329. 4 Op. A. G. 52.

SECTION 38. The fees of registers of deeds, except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit, shall be as follows:

For entering and recording any paper, certifying the same on the original, and indexing it, and for all other duties pertaining thereto, including, when a marginal reference or references are required, one such reference, one dollar. If the paper contains more than one page, at the rate of forty-five cents for each page after the first; provided, that if the paper contains the names of more than two parties thereto, other than the husband or wife of the grantor or grantee, an additional fee of ten cents each shall be charged for indexing the names of additional grantors or grantees or other parties thereto. The minimum fee for recording a deed or conveyance or a mortgage shall be two dollars.

For all copies, at the rate of forty cents a page.

For entering in the margin a discharge of a mortgage, fifty cents.

For entering an attachment or an execution, for each defendant named, fifty cents.

For entering a discharge of an attachment or of a lien on buildings and lands, fifty cents.

For entering and filing a plan, of a size not over fourteen inches by nine and one half inches, one dollar; for larger sizes, not less than two dollars.

For entering a partial release of an attachment, fifty cents.

A fee of twenty-five cents each shall be collected for making, when required, any marginal reference the fee for which is not herein otherwise provided for.

LAND COURT.

Certain fees of land court. 1898, 562, § 110. R. L. 128, § 109. 1905, 249, § 3, 5. 1915, 120, § 3. 1923, 374, § 4. 1928, 386, § 4. 262 Mass. 45.

SECTION 39. The fees payable under chapter one hundred and eighty-five shall be as follows:

For the entry of every original petition or writ and transmitting it to the recorder, when filed with an assistant recorder, three dollars.

For every plan filed in an original proceeding, seventy-five cents, and for every new plan filed after original registration or for making a new plan on request of a registered owner, five dollars. The filing fee in a registry of deeds upon receipt from the recorder of the land court of a plan or copy of a plan shall be one dollar.

For indexing an instrument recorded while a petition for registration is pending, twenty-five cents.

For examining title, on a petition to register land, or on a petition to register easements or rights in land, the actual amount charged or allowed therefor to the examiner by the court.

For each notice by mail, twenty-five cents and the actual cost of printing.

17 For all services by a sheriff or deputy sheriff under provisions of
18 chapter one hundred and eighty-five, the same fees as are provided by
19 law for like services.

20 For each notice by publication, twenty-five cents and the actual cost
21 of publication.

22 For entry of an order dismissing a petition for registration of title,
23 or for foreclosure of a tax title, or a decree of foreclosure of a tax title
24 or of redemption, and sending a memorandum to the assistant recorder,
25 one dollar.

26 For entry of a decree of registration and sending a memorandum to
27 the assistant recorder, one quarter of one per cent of the assessed value
28 of the property registered, on the basis of the last assessment for mu-
29 nicipal taxation, in addition to any sum payable under section ninety-
30 nine of chapter one hundred and eighty-five, but in no one proceeding
31 shall the amount payable under this paragraph be less than ten nor
32 more than one thousand dollars.

33 For a copy of a decree of registration, foreclosure or redemption, one
34 dollar.

35 For the entry of an original certificate of title and issuing one dupli-
36 cate, three dollars.

37 For making and entering a new certificate of title, including issue of
38 one duplicate, one dollar.

39 For each additional duplicate certificate after the first, one dollar.

40 For the registration of every instrument, whether single or in dupli-
41 cate or triplicate, including entering, indexing and filing it and attesting
42 the registration thereof, and also making and attesting a copy of memo-
43 randum on one instrument or on a duplicate certificate when required,
44 two dollars.

45 For making and attesting copy of memorandum on each additional
46 instrument or duplicate certificate if required, seventy-five cents.

47 For filing and registering an adverse claim, three dollars.

48 For entering statement of change of residence or postoffice address,
49 including endorsing and attesting it on a duplicate certificate, fifty cents.

50 For entering any note in the entry book or in the registration book,
51 fifty cents.

52 For the registration of a suggestion of death or notice of issue of a
53 warrant in insolvency or of adjudication of bankruptcy, fifty cents.

54 For the registration of a partial release, discharge or release of a
55 mortgage or other instrument creating an encumbrance, or of an assign-
56 ment or extension of a mortgage, or of a power of attorney, seventy-
57 five cents.

58 For the registration of a memorandum or certificate of entry for
59 possession or deposition in proof thereof, seventy-five cents.

60 For the registration of any levy, or of any discharge or dissolution
61 of any attachment or levy, or of any certificate of or receipt for pay-
62 ment of taxes, or of a notice of any mechanic's lien or lien for labor or
63 materials, or a notice of any pending action or of a judgment or decree,
64 fifty cents.

65 For endorsing on any mortgage, lease or other instrument a memo-
66 randum of partition, one dollar.

67 For every petition after the original registration, one dollar.

68 For a certified copy of any decree or registered instrument, the same
69 fees as are provided for registers of deeds.

REGISTERS OF PROBATE AND INSOLVENCY.

Registers of probate and insolvency. 1893, 469, § 2. R. L. 204, § 30. 1926, 363, § 2.

SECTION 40. The fees of registers of probate and insolvency, payable in advance by the petitioner or libellant, shall be as follows: 1
 For the entry of a libel for divorce or for affirming or annulling marriage, five dollars. 2
 For the entry of a petition for the probate of a will, for administration on the estate of a person deceased intestate, of a petition under section thirty-five or thirty-six of chapter two hundred and nine by a husband or wife for authority to convey land as if sole, of a petition for partition, of a petition for change of name, of a petition for leave to carry on the business of the deceased, and for filing a representation of insolvency, and, except when the petition is certified by the register or assistant register to be incidental to proceedings already pending in the same county, for the entry of a petition for the appointment of a special administrator, conservator, trustee, receiver of the estate of an absentee, or of a guardian except when the petitioner certifies that the ward's estate does not exceed one hundred dollars, three dollars. 3
 For each certificate issued by the register, fifty cents. 4
 For copies of records or other papers in the charge of said registers at the rate of forty cents a page, except as otherwise provided by law. 5

NOTARIES PUBLIC.

Notaries public. R. S. 122, § 16. 1839, 93. G. S. 157, § 13. P. S. 199, § 21. R. L. 204, § 31.

SECTION 41. The fees of notaries public shall be as follows: 1
 For the protest of a bill of exchange, order, draft or check for non-acceptance or non-payment, or of a promissory note for non-payment, if the amount thereof is five hundred dollars or more, one dollar; if it is less than five hundred dollars, fifty cents; for recording the same, fifty cents; for noting the non-acceptance or non-payment of a bill of exchange, order, draft or check or the non-payment of a promissory note, seventy-five cents; and for each notice of the non-acceptance or non-payment of a bill, order, draft, check or note, given to a party liable for the payment thereof, twenty-five cents; but the whole cost of protest, including necessary notices and the record, if the bill, order, draft, check or note is of the amount of five hundred dollars or more, shall not exceed two dollars, and if it is less than five hundred dollars, shall not exceed one dollar and fifty cents; and the whole cost of noting, including recording and notices, shall in no case exceed one dollar and twenty-five cents. 2

COMMISSIONERS IN OTHER STATES.

Commissioners in other states, etc. 1862, 76. P. S. 199, § 22. R. L. 204, § 32. 118 Mass. 422. 139 Mass. 296.

SECTION 42. The fees of commissioners appointed under section four of chapter two hundred and twenty-two shall be as follows: 1
 For administering oaths and certifying the same under their official seals, one dollar for each; for taking acknowledgments of deeds and other instruments and certifying the same under their official seals, one dollar for each; for each written page contained in any deposition or affidavit taken by them, fifty cents; for administering the oath or affirmation to each deponent, one dollar; for authenticating, sealing up and directing each deposition, one dollar; for services not hereinbefore specified, the same fees as are allowed to justices of the peace in this 2

11 commonwealth for like services; but the court to which a deposition is
 12 returnable shall order further allowance therefor if it appears proper to
 13 do so.

GENERAL PROVISIONS.

1 SECTION 43. The fees of public officers for any official duty or serv- Cases not
 2 ice shall, except as otherwise provided, be at the rate prescribed in this R. S. 122, § 21.
 3 chapter for like services.

1855, 311, § 3.	1898, 562, § 110.	7 Gray, 128.
G. S. 157, § 14.	R. L. 128, § 109;	13 Gray, 77.
P. S. 199, § 23.	204, § 33.	118 Mass. 422.
1893, 469, § 2.	1913, 611, § 16.	2 Op. A. G. 610.

1 SECTION 44. The department of public utilities may charge ten cents
 2 a folio for copies of official documents and orders relating to common
 3 carriers. Other public officers required by law to furnish copies of records
 4 or other papers shall receive fees for such copies at the same rate as is
 5 allowed to registers of deeds, unless otherwise provided.

Copies.
1862, 259, § 1.
P. S. 199, § 24.
1893, 469, § 2.
R. L. 204, § 34.
1913, 784, § 7.

1 SECTION 45. A page, when used as the measure of computation, "Page"
 2 shall mean two hundred and twenty-four words. defined.

1795, 41, § 1.	G. S. 157, § 15.	1893, 469, § 2.
R. S. 122, § 22.	P. S. 199, § 25.	R. L. 204, § 35.

1 SECTION 46. Each of the officers before mentioned shall always keep
 2 posted in a conspicuous and convenient place in his office a printed or
 3 written list of the fees prescribed in this chapter so far as they relate
 4 to him.

List of fees to
 be posted in
 public offices.
 1795, 41, § 4.
 R. S. 122, § 17.

G. S. 157, § 16.	1893, 469, § 2.	1913, 611, § 13.
P. S. 199, § 26.	R. L. 204, § 36.	

1 SECTION 47. No fees shall be allowed upon the return of an officer
 2 upon a precept in a criminal case, in which expenses are charged, unless
 3 every item of expense incurred and the name of the person to whom
 4 each amount was paid is set forth under oath in the return; and no
 5 item of expense which may be considered unreasonable shall be allowed
 6 by the court or trial justice without satisfactory proof that the expense
 7 was necessarily incurred and the amount reasonable. But the superior
 8 court, with the written approval of the district attorney, or a district
 9 court or a trial justice, may, upon the petition of an officer named in
 10 sections fifty and fifty-one, allow extra compensation for any meritorious
 11 service for which the fees allowed by law are manifestly inadequate.
 12 No allowance shall be made for aid in the service of a mittimus, unless
 13 first authorized in writing by the court which issues it. Justices, clerks
 14 and assistant clerks of courts shall administer the oath to officers upon
 15 their returns, at their request; and no fee shall be allowed to an officer
 16 for such oath, and no justice of the peace shall be entitled to a fee for
 17 administering such oath.

Return of
 expense in
 criminal cases
 under oath.
 1862, 216, §§ 4,
 5, 12.
 P. S. 199, § 30,
 31.
 1890, 440, § 7.
 R. L. 204, § 39.

1 SECTION 48. If more than one criminal process is served upon the
 2 same defendant on the same day, or if two or more prisoners are con-
 3 veyed at one time by the same officer, by virtue of a mittimus, habeas
 4 corpus or state prison warrant, either on one process or on several pro-
 5 cesses, one traveling fee and one service only shall be allowed in con-
 6 veying such additional prisoner or prisoners, in addition to the actual
 7 reasonable expense necessarily incurred.

Single fees only
 for service, etc.,
 of processes at
 same time.
 1862, 216, § 2.
 P. S. 199, § 32.
 R. L. 204, § 40.

No fee for issuing or serving more than one mittimus, etc.
1862, 216, § 3.
P. S. 199, § 33.
R. L. 204, § 41.

SECTION 49. No fee shall be allowed to a trial justice for issuing more than one mittimus, nor to an officer for the service of more than one mittimus, in cases in which two or more persons are jointly convicted and sentenced to the same place of imprisonment; and, if the superior court is of opinion that a trial justice has improvidently issued two or more warrants against the same defendants for similar offences, no fees shall be allowed to the justice upon any of said warrants.

Salaries officers not to be paid fees, except, etc.
1862, 216, §§ 10, 15.
1876, 215; 227, § 4.
P. S. 199, §§ 34, 35.
1889, 469.
1890, 440, §§ 1, 9, 12.
1891, 325, § 1.
R. L. 204, § 42.
205 Mass. 110.
1 Op. A. G. 594, 603.
2 Op. A. G. 209.
Op. A. G. (1918) 22.

SECTION 50. No officer in attendance on any court, sheriff, deputy sheriff, jailer, constable, city marshal or other police officer who receives a salary or an allowance by the day or hour from the commonwealth or from a county, city or town shall, except as otherwise hereinafter provided, be paid any fee or extra compensation for official services performed by him in any criminal case; or for aid rendered to another officer; or for testifying as a witness in a criminal case during the time for which he receives such salary or allowance; or for services or as a witness at an autopsy or inquest; or in proceedings for commitment of insane persons; but his expenses, necessarily and actually incurred, and actually disbursed by him in a criminal case tried in the superior court, shall, except as provided in section fifty-two, be paid by the county where the trial is held, or in a criminal case tried in a district court or before a trial justice, by the town where the crime was committed. Whoever receives extra compensation or a witness fee in violation of this section shall be punished by a fine of not more than one hundred dollars.

Fees and expenses of officers in criminal cases.
1890, 440, § 2.
1891, 325, § 1.
R. L. 204, § 43.

SECTION 51. The fees and expenses of officers, other than those named in the preceding section, in a criminal case tried in the superior court, shall, except as provided in the following section, be paid by the county where the trial is held, and in a criminal case tried in a district court or before a trial justice, by the town where the crime was committed.

Payment of fees and expenses.
1910, 248.

SECTION 52. Except in Suffolk county, the fees and expenses of officers in the apprehension, trial or commitment of a person arrested or tried as a tramp or vagrant shall be paid by the county where the offence was committed.

Certain officers.
1890, 440, § 6.
R. L. 204, § 44.
1922, 377, § 1.
205 Mass. 110.

SECTION 53. Any officer named in section fifty who attends as a witness at a place other than his residence shall, instead of his expenses, be allowed the witness fee in the court or before the trial justice where he testifies. A police officer on duty at night who attends the superior court as a witness for the commonwealth shall be paid the same fees as any other witness. A police officer who is a witness for the commonwealth, and who under the direction of the district attorney aids in securing the attendance of other witnesses, may receive, instead of his expenses, witness fees for one day's attendance. Any police officer named in section fifty, except a police officer of the city of Boston, who attends as a witness in a criminal case pending in a district court or before a trial justice and who by reason of a continuance or postponement thereof at the request of the defendant, is required to again attend, shall, if not on duty and if it is so ordered by the court or trial

15 justice, be paid for such further attendance the same fee as other wit-
 16 nesses. Police officers shall serve subpoenas upon witnesses when re-
 17 quested by the district attorney, and their returns of service shall have
 18 the same force and effect as the return of a deputy sheriff or constable.

1 SECTION 54. A deputy sheriff or other officer attending the superior
 2 court for criminal business, who serves any subpoena or capias between
 3 the daily sessions of said court, may receive such extra compensation
 4 as the district attorney may allow. The officers shall make return, on
 5 oath, of the time actually occupied and of all expenses actually in-
 6 curred and paid in performing such extra service.

Compensation
 of officers for
 attending su-
 perior court in
 criminal cases.
 1890, 440, § 7.
 R. L. 204, § 45.

1 SECTION 55. Railroad police shall not be entitled to any fees for
 2 attendance upon a trial as witnesses for the commonwealth, but they
 3 may be allowed their necessary expenses therefor.

Railroad police
 1890, 440, § 9.
 R. L. 204, § 46.

1 SECTION 56. Except as otherwise provided, an officer of the com-
 2 monwealth whose salary is fixed by law, or any employee of the com-
 3 monwealth receiving regular compensation therefrom, other than a
 4 police officer of the metropolitan district commission, shall not be en-
 5 titled to a witness fee before any court or trial justice in a cause in which
 6 the commonwealth is a party. An officer whose compensation is de-
 7 rived solely from fees shall not be entitled to receive more than one fee
 8 as a witness for a day's attendance on court under one or more sum-
 9 monses in behalf of the commonwealth, and the said fee shall be ap-
 10 portioned by the clerk among the cases in which he is summoned. Noth-
 11 ing in this section shall be construed to authorize the payment of a
 12 witness fee to any member of the police department of said commission
 13 if he is on duty at the time of his attendance on court as a witness.

Certain public
 officers not
 entitled to
 witness fees,
 etc.
 1868, 338.
 1870, 326, § 1.
 1879, 305.
 P. S. 199, § 36.
 R. L. 204, § 47.
 1910, 311.
 1922, 377, § 2.
 1931, 329.
 1 Op. A. G. 404.

1 SECTION 57. If it appears on oath that a salaried officer of the
 2 commonwealth has attended court as a witness in behalf of the com-
 3 monwealth, at a place other than his residence, and that his necessary
 4 expenses have been increased by such attendance, the court or trial
 5 justice may allow such increased necessary expenses, not exceeding
 6 one dollar and fifty cents a day in all, for such actual and necessary
 7 attendance.

Officers may
 be allowed
 expenses.
 1870, 326, § 2.
 P. S. 199, § 37.
 R. L. 204, § 48.

1 SECTION 58. Whoever receives a witness fee or allowance for in-
 2 creased necessary expenses in violation of any provision of the three
 3 preceding sections shall be punished by a fine of not more than one
 4 hundred dollars. Every clerk of a court and trial justice shall report
 5 forthwith to the district attorney for his county every violation of
 6 said sections which comes to his knowledge, and said district attorneys
 7 shall institute prosecutions therefor.

Penalty.
 1870, 326, § 3.
 P. S. 199, § 38.
 1890, 440, § 12.
 R. L. 204, § 49

1 SECTION 59. If witnesses are in attendance in two or more criminal
 2 cases pending at the same time before the same court, they shall not be
 3 allowed full travel and attendance in each case, but the justice or clerk
 4 of the court or trial justice may reduce and apportion the same, allowing
 5 at least one travel and attendance.

Witnesses' fees
 apportioned in
 certain cases.
 1855, 180, § 2.
 G. S. 157, § 20.
 1860, 191, § 6.
 P. S. 199, § 39.

Witnesses' fees to be refused in certain cases. 1854, 389. G. S. 157, § 21. P. S. 199, § 40. R. L. 204, § 51. SECTION 60. If, on the trial of a criminal case, it appears that a witness has induced the defendant to commit the crime with which he is charged with intent to appear as a witness against him, the court or magistrate may in his discretion refuse to allow him his fees.

Officers not to purchase orders, etc. 1855, 180, § 3. G. S. 157, § 22. P. S. 199, § 41. R. L. 204, § 52. SECTION 61. A sheriff, deputy sheriff or other officer who takes the certificates of witnesses in criminal cases shall not purchase or discount or have any interest in orders drawn or demands upon the treasury by such witnesses.

Penalty for false certificates of witnesses, etc. 1854, 380. G. S. 157, § 23. P. S. 199, § 42. R. L. 204, § 53. SECTION 62. Whoever, with intent to defraud, signs or procures to be signed a certificate of attendance or travel as a witness before a court, trial justice or reference founded upon a rule of court, in any case in which the witness did not so attend, or for a greater number of days than he actually attended, or for a greater number of miles than he actually traveled, upon which certificate the attendance or travel so claimed is allowed as a part of the expenses of prosecution, shall forfeit thirty dollars for each offence, to be recovered on complaint or indictment to the use of the county, or by action of tort to the use of any person against whom such excessive costs were taxed, with four times the whole amount taxed for attendance or travel on such false certificate, and double costs in the action of tort. Such complaint, indictment or action shall be commenced within two years after the offence is committed.

Refusal of fees to delinquent magistrate. 1855, 180, § 1. G. S. 157, § 19. P. S. 199, § 43. R. L. 204, § 54. SECTION 63. If the administration of justice or the progress of business in criminal proceedings is delayed, obstructed or prevented by the negligence of a magistrate in certifying and returning recognizances, records or other official papers which it is his duty to transmit to a higher court, or in omitting the formalities required by law, the district attorney, with the approval of the court, may refuse to allow the fees, either in whole or in part, to which such magistrate would otherwise be entitled.

Refusal of fees to complainant. 1890, 440, § 13. R. L. 204, § 55. SECTION 64. If the court finds that a complaint in a criminal case is unfounded, frivolous or malicious, it may refuse to allow any fees to the complainant.

PART IV.

CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES.

TITLE I.

CRIMES AND PUNISHMENTS.

- CHAPTER 263. Rights of Persons accused of Crime.
- CHAPTER 264. Crimes against Governments.
- CHAPTER 265. Crimes against the Person.
- CHAPTER 266. Crimes against Property.
- CHAPTER 267. Forgery and Crimes against the Currency.
- CHAPTER 268. Crimes against Public Justice.
- CHAPTER 269. Crimes against Public Peace.
- CHAPTER 270. Crimes against Public Health.
- CHAPTER 271. Crimes against Public Policy.
- CHAPTER 272. Crimes against Chastity, Morality, Decency and Good Order.
- CHAPTER 273. Desertion, Non-Support and Illegitimacy.
- CHAPTER 274. Felonies, Accessories and Attempts to commit Crimes.

CHAPTER 263.

RIGHTS OF PERSONS ACCUSED OF CRIME.

SECT.	SECT.
1. Person arrested to be informed of charge.	6. Persons indicted, how convicted. Waiver of right to trial by jury.
2. Penalty for arrest on false pretence.	7. When former acquittal a bar.
3. Action for false imprisonment limited.	8. When former acquittal not a bar.
4. Prosecution of crimes.	8A. Former acquittal in district court, etc., a bar to second complaint.
5. Accused entitled to counsel, etc.	9. No person to be punished until convicted.

1 SECTION 1. Whoever is arrested by virtue of process, or whoever is
 2 taken into custody by an officer, has a right to know from the officer
 3 who arrests or claims to detain him the true ground on which the arrest
 4 is made; and an officer who refuses to answer a question relative to the
 5 reason for such arrest, or answers such question untruly, or assigns to
 6 the person arrested an untrue reason for the arrest, or neglects upon
 7 request to exhibit to the person arrested, or to any other person acting
 8 in his behalf, the precept by virtue of which such arrest has been made,
 9 shall be punished by a fine of not more than one thousand dollars or by
 10 imprisonment for not more than one year.

Person arrested to be informed of charge. 1852, 224, § 1. G. S. 158, § 1. P. S. 200, § 1. R. L. 205, § 1. 253 Mass. 509.

Penalty for arrest on false pretence. 1852, 224, § 2. G. S. 158, § 2. P. S. 200, § 2. R. L. 205, § 2.

SECTION 2. An officer who arrests or takes into or detains in custody a person, pretending to have a process if he has none, or pretending to have a different process from that which he has, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Action for false imprisonment limited. 1914, 126.

SECTION 3. No action, except for use of excessive force, shall lie against any officer other than the arresting officer, by reason of the fact that, in good faith and in the performance of his duties, he participates in the arrest or imprisonment of any person believed to be guilty of a crime unless it can be shown that such other officer in the performance of his duties took an active part in the arrest or imprisonment as aforesaid, either by ordering or directing that said arrest or imprisonment take place or be made, or by actually initiating the making and carrying out of said arrest and imprisonment. No action, except for use of excessive force, shall lie against any bystander assisting an officer in making an arrest, at the request of the officer.

Prosecution of crimes. Decl. of Rights, art 12. (Const. Rev. art. 12.) R. S. 123, § 1.

SECTION 4. No person shall be held to answer in any court for an alleged crime, except upon an indictment by a grand jury or upon a complaint before a district court or trial justice or in proceedings before a court-martial.

G. S. 158, § 3. P. S. 200, § 3. R. L. 205, § 3.

Accused entitled to counsel, etc. Decl. of Rights, art 12. (Const. Rev. art. 12.)

SECTION 5. A person accused of crime shall at his trial be allowed to be heard by counsel, to defend himself, to produce witnesses and proofs in his favor and to meet the witnesses produced against him face to face.

R. S. 123, § 2. G. S. 158, § 4. P. S. 200, § 4. R. L. 205, § 4.

Persons indicted, how convicted. Waiver of right to trial by jury. R. S. 123, § 3. G. S. 158, § 5. P. S. 200, § 5. R. L. 205, § 5. 1929, 185, § 1.

SECTION 6. A person indicted for a crime shall not be convicted thereof except by confessing his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer or by the verdict of a jury accepted and recorded by the court or, in any criminal case other than a capital case, by judgment of the court rendered as hereinafter provided. Any defendant in the superior court in a criminal case other than a capital case, whether begun by indictment or upon complaint, may, if he shall so elect, when called upon to plead, or later and before a jury has been impanelled to try him upon such indictment or complaint, waive his right to trial by jury by signing a written waiver thereof and filing the same with the clerk of the court, whereupon he shall be tried by the court instead of by a jury, but not, however, unless all the defendants, if there are two or more, shall have exercised such election before a jury has been impanelled to try any of the defendants; and in every such case the court shall have jurisdiction to hear and try such cause and render judgment and sentence thereon.

When former acquittal a bar R. S. 123, § 4. G. S. 158, § 6. P. S. 200, § 6. R. L. 205, § 6. 12 Gray, 171. 111 Mass. 404. 113 Mass. 200. 160 Mass. 276.

SECTION 7. A person shall not be held to answer on a second indictment or complaint for a crime of which he has been acquitted upon the facts and merits; but he may plead such acquittal in bar of any subsequent prosecution for the same crime, notwithstanding any defect in the form or substance of the indictment or complaint on which he was acquitted.

220 Mass. 142. 241 Mass. 131. 254 Mass. 560. 255 Mass. 317.

1 SECTION 8. If a person has been acquitted by reason of a variance
 2 between the indictment or complaint and the proof, or by reason of a
 3 defect of form or substance in the indictment or complaint, he may be
 4 again arraigned, tried and convicted for the same crime on a new indict-
 5 ment or complaint, notwithstanding such former acquittal.

When former
acquittal not
a bar.
R. S. 123, § 5.
G. S. 158, § 7.
P. S. 200, § 7.
R. L. 205, § 7.

12 Pick. 496. 105 Mass. 189. 241 Mass. 131.
 13 Allen, 554. 220 Mass. 142. 254 Mass. 560.

1 SECTION 8A. A person shall not be held to answer in a district court
 2 or before a trial justice to a second complaint for an offense for which he
 3 has already been tried upon the merits in said court or before such justice.

Former
acquittal in
district court,
etc., a bar
to second
complaint.

1922, 432. 258 Mass. 89.

1 SECTION 9. A person shall not be punished for a crime unless he has
 2 been legally convicted thereof by a court having competent jurisdiction
 3 of the cause and of the person.

No person to
be punished
until convicted

R. S. 123, § 6. G. S. 158, § 8. P. S. 200, § 8. R. L. 205, § 8.

CHAPTER 264.

CRIMES AGAINST GOVERNMENTS.

SECT.	SECT.
1. Treason defined.	10. Discrimination against persons wear- ing uniform of United States army, etc., prohibited in places of amuse- ment, etc.
2. Penalty.	
3. Mispriison of treason. Penalty.	10A. Exploiting uniform of army, etc., penalized.
4. Proof of treason.	11. Promotion of anarchy prohibited.
5. Penalty for misuse of flag, etc.	12. Arrest without warrant.
6. Exceptions to § 5.	
7. Misuse of foreign flags, etc.	
8. Display of foreign flag.	
9. Manner of playing, etc., national anthem.	

1 SECTION 1. Treason against the commonwealth shall consist only in
 2 levying war against it, or in adhering to the enemies thereof, giving them
 3 aid and comfort; it shall not be bailable.

Treason
defined
Decl. of Right-
art. 25.
(Const. Rev.
art. 25.)

C. L. 15, § 12; 263, § 2. R. S. 124, § 1. 1871, 61.
 1696, 255, § 1. 1852, 259, § 4. P. S. 201, § 1;
 1744-5, 6, § 1. G. S. 159, § 1; 212, § 72.
 1776-7, 32, §§ 2, 3. 170, § 54. R. L. 206, § 1.

1 SECTION 2. Whoever commits treason against the commonwealth
 2 shall be punished by imprisonment in the state prison for life.

Penalty.
B. L. 94, § 12

C. L. 263, § 2. 1776-7, 32, § 2. G. S. 159, § 2.
 1696, 255, § 1. R. S. 124, § 2. P. S. 201, § 2.
 1744-5, 6, § 1. 1852, 259, § 1. R. L. 206, § 2.

1 SECTION 3. Whoever, having knowledge of the commission of treason,
 2 conceals the same and does not as soon as may be disclose and make known
 3 such treason to the governor, or to a justice of the supreme judicial or
 4 superior court, shall be guilty of mispriison of treason, and shall be
 5 punished by a fine of not more than one thousand dollars or by imprison-
 6 ment in the state prison for not more than five years, or in jail for not
 7 more than two years.

Mispriison of
treason.
Penalty.
1776-7, 32,
§§ 4, 5.
R. S. 124, § 3.
G. S. 159, § 3
P. S. 201, § 3
R. L. 206, § 3.

Proof of treason. 1776-7, § 32, § 11. R. S. 124, § 4.

SECTION 4. No person shall be convicted of treason except by the testimony of two witnesses to the same overt act of treason whereof he stands indicted, unless he confesses the same in open court.

G. S. 159, § 4. P. S. 201, § 4. R. L. 206, § 4.

Penalty for misuse of flag, etc. 1899, 254. 1901, 153. R. L. 206, § 5. 1903, 195. 1907, 232, § 2. 1913, 464, 604. 1914, 579. 1917, 265. 1918, 257, § 1. 1919, 5. 1920, 2. 1921, 278. 1922, 227. 219 Mass. 30. 295 U. S. 34. 4 Op. A. G. 470.

SECTION 5. Whoever publicly mutilates, tramples upon, defaces or treats contemptuously the flag of the United States or of Massachusetts, whether such flag is public or private property, or whoever displays such flag or any representation thereof upon which are words, figures, advertisements or designs, or whoever exposes to public view, manufactures, sells, exposes for sale, gives away or has in possession for sale or to give away or for use for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise or articles upon which is attached, through a wrapping or otherwise, engraved or printed in any manner, a representation of the United States flag, or whoever uses any representation of the arms or the great seal of the commonwealth for any advertising or commercial purpose, shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not more than one year, or both; but a flag belonging to a grand army post, to a camp of the United Spanish War Veterans, to a post or department of The American Legion, or to a post or department of the Veterans of Foreign Wars of the United States, or belonging to or used in the service of the United States or the commonwealth, may have the names of battles and the name and number of the organization to which such flag belongs inscribed thereon. Words, figures, advertisements or designs attached to, or directly or indirectly connected with, the flag or any representation thereof in such manner that the flag or its representation is used to attract attention to or advertise such words, figures, advertisements or designs, shall for the purposes of this section be deemed to be upon the flag.

Exceptions to § 5. 1916, 36. 1917, 289. 1928, 154.

SECTION 6. The preceding section shall not apply to publications issued solely for the purpose of giving information in relation to the flag, or of promoting patriotism or of encouraging the study of American history, or to any newspaper, periodical, book, pamphlet, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on which is printed, painted, or placed the flag of the United States not connected with any advertisement and not used for advertising purposes, or to any article of jewelry upon which is placed a representation of the arms or flag of the commonwealth not connected with any advertisement and not used for advertising purposes; but no words, figures, designs or other marks of any kind shall be placed upon the flag of the United States or of the commonwealth or representation thereof, or upon any representation of the arms of the commonwealth.

Misuse of foreign flags, etc. 1912, 197.

SECTION 7. Whoever publicly mutilates, tramples upon, defaces or treats contemptuously the flag or emblem of a foreign country at peace with the United States, whether such flag or emblem is public or private property, or whoever displays such flag or emblem or any representation thereof upon which are words, figures, advertisements or designs, shall be punished by a fine of not less than five nor more than fifty dollars.

1 SECTION 8. Whoever displays the flag or emblem of a foreign country
 2 upon the outside of a state, county, city or town building or public school-
 3 house shall be punished by a fine of not more than twenty dollars; but,
 4 except as to public schoolhouses, this section shall not apply when a
 5 citizen of such foreign country becomes the guest of the United States
 6 or of the commonwealth, if the governor by proclamation authorizes the
 7 flag of the country of which such guest is a citizen to be displayed upon
 8 public buildings.

Display of
 foreign flag.
 1895, 115.
 R. L. 206, § 6.

1 SECTION 9. Whoever plays, sings or renders the "Star Spangled
 2 Banner" in any public place, theatre, motion picture hall, restaurant
 3 or café, or at any public entertainment, other than as a whole and sepa-
 4 rate composition or number, without embellishment or addition in the
 5 way of national or other melodies, or whoever plays, sings or renders the
 6 "Star Spangled Banner", or any part thereof, as dance music, as an exit
 7 march or as a part of a medley of any kind, shall be punished by a fine
 8 of not more than one hundred dollars.

Manner of
 playing, etc.,
 national
 anthem.
 1917, 311,
 §§ 1, 2.

1 SECTION 10. No proprietor, manager or employee of a theatre or
 2 other public place of entertainment or amusement shall make, or cause
 3 to be made, any discrimination against any person lawfully wearing the
 4 uniform of the army, navy, revenue cutter service or marine corps of the
 5 United States because of that uniform, and whoever makes or causes to
 6 be made such discrimination shall be punished by a fine of not more than
 7 five hundred dollars.

Discrimination
 against persons
 wearing uni-
 form of United
 States army,
 etc., prohibited
 in places of
 amusement,
 etc.
 1911, 460.

1 SECTION 10A. Whoever wears the uniform, or any distinctive part
 2 thereof, of the United States army, navy, marine corps, revenue cutter
 3 service, or coast guard, or of the national guard, while soliciting alms,
 4 or while engaged, for personal profit, in selling merchandise or taking
 5 orders for the same, in seeking or receiving contributions in support of
 6 any cause, enterprise or undertaking or in soliciting or receiving sub-
 7 scriptions to any book, paper or magazine, shall be punished by a fine
 8 of not more than one hundred dollars, or by imprisonment for not more
 9 than three months; provided, that this section shall not apply to the
 10 sale of property or any other act or transaction conducted under author-
 11 ity of the government of the United States.

Exploiting
 uniform of
 army, etc.,
 penalized.
 1924, 219.

1 SECTION 11. Whoever by speech or by exhibition, distribution or
 2 promulgation of any written or printed document, paper or pictorial
 3 representation advocates, advises, counsels or incites assault upon any
 4 public official, or the killing of any person, or the unlawful destruc-
 5 tion of real or personal property, or the overthrow by force or violence
 6 of the government of the commonwealth, shall be punished by a fine of
 7 not more than one thousand dollars or by imprisonment for not more
 8 than three years, or both; provided, that this section shall not be con-
 9 strued as reducing the penalty now imposed for the violation of any law.

Promotion of
 anarchy pro-
 hibited.
 1919, 191, § 1.

1 SECTION 12. Any person found in the act of violating any provision
 2 of the preceding section may be arrested without a warrant.

Arrest with-
 out warrant.

CHAPTER 265.

CRIMES AGAINST THE PERSON.

<p>SECT.</p> <ol style="list-style-type: none"> 1. Murder defined. 2. Punishment for murder. 3. Murder in a duel out of commonwealth. 4. Accessory in duel. 5. Former conviction, etc., out of commonwealth a bar, when. 6. Engaging in duel, challenging, etc. 7. Accepting or carrying challenge and abetting a duel. 8. Posting another for not fighting duel. 9. Prize fighting. 10. Aiding, advising, etc., prize fight. 11. Leaving commonwealth to fight. 12. Boxing matches for reward. 13. Manslaughter. 14. Mayhem. 15. Assault with intent to murder, main, etc. 15A. Assault and battery with dangerous weapon. 16. Attempt to murder by poisoning, etc. 17. Punishment of robbery in certain cases. 	<p>SECT.</p> <ol style="list-style-type: none"> 18. Assault with intent to rob, etc., being armed. 19. Robbery, not being armed. 20. Assault with intent to rob, etc., not being armed. 21. Confining or putting in fear a person for the purpose of stealing, etc. 22. Rape. 23. Rape of child. 24. Assault with intent to commit rape. 24A. Venue. 25. Attempt to extort money, etc., by threat. 26. Kidnapping, etc. 27. Venue. 28. Poisoning food, medicine, spring, etc. 29. Assaults not before mentioned. 30. Negligence, etc., of person having care of public conveyance. 31. Driver of stage coach, etc. leaving horses without charge, etc. 32. Penalty for throwing, etc., of glass in public streets, etc. 33. Wearing of hat-pins regulated.
---	--

Murder defined. 1784, 69.
 R. S. 133, § 15.
 1858, 154, §§ 1-3.
 G. S. 160, §§ 1-3, 7.
 P. S. 202, §§ 1-3, 7.
 R. L. 207, § 1.
 16 Gray, 1.

SECTION 1. Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree. Murder which does not appear to be in the first degree is murder in the second degree. Petit treason shall be prosecuted and punished as murder. The degree of murder shall be found by the jury.

9 Allen, 585.	165 Mass. 45	219 Mass. 1.	257 Mass. 391.
12 Allen, 155	174 Mass. 245	235 Mass. 562.	263 Mass. 356.
118 Mass. 36.	184 Mass. 255.	240 Mass. 402.	264 Mass. 94.
126 Mass. 253.	189 Mass. 437.	255 Mass. 304.	265 Mass. 382.

Punishment for murder. B. L. 94, §§ 4-6.
 C. L. 14, §§ 4, 5.
 1697, 17.

SECTION 2. Whoever is guilty of murder in the first degree shall suffer the punishment of death, and whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life.

1784, 44, § 1.	1858, 154, §§ 4, 5.	P. S. 202, §§ 4, 5.
1894, 123, § 1.	G. S. 160, §§ 4, 5.	R. L. 207, § 2.
R. S. 125, § 1.		

Murder in a duel out of commonwealth. R. S. 125, § 3.
 G. S. 160, § 9.
 P. S. 202, § 9.
 R. L. 207, § 3.

SECTION 3. An inhabitant or resident of this commonwealth who, by previous appointment or engagement made within the same, fights a duel outside its jurisdiction, and in so doing inflicts a mortal wound upon a person whereof he dies within the commonwealth shall be guilty of murder within this commonwealth, and may be indicted, tried and convicted in the county where the death occurs.

1 SECTION 4. An inhabitant or resident of this commonwealth who, by
 2 previous appointment or engagement made within the same, becomes
 3 the second of either party in such duel and is present as a second when
 4 a mortal wound is inflicted upon a person whereof he dies within this
 5 commonwealth shall be an accessory before the fact to murder in this
 6 commonwealth, and may be indicted, tried and convicted in the county
 7 where the death occurs.

Accessory
 in duel.
 R. S. 125, § 4.
 G. S. 160, § 10.
 P. S. 202, § 10.
 R. L. 207, § 4.

1 SECTION 5. A person indicted under either of the two preceding sec-
 2 tions may plead a former conviction or acquittal of the same crime in
 3 any other state or country; and if his plea is admitted or established,
 4 it shall be a bar to all further proceedings against him for the same crime
 5 within this commonwealth.

Former con-
 viction, etc.,
 out of com-
 monwealth a
 bar, when.
 R. S. 125, § 5.
 G. S. 160, § 11.

P. S. 202, § 11.

R. L. 207, § 5.

1 SECTION 6. Whoever engages in a duel with a deadly weapon, al-
 2 though no homicide ensues, or challenges another to fight such duel, or
 3 sends or delivers a written or verbal message purporting or intended to
 4 be such challenge, although no duel ensues, shall be punished by imprison-
 5 ment in the state prison for not more than twenty years or by a fine of
 6 not more than one thousand dollars and imprisonment in jail for not more
 7 than two and one half years; and shall be incapable of holding or of
 8 being elected or appointed to any place of honor, profit or trust under
 9 the constitution or laws of the commonwealth for twenty years after
 10 such conviction.

Engaging in
 duel, challeng-
 ing, etc.
 1719-20, 1.
 1728-9, 15, § 1.
 1784, 9, §§ 1, 2.
 1804, 123, § 6.
 R. S. 125, § 6.
 G. S. 160, § 12.
 P. S. 202, § 12.
 R. L. 207, § 6.
 1914, 635.
 1918, 257,
 § 464.
 1919, 5.
 1920, 2.

1 SECTION 7. Whoever accepts or knowingly carries or delivers any
 2 such challenge or message, whether a duel ensues or not, and whoever is
 3 present at the fighting of a duel with deadly weapons as an aid, second or
 4 surgeon, or advises, encourages or promotes such duel, shall be punished
 5 by imprisonment for not more than one year or by a fine of not more than
 6 five hundred dollars; and shall be incapable, as provided in the preceding
 7 section, for five years after such conviction.

Accepting or
 carrying chal-
 lenge and abet-
 ting a duel.
 1804, 123, § 7.
 R. S. 125, § 7.
 G. S. 160, § 13.
 P. S. 202, § 13.
 R. L. 207, § 7.

1 SECTION 8. Whoever posts another, or in writing or print uses any
 2 reproachful or contemptuous language to or concerning another, for not
 3 fighting a duel or for not sending or accepting a challenge shall be punished
 4 by imprisonment for not more than six months or by a fine of not more
 5 than one hundred dollars.

Posting another
 for not fighting
 duel.
 R. S. 125, § 8.
 G. S. 160, § 14.
 P. S. 202, § 14.
 R. L. 207, § 8.

1 SECTION 9. Whoever, except as provided in sections thirty-two to
 2 fifty, inclusive, of chapter one hundred and forty-seven, by previous
 3 appointment or arrangement, engages in a fight with another person
 4 shall be punished by imprisonment in the state prison for not more
 5 than ten years or by a fine of not more than five thousand dollars.

Prize fighting.
 1849, 49, § 1.
 G. S. 160, § 15.
 P. S. 202, § 15.
 R. L. 207, § 9.
 7 Gray, 324.
 1 Op. A. G.
 249.

1 SECTION 10. Whoever, except as provided in sections thirty-two to
 2 fifty, inclusive, of chapter one hundred and forty-seven, is present at
 3 such fight as an aid, second or surgeon, or advises, encourages or promotes
 4 such fight, shall be punished by imprisonment in the state prison for not
 5 more than five years or by a fine of not more than one thousand dollars
 6 and by imprisonment in jail for not more than two and one half years.

Aiding, advis-
 ing, etc., prize
 fight.
 1849, 49, § 2.
 G. S. 160, § 16.
 P. S. 202, § 16.
 R. L. 207, § 10.
 1914, 635.
 1918, 257, § 464.
 1919, 5.

1920, 2.

7 Gray, 324.

Leaving commonwealth to fight. 1849, 49, § 3. G. S. 160, § 17. P. S. 202, § 17. R. L. 207, § 11. 108 Mass. 302.

SECTION 11. An inhabitant or resident of this commonwealth who, by previous appointment or engagement made in the same, leaves the same and engages in a fight with another person outside the limits thereof shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five thousand dollars.

Boxing matches for reward. 1896, 422. R. L. 207, § 12. 187 Mass. 441.

SECTION 12. Whoever, except as provided in sections thirty-two to fifty, inclusive, of chapter one hundred and forty-seven, engages in or gives or promotes a public boxing match or sparring exhibition, or engages in a private boxing match or sparring exhibition, for which the contestants have received or have been promised any pecuniary reward, remuneration or consideration whatsoever, directly or indirectly, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than three months, or both.

Manslaughter. 1784, 44, § 2. 1804, 123, § 3. 1818, 124, § 2. R. S. 125, § 9. G. S. 160, § 18. P. S. 202, § 18.

SECTION 13. Whoever commits manslaughter shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.

R. L. 207, § 13. 1919, 5. 131 Mass. 423. 1914, 635. 1920, 2. 138 Mass. 165. 1918, 257, § 464. 102 Mass. 155.

Mayhem. B. L. 87. 1804, 123, § 4. R. S. 125, § 10. G. S. 160, § 19. P. S. 202, § 19. R. L. 207, § 14. 1914, 635. 1918, 257, § 464. 1919, 5. 1920, 2. 1923, 280. 133 Mass. 571.

SECTION 14. Whoever, with malicious intent to maim or disfigure, cuts out or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or member, of another person, and whoever is privy to such intent, or is present and aids in the commission of such crime, or whoever, with intent to maim or disfigure, assaults another person with a dangerous weapon, substance or chemical, and by such assault disfigures, cripples or inflicts serious or permanent physical injury upon such person, and whoever is privy to such intent, or is present and aids in the commission of such crime, shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.

Assault with intent to murder, maim, etc. 1784, 65, § 3. 1804, 123, § 5. 1818, 124, § 3. R. S. 125, § 11. G. S. 160, § 20. P. S. 202, § 20. R. L. 207, § 15. 1914, 635.

SECTION 15. Whoever assaults another with intent to commit murder, or to maim or disfigure his person in any way described in the preceding section, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.

1918, 257, § 464. 1920, 2. 162 Mass. 495. 1919, 5. 10 Gray, 11.

Assault and battery with dangerous weapon. 1927, 187, § 1.

SECTION 15A. Whoever commits assault and battery upon another by means of a dangerous weapon shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars or imprisonment in jail for not more than two and one half years.

Attempt to murder by poisoning, etc. 1832, 62. R. S. 125, § 12. G. S. 160, § 21. P. S. 202, § 21.

SECTION 16. Whoever attempts to commit murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall be punished by imprisonment in the state prison for not more than twenty years or by

5 a fine of not more than one thousand dollars and imprisonment in jail R. L. 207, § 16.
 6 for not more than two and one half years. 1914, 635.
 1918, 257, § 464. 1919, 5. 1920, 2. 170 Mass. 18.

1 SECTION 17. Whoever, being armed with a dangerous weapon, Punishment of
 2 assaults another and robs, steals and takes from his person money or robbery in cer-
 3 other property which may be the subject of larceny, with intent if ro- tam cases.
 4 sisted to kill or maim the person robbed, or, being so armed, wounds 1818, 124, § 1.
 5 or strikes the person robbed, shall be punished by imprisonment in the R. S. 125, § 13.
 6 state prison for life or for any term of years. 1839, 127.
 1911, 84. 11 Allen, 20. 255 Mass. 304.
 17 Mass. 359. 165 Mass. 133. 257 Mass. 391.
 6 Met. 565.

1 SECTION 18. Whoever, being armed with a dangerous weapon, Assault with
 2 assaults another with intent to rob or murder shall be punished by intent to rob,
 3 imprisonment in the state prison for not more than twenty years. etc., being
 armed.
 1761-2, 21, § 1. 1818, 124, § 3. P. S. 202, § 23.
 1784, 52, § 2. R. S. 125, § 14. R. L. 207, § 18.
 1804, 143, § 9. G. S. 160, § 23. 8 Gray, 357.

1 SECTION 19. Whoever, not being armed with a dangerous weapon, Robbery, not
 2 by force and violence, or by assault and putting in fear, robs, steals being armed
 3 and takes from the person of another money or other property which C. L. 12, § 4.
 4 may be the subject of larceny, shall be punished by imprisonment in 1692-3,
 5 the state prison for life or for any term of years. 18, § 4.
 1711-12, 2, § 1
 1761-2, 21, § 1.
 1784, 52, § 2. P. S. 202, § 24. 12 Allen, 540.
 1804, 143, § 7. R. L. 207, § 19. 126 Mass. 252.
 R. S. 125, § 15. 7 Mass. 242. 264 Mass. 94.
 G. S. 160, § 24. 8 Cush. 215. 271 Mass. 99.

1 SECTION 20. Whoever, not being armed with a dangerous weapon, Assault with
 2 assaults another with force and violence and with intent to rob or steal intent to rob,
 3 shall be punished by imprisonment in the state prison for not more than etc., not being
 4 ten years. armed.
 1804, 143, § 9.
 R. S. 125, § 16. R. L. 207, § 20. 14 Gray, 393.
 G. S. 160, § 25. 12 Cush. 270. 167 Mass. 434.
 P. S. 202, § 25.

1 SECTION 21. Whoever, with intent to commit larceny or any felony, Confining or
 2 confines, maims, injures or wounds, or attempts or threatens to kill, putting in fear
 3 confine, maim, injure or wound, or puts any person in fear, for the a person for
 4 purpose of stealing from a building, bank, safe, vault or other depository the purpose of
 5 of money, bonds or other valuables, or by intimidation, force or threats stealing, etc.
 6 compels or attempts to compel any person to disclose or surrender the 1876, 202.
 7 means of opening any building, bank, safe, vault or other depository P. S. 202, § 26.
 8 of money, bonds or other valuables, or attempts to or does break, burn, R. L. 207, § 21.
 9 blow up or otherwise injure or destroy a safe, vault or other depository 1918, 257.
 10 of money, bonds or other valuables in any building or place, shall, § 446.
 11 whether he succeeds or fails in the perpetration of such larceny or felony, 1919, 5.
 12 be punished by imprisonment in the state prison for life or for any term 1920, 2
 13 of years. 165 Mass. 457.
 167 Mass. 434
 168 Mass. 222.
 255 Mass. 304.

1 SECTION 22. Whoever ravishes and carnally knows a female by Rape.
 2 force and against her will shall be punished by imprisonment in the C. L. 15, § 15.
 3 state prison for life or for any term of years. 1697, 18.
 1784, 68. 1871, 55. R. L. 207, § 22. 8 Gray, 489.
 1805, 97, § 1. P. S. 202, § 27. 19 Pick. 479. 105 Mass. 376.
 R. S. 125, § 18. 1886, 305. 4 Met. 354. 110 Mass. 405.
 1852, 259, § 2. 1888, 391. 4 Gray, 7. 248 Mass. 482.
 G. S. 160, § 26. 1893, 466, § 1

Rape of child.
C. L. 15, § 17.
1697, 18
1784, 68.
1805, 97, § 1.
R. S. 125, § 18.
1852, 259, § 2.
G. S. 160, § 26.
1871, 55.

SECTION 23. Whoever unlawfully and carnally knows and abuses a female child under sixteen shall be punished by imprisonment in the state prison for life or for any term of years, or, except as otherwise provided, for any term in any other penal institution in the commonwealth.

P. S. 202, § 27.	1893, 466, § 2.	165 Mass. 66.
1886, 305	R. L. 207, § 23.	170 Mass. 194.
1888, 391.	4 Gray, 7.	

Assault with intent to commit rape.
1784, 65, § 3.
1805, 97, § 3.
1815, 86
R. S. 125, § 19.

SECTION 24. Whoever assaults a female with intent to commit a rape shall be punished by imprisonment in the state prison for life or for any term of years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.

G. S. 160, § 27	1918, 257, § 464.	143 Mass. 32
P. S. 202, § 28.	1919, 5.	162 Mass. 466.
R. L. 207, § 24.	1920, 2.	165 Mass. 66.
1914, 635.	116 Mass. 346.	

Venue.
1923, 339.

SECTION 24A. If, in connection with the alleged commission of a crime described in section twenty-two, twenty-three or twenty-four, the female against whom said crime is alleged to have been committed has been conveyed from one county or judicial district into another, said crime may be alleged to have been committed, and may be prosecuted and punished, in the county or judicial district where committed or from which such female was so conveyed.

Attempt to extort money, etc., by threat.
R. S. 125, § 17.
1853, 412.
G. S. 160, § 28.
P. S. 202, § 29.
R. L. 207, § 25.
1914, 635.
1918, 257, § 464.
1919, 5.
1920, 2.
12 Cush. 84.
12 Allen, 449.
101 Mass. 27.

SECTION 25. Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both.

106 Mass. 1	128 Mass. 55.	240 Mass. 264.
108 Mass. 15.	130 Mass. 59.	252 Mass. 465.
307, 488	145 Mass. 181.	264 Mass. 221.
121 Mass. 57.	148 Mass. 27.	269 Mass. 598.
122 Mass. 19.	163 Mass. 291.	

Kidnapping, etc.
B. L. 94, § 10.
C. L. 15, § 10.
1784, 72, § 10.
1787, 48, § 1.
R. S. 125, § 20.
G. S. 160, § 30.
P. S. 202, § 30.
1901, 428.
R. L. 207, § 26.
1931, 426, § 43.
12 Met. 56
5 Allen, 518
255 Mass. 144.

SECTION 26. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for not more than twenty-five years.

Venue.
R. S. 125, § 21.
G. S. 160, § 31.
P. S. 202, § 31.
R. L. 207, § 27.
1931, 426, § 44

SECTION 27. A crime described in the preceding section may be tried in the county where committed or in any county in or to which the person so seized, inveigled or kidnapped is confined, held, carried or brought;

4 and upon the trial of any such crime, the consent thereto of the person
 5 so seized, inveigled, kidnapped or confined shall not be a defence unless
 6 the jury finds that such consent was not obtained by fraud or extorted
 7 by duress or threats.

1 SECTION 28. Whoever mingles poison with food, drink or medicine
 2 with intent to kill or injure another person, or wilfully poisons any spring,
 3 well or reservoir of water with such intent, shall be punished by imprison-
 4 ment in the state prison for life or for any term of years.

Poisoning food,
 medicine,
 spring, etc.
 R. S. 125, § 22
 G. S. 160, § 32.

P. S. 202, § 32.
 R. L. 207, § 28.

9. Allen, 271.
 108 Mass. 487

140 Mass. 443.

1 SECTION 29. Whoever assaults another with intent to commit a felony
 2 shall, if the punishment of such assault is not hereinbefore provided, be
 3 punished by imprisonment in the state prison for not more than ten
 4 years or by a fine of not more than one thousand dollars and imprison-
 5 ment in jail for not more than two and one half years.

Assaults not
 before-
 mentioned.
 R. S. 125, § 23.
 G. S. 160, § 33.
 P. S. 202, § 33.
 R. L. 207, § 29

1914, 635. 1918, 257, § 464 1919, 5. 1920, 2.

1 SECTION 30. Whoever, having the management or control of or over
 2 a steamboat or other public conveyance used for the common carriage
 3 of persons, is guilty of gross negligence in or relative to the management
 4 or control of such steamboat or other public conveyance, while being so
 5 used for the common carriage of persons, shall be punished by a fine of
 6 not more than five thousand dollars or by imprisonment in jail for not
 7 more than two and one half years.

Negligence,
 etc., of per-
 son having care
 of public
 conveyance.
 1853, 418.
 G. S. 160, § 35.
 P. S. 202, § 34
 R. L. 207, § 30.
 1914, 635.

1918, 257, § 464. 1919, 5. 1920, 2.

1 SECTION 31. A driver of a vehicle for the conveyance of passengers
 2 for hire, who, when a passenger is within or upon such vehicle, leaves the
 3 horses thereof without a suitable person to take the charge and guidance
 4 of them, or without fastening them in a safe and prudent manner, shall
 5 be punished by imprisonment for not more than two months or by a fine
 6 of not more than fifty dollars.

Driver of stage
 coach, etc.,
 leaving horses
 without
 charge, etc.
 1826, 140.
 P. S. 51, § 4.
 G. S. 160, § 36
 P. S. 202, § 35.

R. L. 207, § 31.

1 SECTION 32. Whoever throws or drops glass on a public way, or on or
 2 near a bathing beach, or on a public way, sidewalk or reservation in the
 3 immediate neighborhood of a bathing beach, shall be punished by a fine of
 4 not more than fifty dollars, or by imprisonment for not more than one
 5 month.

Penalty for
 throwing, etc.,
 of glass in
 public streets,
 etc.
 1913, 211
 1914, 76

1 SECTION 33. Whoever wears in public a hat-pin protruding more than
 2 one half inch beyond the crown of the hat, unless the point thereof is
 3 so protected as to be incapable of causing injury to others, shall be
 4 punished by a fine of not more than one hundred dollars.

Wearing of
 hat-pins
 regulated.
 1913, 256.

CHAPTER 266.

CRIMES AGAINST PROPERTY.

SECT.	SECT.
1. Burning dwelling house, etc.	31. Fraudulently obtaining signature.
2. Burning in night time.	32. Fraudulent conversion of property by captain of vessel.
3. Burning in day time.	33. False pretences to constitute larceny in certain cases.
4. Burning of building of less value than one thousand dollars, etc., or bridge, ship, etc.	34. Same subject.
5. Burning of wood, fence, corn, grain, tree, soil, etc.	35. Limitation of §§ 30, 31 and 34.
6. Wife liable for burning property of husband.	36. Persons obtaining credit by false pretences to be guilty of larceny.
7. Wanton or reckless injury or destruction of woods by fire.	37. Drawing and uttering fraudulent checks, drafts and orders.
8. Negligence in cases of fires.	38. Wrongful detention of money by carriers and their employees.
9. Same subject.	38A. Misuse of construction loans.
10. Burning insured property.	39. Larceny and destruction of wills.
11. Injury, etc., to fire alarm, apparatus, etc., before fire.	40. Common and notorious thief.
12. Injury, etc., to fire alarm, apparatus, etc., preventing alarm or extinction of fire during fire.	41. Second conviction of larceny of a bicycle.
13. Injuring fire engines.	42. Larceny of paper designed for bank bills, etc.
14. Burglary, being armed or making an assault.	43. Printer, etc., retaining such paper, etc., with intent to pass, etc.
15. Burglary, not being armed, etc.	44. Larceny of things annexed to the realty.
16. Breaking, in night time, building or ship.	45. Same subject.
17. Entering, in night time, without breaking, or breaking, etc., in day time.	46. Larceny of beast or bird.
18. Entering dwelling house in night time or breaking, etc., without putting in fear, in day time.	47. Penalty for wrongfully removing collar from or stealing or poisoning a dog.
19. Breaking and entering railroad car, etc.	48. Officer making arrest to secure, etc., goods stolen.
20. Stealing in building, ship, etc.	49. Making, holding, using, etc., burglarious instrument.
21. Refusal to deliver stolen property, etc.	50. Fraud or embezzlement by employee in treasury.
22. Detention of persons unlawfully entering places where poultry is kept. Penalty.	51. Fraud or embezzlement by city, town or county officer.
23. Embezzling, etc., of property at a fire to be deemed larceny.	52. Fraud or embezzlement by bank officer, employee, etc.
24. Stealing at a fire.	53. Evidence in fraud or embezzlement by accomplice of officer or employee of bank, etc.
25. Larceny from the person.	53A. Certain crimes relating to banks and banking.
26. Subjects of larceny.	54. Penalty for receiving deposits by insolvent banks, etc.
27. Penalty for stealing tools of contractors, builders, etc.	55. Embezzlement by liquidating agent, receiver, etc.
27A. Removing or concealing automobiles to defraud insurers.	56. Embezzlement by broker, etc.
28. Theft or concealment of motor vehicles, etc. Operation without authority of owner after suspension, etc., of license. Penalty.	57. Embezzlement by trustee, etc.
29. Disposition of prosecutions under §§ 27A and 28.	58. Embezzlement from voluntary association.
30. Larceny, etc.	59. Same subject.
	60. Buying or receiving stolen goods.
	61. Effect of restitution of stolen property bought, etc.

SECT.

- 62. Common receiver of stolen goods.
- 63. Unlawful taking, etc., of boats, certain vehicles and animals.
- 64. Fraudulent hiring of horses, carriages, automobiles, etc.
- 65. Unauthorized issue of stock.
- 66. Fraudulent issue of stock, etc.
- 67. False entry, etc., in book of corporation.
- 68. Books of corporation as evidence.
- 69. Unlawful use of insignia.
- 70. Same subject.
- 71. Fraudulent use of names, etc.
- 72. Certain publications forbidden, etc.
- 73. Obtaining goods under false pretence of carrying on business.
- 74. Fraudulent use of credit of corporation.
- 75. Obtaining property by trick, etc.
- 76. Gross fraud, etc., at common law.
- 77. Sale of certain articles as sterling and coin silver.
- 78. False marking of articles made of gold, etc., prohibited.
- 79. False representation of imitations of fur prohibited.
- 80. Conveying encumbered land without notice.
- 81. Selling attached land without notice.
- 82. Concealing mortgaged, or using rented, etc., personal property as container, etc., for illegal sale of liquor.
- 83. Sale by mortgagor without consent of mortgagee.
- 84. Sale by hirer, etc., of personalty without consent.
- 85. Sale, etc., of collateral security before debt due, etc.
- 86. Buying, etc., hired property, etc.
- 87. Sale, etc., of personalty held on conditional sale.
- 88. Consignee, etc., fraudulently depositing or pledging property, etc.
- 89. falsely pretending to hold a degree, etc., or granting degrees without authority. Use of word "university" or "college".
- 90. Falsely claiming endorsement, etc.
- 91. Untrue and misleading advertisements prohibited.
- 92. Publishing of false or exaggerated statements prohibited, etc.
- 93. Obtaining or giving false pedigree of animals.
- 94. Malicious destruction of boundary monument, milestone, etc.
- 95. Malicious destruction of historical monument.
- 96. Defacing, etc., building of the commonwealth.
- 97. Defacing building of county.
- 98. Wilful injury, etc., to schoolhouse, church, etc., or furniture, etc.

SECT.

- 99. Defacement of books, etc., of libraries.
- 100. Detention of books of libraries.
- 101. Malicious explosion.
- 102. Throwing explosives into buildings or placing on railways, etc.
- 102A. Possession of infernal machine. Notice of seizure.
- 103. Throwing oil of vitriol, coal tar, etc.
- 104. Injury to building.
- 105. Pulling down stone walls or fences.
- 106. Injury, etc., to ice taken as merchandise.
- 107. Injury, etc., to bridge, etc.
- 108. Destroying vessel to defraud owner or insurer.
- 109. Fitting out vessel with intent to destroy it, etc.
- 110. False invoice, etc., of cargo to defraud insurer, etc.
- 111. False protest, etc.
- 111A. Fraudulent claims under policies of fire insurance.
- 112. Malicious killing, etc., of cattle.
- 113. Cutting timber, wood, shrubs, etc., on land of another.
- 114. Malicious injuries to trees, fences, etc.
- 115. Trespass in orchard, garden, etc.
- 116. Picking of berries, etc., by unnaturalized foreign born persons in Barnstable and Plymouth counties restricted.
- 117. Entering orchard, etc., with intent, etc.
- 118. Suffering animals to trespass on land.
- 119. Transportation of injurious insects.
- 120. Trespass on buildings, boats, improved or enclosed land, wharves, etc., after being forbidden. Arrest.
- 121. Entry on land with firearms.
- 122. Defacement of notice against trespassers.
- 123. Trespassing upon land of certain institutions.
- 124. Malicious injury to legal notice.
- 125. Malicious injury to show bill, etc.
- 126. Defacing natural scenery.
- 127. Malicious or wanton injuries to personal property.
- 128. Defacing milk cans.
- 129. Injury to property at state prison or state prison colony.
- 130. Injury to property at other penal institutions.
- 131. Arrest and detention without warrant of trespasser on Sunday.
- 132. Killing or frightening pigeons.
- 133. Injury, etc., to property of Humane Society.

SECT.
 134. Setting fire to coal pit, etc., on wood-land in New Bedford, etc., between March and October.
 135. Mooring vessel, etc., to a buoy, etc.
 136. Injury, etc., to baggage by hackman, etc.

SECT.
 137. Raising water so as to injure mill.
 138. Injury to dam, reservoir, etc.
 139. Defacing, etc., serial numbers, etc., of motor vehicles, etc., wrongfully. Possession. Sale, etc.

Burning dwelling house, etc.
 C. L. 52, § 1.
 1705-6, 9.
 1784, 58, § § 1, 2.
 1804, 131, § § 1, 2.
 1830, 72, § 1.

SECTION 1. Whoever wilfully and maliciously burns the dwelling house of another or a building adjoining such dwelling house, or wilfully and maliciously sets fire to a building by the burning whereof such dwelling house is burned, shall be punished by imprisonment in the state prison for any term of years not to exceed twenty.

R. S. 126, § § 1, 2.	P. S. 203, § 1.	10 Cush. 478.	150 Mass. 332.
1852, 259, § 3.	R. L. 208, § 1.	110 Mass. 403.	151 Mass. 491.
G. S. 161, § 1.	1930, 382.	131 Mass. 421.	264 Mass. 378.
1871, 76.	3 Cush. 525.		

Burning in night time.
 C. L. 52, § 1.
 1705-6, 9.
 1784, 58, § 2.
 1804, 131, § 2.
 R. S. 126, § 3.
 G. S. 161, § 2.
 1871, 76.
 P. S. 203, § 2.
 R. L. 208, § 2.
 10 Cush. 480.
 2 Allen, 159.
 134 Mass. 527.
 172 Mass. 187.
 264 Mass. 378.

SECTION 2. Whoever wilfully and maliciously burns in the night time a meeting house, church, court house, town house, college, academy, jail or other building, which has been erected for public use, or a banking house, warehouse, store, manufactory or mill of another being with the property therein of the value of one thousand dollars, or a barn, stable, shop or office of another within the curtilage of a dwelling house, or any other building by the burning whereof any building mentioned in this section is burned in the night time, shall be punished by imprisonment in the state prison for life or for any term of years.

Burning in day time.
 C. L. 52, § 1.
 1705-6, 9.
 1784, 58, § 2.
 1804, 131, § 3.
 R. S. 126, § 4.

SECTION 3. Whoever wilfully and maliciously burns in the day time a building, the burning of which in the night time might be punished under the preceding section, shall be punished by imprisonment in the state prison for not more than ten years.

G. S. 161, § 3.	P. S. 203, § 3.	R. L. 208, § 3.	264 Mass. 378.
-----------------	-----------------	-----------------	----------------

Burning of building of less value than one thousand dollars, etc., or bridge, slip, etc.
 C. L. 52, § 1.
 1705-6, 9.

SECTION 4. Whoever wilfully and maliciously burns a banking house, warehouse, store, manufactory, mill, barn, stable, shop, office, outhouse or other building of another, which is not described in section two, or a bridge, lock, dam, flume, ship or vessel of another, shall be punished by imprisonment in the state prison for not more than ten years.

1784, 58, § 2.	P. S. 203, § 4.	1 Gray, 493.	151 Mass. 491.
1804, 131, § 3.	R. L. 208, § 4.	15 Gray, 480.	167 Mass. 420.
R. S. 126, § 5.	1 Met. 258.	150 Mass. 332.	264 Mass. 378.
G. S. 161, § 4.			

Burning of wood, fence, corn, grain, tree, soil, etc.
 C. L. 51, § 2;
 52, § 1.
 1705-6, 9.
 1784, 58, § § 3, 4.
 1804, 131, § 4.
 R. S. 126, § 6.
 G. S. 161, § 5.
 P. S. 203, § 5.
 R. L. 208, § 5.
 264 Mass. 378.

SECTION 5. Whoever wilfully and maliciously burns or otherwise destroys or injures a pile or parcel of wood, boards, timber or other lumber, or any fence, bars or gate, or a stack of grain, hay or other vegetable product, or any vegetable product severed from the soil and not stacked, or any standing tree, grain, grass or other standing product of the soil, or the soil itself, of another, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five hundred dollars and imprisonment in jail for not more than one year.

Wife liable for burning property of husband.
 R. S. 126, § 7.

SECTION 6. The preceding sections shall apply to a married woman who commits any of the crimes therein described, although the property burned or set fire to belongs partly or wholly to her husband.

G. S. 161, § 6.	P. S. 203, § 6.	R. L. 208, § 6.
-----------------	-----------------	-----------------

1 SECTION 7. Whoever by wantonly or recklessly setting fire to any
 2 material, or by increasing a fire already set, causes injury to, or the de-
 3 struction of, any growing or standing wood of another shall be punished
 4 by a fine of not more than one hundred dollars or by imprisonment for
 5 not more than six months.

Wanton or
 reckless injury
 or destruction
 of woods by
 fire.
 1882, 163.
 R. L. 208, § 7.

1912, 419, § 1.

1 SECTION 8. Whoever wilfully or without reasonable care sets or
 2 increases a fire upon land of another whereby the property of another is
 3 injured, or whoever negligently or wilfully suffers any fire upon his own
 4 land to extend beyond the limits thereof, whereby the woods or property
 5 of another are injured, shall be punished by a fine of not more than two
 6 hundred and fifty dollars.

Negligence
 in cases of
 fires.
 1886, 296, § 1.
 R. L. 208, § 8.
 1912, 419, § 2.

1 SECTION 9. Whoever, in a town which accepts this section or has
 2 accepted corresponding provisions of earlier laws, sets a fire on land
 3 which is not owned or controlled by him and before leaving the same
 4 neglects to entirely extinguish such fire, or whoever wilfully or negli-
 5 gently sets a fire on land which is not owned or controlled by him whereby
 6 property is endangered or injured, or whoever wilfully or negligently
 7 suffers a fire upon his own land to escape beyond the limits thereof to
 8 the injury of another, shall be punished by a fine of not more than one
 9 hundred dollars or by imprisonment in jail for not more than one month,
 10 or both, and shall also be liable for all damages caused thereby. Such
 11 fine shall be equally divided between the complainant and the town.
 12 This section shall not apply to cities.

Same subject.
 1897, 254.
 §§ 1, 9.
 R. L. 208, § 9.

1 SECTION 10. Whoever, with intent to injure the insurer, burns a
 2 building or any goods, wares, merchandise or other chattels belonging to
 3 himself or another, and which are at the time insured against loss or
 4 damage by fire, shall be punished by imprisonment in the state prison
 5 for not more than twenty years.

Burning in-
 sured property.
 R. S. 126, § 8.
 G. S. 161, § 7.
 P. S. 203, § 7.
 R. L. 208, § 10.
 114 Mass. 272.

131 Mass. 421.	177 Mass. 267.	196 Mass. 342.	264 Mass. 368.
155 Mass. 68.	184 Mass. 484.	238 Mass. 250.	

1 SECTION 11. Whoever, within twenty-four hours prior to the burn-
 2 ing of a building or other property, wilfully, intentionally and without
 3 right cuts or removes a bell rope or a wire or conduit connected with a
 4 fire alarm signal system or injures or disables any fire alarm signal box
 5 or any part of such system in the vicinity of such building or property,
 6 or cuts, injures or destroys an engine, hose or other fire apparatus in
 7 said vicinity shall be punished by a fine of not more than five hundred
 8 dollars or by imprisonment for not more than two years.

Injury, etc.,
 to fire alarm,
 apparatus, etc.,
 before fire.
 1855, 446, § 1.
 G. S. 161, § 7.
 P. S. 203, § 7.
 R. L. 208, § 11.
 1918, 257,
 § 447.
 1919, 5.
 1920, 2.

1 SECTION 12. Whoever, during the burning of a building or other
 2 property, wilfully and maliciously cuts or removes a bell rope or a wire
 3 or conduit connected with a fire alarm signal system or injures or disables
 4 any fire alarm signal box or any part of such system in the vicinity of
 5 such building or property, or otherwise prevents an alarm being given,
 6 or whoever cuts, injures or destroys an engine, hose or other fire appar-
 7 tus, in said vicinity, or otherwise wilfully and maliciously prevents or
 8 obstructs the extinction of a fire shall be punished by imprisonment in
 9 the state prison for not more than seven years or in jail for not more
 10 than two and one half years or by a fine of not more than one thousand
 11 dollars.

Injury, etc.,
 to fire alarm,
 apparatus, etc.,
 preventing
 alarm or ex-
 tinction of fire
 during fire.
 1855, 446, § 2.
 G. S. 161, § 9.
 P. S. 203, § 9.
 R. L. 208, § 12.
 1918, 257,
 § 448.
 1919, 5.
 1920, 2.

Injuring fire engines.
1801, 29.
R. S. 18, § 23.
G. S. 24, § 22.
P. S. 35, § 26.
R. L. 208, § 13.
1918, 257,
§ 449.

SECTION 13. Whoever wantonly or maliciously injures a fire engine or other fire apparatus shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, and shall be further ordered to recognize with sufficient surety or sureties for his good behavior during such term as the court shall order.

1919, 5.

1920, 2.

Burglary, being armed or making an assault.
C. L. 13, § 1.
1692-3, 18, § 4.
1715-16, 1.
1769-70,
16, § 2.
1784, 48.
1805, 101, § 1.
R. S. 126, § 9.
1839, 127.
G. S. 161, § 10.
1871, 76.

SECTION 14. Whoever breaks and enters a dwelling house in the night time, with intent to commit a felony, or whoever, after having entered with such intent, breaks such dwelling house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on a person lawfully therein, shall be punished by imprisonment in the state prison for life or for any term of not less than ten years.

P. S. 203, § 10.
1888, 135, § 1.

R. L. 208, § 14.
1 Mass. 476.

22 Pick. 1.
105 Mass. 588.

Burglary, not being armed, etc.
C. L. 13, § 1.
1692-3, 18, § 4.
1715-16, 1.
1769-70,
16, § 3.
1784, 48.
1805, 101, § 2.
1830, 72, § 2.
R. S. 126, § 10.
G. S. 161, § 11.
P. S. 203, § 11.
1888, 135, § 2.
R. L. 208, § 15.

SECTION 15. Whoever breaks and enters a dwelling house in the night time, with the intent mentioned in the preceding section, or, having entered with such intent, breaks such dwelling house in the night time, the offender not being armed, nor arming himself in such house, with a dangerous weapon, nor making an assault upon a person lawfully therein, shall be punished by imprisonment in the state prison for not more than twenty years and, if he shall have been previously convicted of any crime named in this or the preceding section, for not less than five years.

4 Met. 357.

Breaking, in night time, building or ship.
C. L. 204, § 3.

SECTION 16. Whoever, in the night time, breaks and enters a building, ship or vessel, with intent to commit a felony, shall be punished by imprisonment in the state prison for not more than twenty years.

1692-3, 18, § 4.
1804, 143, § 4.
R. S. 126, § 11.
1839, 31.

1851, 156, § 1.
G. S. 161, § 12.
P. S. 203, § 12.
R. L. 208, § 16.

20 Pick. 356.
3 Met. 316.
6 Met. 236.
12 Met. 240.

108 Mass. 1.
130 Mass. 45.
135 Mass. 540.

Entering, in night time, without breaking, or breaking, etc., in day time.
C. L. 204, § 3.
1692-3, 18, § 4.
1784, 66, § 8.

SECTION 17. Whoever, in the night time, enters without breaking, or breaks and enters in the day time, a building, ship or vessel, with intent to commit a felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years.

1804, 143, § 5.
R. S. 126, § 12.

1851, 156, § 2.
G. S. 161, § 13.

P. S. 203, § 13.
R. L. 208, § 17.

Entering dwelling house in night time or breaking, etc., without putting in fear, in day time.
1784, 66, § 8.
1805, 101, § 4.
R. S. 126, § 13.
1851, 156, § 3.

SECTION 18. Whoever, in the night time, enters a dwelling house without breaking, or breaks and enters in the day time a building, ship or vessel, with intent to commit a felony, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars and imprisonment in jail for not more than two years.

G. S. 161, § 14.
1869, 386.

P. S. 203, § 15.
R. L. 208, § 18.

122 Mass. 454.
210 Mass. 443.

Breaking and entering railroad car, etc.
1874, 70; 372,
§ 158.
P. S. 203, § 11.
R. L. 208, § 19.

SECTION 19. Whoever breaks and enters, or enters in the night time without breaking, a railroad car, with intent to commit a felony, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars and imprisonment in the house of correction for not more than two years.

1 SECTION 20. Whoever steals in a building, ship, vessel or railroad
2 car shall be punished by imprisonment in the state prison for not more
3 than five years or by a fine of not more than five hundred dollars or by
4 imprisonment in jail for not more than two years.

Stealing in
building, ship,
etc.
1804, 143, § 6.
1830, 72, § 3.

R. S. 126, § 14.
1843, 1, § 1.
1845, 28.
1851, 156, § 4.
G. S. 161, § 15.

P. S. 203, § 16.
1896, 389.
R. L. 208, § 20.
2 Cush. 582.
3 Gray, 450.

8 Gray, 469.
111 Mass. 429.
129 Mass. 101.
135 Mass. 269.
255 Mass. 340.

1 SECTION 21. Whoever, having been convicted, either as principal or
2 accessory, of burglary or robbery, or of any of the crimes described in
3 sections seventeen to twenty, inclusive, of chapter two hundred and
4 sixty-five, or of breaking and entering or of entering a building with
5 intent to commit robbery or larceny, has in his possession or control
6 money, goods, bonds or bank notes, or any paper of value, or any prop-
7 erty of another, which was obtained or taken by means of such crime,
8 and, upon being requested by the lawful owner thereof to deliver the
9 same to him, refuses or fails so to do while having power to deliver the
10 same, shall be punished by imprisonment in the state prison for not
11 more than five years or in jail or house of correction for not more than
12 two years.

Refusal to
deliver stolen
property, etc.
1879, 168.
P. S. 203, § 17
R. L. 208, § 21

1 SECTION 22. Whoever, with intent to commit larceny, breaks or
2 enters or enters in the night without breaking any building or enclosure
3 wherein is kept or confined any kind of poultry, may be detained or kept
4 in custody in a convenient place by the owner of the poultry, or by his
5 agent or employee, for not more than twenty-four hours, Sunday ex-
6 cepted, until a complaint can be made against him for the offence and
7 he be taken upon a warrant issued upon such complaint, and, upon con-
8 viction of such trespassing or breaking or entering, shall be punished
9 by a fine of not less than one hundred nor more than five hundred dollars
10 or by imprisonment in the house of correction for not less than six months
11 nor more than two years, or by both such fine and imprisonment.

Detention of
persons unlaw-
fully entering
places where
poultry is kept.
Penalty.
1911, 594.
§§ 1, 2.
1930, 185.

1 SECTION 23. Whoever steals, conveys away or conceals any furniture,
2 goods, chattels, merchandise or effects of persons whose houses or build-
3 ings are on fire or are endangered thereby, and does not, within two days
4 thereafter, restore the same or give notice of his possession thereof to the
5 owner, if known, or, if unknown, to the mayor or one of the aldermen,
6 selectmen or firewards of the place, shall be guilty of larceny.

Embezzling,
etc., of
property at a
fire to be
deemed
larceny.
1711-12, 5, § 4.
1744-5, 30, § 4

1796, 88, § 1.
R. S. 18, § 8.

G. S. 24, § 8.
P. S. 35, § 8.

R. L. 208, § 22.

1 SECTION 24. Whoever steals in a building which is on fire, or steals
2 property which has been removed in consequence of an alarm caused by
3 fire, shall be punished by imprisonment in the state prison for not more
4 than five years or by a fine of not more than five hundred dollars and
5 imprisonment in jail for not more than two years.

Stealing
at a fire.
R. S. 126, § 15
G. S. 161, § 16.
P. S. 203, § 18.
R. L. 208, § 23

1 SECTION 25. Whoever commits larceny by stealing from the person
2 of another shall be punished by imprisonment in the state prison for not
3 more than five years or in jail for not more than two years.

Larceny from
the person.
1784, 66, § 2.

1804, 143, § 8.
R. S. 126, § 16.
G. S. 161, § 17.
P. S. 203, § 19
R. L. 208, § 24.

3 Cush. 235.
12 Allen, 182.
99 Mass. 431.
105 Mass. 169
138 Mass. 483.

188 Mass. 330
203 Mass. 598.
213 Mass. 225.
215 Mass. 209.
235 Mass. 357.

Subjects of
larceny.
1784, 66, § 1.
1804, 143, § 1.
R. S. 126, § 17.
G. S. 161, § 18.
P. S. 203, § 20.
1898, 562,
§ 111.
R. L. 208, § 25.
7 Met 473.
9 Met 273.
4 Gray, 416.
8 Gray, 492.

SECTION 26. Larceny may be committed of a bank note, bond, 1
promissory note, bill of exchange or other bill, order or certificate, or of 2
a book of accounts for or concerning money or goods due or to become 3
due or to be delivered, or of a deed or writing containing a conveyance 4
of land, or of any valuable contract in force, or of a receipt, release or 5
defeasance, or of a writ, process, certificate of title or duplicate certificate 6
issued under chapter one hundred and eighty-five, or of a public 7
record. 8

100 Mass. 206.

103 Mass. 425.

Penalty for
stealing tools
of contractors,
builders, etc.
1907, 500, § 1.

SECTION 27. Whoever steals any tool belonging to any contractor, 1
builder or mechanic from any building during the course of its con- 2
struction, completion, alteration or repair, shall, for a first offence be 3
punished by a fine of not more than one hundred dollars or by imprison- 4
ment for not more than six months, or both, and for a subsequent offence 5
by a fine of one hundred dollars or by imprisonment for six months, or 6
both. 7

Removing or
concealing
automobiles to
defraud
insurers.
1923, 347, § 1.

SECTION 27A. Whoever, with intent to defraud the insurer, removes 1
or conceals an automobile belonging to himself or another which is at 2
the time insured against theft, or whoever, with intent as aforesaid, aids 3
or abets in such removal or concealment, shall be punished by imprison- 4
ment in the state prison for not more than five years or by imprisonment 5
in jail or house of correction for not less than one year. 6

Theft or con-
cealment of
motor vehicles,
etc. Opera-
tion without
authority of
owner after
suspension,
etc., of license.
Penalty.
1919, 249, § 1.
1920, 322.
1926, 267, § 1;
296.

SECTION 28. Whoever steals an automobile or motor cycle, or receives 1
or buys an automobile or motor cycle knowing the same to have been 2
stolen, or conceals any automobile or motor cycle thief knowing him to be 3
such, or conceals any automobile or motor cycle knowing the same to 4
have been stolen, or takes an automobile or motor cycle without the 5
authority of the owner and steals from it any of its parts or accessories, 6
or without the authority of the owner operates an automobile or motor 7
cycle after his right to operate without a license has been suspended or 8
after his license to operate has been suspended or revoked and prior to 9
the restoration of such right or license to operate or to the issuance to 10
him of a new license to operate, shall be punished by imprisonment in 11
the state prison for not more than ten years or imprisonment in jail or 12
house of correction for not more than two and one half years. 13

Disposition of
prosecutions
under §§ 27A
and 28.
1919, 249, § 2.
1923, 347, § 2.

SECTION 29. A complaint or indictment for the violation of any pro- 1
vision of section twenty-seven A or twenty-eight shall not, unless the 2
purposes of justice require such disposition, be placed on file or disposed 3
of except by trial and judgment according to the regular course of criminal 4
proceedings. It shall be otherwise disposed of only upon motion in 5
writing, stating specifically the reasons therefor and verified by affidavit 6
if facts are relied on. If the court or justice certifies in writing that he is 7
satisfied that the cause relied on exists and that the interests of public 8
justice require the allowance thereof, such motion shall be allowed, and 9
said certificate shall be filed in the case. 10

Larceny, etc.
C. L. 13,
§§ 2, 3.
1692-3, 18, § 3.
1784, 66, § 1.

SECTION 30. Whoever steals, or with intent to defraud, obtains by 1
a false pretence, or whoever unlawfully and, with intent to steal or em- 2
bezzle, converts or secretes, with intent to convert, the money or personal 3

4 chattel of another, whether such money or personal chattel is or is not
 5 in his possession at the time of such conversion or secreting, shall be
 6 guilty of larceny, and shall, if the value of the property stolen exceeds one
 7 hundred dollars, be punished by imprisonment in the state prison for
 8 not more than five years or by a fine of not more than six hundred dollars
 9 and imprisonment in jail for not more than two years; or, if the value
 10 of the property stolen does not exceed one hundred dollars, shall be
 11 punished by imprisonment in jail for not more than one year or by a fine
 12 of not more than three hundred dollars; or, if the property was stolen
 13 from the conveyance of a common carrier or of a person carrying on an
 14 express business, shall be punished for the first offence by imprisonment
 15 for not less than six months nor more than two and one half years, or by
 16 a fine of not less than fifty nor more than six hundred dollars, or both,
 17 and for a subsequent offence by imprisonment for not less than eighteen
 18 months nor more than two and one half years, or by a fine of not less than
 19 one hundred and fifty dollars nor more than six hundred dollars, or both.

10 Met 521.	108 Mass. 309.	160 Mass. 319, 551.
11 Met. 64	111 Mass. 432	165 Mass. 526.
12 Met. 446	115 Mass. 481	166 Mass. 513.
3 Gray, 434, 461.	116 Mass. 1, 49, 42.	169 Mass. 89
6 Gray, 15	121 Mass. 354	187 Mass. 581.
8 Gray, 492	124 Mass. 325, 449.	188 Mass. 308.
9 Gray, 5, 7, 114, 125.	125 Mass. 390.	201 Mass. 564.
10 Gray, 173	126 Mass. 467.	202 Mass. 379.
1 Allen, 590	127 Mass. 20, 446.	207 Mass. 32, 563.
5 Allen, 502.	128 Mass. 79	224 Mass. 42.
7 Allen, 548	129 Mass. 104.	231 Mass. 449.
11 Allen, 233, 266.	130 Mass. 285.	232 Mass. 285.
12 Allen, 145, 181.	132 Mass. 16.	250 Mass. 320, 405.
97 Mass. 584	137 Mass. 98	252 Mass. 55.
99 Mass. 428	140 Mass. 279	253 Mass. 65.
100 Mass. 206	141 Mass. 423, 571.	254 Mass. 320
104 Mass. 548, 549.	149 Mass. 179	257 Mass. 172, 459, 590.
107 Mass. 486.	155 Mass. 523.	265 Mass. 45

1804, 143, § 1.
 1815, 136, § 1.
 1834, 186.
 §§ 1, 3.
 R. S. 126.
 §§ 17, 29-32.
 1857, 233
 G. S. 161.
 §§ 18, 35, 38,
 41, 53, 54.
 P. S. 203.
 §§ 20, 37, 40,
 43, 58, 59
 1889, 458
 1899, 316, § 1.
 R. L. 208, § 26.
 1906, 261.
 1914, 635.
 1918, 257.
 § 464.
 1919, 5.
 1920, 2.
 2 Mass. 14.
 6 Mass. 72.
 4 Pick. 177.
 19 Pick. 179.
 21 Pick. 515.
 2 Met. 343.
 9 Met. 138.

1 SECTION 31. Whoever by a false pretence, with intent to defraud,
 2 obtains the signature of a person to a written instrument, the false making
 3 whereof would be a forgery, shall be punished by imprisonment in the
 4 state prison for not more than ten years, or by a fine of not more than
 5 five hundred dollars and imprisonment in the jail for not more than two
 6 years.

Fraudulently
 obtaining
 signature
 R. S. 126, § 32.
 G. S. 161, § 54.
 P. S. 203, § 59
 R. L. 208, § 27.
 110 Mass. 64
 114 Mass. 325.

1 SECTION 32. Whoever, being a captain of a vessel, embezzles or
 2 fraudulently converts or appropriates money, goods or property, held or
 3 possessed by or delivered to him, which belong wholly or in part to the
 4 crew of such vessel, the owners of the vessel, or to those who have fur-
 5 nished supplies to the vessel, although he is a joint charterer or co-
 6 partner with the members of the crew or with the owners of the vessel,
 7 or with the person who furnished the supplies, shall be guilty of larceny.

Fraudulent
 conversion of
 property by
 captain of
 vessel
 1907, 389.

1 SECTION 33. Whoever, with intent to defraud, obtains by a false
 2 pretence the making, acceptance or endorsement of a bill of exchange
 3 or promissory note, the release or substitution of collateral or other
 4 security, an extension of time for the payment of an obligation, or the
 5 release or alteration of the obligation of a written contract, shall be
 6 guilty of larceny.

False pre-
 tences to con-
 stitute larceny
 in certain
 cases
 1910, 378, § 1.

1 SECTION 34. Whoever, with intent to defraud and by a false pretence,
 2 induces another to part with property of any kind or with any of the
 3 benefits described in the preceding section shall be guilty of larceny.

Same subject.
 1910, 378, § 2.
 224 Mass. 42.

Limitation of
§§ 30, 31
and 34.
1854, 12.
G. S. 161, § 54.
P. S. 203, § 59.
1899, 316, § 2.
R. L. 208, § 28.
1919, 333,
§§ 37, 38.
1920, 2.

SECTION 35. Sections thirty, thirty-one and thirty-four shall not apply to a purchase of property by means of a false pretence relative to the purchaser's means or ability to pay, if, by the terms of the purchase, payment therefor is not to be made upon or before the delivery of the property purchased, unless such pretence is made in writing and is signed by the person to be charged.

222 Mass. 504.

Persons obtaining credit
by false pretences to be
guilty of
larceny.
1913, 312.

SECTION 36. Whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains credit from any bank or trust company or any banking institution accustomed to give credit in any form whatsoever, shall be guilty of larceny.

Drawing and
uttering fraudulent
checks,
drafts and
orders.
1919, 141.

SECTION 37. Whoever, with intent to defraud, makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, with knowledge that the maker or drawer has not sufficient funds or credit at such bank or other depository for the payment of such instrument, although no express representation is made in reference thereto, shall be guilty of attempted larceny, and if money or property is obtained thereby shall be guilty of larceny. As against the maker or drawer thereof, the making, drawing, uttering or delivery of such a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or credit with, such bank or other depository, unless the maker or drawer shall have paid the holder thereof the amount due thereon, together with all costs and protest fees, within ten days after receiving notice that such check, draft or order has not been paid by the drawee. The word "credit", as used herein, shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

Wrongful detention of
money by carriers and their
employees.
1919, 188.

SECTION 38. Whoever, being engaged in the business of transporting merchandise, parcels or other property for hire, accepts from a consignor or his agent or from a connecting carrier any merchandise, parcel or other property for delivery to a consignee upon payment by the consignee of an amount of money for said merchandise, parcel or other property, and embezzles or fraudulently converts to his own use, or with intent to use or embezzle, takes, secretes or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies such money in whole or in part or any substitute therefor received by him from such consignee, contrary to the instructions or without the consent of the consignor, shall be deemed guilty of larceny. A member or employee of a co-partnership, or an officer or employee of a corporation, engaged in said business of transporting merchandise, parcels or other property for hire who so disposes of such money in whole or in part or any substitute therefor for his own use or for the use of said co-partnership or corporation, contrary to the instructions or without the consent of the consignor, shall be guilty of larceny.

Misuse of
construction loans.
1928, 351.

SECTION 38A. Whoever obtains a building or construction loan, secured by a mortgage of real estate, for the payment for labor furnished or to be furnished and/or materials used and/or employed or to be used

4 and/or employed in the construction, repair, removal or alteration of
 5 a building or other structure which is attached or is to be attached to
 6 such real estate, and, before payment in full for all labor furnished or
 7 to be furnished and/or materials used or to be used and or employed
 8 or to be employed as aforesaid, applies the proceeds of such loan, or any
 9 part thereof, to any use other than payment for labor and/or materials
 10 as aforesaid, shall be punished by a fine of not more than five hundred
 11 dollars or by imprisonment in jail for not more than one year, or both.

1 SECTION 39. Whoever steals or for any fraudulent purpose destroys,
 2 mutilates or conceals a will, codicil or other testamentary instrument
 3 shall be punished by imprisonment in the state prison for not more than
 4 five years or in the house of correction for not more than two years. An
 5 indictment for a violation of this section need not contain any allegation
 6 of value or ownership; and in the trial of such an indictment, no dis-
 7 closure made by any person under section fourteen of chapter one hun-
 8 dred and ninety-one shall be used in evidence against him.

Larceny and
 destruction
 of wills.
 G. S. 161,
 §§ 19, 20.
 P. S. 203,
 §§ 21, 22.
 1890, 391
 R. L. 208, § 29

1 SECTION 40. Whoever, having been convicted, upon indictment, of
 2 larceny or of being accessory to larceny before the fact, afterward com-
 3 mits a larceny or is accessory thereto before the fact, and is convicted
 4 thereof upon indictment, and whoever is convicted at the same sitting of
 5 the court, as principal or accessory before the fact, of three distinct lar-
 6 cenes, shall be adjudged a common and notorious thief, and shall be
 7 punished by imprisonment in the state prison for not more than twenty
 8 years or in jail for not more than two and one half years.

Common and
 notorious thief.
 1784, 66,
 §§ 6, 7.
 1804, 143, § 3.
 R. S. 126, § 19
 G. S. 161, § 22
 P. S. 203, § 24
 R. L. 208, § 31.
 1914, 635.
 1918, 257,
 § 464.
 1919, 5.

1920, 2.
 22 Psek. 1.
 3 Met. 457.

4 Met. 360.
 11 Met. 575, 581.

12 Met. 246.
 175 Mass. 202.

1 SECTION 41. Whoever is convicted of a second offence of the larceny
 2 of a bicycle shall, if the value of the bicycle stolen exceeds ten dollars,
 3 be punished by imprisonment in the state prison for not more than five
 4 years or by a fine of not more than two hundred dollars or by imprison-
 5 ment in jail for not more than two years.

Second con-
 viction of
 larceny of a
 bicycle.
 1897, 409
 R. L. 208, § 32

1 SECTION 42. Whoever commits larceny of a printed piece of paper or
 2 blank designed for issue by any incorporated bank or banking company
 3 in the United States as a bank bill, certificate or promissory note, or
 4 printed by means of an engraved plate designed for printing such pieces
 5 of paper or blanks, with intent to injure or defraud either by uttering or
 6 passing the same, or causing or allowing the same to be uttered or passed
 7 as true, either with or without alteration or addition, shall be punished
 8 by imprisonment in the state prison for life or for any term of years.

Larceny of
 paper designed
 for bank bills,
 etc.
 1858, 67, § 1
 G. S. 161, § 23
 P. S. 203, § 25
 R. L. 208, § 33

1 SECTION 43. Whoever, having been employed to print or having
 2 assisted in printing a printed piece of paper or blank described in the
 3 preceding section, or having been intrusted with the care or custody
 4 thereof, retains it in his possession without the knowledge and consent
 5 of the corporation for which it was printed, with intent to injure or defraud
 6 either by uttering or passing it or causing or allowing it to be uttered or
 7 passed as true, either with or without alteration or addition, shall be
 8 punished by imprisonment in the state prison for life or for any term of
 9 years.

Printer, etc.,
 retaining such
 paper, etc.,
 with intent to
 pass, etc.
 1858, 67, § 2
 G. S. 161, § 24.
 P. S. 203, § 26.
 R. L. 208, § 34.

Larceny of things annexed to the realty. 1851, 151, §§ 1-3. G. S. 161, §§ 25-27. P. S. 203, §§ 27-29. R. L. 208, § 35.

SECTION 44. Whoever by a trespass, with intent to steal, takes and carries away anything which is parcel of the realty or is annexed thereto, the property of another and of value, against his will, shall be guilty of such simple or aggravated larceny as he would be guilty of if such property were personal property. Any person may become an accessory to such larceny before or after the fact, or may become a receiver of the property stolen, in like manner as if the property stolen were personal, and shall be punished accordingly. The same courts and justices as would have jurisdiction if the property stolen were personal property shall have jurisdiction of such crimes.

Same subject. 1851, 151, §§ 4, 5. G. S. 161, §§ 28, 29. P. S. 203, §§ 30, 31. R. L. 208, § 36.

SECTION 45. The stealing of such real property may be a larceny from one or more tenants, sole, joint or in common, in fee, for life or years, at will or sufferance, mortgagors or mortgagees, in possession of the same, or who may have an action of tort against the offender for trespass upon the property, but not from one having only the use or custody thereof. The larceny may be from a wife in possession, if she is authorized by law to hold such property as if sole, otherwise her occupation may be the possession of the husband. If such property which was of a person deceased is stolen, it may be a larceny from any one or more heirs, devisees, reversioners, remaindermen or others, who have a right upon such decease to take possession, but not having entered, as it would be after entry. The larceny may be from a person whose name is unknown, if it would be such if the property stolen were personal, and may be committed by those who have only the use or custody of the property, but not by a person against whom no action of tort could be maintained for acts like those constituting the larceny.

Larceny of beast or bird. 1850, 303. G. S. 161, § 30. P. S. 203, § 32. R. L. 208, § 37. 1906, 181.

SECTION 46. Whoever, without the consent of the owner and with a felonious intent, takes any domesticated animal, or a beast or bird which is ordinarily kept in confinement and is not the subject of larceny at common law, shall be guilty of larceny.

Penalty for wrongfully removing collar from or stealing or poisoning a dog. 1858, 139, § 2. 1859, 225, §§ 4, 5. G. S. 88, § 57. P. S. 102, § 88. R. L. 208, § 38. 1913, 551.

SECTION 47. Whoever wrongfully removes the collar from or steals a dog which is licensed and collared as provided in chapter one hundred and forty shall be punished by a fine of not more than one hundred dollars, or by six months' imprisonment, or both. Whoever distributes or exposes a poisonous substance, with intent that it shall be eaten by a dog, shall be punished by a fine of not less than twenty nor more than one hundred dollars.

Officer making arrest to secure, etc., goods stolen. 1894, 113, § 15. R. S. 126, § 25. G. S. 161, § 31. P. S. 203, § 33. R. L. 208, § 39.

SECTION 48. An officer who arrests a person charged as principal or accessory in a robbery or larceny shall secure the property which is alleged to have been stolen, annex a schedule thereof to his return and be answerable for the same; and, upon conviction of the offender, it shall be restored to the owner.

21 Pick. 156. 4 Gray, 418. 6 Allen, 298. 157 Mass. 581.

Making, holding, using, etc., burglarious instrument. 1853, 194. G. S. 161, § 34.

SECTION 49. Whoever makes or mends, or begins to make or mend, or knowingly has in his possession, an engine, machine, tool or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe or other depository, in order to steal therefrom

5 money or other property, or to commit any other crime, knowing the
6 same to be adapted and designed for the purpose aforesaid, with intent
7 to use or employ or allow the same to be used or employed for such pur-
8 pose, shall be punished by imprisonment in the state prison for not more
9 than ten years or by a fine of not more than one thousand dollars and
10 imprisonment in jail for not more than two and one half years.

188 Mass. 282.

199 Mass. 55.

P. S. 203, § 36.
R. L. 208, § 41
1914, 635.
1918, 257,
§ 464
1919, 5.
1920, 2.
S. Gray, 375.
138 Mass. 186.

1 SECTION 50. A person employed in the treasury of the common-
2 wealth who commits a fraud or embezzlement therein shall be punished
3 by a fine of not more than two thousand dollars or by imprisonment in
4 the state prison for life or for any term of years.

Fraud or em-
bezzlement by
employee in
treasury.
1791, 59, § 5.

R. S. 13, § 23;
126, § 28.

G. S. 161, § 36.
P. S. 203, § 38.

R. L. 208, § 42.

1 SECTION 51. A county, city or town officer who embezzles or fraud-
2 ulently converts, or who fraudulently takes or secretes with intent so
3 to do, effects or property which belong to or are in possession of said
4 county, city or town, shall be punished by imprisonment in the state
5 prison for not more than ten years or by a fine of not more than one
6 thousand dollars and imprisonment in jail for not more than two years.

Fraud or em-
bezzlement by
city, town or
county officer.
1855, 487
G. S. 161, § 37.
P. S. 203, § 39.
R. L. 208, § 43.

1 SECTION 52. An officer, director, trustee, agent or employee of a
2 bank, as defined in section one of chapter one hundred and sixty-seven,
3 who fraudulently converts, or fraudulently takes and secretes with
4 intent so to do, any bullion, money, note, bill or other security for
5 money which belongs to and is in possession of such bank, or which
6 belongs to any person and is deposited therein, shall, whether intrusted
7 with the custody thereof or not, be guilty of larceny from said bank, and
8 shall be punished by imprisonment in the state prison for not more than
9 fifteen years, or by a fine of not more than two thousand dollars and
10 imprisonment in jail for not more than two and one half years.

Fraud or em-
bezzlement by
bank officer,
employee, etc.
1783, 53, § 1.
1824, 51.
1828, 96, § 26.
R. S. 126, § 27.
1846, 171, § 1
G. S. 161, § 39.
P. S. 203, § 41.
R. L. 208, § 44.
1911, 216
1914, 635
1918, 257, § 464.
1919, 5.

1920, 2
1922, 313, § 1.
8 Met. 247.

1 Allen, 575.
97 Mass. 50.
101 Mass. 204.

116 Mass. 1.
137 Mass. 98.
173 Mass. 541.

1 SECTION 53. In prosecutions for such crimes, the fraudulent taking
2 or receiving by any person of bullion, money, notes, bills or other security
3 for money which belongs to such bank, by reason of an unlawful con-
4 federacy or agreement between him and an officer of said bank or any
5 person in the employment thereof, with intent to defraud the same, shall
6 be deemed to be a fraudulent taking by such officer or person in the em-
7 ployment of the bank to his own use, within the meaning of the preceding
8 section; and it shall not be necessary, upon the trial, to identify the
9 particular bullion, money, note, bill or security for money which is so
10 taken or received. Upon the trial of the crime of embezzling, fraudu-
11 lently converting or fraudulently taking and secreting, with intent so to
12 embezzle or convert, the bullion, money, notes, bank notes, checks,
13 drafts, bills of exchange, obligations or other securities for money of any
14 person, bank, corporation, partnership, county, city or town by a cashier
15 or other officer, clerk, agent or servant of such person, bank, corporation,
16 partnership, county, city or town, evidence may be given of any such
17 embezzlement, fraudulent conversion or taking with such intent com-
18 mitted within six months after the time stated in the indictment.

Evidence in
fraud or em-
bezzlement by
accomplice of
officer or em-
ployee of
bank, etc.
1834, 186, § 2
R. S. 133, § 10.
1845, 215.
1846, 171,
§ 2, 3.
G. S. 161,
§ 40, 42.
1878, 186.
P. S. 203,
§ 42, 44.
R. L. 208, § 45
118 Mass. 443

Certain crimes
relating to
banks and
banking.
1922, 313, § 2.
257 Mass. 289.

SECTION 53A. An officer, director, trustee, agent or employee of a bank, as defined in section one of chapter one hundred and sixty-seven, who wilfully misapplies otherwise than as described in section fifty-two or fifty-three, any of the moneys, funds, credits or other property of such bank; or who, without authority from the directors or trustees of such bank, executes or issues a certificate of deposit, order or bill of exchange, or makes an acceptance, purporting to be executed, issued or made by such bank; or who, without such authority, assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree or other property of such bank; or who loans the funds or credit of such bank to any individual, corporation, joint stock company, trust, association or partnership known by him to be insolvent; or who knowingly receives or accepts for such bank any fictitious, valueless, inadequate or irresponsible obligation directly or as security or endorsement unless the consideration or security is otherwise sufficient, or unless it shall be necessary to prevent loss upon a debt previously contracted in good faith; or who certifies any check drawn upon such bank unless the drawer then has on deposit with the bank and entered to his credit on its books not less than the amount of money specified in the check; or who resorts to any fictitious or colorable loan, transfer or device to avoid any provision of law relating to such bank; or who knowingly makes or causes to be made any false entry in any book, report or statement of such bank; and any person who knowingly aids or abets any violation of this section shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than ten years, or in a jail or house of correction for not more than two and one half years, or by both such fine and imprisonment.

Penalty for
receiving
deposits by
insolvent
banks, etc.
1914, 567, 635.
1918, 257,
§ 464.
1919, 5.
1920, 2.

SECTION 54. Any officer of any trust company, savings or co-operative bank or institution for savings, or any individual banker who receives or permits the receipt of, and any employee who receives, any deposit knowing that such company, bank, institution or banker is insolvent, shall be punished by imprisonment for not more than two and one half years or by a fine of not more than five thousand dollars, or both.

Embezzlement
by liquidating
agent, receiver,
etc.
1874, 79.
P. S. 203, § 15.
R. L. 208, § 46.
1922, 313, § 3.

SECTION 55. An agent appointed by the commissioner of banks for the purposes of liquidating the affairs of a bank, as defined in section one of chapter one hundred and sixty-seven, or a person employed by said commissioner under section twenty-six of said chapter, or a receiver or other officer appointed by a court of record, who embezzles or fraudulently converts, or fraudulently takes and secretes with intent so to do, or wilfully misapplies, moneys, funds, credits or other property in his possession by virtue of his appointment or employment, shall be guilty of larceny and shall be punished by imprisonment in the state prison for not more than ten years, or by a fine of not more than one thousand dollars and imprisonment in a jail or house of correction for not more than two years.

Embezzlement
by broker, etc.
1892, 138.
R. L. 208, § 47.
1914, 635.
1918, 257,
§ 464.
1919, 5.
1920, 2.

SECTION 56. A broker, or officer, manager or agent of a corporation doing the business of brokers, who, having been intrusted, solely or jointly, with money, stock or security for the payment of money, with any direction in writing to invest, dispose of, apply, pay or deliver such money, stock or security, or any part thereof, or the proceeds or any

6 part of the proceeds thereof, in any manner, for any purpose or to any
 7 person mentioned or specified in such direction, in violation of good faith
 8 and contrary to the terms of such direction, embezzles or fraudulently
 9 converts such money, stock or security, or any part thereof, or the pro-
 10 ceeds or any part of the proceeds thereof, shall be punished by imprison-
 11 ment in the state prison for not more than five years or in jail for not
 12 more than two and one half years or by a fine of not more than five hun-
 13 dred dollars.

202 Mass. 379.
 253 Mass. 65.

1 SECTION 57. A trustee under an express trust created by a deed,
 2 will or other instrument in writing, or a guardian, conservator, executor
 3 or administrator, or any person upon or to whom such a trust has de-
 4 volved or come, who embezzles or fraudulently converts or appropriates
 5 money, goods or property held or possessed by him for the use or benefit,
 6 either wholly or partially, of some other person or for a public or chari-
 7 table purpose, to or for his own use or benefit or to or for the use or benefit
 8 of any person other than such person as aforesaid, or for any purpose other
 9 than such public or charitable purpose as aforesaid, or who otherwise
 10 fraudulently disposes of or destroys such property, shall be punished by
 11 imprisonment in the state prison for not more than ten years or by a
 12 fine of not more than two thousand dollars and imprisonment in jail
 13 for not more than two years.

Embezzlement
 by trustee,
et c.
 1877, 231.
 P. S. 203, § 46.
 R. L. 208, § 48.
 1915, 23.
 184 Mass. 320.
 202 Mass. 379.

1 SECTION 58. Whoever, being an officer, agent, clerk or servant of a
 2 voluntary association or society, embezzles or fraudulently converts, or
 3 fraudulently takes or secretes with intent so to do, effects or property
 4 which belong to such association or society, or which have come to his
 5 possession or are under his care by virtue of his office or employment,
 6 shall be guilty of larceny.

Embezzlement
 from voluntary
 association.
 1884, 174.
 R. L. 208, § 49.
 248 Mass. 317.

1 SECTION 59. Whoever embezzles or fraudulently converts, or se-
 2 cretes with intent to embezzle or fraudulently convert, money, goods or
 3 property or any part thereof which has been delivered to him, which
 4 may be the subject of larceny and which belong to any organization of
 5 the volunteer militia, post of the Grand Army of the Republic, or other
 6 voluntary association, shall be guilty of simple larceny, although he is a
 7 member of such organization or voluntary association and, as such, en-
 8 titled to an interest in the property thereof. In a prosecution under
 9 this section, it shall be sufficient to describe such organization or associa-
 10 tion by the name by which it is generally known and as a voluntary
 11 association.

Same subject.
 1886, 328.
 R. L. 208, § 50.
 248 Mass. 317.

1 SECTION 60. Whoever buys, receives or aids in the concealment of
 2 stolen or embezzled property, knowing it to have been stolen or em-
 3 bezzled, or whoever with intent to defraud buys, receives or aids in the
 4 concealment of property, knowing it to have been obtained from a person
 5 by a false pretence of carrying on business and dealing in the ordinary
 6 course of trade, shall be punished by imprisonment in the state prison
 7 for not more than five years or by a fine of not more than five hundred
 8 dollars and imprisonment in jail for not more than two years.

Buying or re-
 ceiving stolen
 goods.
 1698, 8.
 1723-4, 9.
 1784, 66, § 9.
 1804, 143, § 10.
 R. S. 126, § 20.
 1853, 184, § 1.
 G. S. 161,
 §§ 43, 46.
 1863, 248, § 3.
 P. S. 203,
 §§ 48, 51, 61.

R. L. 208, § 51.	117 Mass. 141.	140 Mass. 473.	232 Mass. 588.
6 Met. 241.	120 Mass. 198.	196 Mass. 286.	251 Mass. 369.
7 Met. 460.	121 Mass. 373.	207 Mass. 25.	261 Mass. 68.
5 Gray, 82.	136 Mass. 170.		

Effect of
restitution of
stolen property
bought, etc.
1804, 143, § 13.
R. S. 126, § 21.
G. S. 161, § 14.
P. S. 203, § 49.
R. L. 208, § 52.

SECTION 61. If, upon a first conviction under the preceding section, it is shown that the act of stealing the property was a simple larceny, and if the person convicted makes restitution to the person injured to the full value of the property stolen and not restored, he shall not be imprisoned in the state prison.

Common receiver of
stolen goods.
1804, 143, § 12.
R. S. 126, § 22.
1853, 184, § 2.
G. S. 161, § 47.
P. S. 203, § 52.
R. L. 208, § 53.
226 Mass. 409.

SECTION 62. Whoever is convicted of buying, receiving or aiding in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, having been before convicted of the like offence, and whoever is convicted at the same sitting of the court of three or more distinct acts of buying, receiving or aiding in the concealment of money, goods or property stolen or embezzled as aforesaid, shall be adjudged a common receiver of stolen or embezzled goods and shall be punished by imprisonment in the state prison for not more than ten years.

Unlawful
taking, etc., of
boats, certain
vehicles and
animals.
C. L. 19, § 5.
1854, 295.
1856, 39, § 1.
G. S. 161, § 48.
P. S. 203, § 53.
R. L. 208, § 54.
1926, 203, 296.

SECTION 63. Whoever wilfully, mischievously and without right takes or uses a boat or vehicle, other than a motor vehicle, or takes, drives, rides or uses any draught animal which is the property of another, without the consent of the owner or other person who has the legal custody, care or control thereof, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than six months; but this section shall not apply to the property of another taken with intent to steal it, or under a claim of right, or with the presumed consent of the owner or other person who has the legal control, care or custody thereof.

Fraudulent
hiring of
horses, car-
riages, automo-
biles, etc.
1882, 236.
R. L. 208, § 55.
1910, 516.
205 Mass. 400.

SECTION 64. Whoever hires a horse, carriage or other vehicle, and, with intent to cheat or defraud the owner thereof, makes to him or to his agent at the time of such hiring a false statement of the distance which he proposes to travel with such horse, carriage or other vehicle, or whoever, with such intent, makes to the owner or his agent, after the use of a horse, carriage or other vehicle, a false statement of the distance which he has actually traveled with such horse, carriage or other vehicle, and whoever, with such intent, refuses to pay for the use of a horse, carriage or other vehicle the lawful fare established therefor by any town, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than two months, or both.

Unauthorized
issue of stock.
1856, 123, § 1.
1858, 114.
G. S. 161, § 49.
P. S. 203, § 54.
R. L. 208, § 56.

SECTION 65. An officer, agent, clerk or servant of a corporation, or any other person, who issues or signs with intent to issue a certificate of stock in a corporation, or who issues, signs or endorses with intent to issue, a bond, note, bill or other obligation or security in the name of such corporation, beyond the amount authorized by law or limited by the legal votes of such corporation or its proper officers, or negotiates, transfers or disposes of such certificate with intent to defraud, shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than one year.

Fraudulent
issue of stock,
etc.
1856, 123, § 2.
G. S. 161, § 50.
P. S. 203, § 55.
R. L. 208, § 57.
243 Mass. 472.

SECTION 66. An officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of the stock of a corporation to a person who is not entitled thereto, or who fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person,

6 shall be punished by imprisonment in the state prison for not more than
7 ten years or in the house of correction for not more than one year.

1 SECTION 67. An officer of a corporation or an agent, clerk or servant
2 of a person, firm or corporation who makes a false entry or omits to make
3 a true entry in any book of such person, firm or corporation, with intent
4 to defraud, and any person whose duty it is to make a record or entry of
5 the transfer of stock, or of the issuing or cancelling of certificates thereof,
6 or of the amount of stock issued by a corporation, in any book thereof,
7 who, with intent to defraud, omits to make a true record or entry thereof,
8 shall be punished by imprisonment in the state prison for not more than
9 ten years or in the house of correction for not more than one year.

False entry,
etc., in book of
corporation.
1856, 123, § 3.
G. S. 161, § 51.
P. S. 203, § 56.
1885, 223.
R. L. 208, § 58.
190 Mass. 293.

1 SECTION 68. Upon the trial of a person for a crime under the three
2 preceding sections, the books of any person, firm or corporation to which
3 he had access or the right of access shall be admissible in evidence.

Books of cor-
poration as
evidence.

1856, 123, § 4. P. S. 203, § 57. 190 Mass. 293.
G. S. 161, § 52. R. L. 208, § 59.

1 SECTION 69. Whoever, not being a member of a society, association
2 or labor union, for the purpose of representing that he is a member
3 thereof, wilfully wears or uses the insignia, ribbon, badge, rosette, button
4 or emblem thereof, if it has been registered in the office of the state
5 secretary, shall be punished by a fine of not more than twenty dollars or
6 by imprisonment for not more than one month, or both.

Unlawful use
of insignia
1902, 430.
1904, 335,
§§ 2, 3.
1909, 514,
§§ 32, 145.

1 SECTION 70. Whoever, not being a member of the Military Order
2 of the Loyal Legion of the United States, the Grand Army of the Re-
3 public, the Sons of Veterans, the Woman's Relief Corps, the Union
4 Veterans' Union, the Union Veteran Legion, the Military and Naval
5 Order of the Spanish-American War, the United Spanish War Veterans,
6 the American Officers of the Great War, the Veterans of Foreign Wars
7 of the United States, the Military Order of Foreign Wars of the United
8 States or the American Legion, wilfully wears or uses the insignia, dis-
9 tintive ribbons or membership rosette or button thereof for the purpose
10 of representing that he is a member thereof shall be punished by a fine
11 of not more than twenty dollars or by imprisonment for not more than
12 one month, or both.

Same subject.
1887, 67.
1891, 15.
1894, 27; 117.
1901, 151.
R. L. 208, § 60.
1907, 232, § 3.
1920, 367.

1 SECTION 71. Whoever wilfully, by color or aid of any false token
2 or writing, or other false pretence or false statement, verbal or written,
3 or without authority of the grand or supreme governing lodge, council,
4 union or other governing body hereinafter mentioned, obtains the signa-
5 ture of any person to any written application, or obtains any money or
6 property for any alleged or pretended degree, or for any alleged or pre-
7 tended membership in any fraternity, association, society, order, organi-
8 zation or union having a grand or supreme governing lodge, council, union
9 or other governing body in the commonwealth, or in any subordinate
10 lodge or body thereof, shall be punished by imprisonment for not more
11 than one year or by a fine of not more than five hundred dollars, or both.

Fraudulent use
of names, etc.
1908, 280, § 1.

1 SECTION 72. Whoever, in a newspaper or other publication, or in any
2 written or printed letter, notice, matter or device, without authority of

Certain publi-
cations for-
bidden, etc.
1908, 280, § 2.

the grand or supreme governing lodge, council, union or other governing body, fraudulently uses or aids in any way in the use of the name, title or common designation of any fraternity, association, society, order, organization or union which has such a governing body, having priority in such use in the commonwealth, or any name, title or designation so nearly resembling the same as to be calculated or likely to deceive; and whoever, without such authority, fraudulently publishes, sells, circulates or distributes any written or printed letter, notice, matter or device, in any way soliciting members of such fraternity, association, society, order, organization or union, or for any alleged or pretended fraternity, association, society, order, organization or union, using any such name, title, designation, or near resemblance thereto; and whoever therein or thereby in any way, without such authority, fraudulently offers to sell, confer, communicate or give information where, of whom or by what means any degree or work, in whole or in part, of such fraternity, association, society, order, organization or union, or of any alleged or pretended fraternity, association, society, order, organization or union using any such name, title or designation or near resemblance thereto, can or may be obtained, conferred or communicated, shall be punished by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or both.

Obtaining goods under false pretence of carrying on business. 1863, 248, § 2. P. S. 203, § 60. R. L. 208, § 61. 1902, 544, § 29. 108 Mass. 309. 153 Mass. 588.

SECTION 73. Whoever, with intent to defraud, by a false pretence of carrying on business and dealing in the ordinary course of trade, obtains from any person goods or chattels shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five hundred dollars and imprisonment in jail for not more than two years.

157 Mass. 486.

182 Mass. 142

Fraudulent use of credit of corporation. 1878, 274. P. S. 203, § 62. R. L. 208, § 62. 217 Mass. 473.

SECTION 74. An officer, agent, clerk or servant of a corporation organized or doing business in the commonwealth, who wilfully uses the name of such corporation, or his own name as such officer, agent, clerk or servant, to obtain money upon the credit of such corporation for his own use or benefit, without authority from such corporation, or who fraudulently lends, invests or appropriates the money or disposes of the property of such corporation, or fraudulently converts it, shall be punished by imprisonment in the state prison for not more than ten years.

Obtaining property by trick, etc. 1855, 135, § 1. G. S. 161, § 57. P. S. 203, § 65. R. L. 208, § 63. 117 Mass. 112. 125 Mass. 384.

SECTION 75. Whoever, by a game, device, sleight of hand, pretended fortune telling or by any trick or other means by the use of cards or other implements or instruments, fraudulently obtains from another person property of any description shall be punished as in the case of larceny of property of like value.

138 Mass. 484.

Gross fraud, etc., at common law. 1785, 21, § 4. 1815, 136, § 2. R. S. 126, § 33. G. S. 161, § 58.

SECTION 76. Whoever is convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two years or by a fine of not more than four hundred dollars.

P. S. 203, § 66.

R. L. 208, § 64.

1 SECTION 77. Whoever makes or sells, or offers to sell or dispose of,
 2 or has in his possession with intent so to do, any article of merchandise
 3 marked, stamped or branded with the words "sterling", "sterling silver",
 4 "coin" or "coin silver", or encased or enclosed in any box, package,
 5 cover or wrapper or other thing in or by which the said article is packed,
 6 enclosed or otherwise prepared for sale or disposition, having thereon any
 7 engraving or printed label, stamp, imprint, mark or trade mark, indicat-
 8 ing or denoting by such marking, stamping, branding, engraving or
 9 printing, that such article is silver, sterling silver, solid silver, coin or
 10 coin silver, shall, unless nine hundred and twenty-five one-thousandths
 11 of the component parts of the metal of which the said article so marked,
 12 stamped or branded with the words "sterling" or "sterling silver" is
 13 manufactured are pure silver, or unless nine hundred one-thousandths
 14 of the component parts of the metal of which the article so marked,
 15 stamped or branded with the words "coin" or "coin silver" is manu-
 16 factured, are pure silver, be punished by a fine of not more than one
 17 hundred dollars.

Sale of certain
 articles as
 sterling and
 coin silver.
 1894, 292.
 R. L. 208, § 65.

1 SECTION 78. Whoever makes or sells, or offers for sale or disposes of,
 2 or has in his possession with intent so to do, any article constructed in
 3 whole or in part of gold or alloy of gold, or of any metal resembling gold,
 4 having marked thereon or upon any tag or label attached thereto, or upon
 5 any package, cover or wrapper in which such article is enclosed or
 6 wrapped, any word or mark indicating or designed or intended to indicate
 7 that the gold or alloy of gold in said article, or in the plating, surface or
 8 any other part of said article is of a greater degree or carat of fineness by
 9 more than one carat than the actual quality or fineness of such gold or
 10 alloy of gold, or any so-called gold filled, rolled gold plated or electro
 11 gold plated article having marked thereon, or upon any tag or label at-
 12 tached thereto, or upon any package, cover or wrapper in which such
 13 article is enclosed or wrapped, any word or mark indicating or designed
 14 or intended to indicate that the gold or alloy of gold upon such article
 15 is of a greater percentage of weight of the article by more than one per
 16 cent than the actual percentage of gold or alloy of gold, shall be punished
 17 by a fine of not more than five hundred dollars. The word or mark upon
 18 the article or upon the tag or label attached thereto, or upon the package,
 19 cover or wrapper in which such article is enclosed, shall be held to apply
 20 to the whole article, all the gold, alloys, solder and base metals being
 21 assayed as one piece, unless the word or mark plainly indicates that it
 22 applies to the plating, surface or other particular part of such article.

False marking
 of articles
 made of gold,
 etc., prohibited.
 1907, 460.
 §§ 1-3.

1 SECTION 79. Whoever, himself, or by his agent or servant, or as the
 2 agent or servant of another person, sells or exchanges, or has in his
 3 custody or possession with intent so to do, or exposes for sale or ex-
 4 change, any manufactured imitations of furs of fur-bearing animals,
 5 representing the same to be the genuine fur of certain animals, shall be
 6 punished by a fine of not less than two hundred nor more than five
 7 hundred dollars.

False repre-
 sentation of
 imitations
 of fur
 prohibited.
 1919, 134.

1 SECTION 80. Whoever conveys land, knowing that an encumbrance
 2 exists thereon, without informing the grantee, before the consideration is
 3 paid, of the existence and nature of such encumbrance, so far as he has

Conveying
 encumbered
 land without
 notice.
 1855, 177, § 2.

G. S. 161, § 59. knowledge thereof, shall be punished by imprisonment for not more than 4
 P. S. 203, § 67. one year or by a fine of not more than one thousand dollars. 5
 R. L. 208, § 66. 15 Gray, 189. 127 Mass. 285, 287. 136 Mass. 438. 254 Mass. 320.

Selling at- SECTION 81. Whoever, knowing that his land is attached on mesne 1
 tached land process, sells and conveys it without giving notice of the attachment to 2
 without notice. the grantee, and with intent to defraud, shall be punished by imprison- 3
 R. S. 126, § 34. ment in the state prison for not more than three years or in jail for not 4
 G. S. 161, § 60. more than one year. 5
 P. S. 203, § 68. R. L. 208, § 67.

Concealing SECTION 82. Whoever, with a fraudulent intent to place personal 1
 mortgaged, property which is subject to a mortgage beyond the control of the mortga- 2
 or using rented, gee, removes or conceals or aids or abets in removing or concealing the 3
 etc., personal property as container, etc., same, and a mortgagor of such property who assents to such removal or 4
 for illegal sale concealment, or whoever shall use rented, leased or mortgaged personal 5
 of liquor. property as a container or implement of sale of intoxicating liquor con- 6
 1859, 246. trary to law, shall be punished by a fine of not more than one thousand 7
 G. S. 161, § 61. dollars or by imprisonment for not more than one year. 8
 P. S. 203, § 69. 112 Mass. 289.
 R. L. 208, § 68. 1929, 329, § 3.
 108 Mass. 12.

Sale by mort- SECTION 83. A mortgagor of personal property who sells or conveys 1
 gator without the same or any part thereof without the written consent of the mort- 2
 consent of gagee, and without informing the vendee or grantee that the same is 3
 mortgagee. mortgaged, shall be punished by a fine of not more than one hundred 4
 1859, 284. dollars or by imprisonment for not more than one year. 5
 G. S. 161, § 62. P. S. 203, § 70. R. L. 208, § 69. § Allen, 518. 10 Allen, 81. 105 Mass. 580. 153 Mass. 252.

Sale by hirer, SECTION 84. A hirer or lessee of personal property who sells or con- 1
 etc., of person- veys the same or any part thereof without the written consent of the 2
 alty without owner or lessor, and without informing the vendee or grantee that it is 3
 consent. so hired or leased, shall be punished by a fine of not more than one 4
 1857, 156. hundred dollars or by imprisonment for not more than one year. 5
 G. S. 161, § 63. P. S. 203, § 71. R. L. 208, § 70.

Sale, etc., of SECTION 85. Whoever, holding collateral security deposited with 1
 collateral secu- him for the payment of a debt which may be due to him, sells, pledges, 2
 rity before debt lends or in any way disposes of the same before such debt becomes due and 3
 due, etc. payable, without the authority of the depositor thereof, shall be pun- 4
 1853, 213. ished by a fine of not more than five hundred dollars or by imprisonment 5
 G. S. 161, § 64. in jail for not more than two years. 6
 P. S. 203, § 72. R. L. 208, § 71. 1 Allen, 502. 100 Mass. 1. 118 Mass. 427. 124 Mass. 185. 137 Mass. 315. 203 Mass. 108. 207 Mass. 32.

Buying, etc., SECTION 86. Whoever, with intent to defraud, buys, receives or 1
 hired property, aids in concealing personal property, knowing it to be hired or leased or 2
 etc. held as collateral security, shall be punished by a fine of not more than 3
 1865, 127, § 1. P. S. 203, § 73. R. L. 208, § 72. one hundred dollars or by imprisonment for not more than one year. 4

Sale, etc., of SECTION 87. Whoever, being in possession of personal property 1
 personalty received upon a written and conditional contract of sale, with intent to 2
 held on con- defraud, sells, conveys, conceals or aids in concealing the same before 3
 ditional sale. performance of the conditions precedent to acquiring the title thereto, 4
 1870, 261. shall be punished by a fine of not more than one hundred dollars or by 5
 P. S. 203, § 74. imprisonment for not more than one year. 6
 R. L. 208, § 73. 150 Mass. 67. 260 Mass. 518.

1 SECTION 88. A consignee or factor who, in violation of good faith
 2 and with intent to defraud the owners thereof, deposits or pledges, as
 3 security for money borrowed by him, a negotiable instrument received
 4 by him, merchandise consigned or intrusted to him, or a bill of lading,
 5 certificate or order for the delivery of merchandise; or who, in like
 6 violation and with like intent, disposes of or applies such property or
 7 evidence of property to his own use; or who, in like violation and with
 8 like intent, disposes of or applies to his own use money which has been
 9 raised or a negotiable instrument which has been acquired by the sale
 10 or other disposition of such property or evidence of property, shall be
 11 punished by a fine of not more than five thousand dollars and imprison-
 12 ment for not more than five years.

Consignee, etc.,
 fraudulently
 depositing or
 pledging prop-
 erty, etc.
 1849, 216, § 6.
 G. S. 161, § 65.
 P. S. 203, § 75.
 R. L. 208, § 74.

1 SECTION 89. Whoever, in a book, pamphlet, circular, advertisement
 2 or advertising sign, or by a pretended written certificate or diploma, or
 3 otherwise in writing, knowingly and falsely pretends to have been an
 4 officer or teacher, or to be a graduate or to hold any degree, of a college
 5 or other educational institution of this commonwealth or elsewhere,
 6 which is authorized to grant degrees, or of a public school of this com-
 7 monwealth, and whoever, without the authority of a special act of the
 8 general court granting the power to give degrees, offers or grants degrees
 9 as a school, college or as a private individual, alone or associated with
 10 others, shall be punished by a fine of not more than one thousand dollars
 11 or by imprisonment for not more than one year, or both. Any indi-
 12 vidual, school, association, corporation or institution of learning, not
 13 having power to confer degrees under a special act of the general court,
 14 using the designation of "university" or "college" shall be punished
 15 by a fine of one thousand dollars; but this shall not apply to any educa-
 16 tional institution whose name on July ninth, nineteen hundred and nine-
 17 teen, included the word "university" or "college".

Falsely pre-
 tending to
 hold a degree,
 etc., or grant-
 ing degrees
 without
 authority. Use
 of word "uni-
 versity" or
 "college".
 1893, 355, § 1.
 R. L. 208, § 75.
 1919, 293, § 4.
 221 Mass. 190
 Op. A. G.
 (1919) 28.

1 SECTION 90. Whoever, in a book, pamphlet, circular, advertisement
 2 or advertising sign, or otherwise in writing, makes any false and fraudu-
 3 lent statement or assertion of endorsement, authority, approval or sanc-
 4 tion of an incorporated college, university or professional school in this
 5 commonwealth or elsewhere, or of officers or instructors thereof, as a
 6 commendation or advertisement of a person or of his services, or of
 7 goods, wares, commodities, processes or treatment, shall be punished
 8 by a fine of not more than one thousand dollars or by imprisonment for
 9 not more than one year, or both.

Falsely claim-
 ing endorse-
 ment, etc.
 1893, 355, § 2.
 R. L. 208, § 76.

1 SECTION 91. Any person who, with intent to sell or in any way dis-
 2 pose of merchandise, securities, service, or anything offered by such per-
 3 son, directly or indirectly, to the public for sale or distribution, or who,
 4 with intent to increase the consumption of or demand for such merchan-
 5 dise, securities, service or other thing, or to induce the public in any
 6 manner to enter into any obligation relating thereto, or to acquire title
 7 thereto, or an interest therein, makes, publishes, disseminates, circulates
 8 or places before the public, or causes, directly or indirectly, to be made,
 9 published, disseminated, circulated or placed before the public within
 10 the commonwealth, in a newspaper or other publication, or in the form
 11 of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or
 12 in any other way, an advertisement of any sort regarding merchandise,
 13 securities, service or anything so offered to the public, which advertise-

Untrue and
 misleading ad-
 vertisements
 prohibited.
 1902, 397.
 1912, 489.
 1914, 288.
 1916, 149.
 240 Mass. 264.
 248 Mass. 1.

ment contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, and which such person knew, or might on reasonable investigation have ascertained to be untrue, deceptive or misleading, shall be punished by a fine of not less than ten nor more than five hundred dollars; provided, that this section shall not apply to any owner, publisher, printer, agent or employee of a newspaper or other publication, periodical or circular, or to any agent of the advertiser who in good faith and without knowledge of the falsity or deceptive character thereof publishes, causes to be published, or participates in the publication of such advertisement.

Publishing of false or exaggerated statements prohibited, etc. 1907, 383. 1911, 428.

SECTION 92. Whoever wilfully and with intent to defraud makes or publishes, or causes or permits to be made or published in any way whatever, any book, prospectus, notice, report, statement, exhibit, advertisement or other publication of or concerning the affairs, financial condition, property or assets of any corporation, joint stock association, partnership or individual, which said book, prospectus, notice, report, statement, exhibit, advertisement or other publication contains any statement which is false or wilfully exaggerated and which shall have a tendency to give a less or greater apparent value to the shares, bonds, property or assets of such corporation, joint stock association, partnership or individual, or any part of said shares, bonds, property or assets, than said shares, bonds, property or assets or any part thereof shall really and in fact possess, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than ten years, or both.

Obtaining or giving false pedigree of animals. 1887, 143. 1890, 334, § 2. R. L. 208, § 77.

SECTION 93. Whoever, by a false pretence, obtains from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals, the registration, or a certificate thereof, of any animal in the herd register, or any other register of such club, association, society or company, or a transfer of such registration, or whoever knowingly makes, exhibits or gives a false pedigree in writing of any animal, shall be punished by imprisonment for not more than two years or by a fine of not more than five hundred dollars, or both.

Malicious destruction of boundary monument, milestone, etc. 1785, 28, § 2. 1823, 113, § 1. R. S. 126, § 43. G. S. 161, § 66. P. S. 203, § 76. 1901, 268, § 2. R. L. 208, § 78. 182 Mass. 473.

SECTION 94. Whoever wilfully, intentionally and without right breaks down, injures, removes or destroys a monument erected for the purpose of designating the boundaries of a town or of a tract or lot of land, or a tree which has been marked for that purpose, or so breaks down, injures, removes or destroys a milestone, mileboard or guideboard erected upon a public way or railroad, or wilfully, intentionally and without right defaces or alters the inscription on any such stone or board, or wilfully, intentionally and without right mars or defaces a building or signboard, or extinguishes a light, or breaks, destroys or removes a lamp, lamp post, railing or post erected on a bridge, sidewalk, public way, court or passage, shall be punished by imprisonment for not more than six months or by a fine of not more than fifty dollars.

Malicious destruction of historical monument. 1899, 358. R. L. 208, § 79.

SECTION 95. Whoever wilfully or maliciously removes, displaces, destroys, defaces, mars or injures any monument, tablet or other device erected to mark an historic place or to commemorate an historic event shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year.

1 SECTION 96. Whoever wilfully, intentionally and without right de-
 2 faces, mars or injures the walls, wainscoting or any other part of any
 3 building belonging to the commonwealth, or the appurtenances thereof,
 4 by cutting, writing or otherwise, shall be punished by a fine of not less
 5 than five nor more than one hundred dollars.

Defacing, etc.,
 building of the
 commonwealth.
 1833, 178.
 R. S. 11, § 8.
 G. S. 5, § 14.
 P. S. 203, § 77.

1901, 268, § 3.

R. L. 208, § 80.

1 SECTION 97. Whoever wilfully mars or injures the walls, wainscoting
 2 or any other part of a court house, or of any other building or room used
 3 for county business, or the appurtenances thereof, by cutting, writing or
 4 otherwise, shall be punished by imprisonment for not more than two
 5 months or by a fine of not more than fifty dollars.

Defacing
 building of
 county.
 1899, 196, § 1.
 R. L. 208, § 81.

1 SECTION 98. Whoever wilfully, intentionally and without right, or
 2 wantonly and without cause, destroys, defaces, mars or injures a school-
 3 house, church or other building erected or used for purposes of education
 4 or religious instruction, or for the general diffusion of knowledge, or an
 5 outbuilding, fence, well or appurtenance of such schoolhouse, church
 6 or other building, or furniture, apparatus or other property belonging
 7 thereto or connected therewith, shall be punished by a fine of not more
 8 than five hundred dollars or by imprisonment for not more than one
 9 year.

Wilful injury,
 etc., to school-
 house, church,
 etc., or furni-
 ture, etc.
 1857, 222.
 G. S. 161, § 67.
 P. S. 203, § 78.
 1901, 268, § 4.
 R. L. 208, § 82.
 2 Allen, 159.

1 SECTION 99. Whoever wilfully, intentionally and without right, or
 2 wantonly and without cause, writes upon, injures, defaces, tears or
 3 destroys a book, plate, picture, engraving, map, newspaper, magazine,
 4 pamphlet, manuscript or statue which belongs to a law, city, town or
 5 other public or incorporated library shall be punished by a fine of not
 6 less than five nor more than fifty dollars or by imprisonment for not
 7 more than six months.

Defacement of
 books, etc., of
 libraries.
 1867, 69.
 1872, 42.
 P. S. 203, § 79.
 1883, 81.
 1901, 268, § 4.
 R. L. 208, § 83.

1 SECTION 100. Whoever wilfully, intentionally and without right,
 2 or wantonly and without cause, detains a book, newspaper, magazine,
 3 pamphlet or manuscript which belongs to a law, city, town or other
 4 public or incorporated library for thirty days after a written notice from
 5 the librarian thereof, containing a copy of this section and given after
 6 the expiration of the time during which, by the regulations of such library,
 7 such book, newspaper, magazine, pamphlet or manuscript may be kept,
 8 shall be punished by a fine of not less than one nor more than twenty-five
 9 dollars or by imprisonment for not more than six months.

Detention of
 books of
 libraries.
 1883, 77.
 1901, 268, § 4.
 R. L. 208, § 84.

1 SECTION 101. Whoever wilfully, intentionally and without right, by
 2 the explosion of gunpowder or of any other explosive, unlawfully destroys
 3 or injures a dwelling house, office, shop or other building, or a ship or
 4 vessel, shall be punished by imprisonment in the state prison for not more
 5 than twenty years or in jail for not more than two and one half years or
 6 by a fine of not more than one thousand dollars.

Malicious
 explosion.
 1851, 129, § 1.
 G. S. 161, § 68.
 P. S. 203, § 80.
 1901, 268, § 4.
 R. L. 208, § 85.
 1914, 635.
 1918, 257, § 464.

1919, 5.

1920, 2.

1 SECTION 102. Whoever wilfully, intentionally and without right
 2 throws into, against or upon, or puts, places or explodes, or causes to be
 3 exploded in, upon or near a dwelling house, office, shop, building, street
 4 railway, street railway car, or vessel, gunpowder or other explosive, or a
 5 bombshell, torpedo or other instrument filled or loaded with an explosive,

Throwing ex-
 plosives into
 buildings or
 placing on
 railways, etc.
 1851, 129, § 2.
 G. S. 161, § 69.
 P. S. 203, § 81.
 1901, 268, § 4.

R. L. 208, § 86. with intent unlawfully to destroy or injure such dwelling house, office, 6
 1904, 396. shop, building, street railway, street railway car, or vessel, or any person 7
 1906, 463, or property therein or thereon, shall be punished by imprisonment in the 8
 III, §§ 85, 158. state prison for not more than ten years or in jail for not more than two 9
 1914, 635. and one half years or by a fine of not more than five hundred dollars. 10
 1918, 257, § 464.
 1919, 5.
 1920, 2.
 217 Mass. 185.

Possession of infernal machine. Notice of seizure. 1930, 317. SECTION 102A. Whoever, other than a police or other law enforcement officer acting in the discharge of his official duties, has in his possession or under his control an infernal machine or a similar instrument, contrivance or device shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment, and the said machine, instrument, contrivance or device shall be forfeited to the commonwealth. The term "infernal machine", as used in this section, shall include any device for endangering life or doing unusual damage to property, or both, by explosion, whether or not contrived to explode automatically and whether or not disguised so as to appear harmless. Notice of the seizure of any such machine, instrument, contrivance or device shall be sent forthwith to the commissioner of public safety and the article seized shall be subject to his order.

Throwing oil of vitriol, coal tar, etc. 1851, 129, § 3. SECTION 103. Whoever wilfully, intentionally and without right throws into, against or upon a dwelling house, office, shop or other building, or vessel, or puts or places therein or thereon oil of vitriol, coal tar or other noxious or filthy substance, with intent unlawfully to injure, deface or defile such dwelling house, office, shop, building or vessel, or any property therein, shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than two and one half years or by a fine of not more than three hundred dollars.

Injury to building. 1862, 160. SECTION 104. Whoever wilfully, intentionally and without right destroys, injures, defaces or mars a dwelling house or other building, whether upon the inside or outside, shall be punished by imprisonment for not more than two months or by a fine of not more than fifty dollars.

Pulling down stone walls or fences. 1901, 298. SECTION 105. Whoever wilfully and without right pulls down or removes any portion of a stone wall or fence which is erected or maintained for the purpose of enclosing land shall be punished by a fine of not more than ten dollars. The director of the division of fisheries and game of the department of conservation, fish and game wardens and deputy fish and game wardens may arrest without a warrant any person found violating this section.

Injury, etc., to ice taken as merchandise. 1850, 114. SECTION 106. Whoever wilfully, intentionally and without right or license, cuts, injures, mars or otherwise damages or destroys ice upon waters from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered or the value thereof diminished for that purpose, shall be punished by a fine of not more than one hundred dollars.

Injury, etc., to bridge, etc. R. S. 126, § 41. SECTION 107. Whoever wilfully, intentionally and without right breaks down, injures, removes or destroys a public bridge, or a lock, cul-

3 vert or embankment of a canal, or wilfully, intentionally and without
 4 right makes an aperture or breach in such embankment with intent to
 5 destroy or injure the same, shall be punished by imprisonment in the
 6 state prison for not more than five years or by a fine of not more than
 7 five hundred dollars and imprisonment in jail for not more than two
 8 years.

G. S. 161, § 74.
 P. S. 203, § 87.
 1901, 268, § 1.
 R. L. 208, § 93.

1 SECTION 108. Whoever casts away, burns, sinks or otherwise destroys
 2 a ship or vessel, with intent to injure or defraud an owner thereof, or of
 3 any property laden on board the same, or an insurer of such ship, vessel
 4 or property, or of any part thereof, shall be punished by imprisonment
 5 in the state prison for not more than ten years.

Destroying
 vessel to de-
 fraud owner
 or insurer.
 1802, 136, § 1.
 1824, 137, § 1.
 R. S. 126, § 35.

G. S. 161, § 76. P. S. 203, § 89. R. L. 208, § 94.

1 SECTION 109. Whoever lades, equips or fits out, or assists in lading,
 2 equipping or fitting out, a ship or vessel, with intent that it shall be wil-
 3 fully cast away, burnt, sunk or otherwise destroyed, and with intent to
 4 injure or defraud an owner or insurer of such ship or vessel, or of any
 5 property laden on board the same, shall be punished by imprisonment
 6 in the state prison for not more than twenty years or by a fine of not more
 7 than five thousand dollars and imprisonment in jail for not more than
 8 two and one half years.

Fitting out
 vessel with
 intent to
 destroy it, etc.
 1802, 136, § 2.
 1824, 137, § 2.
 R. S. 126, §§ 36,
 37.
 G. S. 161, § 77.
 P. S. 203, § 90.
 R. L. 208, § 95.
 1914, 635.
 1918, 257, § 464.

1919, 5. 1920, 2.

1 SECTION 110. An owner of a ship or vessel, or of property laden or
 2 pretended to be laden on board the same, or any other person concerned
 3 in the lading or fitting out of a ship or vessel, who makes out or exhibits,
 4 or causes to be made out or exhibited, a false or fraudulent invoice, bill
 5 of lading, bill or parcels or other false estimates of any goods or property
 6 laden or pretended to be laden on board such ship or vessel, with intent
 7 to injure or defraud an insurer of such ship, vessel or property or of any
 8 part thereof, shall be punished by imprisonment in the state prison for
 9 not more than ten years or by a fine of not more than five thousand dollars
 10 and imprisonment in jail for not more than two years.

False invoice,
 etc., of cargo
 to defraud in-
 surer, etc.
 1802, 136, § 3.
 R. S. 126, § 37.
 G. S. 161, § 78.
 P. S. 203, § 91.
 R. L. 208, § 96.

1 SECTION 111. A master, officer or mariner of a ship or vessel who
 2 makes or causes to be made or swears to a false affidavit or protest, or an
 3 owner of or other person concerned in such ship or vessel, or the owner of
 4 or the person concerned in the goods or property laden on board the
 5 same, who procures such false affidavit or protest to be made, or exhibits
 6 the same, with intent to injure, deceive or defraud an insurer of such ship
 7 or vessel, or of any goods or property laden on board the same, shall be
 8 punished by imprisonment in the state prison for not more than ten years
 9 or by a fine of not more than five thousand dollars and imprisonment in
 10 jail for not more than two years.

False protest,
 etc.
 1802, 136, § 4.
 R. S. 126, § 38.
 G. S. 161, § 79.
 P. S. 203, § 92.
 R. L. 208, § 97.

1 SECTION 111A. Whoever, in connection with or in support of any
 2 claim under any policy of fire insurance issued by any company, as de-
 3 fined in section one of chapter one hundred and seventy-five, and with
 4 intent to injure, defraud or deceive such company, presents to it, or aids
 5 or abets in or procures the presentation to it of, any notice, statement,
 6 proof of loss, bill of lading, bill of parcels, invoice, schedule, account or
 7 other written document, whether or not the same is under oath or is
 8 required or authorized by law or by the terms of such policy, knowing that

Fraudulent
 claims under
 policies of fire
 insurance.
 1926, 198.

such notice, statement, proof of loss, bill of lading, bill of parcels, invoice, schedule, account or other written document contains any false or fraudulent statement or representation of any fact or thing material to such claim, or whoever with intent as aforesaid makes, prepares or subscribes, or aids or abets in or procures the making, preparation or subscription of, any such notice, statement, proof of loss, bill of lading, bill of parcels, invoice, schedule, account or other written document intended to be presented to any such company in connection with or in support of any claim under any such policy issued by it knowing that such notice, statement, proof of loss, bill of lading, bill of parcels, invoice, schedule, account or other written document contains any false or fraudulent statement or representation as aforesaid, shall, except as provided in section one hundred and ten or one hundred and eleven, be punished by imprisonment in the state prison for not more than five years or by imprisonment in jail for not less than six months nor more than two and one half years or by a fine of not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment in jail.

Malicious killing, etc., of cattle.
 1804, 131, § 4
 R. S. 126, § 39.
 G. S. 161, § 80.
 P. S. 203, § 93.
 R. L. 208, § 98.
 1 Mass. 59.
 3 Cush. 558.
 9 Gray, 209, 304.
 195 Mass. 460.

SECTION 112. Whoever wilfully and maliciously kills, maims or disfigures any horse, cattle or other beast of another person, or wilfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such beast, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

213 Mass. 135.

Cutting timber, wood, shrubs, etc., on land of another.
 1698, 7, §§ 1, 2.
 1723-4, 10, §§ 1, 2.
 1726-7, 3, §§ 1, 2.
 1727, 8.
 1785, 28, § 1.
 1818, 3, §§ 2, 4.
 R. S. 126, §§ 44, 45.
 G. S. 161, §§ 81, 84.
 1868, 321.
 P. S. 203, §§ 94, 97.
 R. L. 208, § 99.
 1904, 444, § 1.
 141 Mass. 238.

SECTION 113. Whoever wilfully cuts down or destroys timber or wood standing or growing on the land of another, or carries away any kind of timber or wood cut down or lying on such land, or digs up or carries away stone, ore, gravel, clay, sand, turf or mould from such land, or roots, nuts, berries, grapes or fruit of any kind or any plant there being, or cuts down or carries away sedge, grass, hay or any kind of corn, standing, growing or being on such land, or cuts or takes therefrom any ferns, flowers or shrubs, or carries away from a wharf or landing place any goods in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars; and if the offence is committed on Sunday, or in disguise, or secretly in the night time, the imprisonment shall not be for less than five days nor the fine less than five dollars.

Malicious injuries to trees, fences, etc.
 1698, 7, § 1.
 1785, 28, § 1.
 1829, 63.
 R. S. 126, § 42.
 G. S. 161, § 82.
 1868, 321.
 P. S. 203, § 95.
 R. L. 208, § 100.
 1902, 544, § 30.
 11 Cush. 114.
 127 Mass. 1.

SECTION 114. Whoever wilfully and maliciously or wantonly breaks glass in a building which is not his own, or whoever wilfully and maliciously breaks down, injures, mars or defaces a fence belonging to or enclosing land which is not his own, or wilfully and maliciously throws down or opens a gate, bars or fence, and leaves the same down or open, or maliciously and injuriously severs from the freehold of another any produce thereof or anything attached thereto, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

200 Mass. 175.

Trespass in orchard, garden, etc.

SECTION 115. Whoever wilfully and maliciously enters an orchard, nursery, garden or cranberry meadow, and takes away, mutilates or

3 destroys a tree, shrub or vine, or steals, takes and carries away any fruit
 4 or flower, without the consent of the owner thereof, shall be punished by
 5 a fine of not more than five hundred dollars or by imprisonment for not
 6 more than six months.

C. L. 13, § 1.
 1698, 7, § 1.
 1855, 457.
 G. S. 161, § 83.
 1868, 321.

P. S. 203, § 96.

R. L. 208, § 105.

6 Gray, 349.

228 Mass. 308.

1 SECTION 116. Whoever, being an unnaturalized, foreign born person,
 2 picks wild berries or flowers, or camps or picnics upon any land of which
 3 he is not the owner, within the counties of Barnstable or Plymouth,
 4 between April first and December first, without first obtaining a written
 5 permit so to do from the owner or owners of the land, shall be punished
 6 by a fine of not more than fifty dollars or by imprisonment for not
 7 more than one month, or both. The said written permit shall not be
 8 transferable, and shall be exhibited upon demand to the forest warden,
 9 or his deputies, of the town wherein the land is located, or upon demand
 10 of any sheriff, constable, police or other officer authorized to arrest for
 11 crime. Failure or refusal to produce said permit upon such demand
 12 shall be prima facie evidence of a violation of this section, and any
 13 forest warden or any duly authorized deputy forest warden, sheriff,
 14 police or other officer authorized to arrest for crime, may arrest without
 15 warrant any person who fails or refuses to display for inspection the said
 16 permit upon the demand of any of the officials named in this section.

Picking of
 berries, etc.,
 by unnatural-
 ized foreign
 born persons
 in Barnstable
 and Plymouth
 counties
 restricted.
 1910, 478,
 §§ 1, 2.

1 SECTION 117. Whoever wilfully, intentionally and without right enters
 2 upon the orchard, garden or other improved land of another, with intent
 3 to cut, take, carry away, destroy or injure the trees, grain, grass, hay,
 4 fruit or vegetables there growing or being, shall be punished by imprison-
 5 ment for not more than six months or by a fine of not more than five hun-
 6 dred dollars; and if the offence is committed on Sunday, or in disguise,
 7 or secretly in the night time, the imprisonment shall not be for less than
 8 five days nor the fine less than five dollars.

Entering
 orchard, etc.,
 with intent,
 etc.
 R. S. 126, § 45.
 G. S. 161, § 84.
 1868, 321.
 P. S. 203, § 97.
 R. L. 208,
 § 106.
 1902, 544, § 33.
 228 Mass. 308.

1 SECTION 118. Whoever, having the charge or custody of sheep,
 2 goats, cattle, horses, swine or fowl, wilfully suffers or permits them to
 3 enter or remain on or pass over any orchard, garden, mowing land or
 4 other improved or enclosed land of another, after being forbidden so to
 5 do in writing or by notice posted thereon by the owner or occupant thereof,
 6 or by the authorized agent of such owner or occupant, shall be punished
 7 by a fine of not more than ten dollars.

Suffering ani-
 mals to tres-
 pass on land.
 1878, 168.
 1879, 70.
 P. S. 203, § 98.
 R. L. 208,
 § 107.

1 SECTION 119. Whoever knowingly brings the insects which are
 2 known as the oceria dispar or gypsy moth or as the brown tail moth,
 3 or their nests or eggs, into the commonwealth, or whoever knowingly
 4 transports said insects or their eggs or nests from one town to another
 5 in the commonwealth, except when engaged in, and for the purpose of,
 6 destroying them, shall be punished by a fine of not more than two hundred
 7 dollars or by imprisonment for not more than two months, or both.

Transportation
 of injurious
 insects.
 1830, 95, § 7.
 1891, 210, § 7.
 1898, 544, § 3.
 R. L. 208,
 § 108.

1 SECTION 120. Whoever, without right, enters or remains in or upon
 2 the dwelling house, buildings, boats or improved or enclosed land, wharf
 3 or pier of another, after having been forbidden so to do by the person
 4 who has the lawful control of said premises, either directly or by notice
 5 posted thereon, shall be punished by a fine of not more than twenty
 6 dollars. A person who is found committing such trespass may be ar-

Trespass on
 buildings,
 boats, improved
 or enclosed
 land, wharves,
 etc., after
 being forbid-
 den. Arrest.
 1862, 89
 1876, 181.

P. S. 203, §§ 99, 100, 1890, 410, R. L. 208, § 109, 1929, 109, 1931, 426, § 45.	rested by a sheriff, deputy sheriff, constable or police officer and kept in custody in a convenient place, not more than twenty-four hours, Sunday excepted, until a complaint can be made against him for the offence, and he be taken upon a warrant issued upon such complaint.	7 8 9 10
---	---	-------------------

162 Mass. 582.

164 Mass. 495.

Entry on land with firearms. 1890, 403, § 1. R. L. 208, § 110.	SECTION 121. Whoever, without right, enters upon the land of another with firearms, with intent to fire or discharge them thereon, and, having been requested by the owner or occupant of such land or by his agent to leave such land, remains thereon, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than two months, or both.	1 2 3 4 5 6
---	---	----------------------------

Defacement of notice against trespassers. 1890, 403, § 2. R. L. 208, § 111. 1931, 426, § 307.	SECTION 122. Whoever wilfully tears down, removes or defaces any notice posted on land, or other property described in section one hundred and twenty, by the owner, lessee or custodian thereof, warning persons not to trespass thereon, shall be punished by a fine of not more than twenty-five dollars.	1 2 3 4 5
--	--	-----------------------

Trespassing upon land of certain institutions. 1885, 303, R. L. 208, § 112. 1905, 434, 1906, 243, 1911, 104, 181, 191, 1913, 404, 1914, 358, 1918, 257, § 307. 1919, 5, 1920, 2, 1931, 426, § 308.	SECTION 123. Whoever wilfully trespasses upon land or premises belonging to the commonwealth and appurtenant to the state prison, state prison colony, Massachusetts reformatory, reformatory for women, the prison camp and hospital, state infirmary, state farm, any public institution for the care of insane, feeble minded or epileptic persons, any Massachusetts training school, state charitable institution, or upon land or premises belonging to any county and appurtenant to a jail or house of correction, or, after notice from an officer of any of said institutions to leave said land, remains thereon, shall be punished by imprisonment for not more than three months or by a fine of not more than fifty dollars.	1 2 3 4 5 6 7 8 9 10
--	--	---

Malicious injury to legal notice. 1883, 156, R. L. 208, § 113.	SECTION 124. Whoever wilfully and maliciously, or wantonly and without cause, tears down, removes or defaces a warrant for a town meeting, list of jurors or other notice or paper which has been posted in compliance with law shall, except as otherwise provided, be punished by a fine of not more than ten dollars.	1 2 3 4 5
---	--	-----------------------

Malicious injury to show bill, etc. 1870, 259, P. S. 203, § 101. R. L. 208, § 114.	SECTION 125. Whoever wilfully and maliciously removes, destroys or mutilates a show bill, placard, program or other advertisement posted upon a wall, fence, billboard or structure not lawfully under his control, of an exhibition, show or amusement licensed under section one hundred and eighty-one of chapter one hundred and forty, before such exhibition, show or amusement has taken place, shall be punished by a fine of not more than ten dollars.	1 2 3 4 5 6 7
---	--	---------------------------------

Defacing natural scenery. 1873, 349, P. S. 203, § 102. 1898, 500, R. L. 208, § 115.	SECTION 126. Whoever paints, or puts upon, or in any manner affixes to, any fence, structure, pole, rock or other object which is the property of another, whether within or without the limits of the highway, any words, device, trade mark, advertisement or notice which is not required by law to be posted thereon, without first obtaining the written consent of the owner or tenant of such property, shall, upon complaint of such owner, or of his tenant, or of any municipal or public officer, be punished by a fine of not more than ten dollars. Any word,	1 2 3 4 5 6 7 8
---	--	--------------------------------------

9 device, trade mark, advertisement or notice which has been painted,
10 put up or affixed within the limits of a highway in violation of this
11 section shall be considered a public nuisance, and may be forthwith
12 removed or obliterated and abated by any person.

1 SECTION 127. Whoever destroys or injures the personal property of
2 another in any manner or by any means not particularly described or
3 mentioned in this chapter shall, if such destruction or injury is wilful
4 and malicious, be punished by imprisonment in the state prison for not
5 more than five years or by a fine of not more than one thousand dollars
6 and imprisonment in jail for not more than one year, or, if such destruc-
7 tion or injury is wanton, shall be punished by a fine of not more than
8 five hundred dollars or by imprisonment for not more than one year;
9 but if the value of the property so destroyed or injured is not alleged to
10 exceed fifteen dollars, the punishment shall be a fine of not more than
11 fifteen dollars or imprisonment for not more than one month.

Malicious or wanton injuries to personal property:
R. S. 126, § 39.
1846, 52, § 1.
G. S. 161, § 85.
P. S. 203, § 103.
R. L. 208, § 116.
1904, 305.
2 Met. 21.
3 Cush. 558.
6 Gray, 349.
7 Allen, 577.
107 Mass. 218.
108 Mass. 304.
194 Mass. 97.

228 Mass. 308.

257 Mass. 379.

1 SECTION 128. Whoever, without the consent of the owner thereof,
2 knowingly and wilfully effaces, alters or covers over, or procures to be
3 effaced, altered or covered over, the name, initial or device of any dealer
4 in milk, marked or stamped upon a milk can, or whoever, with intent
5 to defraud and without such consent, detains or uses in his business any
6 such can having the name, initial or device of any dealer in milk so
7 marked or stamped thereon, shall be punished by a fine of not more than
8 ten dollars.

Defacing milk cans.
1885, 133.
R. L. 208, § 117.

1 SECTION 129. Whoever, being a convict in the state prison or state
2 prison colony, wilfully and maliciously destroys or injures the property
3 of the commonwealth at such prison or colony or the property of any
4 person who furnishes materials for the employment of the prisoners, may
5 be punished by imprisonment in the state prison for not more than three
6 years; or if serving a sentence of imprisonment for life, he may be pun-
7 ished by imprisonment at solitary labor for not more than one year or by
8 solitary imprisonment for not more than five days, or both, and such
9 punishment shall be inflicted at such time as the court orders.

Injury to property at state prison or state prison colony:
1891, 295.
1896, 344.
R. L. 208, § 119.
1931, 426, § 309.

1 SECTION 130. Whoever, being a prisoner at the Massachusetts re-
2 formatory, the reformatory for women, the state farm, the prison camp
3 and hospital, any jail or house of correction, wilfully and maliciously
4 injures or destroys any public property or any materials furnished for
5 the employment of prisoners in any of said institutions, may be pun-
6 ished by imprisonment for not less than six months nor more than two
7 and one half years.

Injury to property at other penal institutions.
1896, 344.
R. L. 208, § 120.
1905, 241.
1906, 243.
1911, 181.
1914, 635.

1918, 257, § 461.

1919, 5.

1920, 2.

1 SECTION 131. Whoever is discovered in the act of wilfully injuring a
2 fruit or forest tree or of committing any kind of malicious mischief on
3 Sunday may be arrested without a warrant by a sheriff, deputy sheriff,
4 constable, police officer or other person, and detained in jail or otherwise
5 until a complaint can be made against him for the offence, and he be
6 taken upon a warrant issued upon such complaint; but such detention
7 without warrant shall not continue beyond the following day.

Arrest and detention without warrant of trespasser on Sunday.
1851, 246.
1852, 245.
G. S. 161, § 86.
P. S. 203, § 104.
R. L. 208, § 121.
1931, 426, § 46.

Killing or
frightening
pigeons
1848, 85,
1849, 29,
G. S. 161, § 87.
P. S. 203, § 105.
R. L. 208,
§ 122.

SECTION 132. Whoever wilfully kills pigeons upon, or frightens them from, beds which have been made for the purpose of taking them in nets, by any method, within one hundred rods of the same, except on land lawfully occupied by himself, shall be punished by imprisonment for not more than one month or by a fine of not more than twenty dollars, and shall also be liable for the actual damages to the owner or occupant of such beds.

Injury, etc.,
to property
of Humane
Society
1854, 358,
G. S. 161, § 88.
P. S. 203, § 106.
1889, 399,
R. L. 208,
§ 123.

SECTION 133. Whoever unlawfully enters a house, boat house or hut which is the property of the Humane Society of the Commonwealth of Massachusetts and wilfully injures, removes or carries away any property belonging to said society, or wilfully injures or unlawfully uses or commits any trespass upon the property of said society which is intended or kept for the purpose of saving or preserving human life, or commits any trespass upon such house, hut or boat house, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months; but the penalties of this section shall not apply to persons for whose use said boats, houses and other property are intended and kept. Pilots, sheriffs and their deputies, and constables shall make complaint against all persons guilty of a violation of this section. One half of any fine paid hereunder shall be paid to the person who gives information upon which a conviction is obtained.

Setting fire to
coal pit, etc.,
on woodland in
New Bedford,
etc., between
March and
October.
1839, 148,
G. S. 161,
§§ 89-91.
P. S. 203,
§§ 107-109.
R. L. 208,
§ 124.

SECTION 134. Whoever, between April first and October first, sets fire to a coal pit or pile of wood, for the purpose of charring the same, on any woodland in the cities of New Bedford or Fall River or in the towns of Dartmouth, Freetown, Fairhaven, Middleborough or Rochester, shall forfeit one hundred dollars. Whoever, between the times aforesaid, sets fire to any brush wood or bushes on any part of such woodland, or on land adjoining thereto, so as to cause the burning of such brush wood or bushes, shall forfeit fifty dollars. All forfeitures under this section shall be equally divided between the city or town in which the offence is committed and the person who sues therefor.

Mooring vessel,
etc., to a buoy,
etc.
1860, 53,
§§ 1, 2.
P. S. 203,
§§ 110, 111.
R. L. 208,
§ 125.

SECTION 135. Whoever moors or in any manner makes fast a vessel, scow, boat or raft to a buoy, beacon or floating guide placed by the government of the United States in the navigable waters of the commonwealth shall be punished by a fine of not more than fifty dollars; and whoever wilfully destroys, injures or removes any such beacon or guide shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than three months. One third of all fines which accrue under this section shall be paid to the complainant and two thirds to the county.

Injury, etc., to
baggage by
hackman, etc.
1869, 307,
P. S. 203, § 112.
R. L. 208,
§ 126.

SECTION 136. Any person whose duty it is to handle, remove or take care of the baggage of passengers who wilfully or recklessly destroys or injures a trunk, valise, box, package or parcel, while loading, transporting, unloading, delivering or storing the same, shall be punished by a fine of not more than fifty dollars.

Raising water
so as to injure
mill
1849, 98,
G. S. 161, § 71
P. S. 203, § 84
R. L. 208, § 89

SECTION 137. Whoever, by erecting or maintaining a dam, either within or without the commonwealth, knowingly causes the water of a river or stream so to be raised as to flow upon or injure a mill lawfully existing in the commonwealth and belonging to a citizen thereof, without

5 right as against the owner of such mill, shall be punished by a fine of
 6 not more than one thousand dollars or by imprisonment for not more
 7 than six months; but this section shall not apply to cases in which the
 8 courts of the commonwealth have jurisdiction to abate a dam so raised
 9 or maintained.

1 SECTION 138. Whoever wilfully, intentionally and without right
 2 breaks down, injures, removes or destroys a dam, reservoir, canal or
 3 trench, or a gate, flume, flashboards or other appurtenances thereof, or a
 4 wheel, or mill gear, or machinery of a water mill or steam mill, or wil-
 5 fully or wantonly, without color of right, draws off the water contained
 6 in a mill pond, reservoir, canal or trench, or obstructs such water from
 7 flowing out of the same, shall be punished by imprisonment in the state
 8 prison for not more than five years or by a fine of not more than five hun-
 9 dred dollars and imprisonment in jail for not more than two years.

Injury to dam,
 reservoir, etc.
 1727-S, 3
 1829, 98
 R S 126, § 40.
 1857, 160
 G S 161, § 72.
 1875, 141.
 P S 203, § 85
 1901, 268, § 4
 R L 208, § 90.

1 SECTION 139. Whoever removes, defaces, alters, changes, destroys,
 2 obliterates or mutilates or causes to be removed or destroyed or in any
 3 way defaced, altered, changed, obliterated or mutilated, the serial num-
 4 ber of a motor vehicle or of the engine of a motor vehicle, with intent
 5 thereby to conceal the identity of such motor vehicle shall be punished
 6 by a fine of not more than five hundred dollars or by imprisonment for
 7 not more than one year, or both; and possession of any motor vehicle or
 8 of any part thereof, the serial number on which has been so removed,
 9 defaced, altered, changed, destroyed, obliterated or mutilated shall be
 10 prima facie evidence of a violation of the foregoing provision. Whoever
 11 sells or otherwise disposes of or attempts to sell or otherwise dispose of a
 12 motor vehicle, knowing or having reason to believe that the serial number
 13 of said motor vehicle or of the engine thereof has been so removed, de-
 14 faced, altered, changed, destroyed, obliterated or mutilated, shall be
 15 punished by the same fine or imprisonment, or both. In this section,
 16 the phrase "serial number" shall mean, when used with reference to a
 17 motor vehicle, the number affixed by the maker thereof and, when used
 18 with reference to the engine of a motor vehicle, the engine number,
 19 both as required to be contained in an application for registration of a
 20 motor vehicle by section two of chapter ninety, including the serial
 21 number, as herein defined, as restored or the number substituted under
 22 authority of section thirty-two A of said chapter ninety. In this sec-
 23 tion, the words "motor vehicle" shall, so far as apt, include trailer, semi-
 24 trailer and semi-trailer unit.

Defacing, etc.,
 serial numbers,
 etc., of motor
 vehicles, etc.,
 wrongfully.
 Possession.
 Sale, etc.
 1925, 237, § 2.
 1930, 353, § 2.

CHAPTER 267.

FORGERY AND CRIMES AGAINST THE CURRENCY.

SECT.

1. Forgery of records, certificates, etc.
2. Forgery of railroad ticket, etc.
3. Forgery of stamp or seal.
4. Forgery of railroad stamp, etc.
5. Uttering forged record or contract.
6. Uttering forged railroad ticket, etc.
7. Forging note of treasurer and receiver general, etc.
8. Forging bank bill or note.
9. Possession of ten or more counterfeit bills, with intent, etc.
10. Passing counterfeit bill or forged note.
11. Second conviction, and three convictions at same sitting.
12. Having counterfeit bill, with intent, etc.
13. Making or having tool, etc., for counterfeiting, with intent, etc.
14. Testimony of president, etc., of bank, dispensed with in certain cases.
15. Sworn certificates of certain officers made evidence.
16. Affixing fictitious signature.
17. Counterfeiting coin, or having ten counterfeit pieces, etc.
18. Having less than ten pieces, with intent, etc. Uttering counterfeit coin.

SECT.

19. Second conviction, and three convictions at same sitting.
20. Making, mending or having tool for coining, with intent, etc.
21. Issuing or passing note as currency, etc., except, etc.
22. Issuing small note, etc., as currency, except, etc.
23. Circulation of fractional bill.
24. Fraudulently connecting parts of bank notes, etc.
25. Wilful and malicious injury to bank bill.
26. Maliciously gathering up, etc., bills of bank for purpose of injuring business, etc. Penalty.
27. Possession of worthless bills, not current, etc.
28. Uttering or passing such bill, etc.
29. Engraving, etc., shop bill, resembling bank bills.
30. Sheriff, etc., to seize counterfeit bills, etc.
31. Compensation to prosecutors, etc., of forgers, etc.

Forgery of records, certificates, etc.
 C. L. 54, § 3.
 1692-3, 18, § 8.
 1784, 67.
 1785, 21, § 3.
 1804, 120, § 1.
 1805, 88, § 1.
 R. S. 127, § 1.
 G. S. 162, § 1.
 1874, 78.
 P. S. 204, § 1.
 1898, 562, § 113.
 1901, 371, § 1.
 R. L. 209, § 1.
 1909, 155, § 1.
 1931, 394, § 202.
 2 Mass. 397.
 15 Mass. 526.
 17 Mass. 46.
 3 Cush. 150.
 3 Gray, 441.
 2 Allen, 161, 165.
 101 Mass. 32, 209.
 114 Mass. 278, 311.

SECTION 1. Whoever, with intent to injure or defraud, falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of a clerk or register of a court, public register, notary public, justice of the peace, town clerk or any other public officer, in relation to a matter wherein such certificate, return or attestation may be received as legal proof; or a charter, deed, will, testament, bond or writing obligatory, power of attorney, policy of insurance, bill of lading, bill of exchange or promissory note; or an order, acquittance or discharge for money or other property; or an acceptance of a bill of exchange, or an endorsement or assignment of a bill of exchange or promissory note for the payment of money; or an accountable receipt for money, goods or other property; or a stock certificate, or any evidence or muniment of title to property; or a certificate of title, duplicate certificate of title, certificate issued in place of a duplicate certificate, the registration book, entry book, or any indexes provided for by chapter one hundred and eighty-five, or the docket of the recorder; shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two years. 17

118 Mass. 439.	137 Mass. 109.	157 Mass. 386.
120 Mass. 358.	145 Mass. 392.	218 Mass. 502.
124 Mass. 327.	148 Mass. 296.	231 Mass. 449.
129 Mass. 124.		

Forgery of railroad ticket, etc.
 1901, 371, § 1.
 R. L. 209, § 1.
 1909, 155, § 1.

SECTION 2. Whoever, with intent to injure or defraud, falsely makes, alters, forges or counterfeits a railroad ticket, railroad mileage book or railroad pass, or a ticket, badge, pass or any written or printed license purporting to entitle the holder or owner thereof to admission to any 4

5 exhibition, entertainment, performance, match or contest of any kind,
 6 shall be punished by imprisonment in the state prison for not more than
 7 three years or in jail for not more than two years, or by a fine of not more
 8 than five hundred dollars.

1 SECTION 3. Whoever forges, procures to be forged or assists in forg-
 2 ing, the seal of the land court, or, without lawful authority, stamps or
 3 procures to be stamped, or assists in stamping, any document with such
 4 forged seal or with the genuine seal of said court, shall be punished by
 5 imprisonment in the state prison for not more than ten years or in jail for
 6 not more than two years.

Forgery of
stamp or seal.
1838, 562,
§ 114
R. L. 209, § 2.
1904, 448, § 1.

1 SECTION 4. Whoever forges, procures to be forged or assists in forg-
 2 ing, the stamp of any railroad company or of any railroad ticket agent,
 3 or, without lawful authority, stamps or procures to be stamped, or assists
 4 in stamping, any railroad ticket or railroad mileage book with such forged
 5 stamp, or with a genuine stamp of any railroad company or railroad ticket
 6 agent, shall be punished by imprisonment in the state prison for not more
 7 than three years or in jail for not more than two years, or by a fine of not
 8 more than five hundred dollars.

Forgery of
railroad stamp,
etc.
1901, 371, § 3.
R. L. 209, § 2

1 SECTION 5. Whoever, with intent to injure or defraud, utters and
 2 publishes as true a false, forged or altered record, deed, instrument or
 3 other writing mentioned in the four preceding sections, knowing the
 4 same to be false, forged or altered, shall be punished by imprisonment in
 5 the state prison for not more than ten years or in jail for not more than
 6 two years.

Uttering
forged record
or contract.
1632-3, 18, § 8.
1784, 67
1785, 21, § 3.
1804, 120, § 1.
1805, 88, § 1.
R. S. 127, § 2.

G. S. 162, § 2.	1909, 155, § 2.	11 Gray, 305.
P. S. 204, § 2.	2 Gray, 70.	2 Allen, 165.
1901, 371, § 2.	9 Gray, 123.	188 Mass. 91.
R. L. 209, § 3.	10 Gray, 477, 483.	

1 SECTION 6. Whoever, with intent to injure or defraud, utters and
 2 publishes as true a false, forged or altered railroad ticket, railroad mileage
 3 book or railroad pass, or a ticket, badge, pass or any written or printed
 4 license purporting to entitle the holder or owner thereof to admission
 5 to any exhibition, entertainment, performance, match or contest of any
 6 kind mentioned in section two, knowing the same to be false, altered or
 7 forged, shall be punished by imprisonment in the state prison for not
 8 more than three years or in jail for not more than two years, or by a fine of
 9 not more than five hundred dollars.

Uttering
forged rail-
road ticket,
etc.
1901, 371, § 2.
R. L. 209, § 3.
1909, 155, § 2.

1 SECTION 7. Whoever, with intent to injure or defraud, falsely makes,
 2 alters, forges or counterfeits a note, certificate or other bill of credit
 3 issued by the state treasurer, or by any commissioner or other officer
 4 authorized to issue the same for a debt of this commonwealth, shall be
 5 punished by imprisonment in the state prison for life or for any term of
 6 years.

Forging note
of treasurer
and receiver
general, etc.
1804, 120, § 2.
R. S. 127, § 3.
G. S. 162, § 3.
P. S. 204, § 3.
R. L. 209, § 4.

1 SECTION 8. Whoever, with intent to injure or defraud, falsely makes,
 2 alters, forges or counterfeits a bank bill or promissory note payable to
 3 the bearer thereof or to the order of any person, issued by any incor-
 4 porated banking company, shall be punished by imprisonment in the
 5 state prison for life or for any term of years.

Forging bank
bill or note.
1781, 34.
1783, 53, § 2.
1785, 21, § 5.
1804, 120, § 2.
R. S. 127, § 4.

G. S. 162, § 4.	R. L. 209, § 5.	11 Gray, 306.
P. S. 204, § 4	1 Mass. 62, 203.	

Possession of ten or more counterfeit bills, with intent, etc.
 1804, 120, § 2.
 R. S. 127, § 5.
 G. S. 162, § 5.
 P. S. 204, § 5.
 R. L. 209, § 6.
 2 Mass. 132, 138.
 8 Mass. 59, 107.
 4 Pick. 232.
 19 Pick. 124.

SECTION 9. Whoever has in his possession at the same time ten or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged or counterfeit, with intent to utter or pass the same as true, and thereby to injure or defraud, shall be punished by imprisonment in the state prison for life or for any term of years.

97 Mass. 570.

Passing counterfeit bill or forged note.
 1704-5, 8, § 1.
 1720-1, 10.
 1735-6, 18.
 1736-7, 9, § 1.
 1775-6, 18, §§ 1, 3.
 1776-7, 44, § 2.
 1778-9, 25, §§ 1, 2.
 1781, 34.
 1783, 53, § 3.
 1785, 21, § 5.

SECTION 10. Whoever utters or passes or tenders in payment as true any such false, altered, forged or counterfeit note, certificate or bill of credit for any debt of the commonwealth, or a bank bill or promissory note payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

1804, 126, § 3.
 R. S. 127, § 6.
 G. S. 162, § 6.

P. S. 204, § 6.
 R. L. 209, § 7.
 11 Mass. 136.

11 Gray, 306.
 2 Allen, 165.
 4 Allen, 305.

Second conviction, and three convictions at same sitting.
 1714, 6.
 1804, 120, § 3.
 R. S. 127, § 7.
 G. S. 162, § 7.
 P. S. 204, § 7.
 R. L. 209, § 8.

SECTION 11. Whoever, having been convicted of the crime mentioned in the preceding section, is again convicted of the like crime committed after the former conviction, and whoever is at the same sitting of the court convicted upon three distinct charges of such crime, shall be adjudged a common utterer of counterfeit bills, and be punished by imprisonment in the state prison for not more than ten years.

Having counterfeit bill, with intent, etc.
 1804, 120, § 4.
 1833, 222, § 1.
 R. S. 127, § 8.
 1836, 4, §§ 15, 16.
 G. S. 162, § 8.
 P. S. 204, § 8.
 R. L. 209, § 9.
 2 Mass. 132, 138.
 7 Pick. 137.
 3 Met. 460.

SECTION 12. Whoever brings into this commonwealth or has in his possession a false, forged or counterfeit bill or note, in the similitude of the bills or notes, payable to the bearer thereof or to the order of any person, issued by or for any bank or banking company, with intent to utter or pass the same or to render the same current as true, knowing the same to be false, forged or counterfeit, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

8 Met. 235.

10 Gray, 472.

10 Allen, 184.

Making or having tool, etc., for counterfeiting, with intent, etc.
 1704-5, 8, § 1.
 1720-1, 10.
 1735-6, 18.
 1775-6, 18, § 1.
 1776-7, 44, § 1.
 1783, 53, § 4.
 1804, 120, § 5.
 1833, 222, § 2.
 R. S. 127, § 9.
 G. S. 162, § 9.
 P. S. 204, § 9.
 R. L. 209, § 10.
 2 Mass. 128.

SECTION 13. Whoever engraves, makes or mends, or begins to engrave, make or mend, a plate, block, press or other tool, instrument or implement, or makes or provides paper or other material adapted to and designed for the forging or making of a false and counterfeit note, certificate or other bill of credit, purporting to be issued by lawful authority for a debt of the commonwealth, or a false and counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company, and whoever has in his possession such a plate or block engraved in any part, or a press or other tool, instrument or implement, or paper or other material, adapted and designed as aforesaid, with intent to use the same or to cause or permit the same to be used in forging or making such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison for not more than ten years, or by

14 a fine of not more than one thousand dollars and imprisonment in jail
 15 for not more than two years.

1 SECTION 14. In prosecutions for forging or counterfeiting notes or
 2 bills of the banks before mentioned, or for uttering, publishing or tender-
 3 ing in payment as true forged or counterfeit bank bills or notes, or for
 4 being possessed thereof with intent to utter and pass the same as true,
 5 the testimony of the president and cashier of any such bank may be
 6 dispensed with, if their place of residence is out of the commonwealth
 7 or more than forty miles from the place of trial; and the testimony of
 8 any person acquainted with the signature of such president or cashier,
 9 or who has knowledge of the difference in the appearance of the true and
 10 the counterfeit bills or notes of such banks, may be admitted to prove
 11 that such bills or notes are counterfeit.

Testimony of
 president, etc.,
 of bank, dis-
 pensed with
 in certain cases.
 1818, 110.
 1833, 222, § 3.
 R. S. 127, § 10.
 G. S. 162, § 10.
 P. S. 204, § 10.
 R. L. 209, § 11.
 2 Pick. 47.
 5 Cush. 605.

1 SECTION 15. In prosecutions for forging or counterfeiting a note,
 2 certificate, bill of credit or other security issued on behalf of the United
 3 States, or on behalf of any state or territory, or for uttering, publishing
 4 or tendering in payment as true such forged or counterfeit note, certifi-
 5 cate, bill of credit or security, or for being possessed thereof with intent
 6 to utter or pass the same as true, the certificate under oath of the secre-
 7 tary of the treasury, or of the treasurer of the United States, or of the
 8 secretary or treasurer of any state or territory, on whose behalf such
 9 note, certificate, bill of credit or security purports to have been issued,
 10 shall be admitted as evidence for the purpose of proving the same to be
 11 forged or counterfeit.

Sworn certifi-
 cates of cer-
 tain officers
 made evidence.
 1791, 61.
 R. S. 127, § 11.
 G. S. 162, § 11.
 P. S. 204, § 11.
 R. L. 209, § 12.

1 SECTION 16. If a fictitious or pretended signature, purporting to be
 2 the signature of an officer or agent of a corporation, is fraudulently
 3 affixed to an instrument or writing purporting to be a note, draft or
 4 other evidence of debt issued by such corporation, with intent to pass
 5 the same as true, it shall be a forgery, although no such person may ever
 6 have been an officer or agent of such corporation, or ever have existed.

Affixing
 fictitious
 signature.
 R. S. 127, § 13.
 G. S. 162, § 12.
 P. S. 204, § 12.
 R. L. 209, § 13.
 2 Mass. 77.

1 SECTION 17. Whoever counterfeits any gold or silver coin current by
 2 law or usage within the commonwealth, or has in his possession at the
 3 same time ten or more pieces of false money, or coin counterfeited in
 4 the similitude of any gold or silver coin current as aforesaid, knowing
 5 the same to be false and counterfeit, and with intent to utter or pass the
 6 same as true, shall be punished by imprisonment in the state prison for
 7 life or for any term of years.

Counterfeiting
 coin, or having
 ten counter-
 feited pieces, etc.
 1702-3, 2,
 §§ 1, 2
 1749-50,
 22, § 1
 1753-4, 20,
 1804, 120, § 6.

R. S. 127, § 15.
 G. S. 162, § 14.
 P. S. 204, § 14.

R. L. 209, § 14.
 21 Pick. 523.
 8 Met. 313.

10 Met. 256.
 13 Met. 514.
 1 Gray, 564.

1 SECTION 18. Whoever has in his possession less than ten pieces of
 2 the counterfeit coin mentioned in the preceding section, knowing the
 3 same to be counterfeit, with intent to utter or pass the same as true,
 4 or utters, passes or tenders in payment as true any such counterfeit
 5 coin, knowing the same to be false and counterfeit, shall be punished by
 6 imprisonment in the state prison for not more than ten years or by a
 7 fine of not more than one thousand dollars and imprisonment in jail
 8 for not more than two years.

Having less
 than ten pieces,
 with intent,
 etc. Uttering
 counterfeit
 coin.
 1804, 120, § 7.
 R. S. 127, § 16.
 G. S. 162, § 15.
 P. S. 204, § 15.
 R. L. 209, § 15.
 21 Pick. 523.
 10 Met. 256.

Second conviction, and three convictions at same sitting.
 1804, 120, § 7.
 R. S. 127, § 17.
 G. S. 162, § 16.
 P. S. 204, § 16.
 R. L. 209, § 16.
 13 Met. 514.

SECTION 19. Whoever, having been convicted of any of the crimes mentioned in the preceding section, is again convicted of the same crimes committed after the former conviction, and whoever is at the same sitting of the court convicted upon three distinct charges of said crimes, shall be adjudged a common utterer of counterfeit coin, and punished by imprisonment in the state prison for not more than twenty years.

1
2
3
4
5
6

Making, mending or having tool for coining, with intent, etc.
 1804, 120, § 8.
 R. S. 127, § 18.
 G. S. 162, § 17.
 P. S. 204, § 17.
 R. L. 209, § 17.
 6 Met. 221.

SECTION 20. Whoever casts, stamps, engraves, makes or mends, or knowingly has in his possession a mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted to and designed for coining or making counterfeit coin, in the similitude of any gold or silver coin current by law or usage in the commonwealth, with intent to use or employ the same or to cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years.

1
2
3
4
5
6
7
8
9
10

Issuing or passing note as currency, etc., except, etc.
 1833, 206.
 R. S. 36, § 70.
 G. S. 162, § 18.
 P. S. 204, § 18.
 R. L. 209, § 18.

SECTION 21. Whoever issues or passes a note, bill, order or check, other than foreign bills of exchange, the notes or bills of a bank incorporated by the laws of this commonwealth, of the United States, of some one of the United States or of any of the British provinces of North America, with the intent that the same shall be circulated as currency, shall be punished by a fine of fifty dollars.

1
2
3
4
5
6

Issuing small note, etc., as currency, except, etc.
 1804, 58, § 1, 2;
 136, § 1.
 R. S. 33, § 7.
 G. S. 162, § 19.
 P. S. 204, § 19.
 R. L. 209, § 19.

SECTION 22. Whoever issues or passes a note, bill, order or check, other than the notes or bills of a bank incorporated under the authority of this commonwealth, of the United States or of some one of the United States, for an amount less than five dollars, or whereon a less amount than five dollars is due at the time of such issuing or passing thereof, with intent that the same shall be circulated as currency, shall be punished by a fine of fifty dollars.

1
2
3
4
5
6
7

Circulation of fractional bill.
 1853, 392, § 2.
 G. S. 162, § 20.
 P. S. 204, § 20.

SECTION 23. Whoever receives or puts in circulation as currency a bank note or bill which is, or a part of which is, for any fractional part of a dollar shall be punished by a fine of twenty-five dollars.

1
2
3

R. L. 209, § 20.

Fraudulently connecting parts of bank notes, etc.
 R. S. 127, § 12.
 G. S. 162, § 21.
 P. S. 204, § 21.
 R. L. 209, § 21.

SECTION 24. Whoever fraudulently connects different parts of several bank notes or other genuine instruments in such manner as to produce one additional note or instrument, with intent to pass all of them as genuine, shall be guilty of forgery, in like manner as if each of them had been falsely made or forged.

1
2
3
4
5

10 Mass. 34.

Wilful and malicious injury to bank bill.
 1852, 64.
 G. S. 162, § 22.
 P. S. 204, § 22.
 R. L. 209, § 22.

SECTION 25. Whoever wilfully and maliciously tears, cuts or in any manner damages and impairs the usefulness for circulation of a bank bill or note of a bank in this commonwealth shall be punished by a fine of not more than ten dollars; but the possession or uttering of a bill so injured shall not be evidence against a party charged, unless connected with other circumstances tending to prove that the bill or note was injured by him.

1
2
3
4
5
6
7

1 SECTION 26. Whoever maliciously gathers up or retains or maliciously
 2 aids in gathering up or retaining bills or notes of a bank or banking com-
 3 pany, current by law or usage in the commonwealth, for the purpose of
 4 injuring or impeding the circulation or business of such bank or banking
 5 company, or of compelling it to do any act out of the usual course of its
 6 business, shall be punished by a fine of not more than five hundred dol-
 7 lars or by imprisonment for not more than two years; and in the prose-
 8 cution of any such crime it shall not be necessary to set out and describe
 9 each bill, but it shall be sufficient to aver and prove any amount of the
 10 bills of any bank which have been so gathered up or retained.

Maliciously
gathering up,
etc., bills of
bank for
purpose of
injuring busi-
ness, etc.
Penalty,
1859, 116,
§§ 3, 4.
G. S. 162, § 23.
P. S. 204, § 23.
R. L. 209, § 23.

1 SECTION 27. Whoever has in his possession at the same time five or
 2 more bank bills or notes not current which are worthless as bank bills or
 3 notes, knowing the same to be worthless as aforesaid, or has papers not
 4 bank bills or notes, but made in the similitude thereof, or papers pur-
 5 porting to be the bills or notes of a bank which has never existed, knowing
 6 the character of such papers, with intent to pass, utter or circulate the
 7 same, or to procure any other person so to do, for the purpose of injuring
 8 or defrauding, shall be punished by imprisonment in the state prison for
 9 not more than five years, or by a fine of not more than five hundred
 10 dollars and imprisonment in the house of correction for not more than two
 11 and one half years.

Possession of
worthless bills,
not current,
etc.
1857, 231, § 1.
G. S. 162, § 24
P. S. 204, § 24
R. L. 209, § 24.
1914, 635.
1918, 257,
§ 464
1919, 5
1920, 2.

1 SECTION 28. Whoever utters or passes or tenders in payment as true
 2 any such worthless bank bill or note not current, or any paper not a
 3 bank bill or note but made in the similitude thereof, or any paper pur-
 4 porting to be the bill or note of a bank which has never existed, knowing
 5 the same to be worthless and not current, as aforesaid, with intent to
 6 injure and defraud, shall be punished by imprisonment in the state
 7 prison for not more than five years, or by a fine of not more than five
 8 hundred dollars and imprisonment in the house of correction for not
 9 more than two and one half years.

Uttering or
passing such
bill, etc.
1857, 231, § 2.
G. S. 162, § 25.
P. S. 204, § 25.
R. L. 209, § 25.
1914, 635.
1918, 257,
§ 464.
1919, 5.
1920, 2.
7 Allen, 537.

1 SECTION 29. Whoever engraves, prints, issues, utters or circulates a
 2 shop bill or advertisement, in similitude, form and appearance like a bank
 3 bill, on paper similar to paper used for bank bills, and with vignettes,
 4 figures or decorations used on bank bills, or having the general appear-
 5 ance of a bank bill, or in similitude, form and appearance, like a treas-
 6 ury note, note, certificate, bill of credit or other security issued by or
 7 on behalf of the United States, on paper similar to paper used for the
 8 same, respectively, and with vignettes, figures or decorations used thereon,
 9 or having the general appearance of a treasury note, note, certificate,
 10 bill of credit or other security issued by or on behalf of the United States,
 11 shall be punished by a fine of not more than fifty dollars or by impris-
 12 onment in jail for not more than three months.

Engraving,
etc., shop bill,
resembling
bank bills.
1849, 5.
G. S. 162, § 26.
1862, 63.
P. S. 204, § 26.
R. L. 209, § 26.

1 SECTION 30. When false, forged or counterfeit bank bills or notes,
 2 or forged or counterfeit notes or bonds of any state or corporation, or
 3 plates, dies or other tools, instruments or implements used by counter-
 4 feuters, or designed for the forging or making of false or counterfeit notes,
 5 coin or bills, or worthless bank bills or notes not current described in
 6 sections twenty-seven and twenty-eight, come to the knowledge of a
 7 sheriff, constable, police officer or other officer of justice, he shall im-

Sheriff, etc.,
to seize
counterfeit
bills, etc.
1855, 168, § 1.
1857, 231, § 3.
G. S. 162, § 27.
1875, 40
P. S. 204, § 27.
R. L. 209, § 27.

mediately scize and take possession of and deliver them into the custody of the superior court, which shall cause them to be destroyed by an officer of the court, who shall make return to the court of his doings in the premises.

Compensation to prosecutors, etc., of forgers, etc. 1713-14, 11, § 1. 1715-16, 15. 1749-50, 22, § 5. 1804, 120, § 9. 1814, 95. R. S. 127, § 19. 1845, 153; 248. 1846, 142.

SECTION 31. Upon a conviction of any crime mentioned in sections seven, eight, seventeen, eighteen, twenty or twenty-eight or upon forfeiture by persons prosecuted for any such crime of any recognizance for their appearance to answer to the same, the superior court may order compensation to the prosecutor and to the officer who has secured and kept the evidence of the crime, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, which shall be paid by the county.

G. S. 162, § 28. 1860, 191, § 10. P. S. 204, § 28. R. L. 209, § 28.

CHAPTER 268.

CRIMES AGAINST PUBLIC JUSTICE.

<p>SECT.</p> <p>1. Perjury.</p> <p>1A. Verifying certain written statements by written declaration instead of by oath.</p> <p>2. Subornation of perjury.</p> <p>3. Inciting to perjury.</p> <p>4. Commitment on presumption of perjury.</p> <p>5. Papers, etc., may be detained.</p> <p>6. Penalties for making false report, etc., to department of public utilities or certain other state departments, etc.</p> <p>7. Bribe to public officer.</p> <p>8. Acceptance of bribe by officer. Forfeiture of office, etc., upon conviction for larceny, etc.</p> <p>8A. Bribery of police officers.</p> <p>9. Taking bonus, etc., by public officer.</p> <p>10. Taking bonus, etc., by member of legislature, city council, etc.</p> <p>11. Taking bonus by county officer.</p> <p>12. Bribery of officer of public institution.</p> <p>13. Corrupting juror, arbitrator, etc.</p> <p>14. Acceptance of bribe by juror, arbitrator, etc.</p> <p>15. Aiding escape from prison, and rescuing prisoner.</p> <p>16. Penalty for escapes or attempted escapes from penal institutions.</p> <p>17. Aiding escape from an officer.</p> <p>18. Officer suffering escape.</p> <p>19. Suffering or consenting to escape from penal institutions.</p>	<p>SECT.</p> <p>20. Negligently suffering escape, or refusing to receive prisoner.</p> <p>21. Leaving prisoner at large.</p> <p>22. Delay of service of warrant.</p> <p>23. Refusal to arrest, and suffering escape.</p> <p>24. Refusal to aid officer.</p> <p>25. Refusal to arrest upon order of a justice of the peace.</p> <p>26. Furnishing liquor to prisoner.</p> <p>27. Penalty for furnishing intoxicating liquors to patients of public institutions.</p> <p>28. Penalty for giving articles to prisoners without permission.</p> <p>29. Same subject.</p> <p>30. Penalty for disturbing penal institutions.</p> <p>31. Illicit conveyance of articles to or from penal institutions.</p> <p>32. Interference with police signal systems.</p> <p>33. Falsely assuming to be justice of the peace or certain other public officers.</p> <p>34. Disguising to resist execution of the law.</p> <p>35. Unauthorized use of seal of city or town, or of badge of officer.</p> <p>36. Concealing and compounding felony.</p> <p>37. Officer taking bribe for neglecting his duty.</p> <p>38. Extortion of illegal fees.</p>
--	--

Perjury, B. L. 94, § 11. C. L. 15, § 11.

SECTION 1. Whoever, being lawfully required to depose the truth in a judicial proceeding or in a proceeding in a course of justice, wilfully

3 swears or affirms falsely in a matter material to the issue or point in
 4 question, or whoever, being required by law to take an oath or affirma-
 5 tion, wilfully swears or affirms falsely in a matter relative to which such
 6 oath or affirmation is required, shall be guilty of perjury. Whoever
 7 commits perjury on the trial of an indictment for a capital crime shall
 8 be punished by imprisonment in the state prison for life or for any term
 9 of years, and whoever commits perjury in any other case shall be punished
 10 by imprisonment in the state prison for not more than twenty years or
 11 by a fine of not more than one thousand dollars or by imprisonment in
 12 jail for not more than two and one half years, or by both such fine and
 13 imprisonment in jail.

1917, 165, § 2.	12 Mass. 273.	116 Mass. 17.
1918, 257, § 464.	15 Gray, 438.	129 Mass. 115.
1919, 5.	5 Allen, 499.	150 Mass. 160.
1920, 2.	108 Mass. 473.	166 Mass. 174.

1692-3, 18, § 9.
 1784, 51, § 1.
 1797, 35, § 10.
 1812, 144, § 1.
 1824, 91, § 2.
 1829, 56.
 R. S. 94, § 12;
 128, §§ 1, 2.
 G. S. 163,
 §§ 1, 2.
 P. S. 205,
 §§ 1, 2.
 1892, 123.
 1898, 562,
 § 112.
 R. L. 210, § 1.
 1912, 719, § 9.
 1914, 635.

1 SECTION 1A. Except in a judicial proceeding or in a proceeding in a
 2 course of justice, no written statement required by law shall be required
 3 to be verified by oath or affirmation before a magistrate if it contains or
 4 is verified by a written declaration that it is made under the penalties of
 5 perjury. Whoever signs and issues such a written statement containing
 6 or verified by such a written declaration shall be guilty of perjury and
 7 subject to the penalties thereof if such statement is wilfully false in a
 8 material matter.

Verifying cer-
 tain written
 statements by
 written dec-
 laration in-
 stead of
 by oath.
 1926, 187, § 1

1 SECTION 2. Whoever is guilty of subornation of perjury, by procuring
 2 another person to commit perjury, shall be punished as for perjury.

1692-3, 18, § 9.	R. S. 128, § 3.	R. L. 210, § 2.
1784, 51, § 2.	G. S. 163, § 3.	11 Allen, 243.
1812, 144, § 2.	P. S. 205, § 3.	152 Mass. 498.

Subornation
 of perjury.

1 SECTION 3. Whoever attempts to incite or procure another person
 2 to commit perjury, although no perjury is committed, shall be punished
 3 by imprisonment in the state prison for not more than five years or in
 4 jail for not more than one year.

G. S. 163, § 4.	P. S. 205, § 4	R. L. 210, § 3.	161 Mass. 120.
-----------------	----------------	-----------------	----------------

Inciting to
 perjury.
 1784, 51, § 3
 1812, 144, § 3
 R. S. 128, § 4

1 SECTION 4. If it appears to a court of record that a party or a witness
 2 who has been legally sworn and examined, or has made an affidavit, in any
 3 proceeding in a court or course of justice has so testified as to create a
 4 reasonable presumption that he has committed perjury therein, the court
 5 may forthwith commit him or may require him to recognize with sureties
 6 for his appearance to answer to an indictment for perjury; and thereupon
 7 the witnesses to establish such perjury may, if present, be bound over to
 8 the superior court, and notice of the proceedings shall forthwith be given
 9 to the district attorney.

Commitment
 on presumption
 of perjury.
 R. S. 128, § 6.
 G. S. 163, § 5.
 P. S. 205, § 7
 R. L. 210, § 4
 260 Mass. 369.

1 SECTION 5. If perjury is reasonably presumed, as aforesaid, papers,
 2 books or documents which have been produced and are considered neces-
 3 sary to be used on a prosecution for such perjury may by order of the
 4 court be detained from the person who produces them so long as may
 5 be necessary for their use in such prosecution.

Papers, etc.,
 may be de-
 tained.
 R. S. 128, § 7.
 G. S. 163, § 6.
 P. S. 205, § 8.
 R. L. 210, § 5.

1 SECTION 6. Except as provided in sections forty-eight and forty-nine
 2 of chapter one hundred and fifty-five, whoever shall wilfully make false
 3 report to the department of public utilities, the department of public

Penalties for
 making false
 report, etc., to
 department of
 public utilities

or certain other
state depart-
ments, etc.
1911, 184
1914, 742,
§§ 149, 199,
1931, 426,
§ 310.

works, the department of banking and insurance, or the commissioner of corporations and taxation, or who, before any such department or commissioner, shall testify or affirm falsely to any material fact in any matter wherein an oath or affirmation is required or authorized, or who shall make any false entry or memorandum upon any book, report, paper or statement of any company making report to any of the said departments or said commissioner, with intent to deceive the department or commissioner, or any agent appointed to examine the affairs of any such company, or to deceive the stockholders or any officer of any such company, or to injure or defraud any such company, and any person who with like intent aids or abets another in any violation of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Bribe to public
officer.
R. S. 128, § 8.
G. S. 163, § 7.
P. S. 205, § 9.
1891, 349, § 1.
R. L. 210, § 6.
135 Mass. 530.
156 Mass. 480.
170 Mass. 228.
216 Mass. 126.
250 Mass. 445.

SECTION 7. Whoever corruptly gives, offers or promises to a legislative, executive, judicial, county or municipal officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote or opinion, decision or judgment upon any matter, question, cause or proceeding which may be then pending, or which may by law come or be brought before him in his official capacity, or as a consideration for any speech, work or service in connection therewith, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than three thousand dollars and imprisonment in jail for not more than one year.

Acceptance of
bribe by officer.
Forfeiture of
office, etc.,
upon conviction
for
larceny, etc.
R. S. 128, § 9.
G. S. 163, § 8.
P. S. 205, § 10.
1891, 349, § 2.
R. L. 210, § 7.
1923, 451.
201 Mass. 81.
249 Mass. 555.
257 Mass. 590.

SECTION 8. A legislative, executive, judicial, county or municipal officer who corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to him, under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity or as a consideration for any speech, work or service in connection therewith, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the constitution or laws of the commonwealth, and be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five thousand dollars and imprisonment in jail for not more than two years; and an executive, county other than judicial, or municipal officer who is finally convicted of committing, in connection with the performance of the duties of such office, the crime of larceny, embezzlement or obtaining money under false pretences shall, in addition to the penalty imposed by law for the punishment of such crime, forfeit his office and be forever disqualified to hold any public office, trust or appointment as aforesaid.

Bribery of
police officers.
1923, 241.

SECTION 8A. A police officer who corruptly requests or accepts a gift or gratuity or a promise to make a gift or gratuity or to do an act beneficial to him, under an agreement or with an understanding that he will perform in any particular manner, or abstain from performing, any act coming within the course of his duty as such officer, or as a consideration for any work or service in connection therewith, shall forfeit his office, be forever disqualified to hold any public office, trust or

8 appointment under the constitution or laws of the commonwealth and
 9 be punished by imprisonment in the state prison for not more than ten
 10 years or by a fine of not more than five thousand dollars and imprisonment
 11 in jail for not more than two years; and any person who corruptly gives,
 12 offers or promises to a police officer any gift or gratuity whatever, with
 13 intent to influence his act or to secure his inaction in any matter coming
 14 within the course of his duty as such officer, or as a consideration for any
 15 work or service in connection therewith, shall be punished by imprison-
 16 ment in the state prison for not more than five years or by a fine of not
 17 more than three thousand dollars and imprisonment in jail for not more
 18 than one year.

1 SECTION 9. An officer or agent of, or a person employed by, the
 2 commonwealth, or by a county, city, town or by any public institution
 3 not mentioned in section twelve who, being authorized to procure ma-
 4 terials, supplies or other articles either by purchase or contract, or to
 5 employ service or labor, receives, directly or indirectly, for himself or
 6 for another, a commission, discount, bonus, present or reward from the
 7 person who makes such contract, furnishes such materials, supplies or
 8 other articles, or from a person who renders service or labor under such
 9 contract, and a person who gives or offers such commission, discount,
 10 bonus, present or reward, shall be punished by a fine of not less than
 11 ten nor more than five hundred dollars or by such fine and imprisonment
 12 for not more than one year.

Taking bonus,
 etc., by public
 officer
 1862, 101,
 §§ 1, 2
 P. S. 205, § 11.
 1893, 271, § 1.
 R. L. 210, § 8.

1 SECTION 10. A member of the general court, or of the executive
 2 council, or of a state department or commission, who is personally
 3 interested, directly or indirectly, in a contract made by the general court
 4 or by either branch thereof or by such department or commission or by
 5 its authority, in which the commonwealth is an interested party; or a
 6 person, so interested, who alone or with others represents the common-
 7 wealth in making such contract; or such member or person who receives
 8 a commission, discount, bonus, present or reward from a person or persons
 9 making or performing such contract; or a member of a city council or
 10 any branch thereof or of a municipal board of a city who is personally
 11 interested, directly or indirectly, in a contract made by the city council
 12 or by any branch thereof, or by such board or by authority derived
 13 therefrom, in which the city is an interested party; or a person, so
 14 interested, who alone or with others represents a city in making such
 15 contract; or such member or person who, directly or indirectly, for him-
 16 self or for another receives a commission, discount, bonus, present or
 17 reward from any person or persons making or performing such contract,
 18 shall be punished by a fine of not less than fifty nor more than one thou-
 19 sand dollars or by such fine and imprisonment for not more than one
 20 year.

Taking bonus,
 etc., by mem-
 ber of legisla-
 ture, city
 council, etc.
 1872, 274
 1875, 232.
 P. S. 205, § 12.
 R. L. 210, § 9.
 122 Mass. 529.
 195 Mass. 173.
 1 Op. A. G.
 502.

1 SECTION 11. A county officer who is personally interested, directly
 2 or indirectly, in a contract made by the county treasurer, county commis-
 3 sioners, or by their authority, in which the county is an interested party
 4 or a person who alone or with others represents a county in making such
 5 contract, who is so interested, or such officer or person who, directly or
 6 indirectly, for himself or for another, receives a commission, discount,
 7 bonus, present or reward from a person making or performing such
 8 contract, shall be punished as provided in the preceding section.

Taking bonus
 by county
 officer.
 1893, 271, § 2.
 R. L. 210, § 10.

Bribery of officer of public institution. 1872, 282. P. S. 205, § 13. R. L. 210, § 11.

SECTION 12. An officer connected with a prison, house of correction, state hospital or other public charitable institution who is personally interested, directly or indirectly, in a contract, purchase or sale made on account of such institution, or who corruptly accepts a bribe, present or gratuity from any person interested in such contract and a person interested, directly or indirectly, in a contract connected with any such institution who corruptly gives, offers or promises to an officer of such institution a bribe, gift or gratuity, shall be punished by imprisonment in the state prison for not more than three years or by a fine of not more than one thousand dollars or by imprisonment in jail for not more than two years or by both such fine and imprisonment in jail.

Corrupting juror, arbitrator, etc. R. S. 128, § 10. G. S. 163, § 9. P. S. 205, § 14. R. L. 210, § 12.

SECTION 13. Whoever corrupts or attempts to corrupt a master in chancery, master, auditor, juror, arbitrator, umpire or referee by giving, offering or promising any gift or gratuity whatever, with intent to influence his opinion or decision, relative to a cause or matter pending in a court, or before an inquest, or for the decision of which he has been chosen or appointed, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

Acceptance of bribe by juror, arbitrator, etc. R. S. 128, § 11. G. S. 163, § 10. P. S. 205, § 15. R. L. 210, § 13. 174 Mass. 79.

SECTION 14. Whoever, being summoned as a juror or chosen or appointed as an arbitrator, umpire or referee, or, being a master in chancery, master or auditor, corruptly takes anything to give his verdict, award or report, or corruptly receives any gift or gratuity from a party to a suit, cause or proceeding for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, master, auditor, arbitrator, umpire or referee has been chosen or appointed, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

Aiding escape from prison, and rescuing prisoner. C. L. 127, § 4. 1700-1, 2. §§ 3, 4. 1784, 41, § 2. 1805, 113, §§ 6, 8. 1811, 32, § 8. 1827, 118, § 24. R. S. 128, § 12; 144, § 41. G. S. 163, § 11; 179, § 57. P. S. 205, § 16; 221, § 40. R. L. 210, § 14. 119 Mass. 347.

SECTION 15. Whoever conveys into the state prison, the Massachusetts reformatory or reformatory for women, or into a jail, house of correction, house of reformation or like place of confinement, a disguise, instrument, tool, weapon or other thing which is adapted or useful to aid a prisoner in making his escape, with intent to aid the escape of a prisoner, or whoever, by any means, aids or assists such prisoner in endeavoring to escape therefrom, whether such escape is effected or attempted or not, and whoever forcibly or fraudulently rescues or attempts to rescue a prisoner held in custody upon a conviction or charge of crime, shall, if the person whose escape or rescue was effected or intended is a convict under sentence in the state prison or is charged with a felony, be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison for not more than ten years; but if he is a convict under sentence in any other of said institutions, by imprisonment in the state prison for not more than seven years; and if he is charged with a misdemeanor, then by a fine of not more than five hundred dollars or by imprisonment in jail for not more than two years.

Penalty for escapes or attempted escapes from penal institutions. 1805, 113, §§ 9, 10.

SECTION 16. A prisoner who escapes or attempts to escape from any penal institution, or from land appurtenant thereto, or from the custody of any officer thereof or while being conveyed to or from any such institution, may be pursued and recaptured and shall be punished by imprison-

5 ment in the institution to which he was originally sentenced or committed, 1811, 32,
 6 for a term not exceeding five years. If the prisoner has escaped or at- § 9, 10,
 7 tempted to escape from the prison camp and hospital, the expense of 1818, 123, § 7.
 8 supporting him shall be paid by the institution to which he is sentenced 1827, 118,
 9 and the expense of committing him shall be paid by the prison camp and § 11, 12,
 10 hospital. In imposing sentence under this section the court shall observe 1834, 151, § 14,
 11 the provisions of law regarding sentences and commitments to the various R. S. 143,
 12 penal institutions. § 49-51, 144,
 § 37, 38,
 1851, 93,
 G. S. 178, § 46;
 179, §§ 53, 54,
 1866, 198, § 5.

1870, 288, § 3.	R. L. 85, § 33;	1920, 2; 350
1873, 73, § 1	210, §§ 15-18.	1925, 53.
1880, 257, § 8	1903, 188	4 Met. 360.
P. S. 88, § 8;	1904, 243, § 2	5 Met. 555
220, § 50;	1905, 355, § 3.	5 Allen, 130
221, §§ 36, 37.	1916, 187	261 Mass. 490.
1882, 198.	1918, 257, § 464.	Op. A. G. (1920) 95.
1885, 94, §§ 2, 3.	1919, 5.	

1 SECTION 17. Whoever aids or assists a prisoner in escaping or attempt- Aiding escape
 2 ing to escape from an officer or person who has the lawful custody of such from an
 3 prisoner shall be punished by a fine of not more than five hundred dollars officer
 4 or by imprisonment for not more than two years. 1811, 32, § 8,
 1827, 118, § 24

R. S. 128, § 13.	P. S. 205, § 17.	119 Mass. 297.
G. S. 163, § 12	R. L. 210, § 21.	

1 SECTION 18. A jailer or officer who, except as provided in the follow- Officer suffering
 2 ing section, voluntarily suffers a prisoner in his custody upon conviction escape
 3 or upon a charge of crime to escape shall suffer the punishment and 1700-1, 2, § 6.
 4 penalties to which the prisoner whom he suffered to escape was sentenced 1784, 41, § 3.
 5 or would be liable to suffer upon conviction of the crime wherewith he R. S. 128, § 14,
 6 stood charged. G. S. 163, § 13,
 P. S. 205, § 18,
 R. L. 210, § 25

1 SECTION 19. An officer or other person, who, being employed in any Suffering or
 2 penal institution, voluntarily suffers a convict confined therein to escape, consenting to
 3 or in any way consents to such escape, shall be punished by imprisonment escape from
 4 in the state prison for not more than twenty years. penal institu-
 tions

1805, 113, § 6.	R. S. 144, § 39.	P. S. 221, § 38	1929, 170, § 3
1827, 118, § 22.	G. S. 179, § 55.	R. L. 210, § 26.	

1 SECTION 20. A jailer or officer who, through negligence, suffers a Negligently
 2 prisoner in his custody upon conviction or upon a charge of crime to suffering
 3 escape, or wilfully refuses to receive into his custody a prisoner lawfully escape, or re-
 4 directed to be committed thereto upon conviction, upon a charge of fusing to receive
 5 crime, or upon a lawful process, shall be punished by a fine of not more prisoner
 6 than five hundred dollars or by imprisonment for not more than two years. C. L. 128, § 2,
 1700-1, 2, § 7,
 1784, 41, § 3
 R. S. 128, § 15
 G. S. 163, § 14.
 P. S. 205, § 19. R. L. 210, § 27.

1 SECTION 21. An officer or person who, being employed in the state Leaving pris-
 2 prison, suffers a convict under sentence of solitary imprisonment to be oner at large
 3 at large or out of the cell assigned to him, or suffers any convict confined 1805, 113, § 7.
 4 in the prison to be at large out of the prison, or to be visited, conversed 1811, 32, § 7.
 5 with or in any way relieved or comforted, contrary to the regulations of 1827, 118, § 23.
 6 the prison, shall be punished by a fine of not more than five hundred G. S. 179, § 56.
 7 dollars. P. S. 221, § 39.
 R. L. 210, § 28.

1 SECTION 22. An officer who wilfully delays service of a warrant of Delay of
 2 arrest or a search warrant committed to him for service shall be pun- service of
 3 ished by a fine of not more than fifty dollars. warrant

1899, 389	R. L. 210, § 29
-----------	-----------------

Refusal to
arrest, and
suffering
escape.
R. S. 128, § 16.
G. S. 163, § 15.
P. S. 205, § 20.
R. L. 210, § 30.

SECTION 23. An officer who, being authorized to serve process, wilfully and corruptly refuses to execute a lawful process directed to him and requiring him to apprehend or confine a person convicted of or charged with crime, or wilfully and corruptly omits or delays to execute such process, whereby such person escapes, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year.

1
2
3
4
5
6
7

Refusal to aid
officer
1795, 68, § 1.
R. S. 128, § 17.
1855, 45.
G. S. 163, § 16.
P. S. 205, § 21.
R. L. 210, § 31.

SECTION 24. Whoever, being required in the name of the commonwealth by a sheriff, deputy sheriff, constable, police officer or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of a person for a breach of the peace, or in a case of escape or rescue of persons arrested upon civil process, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month.

1
2
3
4
5
6
7

Refusal to
arrest upon
order of a
justice of
the peace.
1795, 68, § 3.
R. S. 128, § 18.
G. S. 163, § 17.
P. S. 205, § 22.
R. L. 210, § 32.

SECTION 25. Whoever, being required by a justice of the peace, upon view of a breach of the peace or of any other offence proper for his cognizance, to apprehend the offender, refuses or neglects to obey such justice, shall be punished as provided in the preceding section; and no person to whom such justice is known or declares himself to be a justice of the peace shall plead any excuse on pretence of ignorance of his office.

1
2
3
4
5
6
7

Furnishing
liquor to
prisoner.
1834, 151, § 21.
R. S. 143, § 37.
1854, 93.
G. S. 178, § 43.
P. S. 222, § 2.
R. L. 210, § 19.

SECTION 26. Whoever gives, sells or delivers spirituous or intoxicating liquor to a person confined in any prison or other place of confinement, or to a person in the custody of a sheriff, constable, police officer, warden of a prison, or other master or keeper of a place of confinement, or has in his possession, within the precincts of any prison or other place of confinement, any such liquor, with intent to convey or deliver it to any person confined therein, except under the direction of the physician appointed to attend such prisoner, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months.

1
2
3
4
5
6
7
8
9

Penalty for
furnishing in-
toxicating
liquors to
patients of
public insti-
tutions.
1903, 410.
1906, 504, § 94.
1918, 63.

SECTION 27. Whoever gives, sells or delivers any spirituous or intoxicating liquor to any patient or inmate of any public institution, or to any patient or inmate under the control of any such institution, except under the direction of a physician authorized so to do, and whoever has in his possession within the precincts of any such institution any such liquor with intent to consume the same or to convey, give, sell or deliver the same to any patient or inmate thereof, except under direction as aforesaid, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months.

1
2
3
4
5
6
7
8
9

Penalty for
giving articles
to prisoners
without per-
mission.
1905, 258.
1906, 243, § 1.

SECTION 28. Whoever gives or delivers to a prisoner in the state farm, in the prison camp and hospital, or in any jail or house of correction, any drug or article whatever, or has in his possession within the precincts of any prison herein named with intent to give or to deliver to any prisoner any such drug or article without the permission of the superintendent, master or keeper, shall be punished by a fine of not more than fifty dollars or by imprisonment in a jail or house of correction for not more than two months.

1
2
3
4
5
6
7
8

1 SECTION 29. A sheriff, jailer, master of a house of correction or officer
 2 of a prison who, under any pretence, gives, sells or delivers or knowingly
 3 permits to be given, sold or delivered to a prisoner in his custody any spir-
 4 ituous liquor, or mixed liquor a part of which is spirituous, or wine, cider
 5 or strong beer, unless the physician of the prison certifies in writing that
 6 the health of the prisoner requires it; or such sheriff, jailer, master of a
 7 house of correction or officer of a prison who willingly or negligently
 8 suffers such prisoner to have or drink any spirituous, fermented or other
 9 strong or mixed liquor, or who places or keeps together prisoners in his
 10 custody of different sexes or classes, contrary to section twenty-two of
 11 chapter one hundred and twenty-seven, shall forfeit twenty-five dollars
 12 for the first offence and fifty dollars for any offence committed subsequent
 13 to the first conviction, and, upon such second conviction, shall be re-
 14 moved from office, and be ineligible to hold the office of sberiff, deputy
 15 sheriff, jailer, master or keeper of any prison for five years thereafter.
 16 If the physician certifies that the health of the prisoner requires such
 17 liquor, the prisoner shall be allowed the quantity prescribed and no
 18 more.

Same subject.
 1817, 149,
 §§ 3, 4,
 1823, 148,
 §§ 2, 4,
 1834, 151,
 §§ 20, 21,
 R. S. 143,
 §§ 36, 37,
 G. S. 178,
 §§ 42, 44,
 P. S. 220,
 §§ 17, 48,
 R. L. 210, § 20.

1 SECTION 30. Whoever wilfully disturbs the state prison, state prison
 2 colony, Massachusetts reformatory, reformatory for women, state farm,
 3 Lyman school, industrial school for boys, industrial school for girls,
 4 prison camp and hospital, or a jail or house of correction, or in any manner
 5 seeks to attract the attention of, or without the permission of the officer
 6 in charge has communication with, an inmate thereof, shall be punished
 7 by a fine of not more than fifty dollars or by imprisonment for not more
 8 than three months.

Penalty for distur-
 bing penal
 institutions
 1885, 303,
 R. L. 210, § 22,
 1909, 255,
 1911, 181,
 1918, 257, § 307,
 1919, 5,
 1920, 2,
 1931, 426, § 311.

1 SECTION 31. Whoever delivers or proeures to be delivered, or has in
 2 his possession with intent to deliver, to a convict confined in any penal
 3 institution, or whoever deposits or conceals in or about the institution, or
 4 the dependencies thereof, or upon any land appurtenant thereto, or in
 5 any boat or vehicle going into the premises belonging to the institution,
 6 any article, with intent that a convict shall obtain or receive it, and who-
 7 ever receives from a convict any article with intent to convey it out of the
 8 institution, contrary to the rules and regulations thereof, and without the
 9 knowledge and permission of the commissioner of correction or of the
 10 warden, superintendent or officer in charge thereof shall be punished
 11 by a fine of not more than five hundred dollars or by imprisonment in the
 12 state prison for not more than three years or in jail for not more than two
 13 and one half years.

Illicit convey-
 ance of articles
 to or from
 penal institu-
 tions
 1805, 113, § 8
 1825, 84, § 4
 R. S. 144, § 42,
 1838, 152, 1,
 G. S. 179, § 58,
 1878, 133
 1879, 294, § 34,
 P. S. 221, § 41,
 1887, 339
 R. L. 210, § 23,
 1911, 181,
 1914, 635,
 1918, 257,
 § 164
 1919, 5; 350,
 § 83.

1920, 2.

1929, 170, § 4.

1 SECTION 32. Whoever opens a signal box connected with a police
 2 signal system for the purpose of giving or causing to be given a false
 3 alarm, or interferes in any way with such box by breaking, cutting, in-
 4 juring or defacing the same; or, without authority, opens, tampers or
 5 meddles with such box, or with any part or parts thereof, or with the
 6 police signal wires, or with anything connected therewith, or, with such
 7 purpose, wantonly and without cause tampers or meddles with a signal
 8 box connected with a fire signal system or with any part or thing con-
 9 nected therewith, shall be punished by a fine of not more than five hun-
 10 dred dollars or by imprisonment for not more than two years, or both.

Interference
 with police
 signal systems.
 1888, 291
 1901, 527
 R. L. 210, § 24.

Falsely assuming to be justice of the peace or certain other public officers. R. S. 128, § 19. 1795, 68, § 2. G. S. 163, § 18. 1877, 200, § 24. P. S. 205, § 23. 1898, 318.

SECTION 33. Whoever falsely assumes or pretends to be a justice of the peace, notary public, sheriff, deputy sheriff, medical examiner, associate medical examiner, constable, police officer, probation officer, or examiner or investigator appointed by the registrar of motor vehicles, and acts as such or requires a person to aid or assist him in a matter pertaining to the duty of such officer, shall be punished by a fine of not more than four hundred dollars or by imprisonment for not more than one year.

1899, 178, § 7. 1922, 52. 1931, 426, § 312. R. L. 210, § 33. 1930, 21.

Disguising to resist execution of the law. 1809, 123, § 2. R. S. 128, § 20. G. S. 163, § 19. P. S. 205, § 25. R. L. 210, § 35.

SECTION 34. Whoever disguises himself with intent to obstruct the due execution of the law, or to intimidate, hinder or interrupt an officer or other person in the lawful performance of his duty, or in the exercise of his rights under the constitution or laws of the commonwealth, whether such intent is effected or not, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year and may if imprisoned also be bound to good behavior for one year after the expiration of such imprisonment.

Unauthorized use of seal of city or town, or of badge of officer. 1881, 9. P. S. 205, § 26. R. L. 210, § 36.

SECTION 35. Whoever, without being duly authorized thereto, prints, stamps, engraves or affixes, or causes to be printed, stamped, engraved or affixed to any paper or other article a representation of the seal of a town in the commonwealth, with intent to give to such paper or article an official character which it does not possess, or, without being duly authorized thereto, and with intent to assume an official character which he does not possess, casts, stamps, engraves, makes or has in his possession a badge or thing in the likeness of an official badge of a police officer, member of a fire department, or other officer appointed by a town in the commonwealth, or by any department of such town, shall be punished by a fine of not more than fifty dollars.

Concealing and compounding felony. R. S. 128, § 21. G. S. 163, § 20. P. S. 205, § 27. R. L. 210, § 37. 16 Mass. 91. 4 Allen, 534. 12 Allen, 557. 225 Mass. 80.

SECTION 36. Whoever, having knowledge of the commission of a felony, takes money, or a gratuity or reward, or an engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such felony, or not to prosecute therefor, or not to give evidence thereof, shall, if such crime is punishable with death or imprisonment in the state prison for life, be punished by imprisonment in the state prison for not more than five years or in jail for not more than one year; and if such crime is punishable in any other manner, by a fine of not more than five hundred dollars or by imprisonment in jail for not more than two years.

Officer taking bribe for neglecting his duty. R. S. 128, § 22. G. S. 163, § 21. P. S. 205, § 28. R. L. 210, § 38.

SECTION 37. A sheriff, constable or other officer who, being authorized to serve legal process, receives from a defendant or from any other person any money or other valuable thing as a consideration, reward or inducement for omitting or delaying to arrest a defendant, or to carry him before a magistrate, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty appertaining to his office, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than three months.

Extortion of illegal fees. 1692-3, 37, § 2.

SECTION 38. A recording officer who wilfully and corruptly demands and receives more than the legal fee for an official duty or service shall

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

3 forfeit fifty dollars; and any other person who wilfully and corruptly de-
 4 mands and receives for the performance of an official duty or service, for
 5 which a fee or compensation is allowed by law, more than the legal fee
 6 shall forfeit thirty dollars. Such penalties may be recovered by com-
 7 plaint or indictment to the use of the county, or in tort to the use of any
 8 person who sues therefor; but such prosecution or action shall be com-
 9 menced within one year after the offence was committed.

1 Pick. 171.

7 Pick. 279.

201 Mass. 261.

1795, 41, § 6.
 R. S. 122, § 19;
 128, § 23
 1855, 311, § 2.
 G. S. 163, § 22.
 P. S. 205, § 29.
 R. L. 210, § 39.
 1 Mass. 227.
 2 Mass. 523.
 15 Mass. 525.
 17 Mass. 410.

CHAPTER 269.

CRIMES AGAINST PUBLIC PEACE.

SECT.

1. Suppression of unlawful assembly.
2. Penalty for refusal to assist.
3. Neglect of mayor or other officer to suppress, etc.
4. Officers may quell unlawful assembly by force, etc.
5. Armed force, if called out, to obey orders of governor, etc.
6. Officers, etc., guiltless if death ensues.
7. Riotously destroying dwelling house, etc.

SECT.

8. Liability of cities and towns, etc., for property destroyed.
9. [Repealed.]
10. Penalty for unlawfully carrying dangerous weapons, possessing machine gun, etc.
- 10A. Sale, etc., of silencers for firearms.
11. Posters on carrying concealed weapons.
12. Manufacturing, etc., slung shot, etc.
13. False alarm of fire.

1 SECTION 1. If twelve or more persons, being armed with clubs or
 2 other dangerous weapons, or if thirty or more persons, whether armed
 3 or not, are unlawfully, riotously or tumultuously assembled in a city or
 4 town, the mayor and each of the aldermen of such city, each of the select-
 5 men of such town, every justice of the peace living in any such city or
 6 town and the sheriff of the county and his deputies shall go among the
 7 persons so assembled, or as near to them as may be with safety, and
 8 in the name of the commonwealth command all persons so assembled
 9 immediately and peaceably to disperse; and if they do not thereupon
 10 immediately and peaceably disperse, each of said magistrates and officers
 11 shall command the assistance of all persons there present in suppressing
 12 such riot or unlawful assembly and arresting such persons.

Suppression of unlawful assembly.
 1750-1, 17, § 1.
 1786, 38, § 1.
 1835, 140, § 1.
 R. S. 129, § 1.
 G. S. 164, § 1.
 P. S. 206, § 1.
 R. L. 211, § 1.
 10 Mass. 518.
 235 Mass. 449.
 3 Op. A. G. 488, 515.

1 SECTION 2. Whoever, being present and being so commanded to
 2 assist in arresting such rioters or persons so unlawfully assembled, or in
 3 suppressing such riot or unlawful assembly, refuses or neglects to obey
 4 such command, or, if required by such magistrate or officer to depart
 5 from the place, refuses or neglects so to do, shall be considered one of
 6 the rioters or persons unlawfully assembled, and may be prosecuted and
 7 punished accordingly.

Penalty for refusal to assist.
 1786, 38, § 2.
 1835, 140, § 1.
 R. S. 129, § 2.
 G. S. 164, § 2.
 P. S. 206, § 2.
 R. L. 211, § 2.

1 SECTION 3. A mayor, alderman, selectman, justice of the peace,
 2 sheriff or deputy sheriff who, having notice of any such riotous or tu-
 3 multuous and unlawful assembly in the city or town where he lives,
 4 neglects or refuses immediately to proceed to the place of such assem-
 5 bly, or as near thereto as he can with safety, or omits or neglects to
 6 exercise the authority conferred upon him by this chapter for suppress-

Neglect of mayor or other officer to suppress, etc.
 1835, 140, § 2.
 R. S. 129, § 3.
 G. S. 164, § 3.
 P. S. 206, § 3.
 R. L. 211, § 3.

ing such assembly and for arresting the offenders, shall be punished 7
by a fine of not more than three hundred dollars. 8

Officers may
quell unlawful
assembly by
force, etc.
1750-1, 17, § 2.
1786, 38, § 3.
1835, 140, § 3.
R. S. 129, § 4.
G. S. 164, § 4.
P. S. 206, § 4.
R. L. 211, § 4.

SECTION 4. If any persons who are so riotously or unlawfully as- 1
sembled, and who have been commanded to disperse, as before pro- 2
vided, refuse or neglect to disperse without unnecessary delay, any two 3
of the magistrates or officers before mentioned may require the aid of a 4
sufficient number of persons, in arms or otherwise as may be necessary, 5
and shall proceed, in such manner as they deem expedient, forthwith 6
to disperse and suppress such assembly, and seize and secure the persons 7
composing the same, so that they may be proceeded with according to 8
law. 9

Armed force,
if called out,
to obey orders
of governor,
etc.
R. S. 129, § 5.
G. S. 164, § 5.
P. S. 206, § 5.
R. L. 211, § 5.

SECTION 5. When an armed force, called out under chapter thirty- 1
three to suppress a tumult or riot, or to disperse a body of men acting 2
together by force and with intent to commit a felony, or to offer violence 3
to persons or property, or with intent by force or violence to resist or 4
oppose the execution of the laws of the commonwealth, arrives at the 5
place of such unlawful, riotous or tumultuous assembly, its members shall 6
obey such orders for suppressing the riot or tumult, and for dispersing 7
and arresting all persons who are committing any of said offences, as 8
they have received from the governor, or a judge of a court of record, 9
or the sheriff of the county, and also such orders as they there receive 10
from any two of the magistrates or officers before mentioned. 11

Officers, etc.,
guiltless if
death ensues.
1750-1, 17, § 1.
1786, 38, § 1.
1835, 140, § 3.
R. S. 129, § 6.
1839, 54, § 1.
G. S. 164, § 6.
P. S. 206, § 6.
R. L. 211, § 6.
7 Allen, 511.

SECTION 6. If, by reason of the efforts made by any two or more 1
of said magistrates or officers or by their direction to disperse such as- 2
sembly, or to seize and secure the persons composing the same who have 3
refused to disperse, though the number remaining may be less than 4
twelve, any such person or any other person then present is killed or 5
wounded, the magistrates and officers, and all persons acting by their 6
order or under their direction, and all persons acting under the two pre- 7
ceding sections, shall be held guiltless, and fully justified in law; and if 8
any of said magistrates or officers, or any person acting under or by the 9
direction of any of the officers before mentioned, is killed or wounded, 10
all persons so assembled, and all other persons who, when commanded 11
or required, refused to aid and assist said magistrates or officers, shall 12
be held answerable therefor. 13

Riotously de-
stroying dwell-
ing house, etc.
1750-1, 17, § 3.
1786, 38, § 3.
R. S. 129, § 7.
G. S. 164, § 7.
P. S. 206, § 7.
R. L. 211, § 7.

SECTION 7. If any of the persons so unlawfully assembled demolishes, 1
pulls down or destroys, or begins to demolish, pull down or destroy, a 2
dwelling house or other building, or a ship or vessel, he shall be punished 3
by imprisonment in the state prison for not more than five years or by a 4
fine of not more than one thousand dollars and imprisonment in jail for 5
not more than two years, and shall also be liable in tort to any person 6
for all damages sustained by him thereby. 7

Liability of
cities and
towns, etc.,
for property
destroyed.
1839, 54,
§§ 2, 3.

SECTION 8. If property of the value of fifty dollars or more is 1
destroyed or if property is injured to that amount by twelve or more 2
persons who are riotously or tumultuously assembled, the town within 3
which the property was situated shall, if the owner of such property uses all 4

5 reasonable diligence to prevent its destruction or injury, and to procure
 6 the conviction of the offenders, be liable to indemnify the owner thereof
 7 in tort to the amount of three fourths of the value of the property de-
 8 stroyed or of the amount of such injury thereto, and may recover the
 9 same against any or all of the persons who destroyed or injured such
 10 property.

G. S. 164,
 §§ 8, 9
 P. S. 206,
 §§ 8, 9,
 R. L. 211, § 8,
 205 Mass. 246,
 238 Mass. 538.

1 SECTION 9. [REPEALED, 1923, 248, § 2.]

1 SECTION 10. Whoever, except as provided by law, carries on his
 2 person, or carries on his person or under his control in a vehicle, a pistol or
 3 revolver, loaded or unloaded, or possesses a machine gun as defined in
 4 section one hundred and twenty-one of chapter one hundred and forty,
 5 without permission under section one hundred and thirty-one of chapter
 6 one hundred and forty, or whoever so carries any stiletto, dagger, dirk
 7 knife, slung shot, metallic knuckles or sawed off shotgun, or whoever,
 8 when arrested upon a warrant for an alleged crime or when arrested while
 9 committing a crime or a breach or disturbance of the public peace, is
 10 armed with, or has on his person, or has on his person or under his control
 11 in a vehicle, a billy or dangerous weapon other than those herein men-
 12 tioned, shall be punished by imprisonment for not less than six months nor
 13 more than two and one half years in a jail or house of correction or for
 14 not less than two and one half years nor more than five years in the state
 15 prison, and upon conviction the pistol or other article shall be confiscated
 16 by the commonwealth. The pistol or article so confiscated shall, by the
 17 authority of the written order of the court or trial justice, be forwarded
 18 by common carrier to the commissioner of public safety, who, upon
 19 receipt of the same, shall notify said court or justice thereof. Said com-
 20 missioner may sell or destroy the same, and, in case of a sale, after paying
 21 the cost of forwarding the article, shall pay over the net proceeds to the
 22 commonwealth.

Penalty for
 unlawfully
 carrying dan-
 gerous
 weapons,
 possessing
 machine gun,
 etc.
 1906, 172, § 2.
 1908, 350;
 583.
 1911, 518, § 2.
 1919, 207, § 2;
 350, §§ 99, 100,
 1923, 248, § 1.
 1925, 284, § 5.
 1927, 326, § 5.
 237 Mass. 489.

1 SECTION 10A. Whoever sells or keeps for sale, or offers, or gives or
 2 disposes of, or uses, any instrument, attachment, weapon or appliance
 3 for causing the firing of any gun, revolver, pistol or other firearm to be
 4 silent or intended to lessen or muffle the noise of the firing of any gun,
 5 revolver, pistol or other firearm shall be punished by imprisonment for not
 6 more than five years in the state prison or for not more than two and one
 7 half years in a jail or house of correction.

Sale, etc.,
 of silencers
 for firearms.
 1926, 261.

1 SECTION 11. The state secretary shall, from time to time, cause to be
 2 printed, in English and in such other languages as he may deem neces-
 3 sary and in large letters so as to be easily read, for use as a poster, section
 4 one hundred and thirty-one of chapter one hundred and forty and sec-
 5 tion ten of this chapter. Sufficient copies of the said poster shall be sent
 6 to the clerks of all towns, for their use as herein provided, and shall be
 7 posted under the direction of the town clerks in such places as they may
 8 select, and in such numbers, according to the population of the town, as
 9 its clerk may deem expedient. The cost of preparing and printing the
 10 posters and of distributing them to the various towns shall be paid by
 11 the commonwealth, and the cost of placing and affixing them in each
 12 town shall be paid by that town.

Posters on
 carrying
 concealed
 weapons.
 1912, 391.

Manufacturing,
etc., slung
shot, etc.
1850, 194, § 2.
G. S. 164, § 11.
P. S. 206, § 11.
R. L. 211, § 10.
1922, 485, § 10.

SECTION 12. Whoever manufactures or causes to be manufactured, or sells or exposes for sale, an instrument or weapon of the kind usually known as slung shot, sword cane, pistol cane, bludgeon, blackjack, or metallic knuckles, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than six months.

False alarm
of fire
1897, 177, § 2.
G. S. 164, § 13.
P. S. 206, § 13.
1897, 385.
R. L. 211, § 12.

SECTION 13. Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates or causes to be made or circulated a false alarm of fire shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months.

CHAPTER 270.

CRIMES AGAINST PUBLIC HEALTH.

SECT.

1. Adulteration of liquor used for drink.
2. Sale of poison.
- 2A. Distribution, etc., of certain dangerous caustic or corrosive substances for household use.
3. Distribution, etc., of harmful or injurious medicines, etc., prohibited.
4. Having with intent to sell and selling, etc., food or drink containing wood alcohol, etc.
5. Sale or delivery of liquor, etc., to patients in certain hospitals forbidden, etc.
6. Sale of cigarettes, etc., to certain minors prohibited, etc.

SECT.

7. Posting of notice as to sale of cigarettes, etc., to minors, and unlawful removal thereof.
8. Sale of candy containing alcohol.
9. Feeding of garbage to animals.
10. Sale of articles containing arsenic.
11. Samples for analysis.
12. Sale of textiles containing arsenic.
13. Refusal of water supply.
14. Expectoration in certain public places.
15. Arrest without warrant.

Adulteration
of liquor used
for drink.
1855, 356
G. S. 166, § 4.
P. S. 208, § 4.
R. L. 213, § 1.

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

Sale of
poison.
1857, 280.
G. S. 166, § 7.
P. S. 208, § 6.
1887, 38.
1888, 209
1896, 397, § 20.
1898, 192.
R. L. 213, § 2.
1912, 263.
1913, 585.
1916, 78.

SECTION 2. Whoever sells arsenic (arsenious acid), atropia or any of its salts, chloral hydrate, chloroform, cotton root or its fluid extract, corrosive sublimate, cyanide of potassium, Donovan's solution, ergot or its fluid extract, Fowler's solution, oil of pennyroyal, oil of savin, oil of tansy, Paris green, Parson's vermin exterminator, phosphorus, prussic acid, "rough on rats", strychnia or any of its salts, tartar emetic, tincture of aconite, tincture of belladonna, tincture of digitalis, tincture of nux vomica, tincture of veratrum viride, compounds of fluorine, or carbolic acid, without the written prescription of a physician, shall affix to the bottle, box or wrapper containing the article sold a label of red paper upon which shall be printed in large black letters the name

12 and place of business of the vendor and the words "POISON" and
 13 "ANTIDOTE", and the label shall also contain the name of an antidote,
 14 if any, for the poison sold. He shall also keep a record of the name and
 15 quantity of the article sold and of the name and residence of the person
 16 or persons to whom it was delivered, which shall be made before the
 17 article is delivered, and shall be open to inspection by the officers of
 18 the state police and by the police authorities and officers of towns.
 19 Whoever neglects to affix such label to such bottle, box or wrapper be-
 20 fore delivery thereof to the purchaser, or whoever neglects to keep or
 21 refuses to show to said officers such record, or whoever purchases any
 22 of said poisons and gives a false or fictitious name to the vendor shall
 23 be punished by a fine of not more than fifty dollars. This section shall
 24 not apply to sales made by wholesale dealers or manufacturing chemists
 25 to retail dealers; or to a general merchant who sells Paris green, London
 26 purple or other arsenical poisons in unbroken packages containing not
 27 less than one quarter of a pound, for the sole purpose of destroying po-
 28 tato bugs or other insects upon plants, vines or trees, except that he shall
 29 record each sale and label each package sold as above provided; or to
 30 sales of compounds containing not more than fifty per cent of sodium
 31 fluoride intended solely for the destruction of roaches, ants or other
 32 household insects, when sold in sealed metal packages containing not
 33 less than one fourth of a pound, plainly labelled in such a manner as to
 34 show the purposes for which the preparation was intended.

1 SECTION 2A. No person shall sell, exchange, deliver or have in his
 2 possession with intent to sell, exchange or deliver any dangerous caustic
 3 or corrosive substance designed for household use unless there is affixed
 4 to the bottle, box, wrapper or other container containing such substance
 5 a conspicuous and easily legible label conforming to the provisions of
 6 federal law regulating the distribution and sale thereof in interstate and
 7 foreign commerce.

Distribution,
 etc., of certain
 dangerous
 caustic or
 corrosive sub-
 stances for
 household use.
 1927, 224, § 1

8 In this section, unless the context or subject matter otherwise requires,
 9 the term "dangerous caustic or corrosive substance" means: hydrochloric
 10 acid and any preparation containing free or chemically unneutralized
 11 hydrochloric acid in a concentration of ten per centum or more; sul-
 12 phuric acid and any preparation containing free or chemically unneutral-
 13 ized sulphuric acid in a concentration of ten per centum or more; nitric
 14 acid or any preparation containing free or chemically unneutralized nitric
 15 acid in a concentration of five per centum or more; carbolic acid, other-
 16 wise known as phenol, and any preparation containing carbolic acid in a
 17 concentration of five per centum or more; oxalic acid and any prepara-
 18 tion containing free or chemically unneutralized oxalic acid in a concen-
 19 tration of ten per centum or more; any salt of oxalic acid and any prepa-
 20 ration containing any such salt in a concentration of ten per centum or
 21 more; acetic acid or any preparation containing free or chemically un-
 22 neutralized acetic acid in a concentration of twenty per centum or more;
 23 hypochlorous acid, either free or combined, and any preparation con-
 24 taining the same in a concentration so as to yield ten per centum or more
 25 by weight of available chlorine, excluding calx chlorinata, bleaching
 26 powder, and chloride of lime; potassium hydroxide and any preparation
 27 containing free or chemically unneutralized potassium hydroxide, includ-
 28 ing caustic potash and Vienna paste, in a concentration of ten per centum
 29 or more; sodium hydroxide and any preparation containing free or
 30 chemically unneutralized sodium hydroxide, including caustic soda and

lye, in a concentration of ten per centum or more; silver nitrate, some- 31
 times known as lunar caustic, and any preparation containing silver 32
 nitrate in a concentration of five per centum or more; and ammonia 33
 water and any preparation yielding free or chemically uncombined 34
 ammonia including ammonium hydroxide in a concentration of five per 35
 centum or more. 36

Any person violating any provision of this section shall be punished by 37
 a fine of not more than fifty dollars; but no person shall be prosecuted 38
 hereunder if the substance is marked as it was when purchased by him 39
 and he can establish a guaranty signed by the wholesaler, jobber or 40
 manufacturer from whom he purchased such substance, to the effect that 41
 the same is correctly marked as required by this section, designating it. 42
 Such guaranty, to afford protection, shall contain the names and ad- 43
 dresses of the parties making the sale of such substances to such person. 44

Products for household cleaning and washing purposes subject to this 45
 section, if labelled in accordance therewith, may be sold, offered for sale, 46
 held for sale and distributed in this commonwealth by any dealer, whole- 47
 sale or retail. 48

Distribution,
 etc., of harmful
 or injurious
 medicines, etc.,
 prohibited.
 1907, 180.

SECTION 3. Whoever distributes, delivers or gives away in any 1
 public way or from house to house or place to place, any bottle, box, 2
 envelope or package containing any liquid, medicine, pill, powder, tablet 3
 or other article composed of any drug, poison or other ingredient or 4
 substance which may be in any way injurious or harmful to any person 5
 who may taste, eat, drink or otherwise use the same, shall be punished 6
 by a fine of not less than fifty nor more than one hundred dollars. 7

Having with
 intent to sell
 and selling,
 etc., food or
 drink con-
 taining wood
 alcohol, etc.
 1905, 220, § 2.
 1910, 541,
 §§ 2, 3.
 1929, 299.

SECTION 4. Whoever, himself, or by his servant or agent, or as the 1
 servant or agent of another, sells or exchanges, or has in his possession 2
 with intent to sell or exchange, or knowingly delivers or has in his pos- 3
 session with intent to deliver, any article of food or drink, or any drug 4
 intended for internal use, containing any wood alcohol, otherwise known 5
 as methyl alcohol, either crude or refined, under or by whatever name or 6
 trade mark the same may be called or known, shall be punished by a 7
 fine of not more than five thousand dollars or by imprisonment in a jail 8
 or house of correction for not more than two and one half years or in 9
 the state prison for not more than five years, or by both such fine and 10
 imprisonment. 11

Sale or
 delivery of
 liquor, etc.,
 to patients
 in certain
 hospitals for-
 bidden, etc.
 1911, 30.

SECTION 5. Whoever, except under the direction of a physician, 1
 gives, sells or delivers spirituous or intoxicating liquor or a narcotic drug 2
 to a patient in any hospital who is suffering from inebriety or from the 3
 effect of inebriety, or from excessive use of narcotic drugs or from the 4
 effect of such use, and whoever has in his possession within the pre- 5
 cincts of any hospital any such liquor or drug with intent to convey or 6
 deliver it to any such patient, except under direction as aforesaid, shall 7
 be punished by a fine of not more than fifty dollars or by imprisonment 8
 for not more than two months. 9

Sale of
 cigarettes,
 etc., to cer-
 tain minors
 prohibited, etc.
 1886, 72.
 1901, 373.

SECTION 6. Whoever sells a cigarette to a person under eighteen, or 1
 whoever sells snuff or tobacco in any of its forms to any person under 2
 sixteen, or, not being his parent or guardian, gives a cigarette to a person 3
 under eighteen, or gives snuff or tobacco in any of its forms to any 4

5 person under sixteen, shall be punished by a fine of not more than fifty
6 dollars. A copy of this section printed in letters not less in size than
7 eighteen point capitals, boldface, shall be prepared by the department
8 of public health and delivered without charge to towns applying therefor.

R. L. 213, § 3.
1909, 346,
§§ 1, 3.

1 SECTION 7. A copy of the preceding section printed as therein
2 specified shall be posted conspicuously by the owner or person in charge
3 thereof in the shop or other place used to sell cigarettes at retail, and
4 whoever violates this provision shall be punished by a fine of not more
5 than fifty dollars. Any person unlawfully removing a copy so posted
6 while said premises are used for the sale of cigarettes shall be punished
7 by a fine of ten dollars.

Posting of
notice as to
sale of ciga-
rettes, etc., to
minors, and
unlawful re-
moval thereof.
1909, 346,
§§ 1, 2.

1 SECTION 8. Whoever sells to a person any candy enclosing or con-
2 taining liquid or syrup having more than one per cent of alcohol shall
3 be punished by a fine of not more than one hundred dollars.

Sale of candy
containing
alcohol

1891, 333.

R. L. 213, § 4.

1913, 647.

1 SECTION 9. Whoever knowingly feeds or has in his possession with
2 intent to feed to a milch cow any garbage, refuse or offal collected by a
3 town, or by any person having authority therefrom, shall be punished
4 by a fine of not more than one hundred dollars or by imprisonment for
5 not more than two months; and whoever knowingly feeds or has in his
6 possession with intent to feed to any food animal, except swine, any
7 garbage, refuse or offal collected by a city of more than thirty thousand
8 inhabitants shall be punished by a fine of not more than fifty dollars or
9 by imprisonment for not more than one month.

Feeding of
garbage to
animals
1889, 326
1895, 385
R. L. 213, § 5

1 SECTION 10. Whoever, himself, or by his agent or servant, or as the
2 agent or servant of another, manufactures, sells or exchanges, or
3 has in his custody or possession with intent to sell or exchange, or
4 exposes or offers for sale or exchange, any toys or confectionery, con-
5 taining or coated wholly or in part with arsenic, shall be punished by
6 a fine of not less than fifty nor more than one hundred dollars.

Sale of
articles con-
taining arsenic.
1891, 374, § 1.
R. L. 213, § 6.

1 SECTION 11. Whoever offers or exposes for sale or exchange any
2 paper, fabric or other article shall furnish a sample thereof sufficient
3 to ascertain by analysis the existence of arsenic therein, if such sample
4 can be obtained without damage to the remaining portion, to any in-
5 spector, chemist or other agent or officer of the department of public
6 health who applies therefor and tenders the value thereof; and for a
7 violation of this section shall be punished as provided in the preceding
8 section.

Samples for
analysis.
1891, 374, § 3.
R. L. 213, § 7.
1914, 792, § 1.
1919, 350, § 96.

1 SECTION 12. Whoever, himself, or by his agent or servant, manu-
2 factures, sells or exchanges, or has in his custody or possession with
3 intent to sell or exchange, any woven fabric or paper containing arsenic
4 in any form, or any article of dress or household use composed wholly
5 or in part of such woven fabric or paper, shall be punished by a fine of
6 not less than fifty nor more than two hundred dollars; but this section
7 shall not apply to articles intended for the destruction of insects, having
8 the word "POISON" plainly printed in uncondensed gothic letters not
9 less than one inch long on both sides of each sheet and square foot of
10 the fabric, or to dress goods or articles of dress containing not more than

Sale of tex-
tiles containing
arsenic.
1900, 325.
1901, 188.
R. L. 213, § 8.
1914, 792, § 1.
1919, 350, § 96.

one one-hundredth grain, or to other materials or articles containing not more than one tenth grain of arsenic for each square yard of the material. The department of public health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists, and adopt such measures as are necessary to enforce this section.

Refusal of water supply. 1898, 168. R. L. 213, § 10. 171 Mass. 329.

SECTION 13. A corporation engaged in selling or distributing water, which refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water previously furnished to or for any building or premises, be punished by a fine of not less than ten nor more than twenty dollars.

Expectoration in certain public places. 1906, 165. 1907, 410. 1908, 150.

SECTION 14. Whoever expectorates or spits upon any public sidewalk, or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, in or upon any part of any city or town hall, any court house or court room, any public library or museum, any church or theatre, any lecture or music hall, any mill or factory, any hall of any tenement building occupied by five or more families, any school building, any ferry boat or steamboat, any railroad car or elevated railroad car, except a smoking car, any street railway car, any railroad or railway station or waiting room, or on any track, platform or sidewalk connected therewith, and included within the limits thereof, shall be punished by a fine of not more than twenty dollars.

Arrest without warrant. 1907, 410, § 2.

SECTION 15. Any person detected in the act of violating the preceding section may, if his name is unknown to the officer, be arrested without a warrant by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court having jurisdiction of such offence.

CHAPTER 271.

CRIMES AGAINST PUBLIC POLICY.

SECT.	SECT.
1. Penalty for winning, etc., money by gaming.	9. Selling lottery ticket, share, etc., or aiding therein.
2. Gaming in public conveyance, etc.	10. Second conviction.
3. Penalty on innholders, etc., for keeping, etc., implements for gaming.	11. Advertising lottery ticket.
4. Gaming in such places, and in places licensed for bowling alleys, etc.	12. Making or selling ticket in a fictitious lottery.
5. Keeping common gaming house, etc.	13. Tickets, etc., sold or offered prima facie false, etc.
6. Gaming at cattle shows, msters, etc.	14. Prizes, etc., forfeited.
7. Setting up or promoting lottery, gift, etc.	15. Aiding in setting up foreign lottery.
8. Permitting lottery, etc., to be set up, etc., in a house, etc.	16. Selling ticket in such lottery, etc.
	17. Penalty for buying and selling pools or registering bets.

SECT.	SECT.
18. Policy lotteries and shops prohibited.	31. Racing, etc., for wager, etc.
19. Printing, etc., of tickets prima facie evidence.	32. Horses driven for a premium or purse. Disguise.
20. Lottery, etc., tickets nuisances. Possession prima facie evidence.	33. Location and regulation of trotting parks.
21. Prima facie evidence of race, etc.	34. Unlawful race ground deemed nuisance. Penalty.
22. Penalty for delivery, etc., of certain letters, etc.	35. Certain words and phrases defined as applied to bucket shops.
22A. Charity whists, etc.	36. Penalty for keeping a bucket shop, and jurisdiction to dissolve such corporation.
23. Common gaming houses, etc., to be entered and certain persons arrested.	37. Penalty for communicating, etc., to make prohibited contracts.
24. Exemption from penalties of chapter.	38. Written statement to be furnished in certain cases.
25. Obstructions in gaming houses.	39. Illegal gratuity, etc., and penalty.
26. Penalty for subsequent obstruction.	40. Employment, discharge, etc., by public service corporations restricted.
27. Judicial notice of lotteries, and prima facie evidence.	41. Certain offices excepted from the preceding section.
28. Plea of misnomer, how received.	42. Betting, etc., on boxing match, etc.
29. Gift enterprises prohibited.	
30. Sale, etc., of trading stamps, etc., prohibited.	

1 SECTION 1. Whoever, on a prosecution commenced within eighteen
 2 months after the commission of the crime, is convicted of winning at
 3 one time or sitting, by gaming or betting on the sides or hands of those
 4 gaming, money or goods to the value of five dollars or more, and of receiv-
 5 ing the same or security therefor, shall forfeit double the value of such
 6 money or goods.

Penalty for winning, etc., money by gaming
 C. L. 57, § 2; 58, § 1; 1785, 58, § 3; R. S. 50, § 14; G. S. 85, § 3.

P. S. 99, § 3.

R. L. 214, § 1.

272 Mass. 113.

1 SECTION 2. Whoever, in a public conveyance or public place, or in
 2 a private place upon which he is trespassing, plays at cards, dice or any
 3 other game for money or other property, or bets on the sides or hands of
 4 those playing, shall forfeit not more than fifty dollars or be imprisoned
 5 for not more than three months; and whoever sets up or permits such
 6 a game shall be punished by a fine of not less than fifty nor more than
 7 one hundred dollars or by imprisonment for not less than three nor more
 8 than twelve months. If discovered in the act, he may be arrested without
 9 a warrant by a sheriff, deputy sheriff, constable or any officer qualified to
 10 serve criminal process, and held in custody, in jail or otherwise, for not
 11 more than twenty-four hours, Sunday and legal holidays excepted, until
 12 complaint may be made against him for such offence.

Gaming in public conveyance, etc.
 1869, 382; P. S. 99, § 4; R. L. 214, § 2; 1907, 366; 1913, 370; 1918, 257, § 456; 1919, 5; 1920, 2.

1 SECTION 3. Every innholder, common victualler or person keeping
 2 or suffering to be kept in any place occupied by him implements such
 3 as are used in gaming, in order that the same may for hire, gain or reward
 4 be used for amusement, who suffers implements of such kind to be used
 5 upon any part of such premises for gaming for money or other property,
 6 or who suffers a person to play at an unlawful game or sport therein, shall
 7 for the first offence forfeit not more than one hundred dollars or be im-
 8 prisoned for not more than three months; and for a subsequent offence
 9 shall be imprisoned for not more than one year. In either case he shall
 10 further recognize with sufficient sureties in a reasonable sum for his
 11 good behavior, and especially that he will not be guilty of any offence
 12 against any of the provisions of sections one to six, inclusive, for three
 13 years from the date of the recognizance.

Penalty on innholders, etc., for keeping, etc., implements for gaming
 C. L. 57, § 2; 1692-3, 20, § 3; 1786, 68, § 5; 1798, 20, §§ 1, 2; 1832, 166, § 11; R. S. 47, § 9; 50, §§ 16, 17; 1845, 211; 1853, 399; 1854, 450; G. S. 85, § 5; P. S. 99, § 6; R. L. 214, § 3; 3 Met. 130.

8 Met. 232.

9 Met. 572.

3 Cush. 279.

12 Cush. 501.

Gaming in such places, and in places licensed for bowling alleys, etc.
 C. L. 57, § 2.
 1692-3, 20, § 3.
 1785, 78, § 3.
 1798, 20, § 3.
 1832, 166, § 11.
 R. S. 47, § 10;
 50, § 18.

SECTION 4. Whoever, in any place mentioned in the preceding section, for the purpose of gaming for money or other property, uses or takes part in using a billiard table, bowling alley or other implement of gaming, or there plays at an unlawful game or sport, or, for the purpose of such gaming, uses or takes part in using a billiard table or bowling alley kept by a person licensed under chapter one hundred and forty, shall forfeit not more than fifty dollars.

G. S. 85, § 6. P. S. 99, § 7. R. L. 214, § 4.

Keeping common gaming house, etc.
 1798, 20, § 2.
 1832, 166, § 11.
 R. S. 50, § 17.
 1848, 315.
 1857, 194,
 §§ 1, 4.
 G. S. 85,
 §§ 7, 8.
 1869, 364, § 1.
 P. S. 99,
 §§ 9, 10.
 1887, 448, § 2.
 1895, 419, § 9.

SECTION 5. Whoever keeps or assists in keeping a common gaming house, or building or place occupied, used or kept for the purposes described in section twenty-three, or is found playing or present as provided in said section, or commonly keeps or suffers to be kept, in a building or place actually used and occupied by him, tables or other apparatus for the purpose of playing at an unlawful game or sport for money or any other valuable thing, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than three months.

R. L. 214, § 5. 160 Mass. 310. 166 Mass. 370.
 7 Allen, 304. 161 Mass. 281. 193 Mass. 383.
 141 Mass. 106. 165 Mass. 40.

Gaming at cattle shows, musters, etc.
 1853, 27.
 G. S. 85, § 9.
 1861, 127, § 2.
 P. S. 99, § 11.
 R. L. 214, § 6.

SECTION 6. Whoever, during or within twelve hours of the time of holding a cattle show, military muster or public gathering, within one mile of the place thereof, practices or engages in any gambling or unlawful game, shall forfeit not more than twenty dollars. If discovered in the act, he may be arrested without a warrant by any sheriff, deputy sheriff, constable or any officer qualified to serve criminal process, and held in custody, in jail or otherwise, for not more than twenty-four hours, Sunday and legal holidays excepted, until a complaint may be made against him for such offence.

Setting up or promoting lottery, gift, etc.
 1719-20, 8,
 §§ 1, 2.
 1732-3, 14, § 1.
 1785, 24,
 §§ 1, 2.
 1800, 57, § 1.
 1817, 191, § 1.
 1822, 90.
 1825, 184, § 1.
 1833, 148, § 1.
 R. S. 132, § 1.
 1856, 121, § 1.
 G. S. 167, § 1.
 P. S. 209, § 1.
 1895, 419, § 13.
 R. L. 214, § 7.
 1918, 257,
 § 457.
 1919, 5.

SECTION 7. Whoever sets up or promotes a lottery for money or other property of value, or by way of lottery disposes of any property of value, or under the pretext of a sale, gift or delivery of other property or of any right, privilege or thing whatever disposes of or offers or attempts to dispose of any property, with intent to make the disposal thereof dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property, and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing or drawing of such lottery, or in such disposal or offer or attempt to dispose of property by such chance or device, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

1920, 2. 146 Mass. 142. 184 Mass. 198.
 13 Allen, 534. 150 Mass. 322. 233 Mass. 154.
 97 Mass. 583. 159 Mass. 55. 257 Mass. 431.
 137 Mass. 250. 177 Mass. 345. 3 Op. A. G. 582.

Permitting lottery, etc., to be set up, etc., in a house, etc.
 1800, 57, § 1.
 1817, 191, § 1.
 1822, 90.
 1825, 184, § 1.
 1833, 148, § 1.
 R. S. 132, § 1.

SECTION 8. Whoever, in a house, shop or building owned or occupied by him or under his control, knowingly permits the setting up, managing or drawing of such lottery, or such disposal or attempt to dispose of property, or the sale of a lottery ticket or share of a ticket, or any other writing, certificate, bill, token or other device purporting or intended to entitle the holder, bearer or any other person to a prize or to a share of

7 or interest in a prize to be drawn in a lottery, or in such disposal of prop-
 8 erty, and whoever knowingly suffers money or other property to be raffled
 9 for in such house, shop or building, or to be won there by throwing or
 10 using dice or by any other game of chance, shall be punished by a fine
 11 of not more than two thousand dollars or by imprisonment for not more
 12 than one year.

1856, 121, § 1
 G. S. 167, § 2.
 P. S. 209, § 2.
 1895, 419, § 13.
 R. L. 214, § 8.
 2 Gray, 69
 184 Mass. 198.

1 SECTION 9. Whoever, for himself or for another, sells or offers for
 2 sale or has in his possession with intent to sell or offer for sale, or to ex-
 3 change or negotiate, or aids or assists in the selling, exchanging, negotiat-
 4 ing or disposing of a ticket in such lottery, or a share of a ticket, or any
 5 such writing, certificate, bill, token or other device, or a share or right
 6 in such disposal or offer, as is mentioned in section seven, shall be punished
 7 by a fine of not more than two thousand dollars or by imprisonment for
 8 not more than one year.

Selling lottery
 ticket, share,
 etc., or aiding
 therein.
 1732-3, 14, § 3.
 1785, 24, § 3.
 1800, 57, § 2.
 1817, 191, § 1.
 1822, 90
 1825, 184, § 1
 1833, 148, § 1
 R. S. 132, § 2

1856, 121, § 1.
 G. S. 167, § 3.
 P. S. 209, § 3.

1895, 419, § 13.
 R. L. 214, § 9

2 Met 329.
 13 Allen, 534.

1 SECTION 10. Whoever, after being convicted of any offence men-
 2 tioned in the three preceding sections, commits the like offence, or any
 3 other of the offences therein mentioned, shall, in addition to the fine
 4 therein provided, be punished by imprisonment for not more than one
 5 year.

Second
 conviction.
 1833, 148, § 1.
 R. S. 132, § 3.
 1856, 121, § 1.
 G. S. 167, § 4.
 P. S. 209, § 4.

R. L. 214, § 10

1 SECTION 11. Whoever, himself or by another, advertises a lottery
 2 ticket or a share in such ticket for sale, or sets up or exhibits, or devises
 3 or makes for the purpose of being set up or exhibited, any sign, symbol
 4 or emblematic or other representation of a lottery or the drawing thereof,
 5 in any way indicating where a lottery ticket or a share thereof or such
 6 writing, certificate, bill, token or other device before mentioned may be
 7 obtained, or in any way invites or entices, or attempts to invite or entice,
 8 any other person to purchase or receive the same, shall be punished by
 9 a fine of not more than two thousand dollars or by imprisonment for
 10 not more than one year.

Advertising
 lottery ticket
 1732-3, 14, § 2.
 1785, 24, § 2.
 1800, 57, § 1
 1817, 191, § 1.
 1822, 90.
 1825, 184, § 1.
 1828, 134, 1.
 1833, 148, § 2.
 R. S. 132, § 4.
 G. S. 167, § 5
 P. S. 209, § 13.
 1895, 419, § 13.
 R. L. 214, § 11.
 5 Pick 41, 42.

1 SECTION 12. Whoever makes or sells, or has in his possession with
 2 intent to sell, exchange or negotiate, or by printing, writing or other-
 3 wise assists in making or selling, or in attempting to sell, exchange or
 4 negotiate, a false or fictitious lottery ticket, or any share thereof, or any
 5 writing, certificate, bill, token or other device before mentioned, or any
 6 ticket or share thereof in a fictitious or pretended lottery, knowing the
 7 same to be false or fictitious, or receives any money or other thing of value
 8 for such ticket or share of a ticket, writing, certificate, bill, token or
 9 other device purporting that the owner, bearer or holder thereof shall
 10 be entitled to receive any prize, or share of a prize, or other thing of value,
 11 that may be drawn in a lottery, knowing the same to be false or fictitious,
 12 shall be punished by imprisonment in the state prison for not more than
 13 three years.

Making or
 selling ticket
 in a fictitious
 lottery.
 1833, 148, § 3
 R. S. 132, § 5.
 G. S. 167, § 6.
 P. S. 209, § 6
 R. L. 214, § 12
 13 Allen, 534
 97 Mass. 583.

1 SECTION 13. Upon the trial of a person charged with any of the
 2 crimes mentioned in the preceding section, a ticket or share of a ticket,
 3 or other writing or thing before mentioned, which the defendant has sold
 4 or offered for sale, or for which he has received a valuable consideration,

Tickets, etc.,
 sold or offered
 prima facie
 false, etc.
 1833, 148, § 3.
 R. S. 132, § 6
 G. S. 167, § 7.

P. S. 209, § 7.
R. L. 214, § 13.
13 Allen, 534.

shall be deemed false, spurious or fictitious, unless the defendant proves that the same was true and genuine, duly issued by the authority of some legislature within the United States, that such lottery was existing and undrawn and that such ticket or share thereof, or other writing or thing before mentioned, was issued by lawful authority and is binding upon the person who issued the same.

Prizes, etc., forfeited
1817, 191, § 2.
1833, 148, § 5.
R. S. 132, § 8.
1856, 121, § 2.
G. S. 167, § 8.
P. S. 209, § 8.
R. L. 214, § 14.

SECTION 14. Money or other thing of value drawn as a prize or share thereof in a lottery, and all property disposed of or offered to be disposed of by chance or device under the pretext mentioned in section seven, by an inhabitant of or a resident within the commonwealth, and all money or other thing of value received by such person by reason of his being the owner or holder of a ticket or share of a ticket in a lottery or pretended lottery, or of a share or right in any such scheme of chance or such device, contrary to this chapter, shall be forfeited, and may be recovered by an information filed or by an action for money had and received brought by the attorney general or a district attorney in the name and on behalf of the commonwealth.

Aiding in setting up foreign lottery.
1869, 112, § 1.
P. S. 209, § 9.
1895, 419, § 13.
R. L. 214, § 15.

SECTION 15. Whoever aids, either by printing or writing, or is in any way concerned in setting up, promoting, managing or drawing a lottery for money, set up, promoted, managed or drawn out of this commonwealth, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Selling ticket in such lottery, etc.
1869, 112, § 2.
P. S. 209, § 10.
1895, 419, § 13.
R. L. 214, § 16.

SECTION 16. Whoever sells, for himself or another, or offers for sale or has in his possession with intent so to do or to exchange or negotiate, or aids or assists in selling, negotiating, exchanging or disposing of a ticket, or a share of a ticket, in a lottery described in the preceding section, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Penalty for buying and selling pools or registering bets.
1878, 165
P. S. 99, § 8
1885, 342, 1
1895, 419, 13,
R. L. 214, 17,
1922, 315
143 Mass. 177
146 Mass. 203
154 Mass. 128,
135,
157 Mass. 455
160 Mass. 354
218 Mass. 281
226 Mass. 409

SECTION 17. Whoever keeps a building or room, or any part thereof, or occupies, or is found in, any place, way, public or private, park or parkway, or any open space, public or private, or any portion thereof, with apparatus, books or any device, for registering bets, or buying or selling pools, upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the result of a game, competition, political nomination, appointment or election, or whoever is present in such place, way, park or parkway, or any such open space, or any portion thereof, engaged in such business or employment; or, being such keeper, occupant, person found or person present, as aforesaid, registers such bets, or buys or sells such pools, or is concerned in buying or selling the same; or, being the owner, lessee or occupant of a building or room, or part thereof, or private grounds, knowingly permits the same to be used or occupied for any such purpose, or therein keeps, exhibits, uses or employs, or knowingly permits to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets, or for buying or selling such pools, or whoever becomes the custodian or depositary for hire, reward, commission or compensation in any manner, of any pools, money, property or thing of value, in any manner staked or bet upon such result, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

1 SECTION 18. Whoever keeps, sets up, promotes or is concerned as
 2 owner, agent, clerk or in any other manner, in managing a policy lottery
 3 or policy shop, or writes, prints, sells, transfers or delivers a ticket, cer-
 4 tificate, slip, bill, token or other device, purporting or designed to guar-
 5 antee or assure to a person, or to entitle him to a chance of drawing or
 6 obtaining a prize or thing of value in a lottery or in the game or device
 7 commonly known as policy lottery or policy, whether drawn or deter-
 8 mined, or remaining to be drawn or determined, or who receives from a
 9 person any money or other thing of value for such article or chance; or
 10 for himself or another writes, prints, sells, transfers or delivers or has
 11 in his possession for the purpose of sale, transfer or delivery, or in any
 12 way aids in selling, exchanging, negotiating, transferring or delivering a
 13 chance or ticket in a lottery, or in the game or device commonly known
 14 as policy lottery or policy, whether drawn or to be drawn, or any such
 15 bill, slip, certificate, token or other device, shall be punished by a fine of
 16 not more than five hundred dollars or by imprisonment for not more
 17 than one year.

Policy lot-
 teries and
 shops pro-
 hibited.
 1892, 409, § 1.
 1895, 419, § 7.
 R. L. 214, § 18.

1 SECTION 19. The printing, writing, advertising, issuing or delivery
 2 of any ticket, paper, document or other article or material representing
 3 or purporting to represent the existence of or any chance or interest in any
 4 lottery, policy lottery or policy game, pool or pools, registered or other
 5 bet or other game or hazard, whether drawn or determined, or remaining
 6 to be drawn or determined, or the receiving of money or other thing of
 7 value for such article or chance, shall be prima facie evidence of the
 8 existence, location and drawing of such lottery, policy lottery or policy
 9 game, and of the act or event upon which such pool or pools, bet, game
 10 or hazard depends or may depend, and of the unlawful character of such
 11 lottery, policy lottery, pool, bet, game or hazard, and the issuing or
 12 delivery of such ticket, paper, document or other article or material
 13 shall be prima facie evidence of value received therefor by the person,
 14 company or corporation issuing or delivering the same, or aiding or
 15 abetting therein, and that such person, company or corporation is con-
 16 cerned in keeping, managing or promoting such lottery, pool, bet, game
 17 or hazard.

Printing, etc.,
 of tickets
 prima facie
 evidence.
 1892, 409, § 2.
 1895, 419, § 8.
 R. L. 214, § 19.

1 SECTION 20. All lottery, policy or pool tickets, slips or checks,
 2 memoranda of any combination or other bet, manifold or other policy or
 3 pool books or sheets, are hereby declared a common nuisance and the
 4 possession thereof unlawful; and the possession of any such article, or
 5 of any other implements, apparatus or materials of any other form of
 6 gaming, shall be prima facie evidence of their use, by the person having
 7 them in possession, in the form of gaming in which like articles are com-
 8 monly used. Any such article found upon the person of one lawfully
 9 arrested for violation of any law relative to lotteries, policy lotteries
 10 or policy, the buying or selling of pools or registering of bets or other
 11 form of gaming shall be competent evidence upon the trial of a com-
 12 plaint or indictment to which it may be relevant. If a person so arrested
 13 in a building or structure or part thereof conceals or attempts to conceal
 14 such articles upon his person or elsewhere, the possession and concealment
 15 or attempt at concealment thereof shall be prima facie evidence that
 16 the place in which the same occurs is kept, maintained, used or occu-
 17 pied for the form of gaming in which like articles are commonly used.

Lottery, etc.,
 tickets
 nuisances.
 Possession
 prima facie
 evidence.
 1895, 419, § 3.
 R. L. 214, § 20.
 164 Mass. 549.

Prima facie evidence of race, etc. 1895, 419, § 4. R. L. 214, § 21. 226 Mass. 409.

SECTION 21. In a prosecution or proceeding relative to lotteries, policy lotteries or policy, buying and selling pools or registered bets, any words, figures or characters, written, printed or exposed upon a blackboard, placard or otherwise, in a place alleged to be used or occupied for such business, purporting or appearing to be a name of a horse or jockey, or a description of or reference to a trial or contest of skill, speed or endurance of man, beast, bird or machine, or game, competition, political nomination, appointment or election, or other act or event, or any odds, bet, combination bet or other stake or wager, or any code, cipher or substitute therefor, shall be prima facie evidence of the existence of the race, game, contest or other act or event so purporting or appearing to be referred to, and that such place is kept or occupied for gaming; and in all cases the same may be proved by a copy or by oral description thereof.

Penalty for delivery, etc., of certain letters, etc. 1895, 419, § 5. R. L. 214, § 22.

SECTION 22. Whoever receives a letter, package or parcel for delivery to or transportation from a person, or delivers or transports the same to or from a person, having reasonable cause to believe that such person is engaged or in any way concerned in the management or promotion of or agency for a lottery, or the game known as policy lottery or policy, or the buying or selling of pools or registering of bets, or other form of gaming, and that such letter, package or parcel has relation to such business, shall be punished by a fine of not less than fifty nor more than five hundred dollars; but this section shall not apply to the receipt, carriage or delivery of United States mail matter by an officer or employee thereof.

Charity whists, etc. 1931, 331.

SECTION 22A. Nothing in this chapter shall authorize the prosecution, arrest or conviction of any person for conducting or promoting, or for allowing to be conducted or promoted, a game of cards commonly called whist or bridge, in connection with which prizes are offered to be won by chance: provided, that the proceeds of the charges for admission to such game are donated solely to charitable, civic, educational, fraternal or religious purposes.

Common gaming houses, etc., to be entered and certain persons arrested. 1834, 172. R. S. 50, § 19. 1857, 194, § 3. G. S. 85, § 8. 1869, 364, § 1. P. S. 99, § 10. 1883, 120. 1887, 448, § 2. 1895, 419, § 9. R. L. 214, § 23. 11 Met. 79. 141 Mass. 106. 165 Mass. 40. 166 Mass. 370.

SECTION 23. If a person makes oath before a district court or a trial justice that he suspects or has probable cause to suspect that a house or other building, room or place is used as and for a common gaming house, for gaming for money or other property, or is occupied, used or kept for promoting a lottery, or for the sale of lottery tickets, or for promoting the game known as policy lottery or policy, or for the buying or selling of pools or registering of bets upon any race, game, contest, act or event, and that persons resort thereto for any such purpose, such court or trial justice, whether the names of the persons last mentioned are known to the complainant or not, shall, if satisfactory evidence is presented, issue a warrant commanding the sheriff or his deputy or any constable or police officer to enter such house, building, room or place, and to arrest the keepers thereof, all persons in any way assisting in keeping the same, whether as janitor, doorkeeper, watchman or otherwise, all persons who are there found participating in any form of gaming and all persons present whether so participating or not, if any lottery, policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any bet, or other implements, apparatus or materials of any form of gaming are found in said place, and to take into their custody all the implements, 19

20 apparatus or materials of gaming, as aforesaid, and all the personal
 21 property, furniture and fixtures there found, and to keep said persons,
 22 implements, apparatus or materials, property, furniture and fixtures so
 23 that they may be forthcoming before some court or magistrate to be
 24 dealt with according to law. The provisions of chapter two hundred
 25 and seventy-six relative to disposal of gaming articles seized upon search
 26 warrants shall apply to all articles and property seized as herein pro-
 27 vided for.

1 SECTION 24. This chapter shall not authorize the arrest or convic-
 2 tion of the owner or proprietor of a race track or trotting course for the
 3 reason that another person has without his knowledge or consent violated
 4 any of its provisions relative to the buying and selling of pools or the
 5 registering or making of bets or to any offence mentioned in the preced-
 6 ing section; nor the arrest or conviction of a person for being present
 7 on a race track or trotting course where pools are sold or bets registered
 8 or made on trials of speed or endurance between horses or other animals;
 9 but this exception shall not apply to a person in any way participating or
 10 assisting in the buying or selling of pools or registering of bets.

Exemption
 from penalties
 of chapter
 1895, 419, § 9.
 R. L. 214, § 24.

1 SECTION 25. If a captain of police in Boston or marshal or chief of
 2 police in any other city or town in the commonwealth finds that access
 3 to any building, apartment or place which he has reasonable cause to
 4 believe is resorted to for the purpose of unlawful gaming is barred by
 5 any obstruction, such as a door, window, shutter, screen, bar or grat-
 6 ing of unusual strength, other than what is usual in ordinary places of
 7 business, or any unnecessary number of doors, windows or obstructions,
 8 he shall order the same removed by the owner or agent of the building
 9 where such obstruction exists, and if any of said officers cannot find
 10 either of the persons mentioned, so as to make personal service, said
 11 notice shall be posted upon the outside of the apartments and on the
 12 outside of said building, and upon the neglect to remove such obstruc-
 13 tion for seven days from the date of said order or posting of said notices,
 14 any of said officers shall cause such obstruction to be removed from such
 15 building, and the expense of such removal shall be a lien on said building
 16 and be collected by the officer removing such obstruction, in the manner
 17 in which a mechanic's lien is collected.

Obstructions
 in gaming
 houses
 1887, 348, § 1
 1892, 388, § 1
 R. L. 214, § 25.

1 SECTION 26. If, within one year after removal of said obstruction,
 2 the premises are again obstructed as above defined, the captain of police
 3 or marshal or chief of police shall have the same power of removal as
 4 provided in the preceding section, and in addition the owner or agent
 5 when such second order of removal is given, either by personal service
 6 or by posting on the building, shall be punished by a fine of not less than
 7 two hundred and fifty nor more than five hundred dollars, and the amount
 8 of said fine shall be a lien upon said building and be collected in like
 9 manner as provided in the preceding section. And for every subsequent
 10 obstruction as above defined, at any time within two years of the giving
 11 of the second notice, as above provided, said officers shall have the same
 12 powers as provided in the preceding section for removing the obstruc-
 13 tions, and the owner or agent at the time such third or subsequent order
 14 of removal is given, either by personal service or by posting on the build-
 15 ing, shall be punished by a fine of not less than five hundred nor more
 16 than one thousand dollars or may be punished by imprisonment for one

Penalty for
 subsequent
 obstruction.
 1892, 388, § 1.
 R. L. 214, § 26.

year, and the amount of said fine shall be a lien upon the said building, 17
and shall be collected in like manner as above provided. Obstructions 18
as above defined, erected more than two years after the giving of the 19
notice of the third offence, shall be construed to be a first offence under 20
this section. 21

Judicial
notice of
lotteries, and
prima facie
evidence—
1895, 419, § 2.
R. L. 214, § 27.
270 Mass. 260.

SECTION 27. Any court or magistrate having criminal jurisdiction 1
may take judicial notice of the general methods and character of lotteries, 2
policy lotteries or the game called policy, pools or combination bets, and 3
the buying and selling of pools and registering of bets. In the trial of a 4
complaint or indictment to which it may be relevant, any lottery, policy 5
or pool ticket, certificate, slip or check, manifold or other policy or pool 6
book or sheet, or memorandum of any pool or sale of pools, or of a bet 7
or odds, or combination bet, or any other implement, apparatus, ma- 8
terials or articles of a character commonly employed in or in connection 9
with lotteries, policy lotteries or policy, the buying or selling of pools or 10
registering of bets, or other form of gaming, shall be prima facie evidence 11
of the existence and unlawful character of a lottery, policy lottery or 12
game, pool or pools, bet, game or hazard, or other form of gaming in 13
which like articles are commonly used, and that such article has relation 14
thereto. 15

Plea of mis-
nomer, how
received.
1895, 419, § 6.
R. L. 214, § 28.
184 Mass. 198.

SECTION 28. No plea of misnomer shall be received to a complaint or 1
indictment for violation of any law relative to lotteries, policy lotteries 2
or policy, the selling of pools or registering of bets, or any form of gam- 3
ing; but the defendant may be arraigned, tried, sentenced and punished 4
under any name by which he is complained of or indicted. No such 5
complaint or indictment shall be abated, quashed or held insufficient 6
by reason of any alleged defect, either of form or substance, if the same 7
is sufficient to enable the defendant to understand the charge and to 8
prepare his defence. No variance between such complaint or indict- 9
ment and the evidence shall be deemed material, unless in some matter 10
of substance essential to the charge under the rule above prescribed. 11

Gift enter-
prises pro-
hibited—
1884, 277.
1898, 576.
R. L. 214, § 29.
165 Mass. 146.
178 Mass. 578.
190 Mass. 110.
208 Mass. 607.

SECTION 29. Whoever sells, exchanges or disposes of any property, 1
or offers or attempts so to do, upon a representation, advertisement, 2
notice or inducement that anything other than what is specifically 3
stated to be the subject of the sale or exchange is or is to be delivered 4
or received, or is in any way connected with or is a part of the transaction, 5
or whoever gives a stamp, coupon or other device which entitles a pur- 6
chaser to demand or receive from a person or company other than the 7
merchant dealing in the goods purchased or the manufacturer thereof, 8
any other property than that actually sold or exchanged, or whoever 9
delivers by any person or company other than the merchant dealing in 10
the goods purchased, or the manufacturer thereof, goods, wares or mer- 11
chandise upon the presentation of such stamp, coupon or other device, 12
shall be punished by a fine of not less than ten nor more than five hundred 13
dollars. 14

Sale, etc., of
trading stamps,
etc., pro-
hibited—
1903, 386.

SECTION 30. Whoever, in connection with the sale of any article or 1
any merchandise whatsoever, sells, gives or delivers any trading stamps, 2
checks, coupons or similar devices to be exchanged for, or to be redeemed 3
by the giving of, any indefinite or undescribed article, the nature and 4
value of which are not stated, or to be exchanged for, or to be redeemed 5

6 by the giving of, any article not distinctly bargained for at the time when
 7 such trading stamps or other devices as aforesaid were sold, given or
 8 delivered, shall be punished by a fine of not less than ten nor more than
 9 fifty dollars.

1 SECTION 31. Whoever, except in trials of speed of horses for premiums
 2 offered by legally constituted agricultural societies, or by corporations au-
 3 thorized thereto by section fourteen of chapter one hundred and eighty,
 4 engages in racing, running, trotting or pacing a horse or other animal
 5 of the horse kind for a bet, wager of money or other thing of value or
 6 a purse or stake made within the commonwealth, or whoever aids or
 7 abets therein, shall be punished by a fine of not more than one thousand
 8 dollars or by imprisonment for not more than one year, or both.

Racing, etc.,
 for wager, etc.
 1846, 200.
 G. S. 167, § 9.
 1865, 67.
 P. S. 209, § 11
 1900, 109.
 R. L. 214, § 30.
 6 Gray, 505.
 102 Mass. 491.
 195 Mass. 116.

1 SECTION 32. Whoever, for the purpose of competing for a purse or
 2 premium offered by an agricultural society, or by a person or associa-
 3 tion in the commonwealth, knowingly and designedly enters or drives a
 4 horse that is painted or disguised, or is a different horse from the one
 5 that purports to be entered or driven, or knowingly and designedly, for
 6 the purpose of competing for a premium or purse, enters or drives a
 7 horse in a class to which it does not belong, shall be punished by a fine
 8 of not more than five hundred dollars or by imprisonment for not more
 9 than six months.

Horses driven
 for a premium
 or purse. Dis-
 guise.
 1892, 167
 R. L. 214, § 31

1 SECTION 33. No land within a town shall be laid out or used as a
 2 race ground or trotting park without the previous consent of and location
 3 by the mayor and aldermen or selectmen, who may regulate and alter
 4 the terms and conditions under which the same shall be laid out, used or
 5 continued in use and may discontinue the same when in their judgment
 6 the public good so requires; and no land shall be used for any of the
 7 purposes declared unlawful in section thirty-one.

Location and
 regulation of
 trotting parks.
 1856, 102, § 1
 G. S. 167, § 10
 1864, 63
 P. S. 209, § 12
 R. L. 214, § 32

1 SECTION 34. Every race ground or trotting park established, laid
 2 out, used or continued in use contrary to this chapter is declared a com-
 3 mon nuisance and may be abated as such; and all persons owning, keep-
 4 ing, using or permitting to be used such race ground or trotting park,
 5 or aiding or abetting therein, shall be punished by a fine of not more
 6 than one thousand dollars or by imprisonment for not more than one
 7 year, or both.

Unlawful race
 ground deemed
 nuisance
 Penalty
 1856, 102,
 §§ 2, 3
 G. S. 167, § 11
 P. S. 209, § 13
 R. L. 214, § 33.

1 SECTION 35. The following words and phrases used in this and the
 2 three following sections of this chapter shall, unless a different meaning
 3 is required by the context, have the following meanings:
 4 "Person", an individual, partnership, corporation or association,
 5 whether acting in his or their own right or as the officer, agent, serv-
 6 ant, correspondent or representative of another.
 7 "Contract", any agreement, trade or transaction.
 8 "Securities", all evidences of debt or property and options for the
 9 purchase and sale thereof, shares in any corporation, joint stock com-
 10 pany or association, bonds, coupons, scrip, rights, choses in action and
 11 other evidences of debt or property and options for the purchase or sale
 12 thereof.

Certain words
 and phrases
 defined as
 applied to
 bucket shops.
 1907, 414, § 1

“Commodities”, anything movable that is bought and sold.	13
“Bucket shop”, any room, office, store, building or other place where any contract prohibited by the following section is made or offered to be made.	14 15 16
“Keeper”, any person owning, keeping, managing, operating or promoting a bucket shop, or assisting to keep, manage, operate or promote a bucket shop.	17 18 19
“Bucketing” or “Bucket-shopping”,	20
(a) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in, and without a bona fide purchase or sale of the same; or	21 22 23 24 25 26 27 28
(b) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed or settled, when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or	29 30 31 32 33 34 35
(c) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are, or are asserted to be, bought and sold.	36 37 38 39 40 41 42 43

Penalty for keeping a bucket shop, and jurisdiction to dissolve such corporation 1907, 414, § 2. 253 Mass. 65

SECTION 36. Whoever makes, or offers to make, any contract of bucketing or bucket-shopping, or who is the keeper of any bucket shop, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year. Whoever shall be convicted of a second offence shall be punished by imprisonment for not more than five years. The continuing of the keeping of a bucket shop, by any person, after the first conviction therefor, shall be deemed a second offence hereunder. If a domestic corporation shall be convicted of a second offence, the supreme judicial court may, upon an information in equity in the name of the attorney general, at the relation of the commissioner of corporations and taxation, dissolve the corporation; and if a foreign corporation shall be convicted of a second offence, the supreme judicial court may, in the same manner, restrain it from doing business in this commonwealth.

Penalty for communicating, etc., to make prohibited contracts 1907, 414, § 3.

SECTION 37. Whoever shall communicate, receive, exhibit or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make, any contract prohibited by the preceding section shall be punished as provided therein.

1 SECTION 38. Every person shall furnish, upon demand, to any cus-
 2 tomer or principal for whom such person has executed any order for
 3 the actual purchase or sale of any securities or commodities, either for
 4 immediate or future delivery, a written statement containing the names
 5 of the persons from whom such property was bought, or to whom it has
 6 been sold, as the fact may be, the time when, place where and the price
 7 at which the same was either bought or sold; and if such person refuses
 8 or neglects to furnish such statement within twenty-four hours after
 9 such demand, such refusal or neglect shall be prima facie evidence that
 10 such purchase or sale was bucketing or bucket-shopping.

Written statement to be furnished in certain cases. 1907, 414, § 4

1 SECTION 39. Whoever corruptly gives, offers or promises to an agent,
 2 employee or servant any gift or gratuity whatever, with intent to in-
 3 fluence his action in relation to the business of his principal, employer
 4 or master; or an agent, employee or servant who corruptly requests or
 5 accepts a gift or gratuity or a promise to make a gift or to do an act
 6 beneficial to himself, under an agreement or with an understanding that
 7 he shall act in any particular manner in relation to the business of his
 8 principal, employer or master; or an agent, employee or servant who,
 9 being authorized to procure materials, supplies or other articles either
 10 by purchase or contract for his principal, employer or master, or to
 11 employ service or labor for his principal, employer or master, receives
 12 directly or indirectly, for himself or for another, a commission, discount
 13 or bonus from the person who makes such sale or contract, or furnishes
 14 such materials, supplies or other articles, or from a person who renders
 15 such service or labor; and any person who gives or offers such an agent,
 16 employee or servant such commission, discount or bonus, shall be punished
 17 by a fine of not less than ten nor more than five hundred dollars or by
 18 such fine and by imprisonment for not more than one year; except that
 19 if the person who commits the said offence acts as agent or officer of any
 20 person, to employ persons as clerks, laborers or otherwise, the offence
 21 shall be punished by a fine of not less than twenty-five nor more than
 22 five hundred dollars or by imprisonment in the state prison for not more
 23 than three years. The district attorneys in their respective districts
 24 shall prosecute all violations of this section. No person shall be excused
 25 from attending, testifying or producing books, papers, contracts, agree-
 26 ments and documents before any court or in obedience to the subpoena
 27 of any court having jurisdiction of the offence described herein on the
 28 ground or for the reason that the testimony or evidence, documentary
 29 or otherwise, required of him may tend to criminate him or subject him
 30 to a penalty or forfeiture. But no person shall be liable to any suit or
 31 prosecution, civil or criminal, for or on account of any transaction, matter
 32 or thing concerning which he may testify or produce evidence, documen-
 33 tary or otherwise, before said court or in obedience to its subpoena or in
 34 any such case or proceeding.

Illegal gratuity, etc., and penalty. 1904, 343, 1909, 514, §§ 28, 29, 115, 1912, 495, 252 Mass. 574

1 SECTION 40. No railroad, street railway, electric light, gas, tele-
 2 graph, telephone, water or steamboat company shall appoint, promote,
 3 reinstate, suspend or discharge any person employed or seeking em-
 4 ployment by any such company at the request of the governor, lieu-
 5 tenant governor, or any member or member elect of the council or of
 6 the general court, or candidate therefor, justice of the supreme judicial
 7 court, justice of the superior court, judge of probate, judge of the land

Employment, discharge, etc., by public service corporations restricted. 1903, 320, §§ 1, 3 1909, 514, § 25, 1910, 63, § 2, 261 Mass. 523

court, justice of a district court, district attorney, member or member elect of a board of county commissioners, or candidate for county commissioner, mayor or mayor elect of a city, or candidate therefor, member or member elect of a board of aldermen, or selectmen, or city council, or any executive, administrative or judicial officer, clerk or employee of any branch of the government of the commonwealth or of any county, city or town; nor shall any such public officer or body, or any member or member elect thereof or candidate therefor, directly or indirectly advocate, oppose, or otherwise interfere in, or make any request, recommendation, endorsement, requirement or certificate relative to, and the same, if made, shall not be required as a condition precedent to, or be in any way regarded or permitted to influence or control, the appointment, promotion, reinstatement or retention of any person employed or seeking employment by any such corporation, and no such person shall solicit, obtain, exhibit, or otherwise make use of any such official request, recommendation, certificate or endorsement in connection with any existing or desired employment by a public service corporation. Any person or corporation violating any provision of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Certain offices
excepted from
the preceding
section.
1903, 320, § 2.
1908, 228.
1909, 514,
§§ 26, 145.

SECTION 41. The offices of probation officer, notary public, justice of the peace, prison officer, agent of the commissioner of correction and agent of the department of public welfare shall not be considered public offices within the meaning of the preceding section.

1910, 63, § 2. 1916, 241, § 1. 1919, 350, §§ 82, 83, 87

Betting, etc.,
on boxing
match, etc.
1920, 619, § 15.

SECTION 42. Whoever bets or wagers or sells pools on any boxing or sparring match or exhibition shall be punished by imprisonment for not less than three months or by a fine of not less than fifty dollars, or both.

CHAPTER 272.

CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER.

SECT.	SECT.
1. Abduction of an unmarried female under sixteen for the purpose of marriage.	12. Penalty for sending a female to a house of ill fame, etc.
2. Abduction of women or girls, etc.	13. Detaining a female in house of ill fame.
3. Administering drug.	14. Adultery.
4. Enticing to unlawful intercourse.	15. Polygamy.
5. Penalty for carnal knowledge of idiot, etc.	16. Lascivious cohabitation and lewdness.
6. Penalty on owner of premises, etc.	17. Incest.
7. Penalty for deriving support from an inmate of a house of ill fame, etc.	18. Fornication.
8. Penalty for soliciting, etc.	19. Unlawful attempt, etc., to procure miscarriage.
9. Court may authorize entry of house, etc.	20. Penalty for advertising, etc., notice, etc., of means to procure abortion.
10. Arrest without warrant.	21. Other offences against decency.
11. Evidence and limitation.	22. Concealment by mother of death of illegitimate child.

- SECT.
23. Joinder of murder and concealment.
 24. Keeping house of ill fame.
 25. Use of certain enclosures in restaurants, etc., prohibited.
 26. Penalty for resorting to café, etc., for immoral purposes.
 27. Copy of record of conviction to be sent to licensing officer, etc.
 28. Penalty for possession or sale, etc., of obscene literature.
 29. Dissemination by advertisement, etc., of information concerning certain diseases prohibited.
 30. Dissemination of criminal literature.
 31. Immoral entertainments.
 32. Penalty for giving, etc., immoral entertainments.
 33. Exhibition of deformities.
 34. Sodomy and buggery.
 35. Unnatural and lascivious acts.
 36. Blasphemy.
 37. Profane cursing and swearing.
 38. Disturbing religious worship.
 39. Peddling, gaming, etc., near camp meeting.
 40. Disturbance of school or public meeting.
 41. Disturbance of public libraries.
 42. Disturbance of funeral.
 43. Disorderly conduct in public conveyances.
 44. Arrest for drunkenness.
 45. Persons arrested for drunkenness may be released in certain cases, etc.
 46. Persons arrested for drunkenness to be informed of their right to make statement, etc.
 47. Record of persons released.
 48. Penalties for drunkenness.
 49. Duties of probation officers.
 50. Records open to inspection.
 51. Opium resorts.
 52. Search of suspected opium resorts.
 53. Rogues, vagabonds, etc.
 54. Arrest of disorderly person in streets, highways, etc.
 55. [Repealed.]
 56. Repetition of offence a breach of recognizance.
 57. Discharge of defendant on recognizance.
 58. Begging by children.
 59. Arrest without a warrant for violations of ordinances, etc.
 60. Certain persons may be arrested and detained for the purpose of ascertaining their identity, etc.
 61. Conviction after discharge on former conviction.
 62. Nightwalking. Third conviction.

- SECT.
63. Tramps.
 64. Punishment of tramps.
 65. Arrest of tramps.
 66. Vagrants.
 67. Arrest of vagrants.
 68. Certain persons to be deemed vagabonds.
 69. Arrest of vagabonds.
 70. Attachment of dead body.
 71. Violation of sepulture.
 72. Buying or selling dead body.
 73. Injuring or defacing tombs, etc.
 74. Desecration of burial ground.
 75. Removal of flowers, etc., from grave.
 76. Making road, etc., through burial ground.
 77. Cruelty to animals.
 78. Buying, selling, etc., leading, driving, etc., disabled horses. Penalty.
 79. Corporations liable.
 80. Mutilation of horses.
 - 80A. Mutilation of dogs.
 - 80B. Exhibition of mutilated dogs prohibited.
 81. Rest for animals transported.
 82. Arrest for cruelty to animals.
 83. Search warrant.
 84. Officers to prosecute. Disposition of fines.
 85. Same subject.
 86. Stabling horse, etc., above first floor.
 - 86A. Same subject.
 - 86B. Number of horses, etc., in certain buildings limited.
 - 86C. Smoking in certain stables prohibited, except.
 - 86D. Certain stables to be equipped with pails of water, etc.
 - 86E. Entry into stables by certain officials for law enforcement.
 - 86F. Penalties.
 87. Pigeon shooting, etc.
 88. Search warrant for fighting birds, etc.
 89. Entry without a warrant, etc.
 90. Persons arrested to be taken before court, etc.
 91. Judgment of forfeiture, etc. Proceedings thereon.
 92. Appeal.
 93. Expenses of care, etc., of birds, etc.
 94. Penalty on owner, etc.
 95. Penalty for being present at exhibition, etc.
 96. False notice of birth, etc.
 97. Costumed debt collectors.
 98. Color or race discrimination.
 99. Eavesdropping.
 100. Accessory to same.
 101. Prima facie evidence.
 102. To whom §§ 99-101 not applicable.

1 SECTION 1. Whoever fraudulently and deceitfully entices or takes
 2 away an unmarried female under sixteen from her father's house or else- Abduction of an unmarried female under

sixteen for the purpose of marriage. 1852, 254 G. S. 165, § 1. P. S. 207, § 1. R. L. 212, § 1. 7 Gray, 479. 152 Mass. 1.	where, without the consent of the parent or guardian, if any, under whose care and custody she is living, for the purpose of effecting a clandestine marriage of such female without such consent, shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both.	3 4 5 6 7
Abduction of women or girls, etc. 1845, 216, § 1. G. S. 165, § 2. P. S. 207, § 2. 1886, 329, § 1. 1898, 444, § 1. R. L. 212, § 2. 1910, 424, § 1. 12 Met 93. 131 Mass. 224. 211 Mass. 50.	SECTION 2. Whoever fraudulently and deceitfully entices or takes away a woman or girl from her father's house or elsewhere, for the purpose of prostitution or for the purpose of unlawful sexual intercourse, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in jail.	1 2 3 4 5 6 7
	252 Mass. 158.	
Administering drug. 1886, 329, § 2 R. L. 212, § 3. 1918, 257, § 464. 1919, 5. 1920, 2.	SECTION 3. Whoever applies, administers to or causes to be taken by a woman or girl any drug, matter or thing with intent to stupefy or overpower her so as thereby to enable any person to have unlawful sexual intercourse with her shall be punished by imprisonment in the state prison for not more than three years or in jail or the house of correction for not more than two and one half years or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in jail or the house of correction.	1 2 3 4 5 6 7 8
Enticing to unlawful intercourse. 1886, 329, § 3. 1898, 444, § 2 R. L. 212, § 4.	SECTION 4. Whoever induces any person under eighteen of chaste life to have unlawful sexual intercourse shall be punished as provided in the preceding section.	1 2 3
Penalty for carnal knowledge of idiot, etc. 1886, 329, § 4. R. L. 212, § 5. 1913, 469.	SECTION 5. Whoever has unlawful sexual intercourse with a female who is feeble minded, an idiot or imbecile, under circumstances which do not constitute rape, shall, if he had reasonable cause to believe that she was feeble minded, an idiot or imbecile, be punished as provided in section three.	1 2 3 4 5
Penalty on owner of premises, etc. 1886, 329, § 5. R. L. 212, § 6. 1910, 424, § 2.	SECTION 6. Whoever, being the owner of a place or having or assisting in the management or control thereof, induces or knowingly suffers a female to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse, shall be punished as provided in section three.	1 2 3 4 5
Penalty for deriving support from an inmate of a house of ill fame, etc. 1910, 424, § 5. 1914, 621. 212 Mass. 253.	SECTION 7. Whoever, knowing a female to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of her prostitution, from moneys loaned, advanced to or charged against her by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall share in such earnings, proceeds or moneys, shall be punished by imprisonment in the state prison for not more than three years or in the house of correction for not more than one year or by a fine of not more than one thousand dollars, or both.	1 2 3 4 5 6 7 8 9
Penalty for soliciting, etc. 1910, 424, § 6.	SECTION 8. Whoever shall solicit or receive compensation for soliciting for a prostitute shall be punished by imprisonment in the house of correction for not more than one year or by a fine of not more than five hundred dollars, or both.	1 2 3 4

1 SECTION 9. If a person makes oath before a district court or trial
 2 justice that he has probable cause to suspect that a house, building,
 3 room or place is kept or resorted to for prostitution and that a certain
 4 person owning, or having or assisting in the management or control of
 5 such house, building, room or place knowingly suffers a certain female
 6 to be in or upon such place for the purpose of unlawfully having sexual
 7 intercourse, said court or trial justice shall, if satisfied that there is
 8 probable cause therefor, issue a warrant commanding the sheriff or his
 9 deputy, or any constable or police officer, to enter such house, building,
 10 room or place and search for such person, and take into custody such
 11 person and such female. Said person shall be detained for not more than
 12 twenty-four hours until complaint may be made against him, and said
 13 female for a reasonable time until she may be brought before said court
 14 or trial justice to be recognized with or without sureties at the discretion
 15 of said court or trial justice to appear as witnesses before the next or
 16 any succeeding sitting of said court or trial justice. This section shall
 17 be in addition to and not in derogation of the common law.

Court may
 authorize entry
 of house, etc.
 1910, 424, § 7.

1 SECTION 10. Nothing in the preceding section shall prevent the arrest
 2 and detention without a warrant of any person who, the officer serving
 3 said process may have reasonable cause to believe, is violating any pro-
 4 vision of this chapter, or is keeping a house, room or place resorted to for
 5 prostitution or lewdness, and said officer may upon such search arrest
 6 without a warrant any such person, and detain him until complaint may
 7 be made against him.

Arrest without
 warrant
 1910, 424, § 8.

1 SECTION 11. A person shall not be convicted under sections two to
 2 six, inclusive, upon the evidence of one witness only, unless his testimony
 3 is corroborated in a material particular, and prosecution for a violation
 4 of any of said sections shall not be commenced more than one year after
 5 the commission of the crime.

Evidence and
 limitation.
 1886, 329,
 §§ 6, 7.
 R. L. 212, § 7.
 252 Mass. 158.

1 SECTION 12. Whoever knowingly procures, entices, sends, or aids or
 2 abets in procuring, enticing or sending, a woman or girl to practice pros-
 3 titution, or to enter as an inmate or a servant a house of ill fame or other
 4 place resorted to for prostitution, whether within or without the com-
 5 monwealth, shall be punished by a fine of not less than one hundred nor
 6 more than five hundred dollars or by imprisonment for not less than three
 7 months nor more than two years. Whoever as proprietor or keeper of an
 8 intelligence or employment office, either personally or through an agent
 9 or employee, procures or sends a woman or girl to enter as aforesaid a
 10 house of ill fame or other place resorted to for prostitution, the char-
 11 acter of which on reasonable inquiry could have been ascertained by
 12 him, shall be punished by a fine of not less than fifty nor more than two
 13 hundred dollars.

Penalty for
 sending a
 female to a
 house of ill
 fame, etc.
 1888, 311, § 1
 R. L. 212, § 8
 1910, 424, § 3

1 SECTION 13. Whoever, for any length of time, unlawfully detains or
 2 attempts to detain, or aids or abets in unlawfully detaining or attempt-
 3 ing to detain, or provides or administers or aids or abets in providing or
 4 administering any drug or liquor for the purpose of detaining, a woman or
 5 girl in a house of ill fame or other place where prostitution is practiced
 6 or allowed, shall be punished by imprisonment in the state prison for not
 7 more than five years or in the house of correction for not less than one

Detaining a
 female in
 house of ill
 fame.
 1888, 311, § 2.
 R. L. 212, § 9.
 1910, 424, § 4.

nor more than two and one half years or by a fine of not less than one hundred nor more than five hundred dollars. 8 9

Adultery.
B. L. 94, § 9.
C. L. 15, § 9.
1694-5, 5,
§§ 1, 2.
1762-3, 29.
1784, 40, § 1.
R. S. 130, § 1.
G. S. 165, § 3.
P. S. 207, § 3.
R. L. 212, § 10.
21 Pick. 509.
2 Met. 190.

SECTION 14. A married man who has sexual intercourse with a woman not his wife, an unmarried man who has sexual intercourse with a married woman or a married woman who has sexual intercourse with a man not her husband shall be guilty of adultery and shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years, or by a fine of not more than five hundred dollars. 1 2 3 4 5 6 7

5 Met. 535.	6 Allen, 591.	131 Mass. 577.	163 Mass. 499.
2 Cush. 551.	11 Allen, 23.	157 Mass. 415.	211 Mass. 50.
6 Cush. 78.	97 Mass. 59.		

Polygamy.
1694-5, 5,
§§ 3-5.
1698, 19.
1784, 40, § 2.
R. S. 130,
§§ 2, 3.
G. S. 165,
§§ 4, 5.
P. S. 207,
§§ 4, 5.
R. L. 212, § 11.
1918, 257,
§ 464.
1919, 5.
1920, 2.
1 Pick. 136.
7 Met. 472.
2 Cush. 553.
4 Cush. 49.
6 Allen, 591.
10 Allen, 196.
11 Allen, 23.
105 Mass. 464.

SECTION 15. Whoever, having a former husband or wife living, marries another person or continues to cohabit with a second husband or wife in the commonwealth shall be guilty of polygamy, and be punished by imprisonment in the state prison for not more than five years or in jail for not more than two and one half years or by a fine of not more than five hundred dollars; but this section shall not apply to a person whose husband or wife has continually remained beyond sea, or has voluntarily withdrawn from the other and remained absent, for seven consecutive years, the party marrying again not knowing the other to be living within that time, nor to a person who has been legally divorced from the bonds of matrimony and who is not the guilty cause of such divorce, nor to any person who has been legally divorced after the expiration of two years from the time of the entry of the absolute decree of divorce. 1 2 3 4 5 6 7 8 9 10 11 12 13

113 Mass. 458.	140 Mass. 296	163 Mass. 453
121 Mass. 47.	147 Mass. 294	248 Mass. 15
126 Mass. 34.	158 Mass. 81.	

Lascivious
cohabitation
and lewdness.
1784, 40, § 3.
R. S. 130, § 4.
G. S. 165, § 6.
P. S. 207, § 6.
R. L. 212, § 12.
1 Mass. 8
10 Mass. 153
4 Cush. 49.

SECTION 16. A man and woman who, not being married to each other, lewdly and lasciviously associate and cohabit together, or a man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years or by a fine of not more than three hundred dollars. 1 2 3 4 5 6

127 Mass. 459.	128 Mass. 52.	159 Mass. 61.	273 Mass. 229.
----------------	---------------	---------------	----------------

Incest.
1695-6, 2, § 2.
R. S. 130, § 13.
G. S. 165, § 7.
P. S. 207, § 7.
R. L. 212, § 13.
1918, 257,
§ 464.
1919, 5.
1920, 2.

SECTION 17. Persons within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry or have sexual intercourse with each other, shall be punished by imprisonment in the state prison for not more than twenty years or in jail for not more than two and one half years. 1 2 3 4 5

10 Met. 451.	248 Mass. 259.
--------------	----------------

Fornication.
C. L. 54,
§§ 4, 5.
1692-3, 18, § 5.
1785, 66, § 1.

SECTION 18. Whoever commits fornication shall be punished by imprisonment for not more than three months or by a fine of not more than thirty dollars. 1 2 3

R. S. 130, § 5.	P. S. 207, § 8.	256 Mass. 539.
G. S. 165, § 8.	R. L. 212, § 14.	

Unlawful
attempt,
etc., to procure
miscarriage
1845, 27.

SECTION 19. Whoever, with intent to procure the miscarriage of a woman, unlawfully administers to her, or advises or prescribes for her, or causes any poison, drug, medicine or other noxious thing to be taken 1 2 3

4 by her or, with the like intent, unlawfully uses any instrument or other
 5 means whatever, or, with like intent, aids or assists therein, shall, if she
 6 dies in consequence thereof, be punished by imprisonment in the state
 7 prison for not less than five nor more than twenty years; and, if she does
 8 not die in consequence thereof, by imprisonment in the state prison for
 9 not more than seven years and by a fine of not more than two thousand
 10 dollars.

G. S. 165, § 9
 P. S. 207, § 9
 R. L. 212, § 15.
 11 Gray, 85
 14 Gray, 419
 15 Gray, 187
 16 Gray, 224
 13 Allen, 554
 108 Mass. 461.
 116 Mass. 47,
 343.

121 Mass. 69	159 Mass. 56.	253 Mass. 509.
132 Mass. 261.	165 Mass. 13, 59.	257 Mass. 518.
136 Mass. 429.	195 Mass. 100.	264 Mass. 217.
155 Mass. 274.	213 Mass. 563.	266 Mass. 391.
156 Mass. 99.	231 Mass. 265.	271 Mass. 41.
157 Mass. 519	252 Mass. 545	

1 SECTION 20. Whoever knowingly advertises, prints, publishes, dis-
 2 tributes or circulates, or knowingly causes to be advertised, printed,
 3 published, distributed or circulated, any pamphlet, printed paper, book,
 4 newspaper, notice, advertisement or reference, containing words or lan-
 5 guage giving or conveying any notice, hint or reference to any person,
 6 or to the name of any person, real or fictitious, from whom, or to any
 7 place, house, shop or office where, any poison, drug, mixture, preparation,
 8 medicine or noxious thing, or any instrument or means whatever, or any
 9 advice, direction, information or knowledge, may be obtained for the
 10 purpose of causing or procuring the miscarriage of a woman pregnant
 11 with child or of preventing, or which is represented as intended to prevent,
 12 pregnancy, shall be punished by imprisonment in the state prison for
 13 not more than three years or in jail for not more than two and one half
 14 years or by a fine of not more than one thousand dollars.

Penalty for
 advertising,
 etc., notice,
 etc., of means
 to procure
 abortion
 1847, 83
 G. S. 165, § 10.
 P. S. 207, § 10.
 R. L. 212, § 16.
 1903, 316
 1918, 257,
 § 164
 1919, 5.
 1920, 2.
 193 Mass. 164.
 227 Mass. 57.

1 SECTION 21. Whoever sells, lends, gives away, exhibits, or offers to
 2 sell, lend or give away an instrument or other article intended to be used
 3 for self-abuse, or any drug, medicine, instrument or article whatever
 4 for the prevention of conception or for causing unlawful abortion, or
 5 advertises the same, or writes, prints or causes to be written or printed
 6 a card, circular, book, pamphlet, advertisement or notice of any kind
 7 stating when, where, how, of whom or by what means such article can
 8 be purchased or obtained, or manufactures or makes any such article,
 9 shall be punished by imprisonment in the state prison for not more than
 10 five years or in jail or the house of correction for not more than two and
 11 one half years or by a fine of not less than one hundred nor more than
 12 one thousand dollars.

Other offences
 against
 decency.
 1879, 159, § 1.
 P. S. 207, § 17
 R. L. 212, § 26.
 1918, 257, § 464.
 1919, 5.
 1920, 2.
 227 Mass. 57.

1 SECTION 22. A woman who conceals the death of issue of her body,
 2 which if born alive would be illegitimate, so that it cannot be ascertained
 3 whether it was born alive or, if born alive, whether it was murdered,
 4 shall be punished by a fine of not more than one hundred dollars or by
 5 imprisonment for not more than one year.

Concealment
 by mother of
 death of
 illegitimate
 child.
 1696, 11.
 1784, 42, § 2.

R. S. 130, § 6	P. S. 207, § 11.	1931, 256, § 2.
G. S. 165, § 11.	R. L. 212, § 17.	

1 SECTION 23. A woman indicted for the murder of her infant illegiti-
 2 mate child may also be charged in the same indictment with the crime
 3 described in the preceding section; and if she is acquitted of murder, she
 4 may be convicted of the concealment.

Joinder of
 murder and
 concealment
 1784, 42, § 3
 R. S. 130, § 7.

G. S. 165, § 12.	P. S. 207, § 12	R. L. 212, § 18	1931, 256, § 3.
------------------	-----------------	-----------------	-----------------

Keeping house of ill fame
C. L. 208, § 2.
1720-1, 7, § 3.
1793, 59, § 8.

SECTION 24. Whoever keeps a house of ill fame which is resorted to for prostitution or lewdness shall be punished by imprisonment for not more than two years.

R. S. 130, § 8.	P. S. 207, § 13.	2 Gray, 356.	124 Mass. 26.
1849, 84.	R. L. 212, § 19.	11 Gray, 48.	132 Mass. 1.
1855, 405.	3 Pick. 26.	1 Allen, 7.	150 Mass. 314.
G. S. 165, § 13.	1 Met. 151.	12 Allen, 177.	165 Mass. 588.

Use of certain enclosures in restaurants, etc., prohibited.
1915, 180, §§ 1, 2.

SECTION 25. Any person owning, managing or controlling a café, restaurant, saloon or other place in any town, where food or drink is sold to the public to be consumed upon the premises, and any employee of such person who provides, maintains, uses or permits the use of a booth, stall or enclosure of any description whatever which is so closed by curtains, screens or other devices that the persons within cannot at any time plainly be seen by other persons in such café, restaurant, saloon or other place, or in any division thereof, unless the enclosure is approved by the licensing authorities, shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment for not more than two months, or both.

Penalty for resorting to café, etc., for immoral purposes.
1915, 180, § 3.

SECTION 26. Whoever, for the purpose of immoral solicitation or immoral bargaining, shall resort to any café, restaurant, saloon or other place where food or drink is sold or served to be consumed upon the premises, and whoever shall resort to any such place for the purpose of, in any manner, inducing another person to engage in immoral conduct, and whoever, being in or about any such place, shall engage in any such acts, shall be punished by a fine of not less than twenty-five nor more than five hundred dollars or by imprisonment for not more than one year, or both.

Copy of record of conviction to be sent to licensing officer, etc.
1915, 180, § 4.

SECTION 27. The clerk of the court in which any person is convicted of a violation of either of the two preceding sections shall forthwith send a copy of the record of such conviction to the officer or board issuing any license or licenses under which the place where the offence was committed is conducted.

Penalty for possession or sale, etc., of obscene literature.
1711-12, 6, § 19.
R. S. 130, §§ 10, 12.
G. S. 165, §§ 15, 17.
1862, 168, §§ 1, 3.
1880, 97.
P. S. 207, §§ 15, 16.
1890, 70.
1894, 433.
1895, 162.
R. L. 212, § 20.
1904, 120.
1913, 259

SECTION 28. Whoever imports, prints, publishes, sells or distributes a book, pamphlet, ballad, printed paper or other thing which is obscene, indecent or impure, or manifestly tends to corrupt the morals of youth, or an obscene, indecent or impure print, picture, figure, image or description, manifestly tending to corrupt the morals of youth, or introduces into a family, school or place of education, or buys, procures, receives or has in his possession any such book, pamphlet, ballad, printed paper, obscene, indecent or impure print, picture, figure, image or other thing, either for the purpose of sale, exhibition, loan or circulation or with intent to introduce the same into a family, school or place of education, shall be punished by imprisonment for not more than two years or by a fine of not less than one hundred nor more than one thousand dollars, or both.

1918, 257, § 450.	1930, 162.	126 Mass. 46.	200 Mass. 346.
1919, 5.	17 Mass. 366.	139 Mass. 382.	227 Mass. 57.
1920, 2.	1 Cush. 66.	164 Mass. 162.	271 Mass. 318, 327.

Dissemination by advertisement, etc., of information concerning

SECTION 29. Whoever publishes, delivers, distributes, or causes to be published, delivered or distributed, an advertisement, statement or notice, other than a label which is attached to a bottle or package of

4 medicine, or which is contained in a sealed package of medicine, describ-
 5 ing the causes, symptoms, details or effects of a venereal disease, or of a
 6 disease, infirmity or condition of the sexual organs, for the purpose of
 7 calling attention to or advertising a person from whom, or an office or
 8 place at which, information, treatment or advice may be obtained con-
 9 cerning such diseases or conditions, shall be punished by imprisonment
 10 for not more than six months or by a fine of not less than fifty nor more
 11 than five hundred dollars, or both. This section shall not apply to the
 12 printing or delivering in sealed packages outside this commonwealth of
 13 books, pamphlets or circulars containing such advertisements, nor to
 14 newspapers printed outside this commonwealth, nor to the printing,
 15 publishing or distribution of any matter pertaining to venereal diseases
 16 by state or municipal health authorities.

certain diseases
 prohibited.
 1908, 386.
 1918, 237.

Violation of
 this section
 cause for revo-
 cation, etc.,
 of physician's
 registration,
 etc.
 [See Chap. 112,
 § 2.]

1 SECTION 30. Whoever sells, lends, gives away or has in his possession
 2 with intent to sell, lend, give away or distribute, or offers to sell, lend,
 3 give away or distribute to a minor a book, pamphlet, magazine, news-
 4 paper or other printed paper devoted to the publication or principally
 5 made up of criminal news, police reports or accounts of criminal deeds,
 6 or pictures and stories of lust or crime; or exhibits upon a public way or
 7 in any other place within the view, or which may be within the view, of a
 8 minor, or employs a minor, or having the custody or control of a minor
 9 permits him, to sell, lend, give away or distribute any such book, pam-
 10 phlet, magazine, newspaper or printed paper, shall be punished by im-
 11 prisonment for not more than two years or by a fine of not less than
 12 one hundred nor more than one thousand dollars.

Dissemination
 of criminal
 literature.
 1885, 305.
 R. L. 212, § 21

1 SECTION 31. Whoever, as owner, manager, director, agent or in any
 2 other capacity, uses or causes or permits to be used, in connection with
 3 any show or entertainment, public or private, a phonograph or other
 4 contrivance, instrument or device, which utters or gives forth any pro-
 5 fane, obscene or impure language, shall be punished by imprisonment for
 6 not more than one year or by a fine of not more than five hundred dollars,
 7 or both.

Immoral
 entertainments.
 1896, 339, § 1.
 R. L. 212, § 22

1 SECTION 32. Whoever, as owner, manager, director, agent or in any
 2 other capacity, prepares, advertises, gives, presents or participates in
 3 any lewd, obscene, indecent, immoral or impure show or entertainment,
 4 or in any show or entertainment suggestive of lewdness, obscenity,
 5 indecency, immorality or impurity, or in any show or entertainment
 6 manifestly tending to corrupt the morals of youth, shall be punished by
 7 imprisonment for not more than one year or by a fine of not more than
 8 five hundred dollars, or both.

Penalty for
 giving, etc.,
 immoral en-
 tertainments.
 R. L. 212, § 23
 1910, 367.

1 SECTION 33. Whoever exhibits for hire a minor or insane person who
 2 is deformed or a person who has an appearance of deformity produced by
 3 artificial means shall be punished by a fine of not more than five hun-
 4 dred dollars.

Exhibition of
 deformities.
 1884, 99.
 R. L. 212, § 24.

1 SECTION 34. Whoever commits the abominable and detestable crime
 2 against nature, either with mankind or with a beast, shall be punished
 3 by imprisonment in the state prison for not more than twenty years.

Sodomy and
 buggery.
 B. L. 94,
 §§ 7, 8.

C. L. 14, §§ 7, 8.
 1697, 19.

1784, 46, § 1.
 1804, 133

R. S. 130, § 14.
 G. S. 165, § 18.

P. S. 207, § 18.
 R. L. 212, § 25.

Unnatural and lascivious acts. SECTION 35. Whoever commits any unnatural and lascivious act with another person shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years.

197 Mass. 166.

Blasphemy SECTION 36. Whoever wilfully blasphemes the holy name of God by denying, cursing or contumeliously reproaching God, his creation, government or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ or the Holy Ghost, or by cursing or contumeliously reproaching or exposing to contempt and ridicule, the holy word of God contained in the holy scriptures shall be punished by imprisonment in jail for not more than one year or by a fine of not more than three hundred dollars, and may also be bound to good behavior.

Profane cursing and swearing. SECTION 37. Whoever, having arrived at the age of discretion, profanely curses or swears, shall be punished by a fine of not more than five dollars nor less than one dollar; but no prosecution hereunder shall be commenced after twenty days from the commission of the offence.

R. S. 130, § 16. G. S. 165, § 20. P. S. 207, § 20. R. L. 212, § 29.

Disturbing religious worship. SECTION 38. Whoever wilfully interrupts or disturbs an assembly of people met for worship of God shall be punished by imprisonment for not more than one month or by a fine of not more than fifty dollars.

P. S. 207, § 21. R. L. 212, § 30. 2 Mass. 163.

Peddling, gaming, etc., near camp meeting. SECTION 39. Whoever, during the time of holding a camp or field meeting for religious purposes, and within one mile of the place thereof, hawks or peddles goods, wares or merchandise, or establishes or maintains a tent, booth or building for vending provisions or refreshments, or furnishes shelter and food for or has the care of horses for pay, without permission from the authorities or officers having the charge or direction of such meeting, or engages in gaming or horse racing, or exhibits or offers to exhibit any show or play, shall forfeit not more than twenty dollars; provided, that the time of holding such meeting shall not exceed thirty consecutive days in any one year; and that a person having a regular, usual and established place of business within such limits need not suspend his business.

Disturbance of school or public meeting. SECTION 40. Whoever wilfully interrupts or disturbs a school or other assembly of people met for a lawful purpose shall be punished by imprisonment for not more than one month or by a fine of not more than fifty dollars.

Disturbance of public libraries. SECTION 41. Whoever wilfully disturbs persons assembled in a public library, or a reading room connected therewith, by making a noise or in any other manner during the time when such library or reading room is open to the public shall be punished as provided in the preceding section.

1 SECTION 42. Whoever willfully interrupts or by fast driving or other- Disturbance
 2 wise in any way disturbs a funeral assembly or procession shall be pun- of funeral
 3 ished as provided in section forty. 1851, 193.

G. S. 165, § 21 P. S. 207, § 24 R. L. 212, § 34. 1 Gray, 176.

1 SECTION 43. Whoever, in or upon a railroad carriage, steamboat or Disorderly con-
 2 other public conveyance, is disorderly, or disturbs or annoys travelers duct in public
 3 in or upon the same by profane, obscene or indecent language, or by in- conveyances.
 4 decent behavior, shall be punished as provided in section forty. 1883, 102.
 R. L. 212, § 35.

1906, 463, III, § 87.

1 SECTION 44. Whoever is found in a state of intoxication in a public Arrest for
 2 place, or is found in any place in a state of intoxication committing a drunkenness
 3 breach of the peace or disturbing others by noise, may be arrested with- 1875, 215, § 23.
 4 out a warrant by a sheriff, deputy sheriff, constable or police officer, and G. S. 86, § 40.
 5 kept in custody in a suitable place until he has recovered from his 1869, 415, § 42.
 6 intoxication. 1876, 17.
 P. S. 207, § 25.
 1891, 427, § 1.
 R. L. 212, § 36.

14 Gray, 65. 125 Mass. 198. 150 Mass. 243, 298.
 100 Mass. 316. 141 Mass. 102. 173 Mass. 52.
 125 Mass. 459. 114 Mass. 291. 3 Op. A. G. 96.

1 SECTION 45. Whoever arrests a person for drunkenness shall make a Persons
 2 complaint against him therefor at the next session of the court or of the arrested for
 3 trial justice having jurisdiction of the case; and such court or trial justice drunkenness
 4 may proceed to hear and to dispose of the same according to due course may be re-
 5 of law; and may, if the accused has been released under this section, leased in cer-
 6 order the issuance of a warrant for the arrest, or a summons for the ap- tain cases, etc.
 7 pearance, of the accused for trial, or if the court is satisfied by the report 1891, 427,
 8 of its probation officer, or otherwise, or if the trial justice is satisfied upon §§ 2, 3.
 9 inquiry that the accused has not four times before been arrested for 1893, 414.
 10 drunkenness within a year, and that his written statement hereinafter R. L. 212, § 37.
 11 mentioned is true, the court or trial justice may thereupon direct that 1905, 384.
 12 the accused, if still in custody, be released without arraignment; and if 1917, 135.
 13 not in custody, that further proceedings in the case be suspended or that 157 Mass. 556
 14 the complaint be dismissed. 208 Mass. 287.

15 A person so arrested may, after he has recovered from his intoxication, Persons so
 16 make a written statement, addressed to the court or trial justice having arrested may
 17 jurisdiction of his offence, giving his name and address, setting forth make a state-
 18 what persons, if any, are dependent upon him for support, his place of ment in writing
 19 employment, if any, and whether he has been arrested for drunkenness and request
 20 within the twelve months next preceding, and requesting to be released to be released
 21 from custody; and may deliver said statement to the officer in charge of from custody,
 22 the place in which he is confined, who shall endorse thereon the name of etc.
 23 the arresting officer, and if the arrest is made within the jurisdiction of a
 24 trial justice, his opinion of the probable truth of said statement for the
 25 use of such trial justice, and shall transmit the same to such trial justice;
 26 and if the arrest is made within the jurisdiction of a court having a pro-
 27 bation officer, the officer in charge of the place in which he is confined
 28 shall transmit such statement to said probation officer. Said probation
 29 officer, or his assistants, shall forthwith inquire into the truth thereof
 30 and shall investigate the record of said person as to previous similar
 31 offences, and, for the use of the court having jurisdiction of the case, shall
 32 endorse on such statement, with his signature, the result of his investiga-
 33 tion. The officer for the time being in charge of the place of custody
 34 in a town where no probation officer resides forthwith may release, and

elsewhere the probation officer or assistant probation officer of the court 35
 having jurisdiction of the offence may direct the officer in charge of the 36
 place of custody forthwith to release, and such officer so in charge shall 37
 thereupon release, such arrested person pursuant to his request; pro- 38
 vided, that the officer so releasing or directing the release believes that 39
 the person arrested has given his true name and address, that he will 40
 appear upon a summons, and that he has not four times before been 41
 arrested for drunkenness within the preceding twelve months. 42

Persons
 arrested
 for drunken-
 ness to be
 informed of
 their right to
 make state-
 ment, etc.
 1905, 384, § 2.
 208 Mass. 287.

SECTION 46. The officer in charge of the place of custody in which a 1
 person arrested for drunkenness is confined shall inform him, when he has 2
 recovered from his intoxication, of his right to make a written statement 3
 and request for release under the preceding section, and an officer making 4
 an arrest under the authority of said section shall not be liable for illegal 5
 arrest or imprisonment, if the person arrested is so released at his request. 6

Record of
 persons re-
 leased.
 1891, 427, § 4.
 R. L. 212, § 38.

SECTION 47. A full record shall be kept by every court or trial justice 1
 of each case in which a person is released, as aforesaid, with the statement 2
 made by him. 3

1918, 257, § 451. 1919, 5. 1920, 2.

Penalties for
 drunkenness.
 C. L. 80, § 4.
 1692-3, 18, § 2.
 1693, 9.
 1733-4, 13.
 R. S. 130, § 18.
 1860, 166.
 G. S. 165, § 25.
 1869, 452.
 1872, 301.
 1879, 229, § 1.

SECTION 48. If a person is convicted of drunkenness by the volun- 1
 tary use of intoxicating liquor, he may be punished by imprisonment in 2
 jail or in any place provided by law for common drunkards, or, if a male, 3
 in the Massachusetts reformatory, or, if a female, in the reformatory for 4
 women, for not more than one year; or by a fine of not more than fifteen 5
 dollars, or the court may place the case on file or place the defendant 6
 on probation and prescribe the terms thereof. 7

1880, 221, §§ 1, 2; 1886, 323, § 1. 133 Mass. 496.
 247, § 1. R. L. 212, § 39. 157 Mass. 471.
 1881, 276. 1913, 620. 184 Mass. 195.
 P. S. 207, §§ 26-28. 8 Gray, 484. 1 Op. A. G. 219.
 1885, 365, § 2; 375. 116 Mass. 340.

Duties of pro-
 bation officers.
 1891, 427,
 §§ 6, 7.
 R. L. 212, § 40.
 1918, 257,
 § 452.
 1919, 5.
 1920, 2.

SECTION 49. Probation officers shall assist the courts appointing 1
 them by obtaining and furnishing information relative to previous 2
 arrests, convictions and imprisonments for drunkenness, and such other 3
 facts as the court orders relative to persons accused of drunkenness. 4
 They shall keep a full record, well indexed, of each such case which they 5
 investigate, in such form as the court orders. 6

Records open
 to inspection.
 1891, 427, § 7.
 R. L. 212, § 41.
 1906, 291, § 10.

SECTION 50. Records and statements made under sections forty-five 1
 and forty-seven to forty-nine, inclusive, shall be at all times open to the 2
 police officials of the towns of the commonwealth. The police commis- 3
 sioner of Boston, city marshals and chiefs of police, keepers of jails and 4
 masters of houses of correction shall on application furnish to each other 5
 and to probation officers, and probation officers shall on application fur- 6
 nish to each other, all information in their possession relative to persons 7
 whose cases are under investigation. 8

Opium resorts
 1885, 73.
 R. L. 212, § 42.

SECTION 51. Whoever opens a place to be resorted to by other per- 1
 sons, in which opium or any of its derivatives or compounds is sold or 2
 given away to be smoked at such place, and whoever visits or resorts to 3
 any such place for the purpose of smoking opium or any of its derivatives 4
 or compounds, shall be punished by a fine of not more than five hundred 5
 dollars or by imprisonment for not more than six months, or both. 6

1 SECTION 52. If a person makes oath before a district court or trial
 2 justice that he believes or has probable cause to believe that any place,
 3 house, building or tenement within the jurisdiction of such court or justice
 4 is used or resorted to for the purpose of smoking opium or any of its
 5 derivatives or compounds, or for the purpose of selling or giving away
 6 opium or any of its derivatives or compounds to be smoked at such place,
 7 house, building or tenement, and that persons resort thereto for such
 8 purposes, such court or justice, whether the names of the persons last
 9 mentioned are known or unknown to the complainant, shall, if satis-
 10 fied that there is probable cause therefor, issue a warrant commanding
 11 the sheriff or his deputy or any constable or police officer to enter such
 12 place, house, building or tenement and there to arrest the keepers thereof,
 13 and all persons there present, whether smoking or not, if the implements
 14 for smoking opium or any of its derivatives or compounds are there
 15 found, and seize all the opium and derivatives or compounds thereof and
 16 all the implements for smoking the same and all the furniture, fixtures
 17 and other personal property there found, and to keep said persons, opium,
 18 derivatives or compounds thereof, implements, furniture, fixtures and
 19 property so that they may be produced before a court or magistrate, to
 20 be dealt with according to law. Whoever is found so present or so
 21 smoking shall be punished by a fine of not more than one hundred dollars.
 22 The provisions of chapter two hundred and seventy-six relative to dis-
 23 posal of gaming articles seized upon search warrants shall apply to all
 24 articles seized as herein provided for.

Search of sus-
 pected opium
 resorts.
 1895, 194.
 §§ 1, 2.
 R. L. 212, § 43
 173 Mass. 477.

1 SECTION 53. Rogues and vagabonds, persons who use any juggling or
 2 unlawful games or plays, common pipers and fiddlers, stubborn children,
 3 runaways, common drunkards, common nightwalkers, both male and
 4 female, persons who with offensive or disorderly act or language accost or
 5 annoy in public places persons of the opposite sex, pilferers, lewd, wanton
 6 and lascivious persons in speech or behavior, common railers and brawlers,
 7 persons who neglect their calling or employment or who misspend what
 8 they earn and do not provide for themselves, and all other idle and dis-
 9 orderly persons including therein those persons who neglect all lawful
 10 business and habitually misspend their time by frequenting houses of ill
 11 fame, gaming houses or tipping shops, may be punished by imprisonment
 12 in the Massachusetts reformatory or at the state farm in the case of a
 13 male offender, or in the reformatory for women or at the state farm in the
 14 case of a female offender, or, for not more than six months, in the house
 15 of correction, or by a fine not exceeding two hundred dollars, either with
 16 or without a condition that, if it is not paid within a time specified, the
 17 person convicted shall be punished by imprisonment under this section;
 18 and such conditional sentence shall be executed according to section ten
 19 of chapter two hundred and seventy-nine.

Rogues,
 vagabonds,
 etc.
 C. L., 153, § 1.
 1699-1700.
 S., § 2.
 1769-70, 19.
 1787, 54, § 2.
 1834, 151,
 §§ 2, 3.
 R. S. 143,
 §§ 5, 6.
 1837, 157; 217.
 1851, 346.
 1856, 186.
 G. S. 165,
 §§ 28, 29.
 1866, 235.
 1874, 385, § 21.
 1876, 118.
 1878, 270, § 2.
 1880, 114; 257.
 P. S. 207,
 §§ 29, 30.
 1884, 258, § 1.
 1885, 365, § 1.
 1886, 323, § 1.
 1898, 443, § 1.
 R. L. 85, § 30,
 212, §§ 46, 48.
 1914, 743.
 1931, 239

10 Met. 217.	1 Allen, 6.	112 Mass. 285.	179 Mass. 533.
11 Cush. 477.	4 Allen, 313.	137 Mass. 245.	207 Mass. 572.
5 Gray, 85.	5 Allen, 511.	141 Mass. 78.	248 Mass. 511.
14 Gray, 397.	99 Mass. 497.	170 Mass. 192.	1 Op. A. G. 219.

1 SECTION 54. Whoever is found in a public way or other public place,
 2 committing any offence or disorder mentioned in the preceding section,
 3 may be apprehended by a sheriff, deputy sheriff, constable or police
 4 officer, or by any other person by the order of a magistrate or any of
 5 said officers, without a warrant and be kept in custody for not more
 6 than twenty-four hours, Sundays and legal holidays excepted, until he

Arrest of dis-
 orderly person
 in streets,
 highways, etc.
 1834, 151, § 5.
 R. S. 143, § 7.
 G. S. 165,
 § 33.
 P. S. 207,
 § 34

R. L. 212, § 47. can be taken before a court or trial justice having jurisdiction of such 7
 1914, 654. offence. 8
 3 Op. A. G. 96.

SECTION 55. [REPEALED, 1928, 155, § 58.] 1

Repetition of offence a breach of recognizance. 1834, 151, § 3. R. S. 143, § 8. G. S. 165, § 31. SECTION 56. If a person convicted under section fifty-three appeals from the sentence, the commission of any like offence by him before judgment on the appeal shall be a breach of the condition of the recognizance, if any was taken upon allowing the appeal. 1
2
3
4

P. S. 207, § 32. R. L. 212, § 50.

Discharge of defendant on recognizance. R. S. 143, § 9. G. S. 165, § 32. 1866, 235, § 5. P. S. 207, § 33. R. L. 212, § 51. SECTION 57. When a person is brought before a magistrate upon a charge of any offence mentioned in sections fifty-three, sixty-six and sixty-eight, such magistrate, or the court before which the case may be carried on appeal, may at any stage of the proceedings direct the defendant or appellant to be discharged, upon his entering into a recognizance, with sufficient sureties, in such sum as the magistrate or court orders, for his good behavior for not less than six months nor more than two years, and paying the expenses of prosecution or such part thereof as the magistrate or court orders. 1
2
3
4
5
6
7
8
9

Begging by children. 1887, 422. R. L. 212, § 52. SECTION 58. A parent or other person who employs a minor under fifteen in begging or who, having the care or custody of such minor, permits him to engage in such employment shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months. 1
2
3
4
5

Arrest without a warrant for violations of ordinances, etc. 1878, 181. P. S. 207, § 35. R. L. 212, § 53. 1906, 403. SECTION 59. Whoever remains in a street or elsewhere in a town in wilful violation of an ordinance or by-law of such town or of any rule or regulation for the government or use of any public reservation, parkway or boulevard made under authority of law by any department, officer or board in charge thereof, and whoever in a street or other public place accosts or addresses another person with profane or obscene language, in wilful violation of an ordinance or by-law of such town, may be arrested without a warrant by an officer authorized to serve criminal process in the place where the offence is committed, if he is unknown to such officer, and kept in custody until he can be taken before a court having jurisdiction of the offence. 1
2
3
4
5
6
7
8
9
10
11

Certain persons may be arrested and detained for the purpose of ascertaining their identity, etc. 1910, 436, § 1. SECTION 60. Whoever commits a misdemeanor, as defined by a by-law, regulation or ordinance of a town or authority therein, in the presence of a police officer or an officer authorized to serve criminal process, the substance of which misdemeanor is the placing on or in or throwing into a public way, the sidewalk of a public way or a public alley, filth, rubbish or other substance, and, being requested by such officer forthwith to remove it, refuses or neglects so to do, and if the identity of such person is unknown to the officer, may be arrested by such officer and detained in a safe place without a warrant until his identity is ascertained. Reasonable diligence shall be exercised by the arresting officer in ascertaining the identity of the offender and when identified he shall be released from arrest unless a warrant has issued against him. 1
2
3
4
5
6
7
8
9
10
11
12

1 SECTION 61. Whoever, having been discharged under section one
 2 hundred and forty of chapter one hundred and twenty-seven, is after-
 3 ward convicted of any offence mentioned in section fifty-three com-
 4 mitted after the former conviction, either in the same or a different
 5 county, may be sentenced to hard labor in the house of correction for
 6 not more than one year.

Conviction
after discharge
on former
conviction.
1834, 151, § 8.
R. S. 143, § 13.
G. S. 165, § 34.
P. S. 207, § 36.
R. L. 212, § 54.

1931, 426, § 47.

1 SECTION 62. If a complaint charges a person with being a common
 2 nightwalker, and it is proved at the trial that such person has been twice
 3 before convicted of the same offence, such person may be sentenced to
 4 the house of correction for not more than two and one half years or to the
 5 state farm.

Nightwalking.
Third con-
viction.
1855, 69, § 1.
G. S. 165, § 35.
1866, 198, § 5.
1869, 258, § 1.

1870, 19; 288, § 1.
P. S. 88, § 5;
207, § 37.
1897, 395, § 4.

1898, 443, § 1.
R. L. 85, § 30;
212, § 55.
1918, 257, § 464.

1919, 5.
1920, 2.
1931, 426, § 313.
Op. A. G. (1920) 39.

1 SECTION 63. Whoever, not being under seventeen, a blind person or
 2 a person asking charity within his own town, roves about from place to
 3 place begging, or living without labor or visible means of support, shall
 4 be deemed a tramp. An act of begging or soliciting alms, whether of
 5 money, food, lodging or clothing, by a person having no residence in the
 6 town within which the act is committed, or the riding upon a freight train
 7 of a railroad, whether within or without any car or part thereof, without
 8 a permit from the proper officers or employees of such railroad or train,
 9 shall be prima facie evidence that such person is a tramp.

Tramps.
1880, 257,
§§ 2, 3, 7.
P. S. 207, § 38.
1896, 385.
R. L. 212, § 56.

1 SECTION 64. A tramp shall be punished by imprisonment in the
 2 house of correction for not less than six months nor more than two
 3 years, or by imprisonment at the state farm; and if he enters a dwelling
 4 house or other building without the consent of the owner or occupant
 5 thereof, or wilfully or maliciously injures or threatens to injure any person
 6 therein, or threatens to do any injury to any person, or to the property of
 7 another, or is found carrying a firearm or other dangerous weapon, he
 8 shall be punished by imprisonment in the house of correction for not
 9 less than one nor more than two and one half years, or at the state farm,
 10 but notwithstanding the foregoing a tramp found carrying a firearm or
 11 other dangerous weapon in violation of section ten of chapter two hundred
 12 and sixty-nine may be prosecuted and punished thereunder.

Punishment
of tramps.
1880, 257,
§§ 1, 4.
P. S. 207,
§§ 39, 40.
R. L. 212, § 57.
1918, 257,
§ 464.
1919, 5.
1920, 2.
1931, 426,
§ 314.

1 SECTION 65. A sheriff, deputy sheriff, constable or police officer,
 2 upon view or information of an offence described in the two preceding
 3 sections, may, without a warrant, arrest the offender, and make com-
 4 plaint against him therefor; and the state police shall make such arrests
 5 and complaints. Mayors and selectmen shall appoint special police
 6 officers, who shall also make such arrests and complaints in their re-
 7 spective towns.

Arrest of
tramps.
1880, 257,
§§ 5, 6.
P. S. 207, § 41.
R. L. 212, § 58.

1 SECTION 66. Idle persons who, not having visible means of support,
 2 live without lawful employment; persons wandering abroad and visiting
 3 tippling shops or houses of ill fame, or lodging in groceries, outhouses,
 4 market places, sheds, barns or in the open air, and not giving a good
 5 account of themselves; persons wandering abroad and begging, or who
 6 go about from door to door, or place themselves in public ways, passages

Vagrants.
1866, 235,
§§ 1, 3.
P. S. 207, § 42.
1884, 258, § 1.
1885, 365, § 1.
1886, 323, § 1.
1898, 443, § 1.
R. L. 212, § 59.
13 Allen, 550
108 Mass. 17

147 Mass. 309
1 Op. A. G.
459.

or other public places to beg or receive alms, and who do not come within the description of tramps, as contained in section sixty-three, shall be deemed vagrants, and may be sentenced to the Massachusetts reformatory or state farm or shall be punished by imprisonment for not more than six months in the house of correction or workhouse.

Arrest of
vagrants
1866, 235, § 2.
P. S. 207, § 43.
R. L. 212, § 60.

SECTION 67. Sheriffs, deputy sheriffs, constables and police officers, acting on the request of any person or upon their own information or belief, shall without a warrant arrest and carry any vagrant before a district court or trial justice for the purpose of an examination, and shall make complaint against him.

Certain persons
to be deemed
vagabonds
1866, 235, § 4.
P. S. 207, § 44.
R. L. 212, § 61.
1913, 114
207 Mass. 572.

SECTION 68. A person known to be a pickpocket, thief or burglar, if acting in a suspicious manner around any steamboat landing, railroad depot, or any electric railway station, or place where electric railway cars stop to allow passengers to enter or leave the cars, banking institution, broker's office, place of public amusement, auction room, store, shop, crowded thoroughfare, car or omnibus, or at any public gathering or assembly, shall be deemed a vagabond, and shall be punished by imprisonment in the house of correction for not less than four nor more than twelve months.

Arrest of
vagabonds.
1866, 235, § 4.
P. S. 207, § 45.
R. L. 212, § 62.

SECTION 69. Sheriffs, deputy sheriffs, constables and police officers shall take any such vagabond into custody without a warrant and shall, within twenty-four hours after such arrest, Sundays and legal holidays excepted, take him before a district court or trial justice, and shall make complaint against him.

Attachment of
dead body.
1811, 102, § 2.
R. S. 14, § 81.
G. S. 165, § 36.
P. S. 207, § 46.
R. L. 212, § 63.

SECTION 70. A sheriff, deputy sheriff or constable who takes the body of a deceased person on mesne process or execution shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

Violation of
sepulture.
1814, 175.
1830, 57,
§§ 1, 2.
R. S. 130, § 19.
G. S. 165, § 37.
1879, 16.
P. S. 207, § 47.
1897, 395, § 5.
R. L. 212, § 64
1918, 257,
§ 464.

SECTION 71. Whoever, not being lawfully authorized by the proper authorities, wilfully digs up, disinters, removes or conveys away a human body, or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than two thousand dollars.

1919, 5.
1920, 2.

1931, 426, § 315.
S Pick. 370.

10 Pick. 37.
19 Pick. 304.

Buying or
selling dead
body.
1855, 323,
§§ 2, 3.
G. S. 165, § 38
P. S. 207, § 48.
R. L. 212, § 65.
1918, 257, § 464.

SECTION 72. Whoever buys or sells, or has in his possession for the purpose of buying, selling or trafficking in, the dead body of a human being shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment for not less than three months nor more than two and one half years.

1919, 5.

1920, 2.

Injuring or
defacing tombs,
etc.
1834, 187, § 2.
R. S. 130, § 20.

SECTION 73. Whoever wilfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone or other structure or thing which is placed or designed for a memorial of the dead, or a fence, railing,

4 curb or other thing which is intended for the protection or ornament of
 5 a structure or thing before mentioned or of an enclosure for the burial of
 6 the dead, or wilfully destroys, mutilates, removes, cuts, breaks or injures
 7 a tree, shrub or plant placed or being within such enclosure, or wantonly
 8 or maliciously disturbs the contents of a tomb or a grave, shall be punished
 9 by a fine of not more than one thousand dollars or by imprisonment in
 10 the jail or house of correction for not more than two and one half years.

G. S. 165, § 39
 1879, 39.
 P. S. 207, § 49
 R. L. 212, § 66
 1918, 257,
 § 464.
 1919, 5.
 1920, 2.
 100 Mass. 181.

1 SECTION 74. Whoever wrongfully, and by any act not included in
 2 the preceding section, destroys, injures or removes a building, fence,
 3 railing or other thing lawfully erected in or around a place of burial or
 4 cemetery, or a tree, shrub or plant within its limits, or wrongfully injures
 5 a walk or path, or places rubbish or offensive matter or commits a nuisance
 6 therein, or in any way desecrates or disfigures the same, shall forfeit not
 7 less than five nor more than one hundred dollars. Upon the trial of a
 8 complaint hereunder, use and occupation for the purposes of burial shall
 9 be sufficient evidence of title.

Desecration
 of burial
 ground.
 1841, 114, § 6.
 1855, 257, § 8.
 G. S. 28, § 12.
 P. S. 207, § 50.
 R. L. 212, § 67.
 2 Allen, 512
 7 Allen, 299
 100 Mass. 181.

1 SECTION 75. Whoever, without authority, removes flowers, flags or
 2 memorial tokens from any grave, tomb, monument or burial lot in any
 3 cemetery or other place of burial shall be punished by a fine of not more
 4 than one hundred dollars.

Removal of
 flowers, etc.,
 from grave.
 1888, 395
 R. L. 212, § 68

1 SECTION 76. Whoever lays out, opens, or makes a highway or town
 2 way, or constructs a railroad or canal, or any other thing in the nature
 3 of a public easement, over, through, in or upon any part of an enclosure,
 4 which is the property of a city, town, parish, religious society or of private
 5 proprietors and is used or appropriated for the burial of the dead, unless
 6 authority for that purpose is specially granted by law, or unless the
 7 consent of such city, town, parish, religious society or proprietors, re-
 8 spectively, is first obtained, shall be punished by a fine of not more than
 9 two thousand dollars or by imprisonment for not more than one year.

Making road,
 etc., through
 burial ground.
 1834, 187, § 1.
 R. S. 24,
 §§ 59, 60;
 30, § 21
 G. S. 165, § 40.
 P. S. 207, § 51.
 R. L. 212, § 69.

1 SECTION 77. Whoever overdrives, overloads, drives when overloaded,
 2 overworks, tortures, torments, deprives of necessary sustenance, cruelly
 3 beats, mutilates or kills an animal, or causes or procures an animal
 4 to be so overdriven, overloaded, driven when overloaded, overworked,
 5 tortured, tormented, deprived of necessary sustenance, cruelly beaten,
 6 mutilated or killed, and whoever, having the charge or custody of an
 7 animal, either as owner or otherwise, inflicts unnecessary cruelty upon
 8 it, or unnecessarily fails to provide it with proper food, drink, shelter or
 9 protection from the weather, and whoever, as owner, possessor or person
 10 having the charge or custody of an animal, cruelly drives or works it
 11 when unfit for labor, or cruelly abandons it, or carries it or causes it to be
 12 carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or
 13 inhuman manner, or knowingly and wilfully authorizes or permits it to
 14 be subjected to unnecessary torture, suffering or cruelty of any kind, shall
 15 be punished by imprisonment for not more than one year or by a fine
 16 of not more than two hundred and fifty dollars, or both.

Cruelty to
 animals.
 R. S. 180, § 22.
 1859, 96.
 G. S. 165, § 41.
 1868, 212,
 §§ 1-4.
 1869, 344.
 §§ 1, 2
 P. S. 207,
 §§ 52, 53.
 R. L. 212, § 70.
 7 Allen, 579
 101 Mass. 34
 111 Mass. 108
 113 Mass. 157
 118 Mass. 158.
 127 Mass. 560
 145 Mass. 296.
 150 Mass. 509
 162 Mass. 517.
 164 Mass. 576.
 172 Mass. 214.

1 SECTION 78. No person holding an auctioneer's license shall receive
 2 or offer for sale or sell at public auction, nor shall any person sell at private
 3 sale, or lead, ride or drive on any public way, for any purpose except
 4 that of conveying the horse to a proper place for its humane keeping

Buying,
 selling, etc.,
 leading,
 driving, etc.,
 disabled
 horses
 Penalty.

1906, 185.
1913, 281.

or killing, or for medical or surgical treatment, any horse which, by reason of debility, disease or lameness, or for other cause, could not be worked in the commonwealth without violating the laws against cruelty to animals. This section shall not prohibit the purchase of horses by humane societies incorporated under the laws of the commonwealth for the purpose of humanely killing the same. Violation of this section shall be punished by a fine of not less than five nor more than one hundred dollars or by imprisonment for not more than six months. If a licensed auctioneer violates this section, he shall also forfeit his license.

Corporations
liable.
1868, 212, § 7.
1869, 344, § 6.
P. S. 207, § 54.
R. L. 212, § 71.

SECTION 79. A corporation violating either of the two preceding sections shall be punished by a fine as therein provided, and shall be responsible for the knowledge and acts of its agents and servants relative to animals transported, owned or used by it or in its custody.

Mutilation
of horses.
1889, 267.
1894, 461,
§§ 1-3.
R. L. 212, § 72.

SECTION 80. Whoever cuts the bone of the tail of a horse for the purpose of docking the tail, or whoever causes or knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or whoever assists in or is present at such cutting, shall be punished by imprisonment for not more than one year or by a fine of not less than one hundred nor more than three hundred dollars. If a horse is found with its tail so cut and with the wound resulting from such cutting unhealed, upon the premises or in the charge and custody of any person, such fact shall be prima facie evidence of a violation of this section by the owner or user of such premises or the person having such charge or custody, respectively.

Mutilation
of dogs.
1928, 347, § 1.

SECTION 80A. Whoever crops or cuts off, or causes or procures to be cropped or cut off, except when and as certified to be reasonably necessary by a veterinarian duly registered under chapter one hundred and twelve, the whole or any part of the ear of a dog shall be punished by a fine of not more than two hundred and fifty dollars. If a dog with an ear cropped or cut off in whole or in part and with the wound resulting therefrom unhealed is found confined upon the premises or in the charge or custody of any person, such fact shall be prima facie evidence of a violation of this section by the person in control of such premises or the person having such charge or custody.

Exhibition of
mutilated dogs
prohibited.
1928, 347, § 1.

SECTION 80B. Whoever shows or exhibits or procures to be shown or exhibited at any dog show or exhibition in the commonwealth a dog with an ear or ears cropped or cut off, except when and as certified to be reasonably necessary by a veterinarian duly registered under the laws of the state of his residence, shall be punished by a fine of not more than two hundred and fifty dollars.

Rest for
animals
transported.
1868, 212, § 5.
1869, 344, § 3.
1874, 372,
§ 142.
P. S. 207, § 55.
R. L. 212, § 73.
179 Mass. 44.

SECTION 81. Railroad corporations shall not permit animals carried or transported by them to be confined in cars longer than twenty-eight consecutive hours without unloading them for at least five consecutive hours for rest, water and feeding, unless prevented by storm or accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall during such rest be properly fed, watered and sheltered by the owner or person having the custody of them, or, in case of his default, by the railroad corporation

10 transporting them, at the expense of said owner or person in custody
 11 thereof. In such case the corporation shall have a lien upon such animals
 12 for food, care and custody furnished, and shall not be liable for such
 13 detention. A corporation, owner or eustodian of such animals failing to
 14 comply with this section shall be punished by a fine of not less than one
 15 hundred nor more than five hundred dollars. This section shall not apply
 16 to animals carried in cars in which they can and do have proper food,
 17 water, space and opportunity for rest.

1 SECTION 82. A person found violating any provision of section
 2 seventy-seven or eighty-one may be arrested and held without a warrant
 3 as provided in section fifty-four; the person making an arrest with or
 4 without a warrant shall use reasonable diligence to give notice thereof to
 5 the owner of animals found in the charge or custody of the person arrested,
 6 shall properly care and provide for such animals until the owner thereof
 7 takes charge of them, not, however, exceeding sixty days from the date
 8 of said notice, and shall have a lien on said animals for the expense of
 9 such care and provision.

Arrest for
 cruelty to
 animals.
 1869, 341, § 4.
 P. S. 207, § 56.
 R. L. 212, § 74.

1 SECTION 83. If complaint is made to a court or magistrate authorized
 2 to issue warrants in criminal cases that the complainant has reasonable
 3 cause to believe that the laws relative to cruelty to animals have been or
 4 are violated in any particular building or place, such court or magistrate,
 5 if satisfied that there is reasonable cause for such belief, shall issue a
 6 search warrant authorizing any sheriff, deputy sheriff, constable or police
 7 officer to search such building or place; but no such search shall be made
 8 after sunset, unless specially authorized by the magistrate upon satisfac-
 9 tory cause shown.

Search
 warrant.
 1869, 341, § 5.
 P. S. 207, § 57.
 R. L. 212, § 75.

1 SECTION 84. Sheriffs, deputy sheriffs, constables and police officers
 2 shall prosecute all violations of sections seventy-seven to eighty-one, in-
 3 clusive, which come to their notice, and, upon all convictions for cruelty
 4 to animals, fines collected upon or resulting from the complaint or informa-
 5 tion of an officer or agent of the Massachusetts Society for the Preven-
 6 tion of Cruelty to Animals shall, except as provided in the following
 7 section, be paid to said society after deducting therefrom for the expense
 8 of prosecution such amount as the court or trial justice shall order.

Officers to
 prosecute.
 Disposition
 of fines.
 1868, 212, § 8.
 1869, 341, § 7.
 P. S. 207, § 58.
 1891, 304.
 R. L. 212, § 76.
 2 Op. A. G.
 292.
 Op. A. G.
 (1920) 277.

1 SECTION 85. One half of all fines collected upon convictions under
 2 section eighty upon or resulting from the complaint or information of any
 3 officer or agent of the Massachusetts Society for the Prevention of Cruelty
 4 to Animals shall be paid to said society.

Same subject.
 1894, 461, § 4.
 R. L. 212, § 77.

1 SECTION 86. No person shall stable a horse or mule on the second or
 2 any higher floor of any building, unless there are two means of exit there-
 3 from, at opposite ends of the building, to the main or street floor, unless
 4 such building is equipped with an automatic sprinkler system. This sec-
 5 tion shall not apply to cities.

Stabling horse,
 etc., above
 first floor.
 1916, 158,
 §§ 1-3.
 1921, 109.
 1924, 478, § 1.

1 SECTION 86A. No person shall stable a horse or mule above the first
 2 or ground floor of any building not equipped with an automatic sprinkler
 3 system, or horses or mules exceeding six in all on the first or ground floor
 4 of any building not so equipped, unless there are two unobstructed means
 5 of exit from each floor whereon it or they are stabled, as far apart as

Same subject.
 1924, 478, § 2.

	practicable and so constructed as to grade that the said animal or animals can quickly and safely leave the building in case of fire and approved as to situation, arrangement and utility by the chief of the fire department. The person in charge of horses and mules stabled in any building not equipped with such a system and requiring two exits as aforesaid shall cause each such animal to use each such exit at least once a week. This and the four following sections shall apply only to cities.	6 7 8 9 10 11 12
Number of horses, etc., in certain buildings limited. 1924, 478, § 2.	SECTION 86B. No person shall stable horses or mules exceeding fifteen in all at any one time in a building not equipped with an automatic sprinkler system unless a watchman is employed constantly on the premises to guard against fire.	1 2 3 4
Smoking in certain stables prohibited, except. 1924, 478, § 2.	SECTION 86C. No person shall have a lighted cigarette, cigar or pipe in his possession in any building in which by the provisions of section eighty-six A two unobstructed means of exit are required or in which by the provisions of section eighty-six B the employment of a watchman is required, except in a room in said building made fire-resisting.	1 2 3 4 5
Certain stables to be equipped with pails of water, etc. 1924, 478, § 2.	SECTION 86D. On every floor of a building not equipped with an automatic sprinkler system, where horses or mules are stabled, there shall be kept in accessible locations and filled at all times, four pails of water and one pail of sand, for each one thousand square feet of floor space, to be used for no other purpose than extinguishing fires and to be so marked.	1 2 3 4 5
Entry into stables by certain officials for law enforcement. 1924, 478, § 2. 1930, 399, § 4.	SECTION 86E. The chief of the fire department or any person designated by him may, at all reasonable hours, enter into buildings within their jurisdiction where horses or mules are stabled, or upon premises adjacent thereto, for the purpose of enforcing sections eighty-six A to eighty-six D, inclusive, and if any such official or person so authorized finds the existence of conditions likely to cause a fire in such buildings or on such premises, he shall order such conditions to be remedied. Such order shall be served by delivering the same in hand or by posting the same in a conspicuous place on the building or premises affected thereby.	1 2 3 4 5 6 7 8 9
Penalties. 1924, 478, § 2.	SECTION 86F. Whoever violates any provision of sections eighty-six to eighty-six D, inclusive, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one month, or both. Whoever refuses or unreasonably neglects to comply with any order issued under section eighty-six E shall be punished by a fine of not more than ten dollars for each day during which such refusal or neglect continues after service of said order.	1 2 3 4 5 6 7
Pigeon shooting, etc. 1879, 187. P. S. 207, § 59. R. L. 212, § 78.	SECTION 87. Whoever keeps or uses any live bird, to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field or premises, or knowingly permits the use thereof, for the purpose of such shooting, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month, or both. Nothing herein contained shall apply to the shooting of wild game.	1 2 3 4 5 6 7
Search warrant for fighting birds, etc. 1876, 85, § 1. P. S. 207, § 60. R. L. 212, § 79.	SECTION 88. If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant has reasonable cause to believe that preparations are being made for an exhibition of the	1 2 3

4 fighting of birds, dogs or other animals, or that such exhibition is in
 5 progress, or that birds, dogs or other animals are kept or trained for fight-
 6 ing at any place or in any building or tenement, such court or magistrate,
 7 if satisfied that there is reasonable cause for such belief, shall issue a
 8 search warrant authorizing any sheriff, deputy sheriff, constable or police
 9 officer, or special police officer duly appointed by the commissioner of
 10 public safety at the request of the Massachusetts Society for the Pre-
 11 vention of Cruelty to Animals, to search such place, building or tenement
 12 at any hour of the day or night and take possession of all such birds, dogs
 13 or other animals there found, and arrest all persons there present at any
 14 such exhibition or where preparations for such exhibition are being made,
 15 or where birds, dogs or other animals are kept or trained for fighting.

1918, 99, § 1.
 1926, 76, § 1.

1 SECTION 89. Any officer authorized to serve criminal process, or
 2 special police officer duly appointed by the commissioner of public safety
 3 at the request of the Massachusetts Society for the Prevention of Cruelty
 4 to Animals, may, without a warrant, enter any place, building or tene-
 5 ment in which there is an exhibition of the fighting of birds, dogs or other
 6 animals, or in which preparations are being made for such an exhibition,
 7 and arrest all persons there present and take possession of and remove
 8 from the place of seizure the birds, dogs or other animals engaged in fight-
 9 ing, or there found and intended to be used or engaged in fighting, or kept
 10 or trained for fighting, and hold the same in custody subject to the order
 11 of court as hereinafter provided.

Entry without
 a warrant, etc.
 1869, 435, § 1
 1876, 85, § 2
 P. S. 207, § 61.
 R. L. 212, § 80
 1918, 99, § 2
 1926, 76, § 2.

1 SECTION 90. Persons arrested under either of the two preceding sec-
 2 tions shall be kept in jail or other convenient place not more than twenty-
 3 four hours, Sundays and legal holidays excepted, at or before the ex-
 4 piration of which time they shall be taken before a district court or a
 5 trial justice and proceeded against according to law.

Persons
 arrested to be
 taken before
 court, etc.
 1869, 435, § 1.
 1876, 85, § 3.
 P. S. 207, § 62.

R. L. 212, § 81.

1 SECTION 91. After such seizure and removal of such birds, dogs or
 2 other animals, application shall be made to a district court or a trial
 3 justice for a decree of forfeiture of the same; and if, upon the hearing
 4 of such application, notice thereof having been previously given as the
 5 justice or court orders, it shall be found that such birds, dogs or other
 6 animals, or any of them, at the time of such seizure were engaged in
 7 fighting at an exhibition thereof, or were owned, kept, possessed or
 8 trained by any person with the intent that they should be so engaged,
 9 such birds, dogs or other animals shall be adjudged forfeited and such
 10 justice or court shall thereupon, unless an appeal is taken as provided
 11 in the following section, issue an order for killing them, which shall be
 12 directed to any officer authorized to serve criminal process; and the
 13 officer receiving said order shall cause such birds, dogs or other animals
 14 to be killed within twenty-four hours thereafter. Birds, dogs or other
 15 animals seized as hereinbefore provided, which are not adjudged for-
 16 feited, shall be delivered to the owner or person entitled to the posses-
 17 sion thereof. Any person shall be allowed to appear as claimant in the
 18 proceeding upon the application for a decree of forfeiture.

Judgment of
 forfeiture, etc.
 Proceedings
 thereon.
 1869, 435, § 2.
 1876, 85, § 4
 P. S. 207, § 63
 R. L. 212, § 82.

1 SECTION 92. An owner or claimant aggrieved by such judgment
 2 may, within twenty-four hours after the entry thereof and before its
 3 execution, appeal therefrom to the superior court; and all proceedings

Appeal.
 1869, 435, § 3.
 1876, 85, § 5.
 P. S. 207, § 64.
 R. L. 212, § 83

upon and after such appeal, including the right of exception, shall conform, so far as may be, to those in criminal cases, except that before such appeal is allowed the appellant shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient sureties, to prosecute his appeal and to pay such expenses of the prosecution as the court may order and such expenses as may be thereafter incurred in the care and keeping of the birds, dogs or other animals claimed by such appellant if final judgment is rendered against them, and to abide the judgment of the court thereon. Upon the final judgment, the birds, dogs or other animals held in custody to abide such judgment shall be disposed of, under the direction of the superior court, in like manner as the court or justice might have disposed of them if no appeal had been taken. During the pendency of the appeal, all birds, dogs or other animals adjudged forfeited shall be kept in custody in a place other than that from which they were taken.

Expenses of care, etc., of birds, etc.
1869, 435, § 4.
1876, 85, § 6.

SECTION 93. The necessary expenses incurred in the care and destruction of such birds, dogs and other animals may be allowed and paid in the same manner as expenses in criminal prosecutions.

P. S. 207, § 65.

R. L. 212, § 84.

Penalty on owner, etc.
1859, 158, § 1.
G. S. 88, § 79.
1869, 435, § 5.
1876, 85, § 7.
P. S. 207, § 66.
R. L. 212, § 83.

SECTION 94. Whoever owns, possesses, keeps or trains a bird, dog or other animal, with intent that it shall be engaged in an exhibition of fighting, or whoever establishes or promotes an exhibition of the fighting of birds, dogs or other animals, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both.

Penalty for being present at exhibition, etc.
1859, 158, § 2.
G. S. 88, § 79.
1869, 435, § 6.
1876, 85, § 8.
P. S. 207, § 67.
R. L. 212, § 86.
Op. A. G. (1920) 277.

SECTION 95. Whoever is present at any place, building or tenement where preparations are being made for an exhibition of the fighting of birds, dogs or other animals, with intent to be present at such exhibition, or is present at, aids in or contributes to such exhibition, shall be punished by a fine of not more than twenty-five dollars or by imprisonment for not more than one month, or both.

False notice of birth, etc.
1800, 195.
P. S. 207, § 68.
R. L. 212, § 87.

SECTION 96. Whoever wilfully sends to the publisher of a newspaper for publication a false notice of a birth, marriage or death shall be punished by a fine of not more than one hundred dollars.

Costumed debt collectors.
1809, 238.
R. L. 212, § 88.
1918, 257, § 404.
1919, 5.
1920, 2.

SECTION 97. A director or officer of a corporation engaged in the business of a collection agency or in making collections from delinquent debtors or any other person who employs persons, dressed in unusual and striking costumes intended to attract public attention to the occupation of the wearers, to call upon debtors for the purpose of demanding payments of debts alleged to be due, and whoever, being so employed, calls at the house or place of business of an alleged debtor, wearing such costume, or a costume having an inscription adapted to attract attention to his occupation, shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment in jail for not less than three months nor more than two and one half years.

Color or race discrimination.
1863, 277.
1866, 252.

SECTION 98. Whoever makes any distinction, discrimination or restriction on account of color or race, except for good cause applicable

3 alike to all persons of every color and race, relative to the admission of
 4 any person to, or his treatment in, a theatre, skating rink or other public
 5 place of amusement, licensed or unlicensed, or in a public conveyance or
 6 public meeting, or in an inn, barber shop or other public place kept for
 7 hire, gain or reward, licensed or unlicensed, or whoever aids or incites
 8 such distinction, discrimination or restriction, shall be punished by a
 9 fine of not more than three hundred dollars or by imprisonment for not
 10 more than one year, or both, and shall forfeit to any person aggrieved
 11 thereby not less than twenty-five nor more than three hundred dol-
 12 lars; but such person so aggrieved shall not recover against more than
 13 one person by reason of any one act of distinction, discrimination or
 14 restriction.

P. S. 207, § 69,
 1885, 316,
 1893, 436,
 1895, 461,
 R. L. 212, § 89,
 13 Allen, 247,
 216 Mass. 341,
 217 Mass. 589.

1 SECTION 99. Whoever, except when authorized by written permis-
 2 sion of the attorney general of the commonwealth, or of the district at-
 3 torney for the district, secretly overhears, or attempts secretly to over-
 4 hear, or to have any other person secretly overhear, any spoken words
 5 in any building by using a device commonly known as a dictagraph or
 6 dictaphone, or however otherwise described, or any similar device or
 7 arrangement, or by tapping any wire, with intent to procure information
 8 concerning any official matter or to injure another, shall be guilty of the
 9 crime of eavesdropping and shall be punished by imprisonment for not
 10 more than two years or by a fine of not more than one thousand dollars,
 11 or both.

Eavesdropping,
 1920, 558, § 1.

1 SECTION 100. Whoever, except when authorized under the preced-
 2 ing section, either on his own account or as the servant or agent of an-
 3 other, permits or acquiesces in the installing of a device commonly known
 4 as a dictagraph or dictaphone or any similar device or arrangement, or
 5 the tapping of any wire, with intent to procure or knowing or intending
 6 that it will be used to procure information concerning any official matter
 7 or to injure another, shall be punished by imprisonment for not more
 8 than two years or by a fine of not more than one thousand dollars, or
 9 both.

Accessory to
 same
 1920, 558, § 1.

1 SECTION 101. Proof of the installation in any building of any device
 2 or arrangement which may be used for the purpose of violating the pro-
 3 visions of section ninety-nine by listening to any spoken words or proof
 4 of the tapping of any wire, unless duly authorized and unless done with
 5 the consent of the owner or person in control of the building, shall be
 6 prima facie evidence of the commission of the crime of eavesdropping;
 7 but nothing contained in this or the two preceding sections shall render it
 8 unlawful for any person to install and use such a device on premises
 9 under his exclusive control.

Prima facie
 evidence
 1920, 558, § 2.

1 SECTION 102. The three preceding sections shall not apply to a cor-
 2 poration subject to the jurisdiction of the department of public utilities
 3 of the commonwealth or to the jurisdiction of the interstate commerce
 4 commission, or to the employees of any such corporation while engaged
 5 in the conduct of its business.

To whom
 §§ 99 - 101 not
 applicable.
 1920, 558, § 5.

CHAPTER 273.

DESERTION, NON-SUPPORT AND ILLEGITIMACY.

SECT.

WIVES AND CHILDREN.

1. Offences and punishment.
2. Jurisdiction and venue.
3. Fines may be used for support.
4. Orders pendente lite.
5. Orders for payment.
6. Recognizances. Forfeited bail, etc., may be used for support.
7. Evidence.
8. Want of custody of child no defence.
9. Payment for labor of convict.
10. Uniformity of construction.

ILLEGITIMACY.

11. Getting woman with child. Jurisdiction and venue.
12. Adjudication of paternity. Appeal. New trial.

SECT.

13. Adjournments. Confinement, etc., expenses.
14. Custody of child.
15. Non-support of child.
16. Penalties, orders and practice like those provided for cases of legitimate children.
17. Dismissal, when allowed. Effect.
18. Forfeited bail may be used for support.
19. Cannot proceed after illegitimacy proceedings under former law.

DESTITUTE PARENTS.

20. Offence and punishment.
21. Jurisdiction and venue.
22. Orders and practice like those provided for cases of wives and children.

WIVES AND CHILDREN.

Offences and punishment.
 1882, 270, § 4
 1884, 210, § 1
 1885, 176, § 1.
 1893, 262.
 1899, 309, § 1.
 R. L. 212, § 45.
 1905, 307.
 1906, 501, § 1
 1907, 563, § 26.
 1908, 104
 1909, 180.
 1911, 456, § 1.
 1925, 126
 1929, 258, § 1.
 1931, 226.
 136 Mass. 435.
 156 Mass. 485.
 157 Mass. 73.
 165 Mass. 356.
 197 Mass. 91.
 220 Mass. 336.
 223 Mass. 62.
 263 Mass. 25.
 266 Mass. 80.

SECTION 1. Any husband or father who without just cause deserts his wife or minor child, whether by going into another town in the commonwealth or into another state, and leaves them or any or either of them without making reasonable provision for their support, and any husband or father who unreasonably neglects or refuses to provide for the support and maintenance of his wife or minor child, and any husband or father who abandons or leaves his wife or minor child in danger of becoming a burden upon the public, and any mother who deserts or wilfully neglects or refuses to provide for the support and maintenance of her child under the age of sixteen, and any parent whose minor child by reason of the neglect, cruelty, drunkenness, habits of crime or other vice of such parent is growing up without education, or without salutary control, or without proper physical care, or in circumstances exposing such child to lead an idle and dissolute life, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both. No civil proceeding in any court shall be held to be a bar to a prosecution hereunder for desertion or non-support. In a prosecution hereunder for desertion or non-support against a husband, a decree or judgment of a probate court in a proceeding in which the husband appeared or was personally served with process, establishing the right of the wife to live apart, or her freedom to convey and deal with her property, or the right to the custody of the children, shall be admissible and shall be prima facie evidence of such right.

Jurisdiction and venue.
 1906, 501, § 5.
 1911, 456, § 3.
 197 Mass. 91.
 206 Mass. 80

SECTION 2. Proceedings under the preceding section shall be begun if in the superior court, in the county in which is situated the place where the husband and wife last lived together or where the husband or wife or parent of the child is living, and, if begun in a district court or before a trial justice, in the court or before the trial justice having such place within its or his judicial district.

1 SECTION 3. The court imposing a fine under section one may at any
 2 time order it paid in whole or in part to a probation officer, to be paid
 3 by him to the wife or to the city, town, corporation, society or person
 4 actually supporting the wife, child or children, or to the state treasurer
 5 for the use of the department of public welfare if the child has been
 6 committed to said department.

Fines may be used for support.
 1884, 210, § 1.
 1885, 176, § 1.
 1893, 262.
 R. L. 212, § 45.
 1905, 307.
 1906, 501, § 2.

1907, 563, § 26. 1908, 104. 1911, 456, § 2. 1919, 350, § 87.

1 SECTION 4. The district court, or a trial justice, at any time after
 2 arraignment and before an appeal from such court or trial justice is per-
 3 fected by entry in the superior court, and the superior court at any time
 4 after such entry and before final determination of the case, may, upon
 5 motion of the complainant or district attorney and upon notice to the
 6 defendant, enter such temporary order as may seem just, providing for
 7 the support of the wife, or children, or both, pendente lite, and said order,
 8 wherever made, shall continue in force until modified or revoked by the
 9 court before which the case is pending. If any such order is made by a
 10 district court, or by a trial justice, an appeal to the superior court shall
 11 not vacate such order. Violation of an order made by either court may
 12 be punished as for a contempt by the court before which the case is then
 13 pending.

Orders pendente lite.
 1911, 456, § 4.
 1922, 397.

1 SECTION 5. Before trial, with the consent of the defendant, or after
 2 entry of a plea of guilty or nolo contendere, or after conviction, if the
 3 defendant is placed on probation, with or without suspension of the execu-
 4 tion of a sentence, the court, having regard to the circumstances and to
 5 the financial ability or earning capacity of the defendant, may make an
 6 order, which shall be subject to change from time to time as circumstances
 7 may require, directing the defendant to pay certain sums periodically,
 8 for a term not exceeding six years, to the probation officer, and may re-
 9 lease the defendant from custody on probation. The probation officer,
 10 subject to the direction of the court, shall pay over payments received by
 11 him to the wife or guardian or custodian of the child, or to the city, town,
 12 corporation, society or person supporting the wife or child, or to the state
 13 treasurer for the use of the department of public welfare when the pay-
 14 ments are for the support of a child committed to it. If the court be satis-
 15 fied by due proof under oath that at any time the defendant has violated
 16 the terms of the order for payments, it may proceed to try the defendant
 17 upon the original charge, or sentence him under the original plea or con-
 18 viction, or enforce the suspended sentence, as the case may be.

Orders for payment.
 1905, 307.
 1906, 501,
 §§ 3, 4
 1907, 563, § 26
 1908, 104.
 1911, 456,
 §§ 5, 6.
 1914, 520.
 1918, 257,
 §§ 453, 454.
 1919, 5: 350,
 § 87.
 1920, 2.
 1925, 182.

1 SECTION 6. The court, in releasing a defendant from custody on pro-
 2 bation, may in its discretion require him to enter into a recognizance,
 3 with or without surety, in such sum as the court may order. The con-
 4 dition of the recognizance shall be, that if the defendant shall make his
 5 personal appearance in court, whenever ordered to do so, and shall comply
 6 with the order for payments, and with any change therein, then the recog-
 7 nizance shall be void, but otherwise shall be and remain of full force and
 8 effect. Suit may be brought upon such recognizance by the district
 9 attorney or any other person authorized by the court. If the defendant
 10 is admitted to bail pending trial, and the bail is forfeited, or if a recogni-
 11 zance under this section is forfeited, the court may order that the money
 12 forfeited or recovered be paid in whole or in part to a probation officer,
 13 to be paid by him as provided in the preceding section.

Recognizances Forfeited bail, etc., may be used for support.
 1871, 42, § 1.
 P. S. 85, § 4.
 R. L. 82, § 4.
 1905, 307.
 1906, 501,
 §§ 3, 4
 1907, 563, § 26
 1908, 104
 1911, 53: 456,
 §§ 5, 6.
 1913, 563, § 9.
 1914, 520.
 1918, 199: 257,
 §§ 453, 454.
 1919, 5
 1920, 2.

Evidence
 1893, 262, § 1.
 R. L. 212, § 45.
 1905, 397.
 1906, 501, § 1.
 1907, 563, § 26.
 1908, 104.
 1909, 180.
 1911, 456, § 7.
 219 Mass. 197.
 223 Mass. 150.
 263 Mass. 25.
 264 Mass. 485.

SECTION 7. No other or greater evidence shall be required to prove the marriage of the husband and wife, or that the defendant is the parent of the child, than may be required to prove the same facts in a civil action. In any prosecution begun under section one, both husband and wife shall be competent witnesses to testify against each other to any relevant matters, including the fact of their marriage and the parentage of the child; provided, that neither shall be compelled to give evidence incriminating himself. Proof of the desertion of the wife or child, or of the neglect or refusal to make reasonable provision for their support and maintenance, shall be prima facie evidence that such desertion, neglect or refusal is wilful and without just cause. In no prosecution under sections one to ten, inclusive, shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply.

Want of custody of child no defence.
 1917, 163.
 1918, 257, § 453.

SECTION 8. In proceedings under section one against a parent, relative to any minor child, it shall not of itself be a defence that the defendant has ceased to have custody or the right to custody of such child on his own acquiescence or by judicial action.

1919, 5; 148.

1920, 2.

244 Mass. 281.

Payment for labor of convict
 1911, 456, § 8.
 1912, 264; 310.
 1924, 381.

SECTION 9. If the court imposing a sentence under section one, finds the wife or child, as the case may be, of the defendant to be in destitute or needy circumstances, the superintendent, master or keeper of the reformatory or penal institution where he is confined upon such sentence shall pay over to the probation officer of such court at the end of each week, out of the annual appropriation for the maintenance of such reformatory or penal institution, a sum equal to fifty cents for the wife and an additional amount equal to twenty-five cents for each dependent minor child for each day's hard labor performed by the person so confined, and shall state the name of the person for whose labor the payment is made. The probation officer shall pay over said sum in the manner provided in section five for the payments therein provided for.

Uniformity of construction
 1911, 456, § 9.

SECTION 10. The nine preceding sections shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states enacting their provisions.

ILLEGITIMACY.

Getting woman with child Jurisdiction and venue.
 C. L. 55, § 2.
 1692-3, 18, § 5.
 1785, 66, § 2.
 R. S. 49, § 1.
 1851, 96, §§ 1, 2.
 1853, 57, § 11.
 1857, 300, § 1.

SECTION 11. Whoever, not being the husband of a woman, gets her with child shall be guilty of a misdemeanor. Proceedings under this section or any of the eight following sections shall be begun, if in the superior court, in the county in which is situated the place where the defendant or the mother of the illegitimate child lives, and, if begun in a district court, in the court having such place within its judicial district.

1859, 239, §§ 1, 2, 6.
 G. S. 72, §§ 1, 3, 13.
 1863, 127, § 5.
 P. S. 85, §§ 1, 3, 22.
 1885, 289.
 R. L. 82, §§ 1, 3, 22.
 1904, 159.

1913, 563, §§ 1, 9.
 1931, 256, § 4.
 3 Met. 209.
 13 Met. 372.
 15 Gray, 50.
 4 Allen, 365.

193 Mass. 528.
 229 Mass. 157.
 235 Mass. 385.
 236 Mass. 362.
 239 Mass. 592.
 267 Mass. 591.

Adjudication of paternity.
 Appeal.
 New trial.
 C. L. 55, § 2.

SECTION 12. If the defendant pleads guilty or nolo contendere, or is found guilty, the court shall enter a judgment adjudging him the father of the child; but such adjudication shall not be made after a plea of not

4 guilty, against the objection of the defendant, until the child is born
 5 or the court finds that the mother is at least six months pregnant. At
 6 the sitting when such adjudication is made by a district court, if made
 7 after a plea of not guilty, the defendant may appeal therefrom to the
 8 superior court as in other criminal cases. The adjudication, whether any
 9 sentence be imposed or not, shall be final and conclusive unless an appeal
 10 therefrom be taken as hereinbefore provided, or, if such adjudication
 11 be made by the superior court, unless set aside upon an appeal taken
 12 not later than three days thereafter under section twenty-eight of chap-
 13 ter two hundred and seventy-eight or upon exceptions. Such adjudica-
 14 tion may be entered by the superior court notwithstanding exceptions
 15 have been alleged or an appeal has been taken. The court making the
 16 adjudication may within one year thereafter grant a new trial for any
 17 cause.

1692-3, 18, § 5.
 1785, 66, § 12.
 R. S. 49, § 4.
 G. S. 72, § 7.
 1863, 127, § 2.
 P. S. 85,
 §§ 7, 15.
 1885, 384, § 5.
 R. L. 82,
 §§ 7, 15.
 1913, 563,
 §§ 2, 9.
 103 Mass. 50.
 112 Mass. 60.
 194 Mass. 291.

1 SECTION 13. No law limiting adjournments or continuances shall
 2 apply to any proceedings under sections eleven to nineteen, inclusive.
 3 If the child has not been born at the time of the adjudication, the court
 4 shall continue the case from time to time until the child is born. At any
 5 time after adjudication, after inquiring into the respective means of the
 6 defendant and the mother, the court having jurisdiction of the case may
 7 make an order for the payment to the mother or to a probation officer of a
 8 sum of money determined by the court for the expenses of the pregnancy
 9 and of the confinement of the mother, whether the child is born dead or
 10 alive. If the child has died, or subsequently if the child dies, the court
 11 may make an order for the payment of its funeral expenses, whether or not
 12 other relief is sought. For failure to comply with any such order the
 13 court may order the defendant committed to jail, as for a contempt of
 14 court, for a term not exceeding two months, unless he shall sooner comply
 15 therewith.

Adjournments.
 Confinement,
 etc., expenses.
 1692-3, 18, § 5.
 1785, 66, § 2.
 R. S. 49, § 2.
 G. S. 72, § 5.
 1863, 127, § 1.
 P. S. 85,
 §§ 6, 13.
 1891, 367.
 R. L. 82,
 §§ 6, 13.
 1913, 563,
 §§ 2, 4, 9.
 1931, 211.

1 SECTION 14. After the adjudication, the court may make such order
 2 as may be considered expedient relative to the care and custody of the
 3 child, and from time to time may revise and alter said order, as justice
 4 and the welfare of the child require, which order shall be binding on all
 5 persons.

Custody of
 child.
 1913, 563, § 5.

1 SECTION 15. Any father of an illegitimate child, whether begotten
 2 within or without the commonwealth, who neglects or refuses to contribute
 3 reasonably to its support and maintenance, shall be guilty of a misde-
 4 meanor. If there has been any final adjudication of the paternity of the
 5 child, such adjudication shall be conclusive on all persons in proceedings
 6 under this section; otherwise, the question of paternity shall be deter-
 7 mined in proceedings hereunder. The duty to contribute reasonably to
 8 the support of such child shall continue during its minority.

Non-support
 of child.
 C. L. 55, § 2.
 1692-3, 18, § 5.
 1785, 66, § 2.
 R. S. 49, § 4.
 G. S. 72, § 7.
 P. S. 85, § 15.
 R. L. 82, § 15.
 1913, 563,
 §§ 6, 7, 9.
 5 Mass. 517.

103 Mass. 50.
 112 Mass. 60.

223 Mass. 150.
 239 Mass. 592.

264 Mass. 485.

1 SECTION 16. After the adjudication and the birth of the child, in
 2 proceedings under section eleven, or after conviction, in proceedings
 3 under the preceding section, the defendant shall be subject upon the
 4 original complaint or indictment in such proceedings to penalties and
 5 orders for payments similar to those provided by the first ten sections
 6 of this chapter; and the practice established thereby shall, so far as

Penalties,
 orders and
 practice like
 those provided
 for cases of
 legitimate
 children.
 C. L. 55, § 2.
 1692-3, 18, § 5.
 1785, 66, § 2.

1825, 173
R. S. 49.
§§ 3, 4, 6.

applicable, apply to any proceedings under sections eleven to nineteen, inclusive. 7 8

1857, 305, §§ 1, 2.
1859, 239, § 4.
G. S. 72, §§ 7, 8, 12.
1871, 42, § 1.

P. S. 85, §§ 4, 15, 16, 21.
R. L. 82, §§ 1, 15, 16, 21.
1911, 53
1913, 563, §§ 6, 7, 9.

219 Mass. 197.
239 Mass. 592.
264 Mass. 485.

Dismissal, when allowed.
Effect.
1859, 239, § 5.
G. S. 72, §§ 9, 10.
1862, 213.
1865, 161.
P. S. 85, §§ 12, 17-19.
1885, 384, § 5.
R. L. 82, §§ 12, 17-19.
1905, 345.
1913, 563, §§ 3, 9.
4 Allen, 59
121 Mass. 533.

SECTION 17. If the court having jurisdiction of any case under sections eleven to nineteen, inclusive, or any of them, becomes satisfied that no living child will be born of which the defendant at the time of making the complaint was the father, or that the defendant and the mother have married each other and the child has become or will be the legitimate child of the defendant, or that adequate provision has been made for its maintenance, the case may be dismissed and any adjudication vacated; and if the court certifies that such provision has been made, no further prosecution shall be maintained under any of said sections. 1 2 3 4 5 6 7 8 9 10

Forfeited bail may be used for support.
1863, 127, § 2.
P. S. 85, § 7.
R. L. 82, § 7.
1913, 563, § 9.
1918, 199.

SECTION 18. If money is forfeited or recovered upon a recognizance or deposit in lieu thereof given in proceedings under sections eleven to nineteen, inclusive, or any of them, the court in which such proceedings are pending may order such money paid to the probation officer and expended by him, under the direction of the court, for the support of the child. 1 2 3 4 5 6

Cannot proceed after illegitimacy proceedings under former law.

SECTION 19. No proceedings shall be maintained under any of the eight preceding sections in any case where illegitimacy proceedings were begun before July first, nineteen hundred and thirteen. 1 2 3

1913, 563, §§ 7, 9.

1931, 256, § 5.

DESTITUTE PARENTS.

Offence and punishment.
1915, 163, § 1.
223 Mass. 159.
4 Op. A. G. 613.

SECTION 20. Any person, over twenty-one, who, being possessed of sufficient means, unreasonably neglects or refuses to provide for the support and maintenance of his parent, whether father or mother, residing in the commonwealth, when such parent through misfortune and without fault of his own is destitute of means of sustenance and unable by reason of old age, infirmity or illness to support and maintain himself, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one year, or both. No such neglect or refusal shall be deemed unreasonable as to a child who shall not during his minority have been reasonably supported by such parent, if such parent was charged with the duty so to do, nor as to a child who, being one of two or more children, has made proper and reasonable contribution toward the support of such parent. 1 2 3 4 5 6 7 8 9 10 11 12 13

Jurisdiction and venue.
1915, 163, § 3.
1931, 394,
§ 137.

SECTION 21. Proceedings under the preceding section shall be begun, if in the superior court, in the county in which is situated the place where the defendant or the parent lives, and, if begun in a district court, in the court having such place within its judicial district. Complaints in district courts under the preceding section may be made by any such parent, by any child of such parent, by the board of public welfare of the town where such parent has a settlement, or by any public relief officer. 1 2 3 4 5 6 7

1 SECTION 22. Before trial, with the consent of the defendant, or after
 2 entry of a plea of guilty or nolo contendere, or after conviction, the court
 3 may make for the benefit of such destitute parent orders similar to those
 4 provided by section five; and the practice established by the first ten
 5 sections of this chapter shall, so far as applicable, apply to proceedings
 6 under this and the two preceding sections.

Orders and
 practice like
 those provided
 for cases
 of wives and
 children.
 1915, 163, § 2.

CHAPTER 274.

FELONIES, ACCESSORIES AND ATTEMPTS TO COMMIT CRIMES.

SECT. 1. Felony and misdemeanor. 2. Accessory before the fact. 3. Accessory before the fact. When and how tried.	SECT. 4. Accessory after the fact. 5. Accessory after the fact. How, when and where tried. 6. Attempt to commit crime.
--	--

1 SECTION 1. A crime punishable by death or imprisonment in the
 2 state prison is a felony. All other crimes are misdemeanors.

Felony and
 misdemeanor.

1852, 37, § 1 G. S. 168, § 1. P. S. 210, § 1.	R. L. 215, § 1. 11 Allen, 243. 151 Mass. 96.	206 Mass. 417. 246 Mass. 464. 255 Mass. 340.
---	--	--

1 SECTION 2. Whoever aids in the commission of a felony, or is ac-
 2 cessory thereto before the fact by counselling, hiring or otherwise pro-
 3 curing such felony to be committed, shall be punished in the manner
 4 provided for the punishment of the principal felon.

Accessory be-
 fore the fact.
 1784, 65, § 1;
 66, § 9.
 1804, 131, § 1.

R. S. 133, § 1. G. S. 168, § 3. P. S. 210, § 3.	R. L. 215, § 2. 127 Mass. 15.	221 Mass. 45. 266 Mass. 391.
---	----------------------------------	---------------------------------

1 SECTION 3. Whoever counsels, hires or otherwise procures a felony
 2 to be committed may be indicted and convicted as an accessory be-
 3 fore the fact, either with the principal felon or after his conviction; or
 4 may be indicted and convicted of a substantive felony, whether the
 5 principal felon has or has not been convicted, or is or is not amenable
 6 to justice; and in the last mentioned case may be punished in the same
 7 manner as if convicted of being an accessory before the fact. An acces-
 8 sory to a felony before the fact may be indicted, tried and punished in
 9 the same county where the principal felon might be indicted and tried,
 10 although the counselling, hiring or procuring the commission of such
 11 felony was committed within or without this commonwealth or on the
 12 high seas.

Accessory
 before the fact.
 When and how
 tried.
 1830, 49,
 §§ 1, 2.
 R. S. 133,
 §§ 2, 3.
 G. S. 168,
 §§ 4, 5.
 P. S. 210,
 §§ 4, 5.
 R. L. 215, § 3.
 16 Mass. 123.
 9 Pick. 496.
 11 Allen, 243.
 101 Mass. 204.
 108 Mass. 12.
 111 Mass. 395.

114 Mass. 307.

262 Mass. 108.

1 SECTION 4. Whoever, not a husband or wife, or, by consanguinity,
 2 affinity or adoption, the parent or grandparent, child or grandchild,
 3 brother or sister of the offender, after the commission of a felony, har-
 4 bors, conceals, maintains or assists the principal felon or accessory
 5 before the fact, or gives such offender any other aid, knowing that he
 6 has committed a felony or has been accessory thereto before the fact,
 7 with intent that he shall avoid or escape detention, arrest, trial or punish-
 8 ment, shall be an accessory after the fact, and, except as otherwise pro-

Accessory after
 the fact.
 1784, 65, § 2;
 66, § 9.
 1804, 123, § 2;
 131, § 5; 143,
 § 10.
 1805, 97, § 2;
 101, § 3.
 R. S. 133, § 4.
 G. S. 168, § 6.
 1876, 213, § 7.
 P. S. 210, § 6.
 R. L. 215, § 4.

1918, 257. vided, be punished by imprisonment in the state prison for not more 9
 § 464. than seven years or in jail for not more than two and one half years or 10
 1919, 5. by a fine of not more than one thousand dollars. 11
 1920, 2.
 250 Mass. 454. 254 Mass. 454.

Accessory SECTION 5. An accessory to a felony after the fact may be indicted, 1
 after the fact. convicted and punished, whether the principal felon has or has not 2
 How, when and been previously convicted, or is or is not amenable to justice, either in 3
 where tried. the county where he became an accessory or in the county where the 4
 1830, 49, § 3. principal felony was committed. 5
 R. S. 133, § 5.
 G. S. 168, § 7.
 P. S. 210, § 7.
 R. L. 215, § 5.

Attempt to SECTION 6. Whoever attempts to commit a crime by doing any act 1
 commit crime. toward its commission, but fails in its perpetration, or is intercepted or 2
 1832, 62. prevented in its perpetration, shall, except as otherwise provided, be 3
 R. S. 133, § 12. punished as follows: 4
 G. S. 168, § 8.
 P. S. 210, § 8.
 R. L. 215, § 6.
 1911, 130.
 1924, 164.

10 Met. 422. First, by imprisonment in the state prison for not more than ten years, 5
 3 Cush. 529. if he attempts to commit a crime punishable with death. 6

5 Cush. 365. Second, by imprisonment in the state prison for not more than five 7
 105 Mass. 162, years or in a jail or house of correction for not more than two and one 8
 169, 460. half years, if he attempts to commit a crime, except any larceny under 9
 107 Mass. 225. section thirty of chapter two hundred and sixty-six, punishable by im- 10
 123 Mass. 422. prisonment in the state prison for life or for five years or more. 11
 140 Mass. 451.
 143 Mass. 32.
 149 Mass. 229.
 170 Mass. 18.

177 Mass. 267. Third, by imprisonment in a jail or house of correction for not more 12
 188 Mass. 330. than one year or by a fine of not more than three hundred dollars, if he 13
 210 Mass. 445. attempts to commit a crime, except any larceny under said section thirty, 14
 213 Mass. 225. punishable by imprisonment in the state prison for less than five years 15
 215 Mass. 209. or by imprisonment in a jail or house of correction or by a fine. 16
 235 Mass. 357.
 264 Mass. 368,
 378.

Fourth, by imprisonment in a jail or house of correction for not more 17
 than two and one half years or by a fine, or by both such fine and im- 18
 prisonment, if he attempts to commit any larceny punishable under said 19
 section thirty. 20

TITLE II.

PROCEEDINGS IN CRIMINAL CASES.

- CHAPTER 275. Proceedings to prevent Crimes.
- CHAPTER 276. Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail. Probation Officers and Board of Probation.
- CHAPTER 277. Indictments and Proceedings before Trial.
- CHAPTER 278. Trials and Proceedings before Judgment.
- CHAPTER 279. Judgment and Execution.
- CHAPTER 280. Fines and Forfeitures.

CHAPTER 275.

PROCEEDINGS TO PREVENT CRIMES.

SECT.

1. Justices authorized to keep the peace.
2. Complaint of threat to commit crime.
3. Arrest.
4. Penalty. Recognizance to keep the peace.
5. Commitment on failure to recognize, etc.
6. Complainant. When to pay expenses.
7. Payment of expenses.
8. Appeal.
9. Witnesses to recognize.
10. Proceedings on appeal.

SECT.

11. Recognizance to remain in force if appeal is not prosecuted.
12. Discharge from commitment upon recognizing.
13. Recognizance to be transmitted to superior court.
14. Recognizance. When to be required on view of court or justice.
15. Persons who go armed to find sureties for the peace, etc.
16. Remission of penalty.
17. Surrender of principal by surety.

1 SECTION 1. The justices of the supreme judicial court, of the su-
 2 perior court, of district courts and trial justices may cause all laws made
 3 for the preservation of the public peace to be kept; and in the execution
 4 of that power may require persons to give security to keep the peace,
 5 or for their good behavior, or both, as provided in this chapter.

R. L. 216, § 1.

Justices authorized to keep the peace.
 R. S. 134, § 1.
 G. S. 169, § 1.
 P. S. 211, § 1.

1 SECTION 2. If complaint is made to any such court or justice that
 2 a person has threatened to commit a crime against the person or property
 3 of another, such court or justice shall examine the complainant and
 4 any witnesses who may be produced, on oath, reduce the complaint to
 5 writing and cause it to be subscribed by the complainant.

Complaint of threat to commit crime.
 R. S. 134, § 2.
 G. S. 169, § 2.
 P. S. 211, § 2.
 R. L. 216, § 2.

1 SECTION 3. If, upon such examination, it is found there is just
 2 cause to fear that such crime may be committed, such court or justice
 3 shall issue a warrant, reciting the substance of the complaint, and re-
 4 quiring the officer to whom it is directed forthwith to apprehend the
 5 person complained of and take him before such justice or some other

Arrest.
 1692-3, 18, § 6.
 1783, 51, § 1.
 1794, 26, § 2.
 R. S. 134, § 3.
 G. S. 169, § 3.
 P. S. 211, § 3.
 R. L. 216, § 3.

justice or court having jurisdiction of the cause. Such warrant, if issued by a justice, shall be under his hand.

Penalty.
Recognizance
to keep the
peace.
1833, 63.
R. S. 134, § 4.
G. S. 169, § 4.
P. S. 211, § 4.
1894, 505, § 4.
§§ 1, 2.
1896, 388.
R. L. 216, § 4.
4 Mass. 497.
8 Mass. 78.

SECTION 4. If the person complained of is convicted, he may be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months. He may appeal as in other criminal cases, and section twenty-four of chapter two hundred and seventy-eight shall apply to such appeals. Instead of imposing sentence, the court or justice may order the person complained of to enter into a recognizance, with sufficient sureties, in such sum as the court or justice orders, to keep the peace toward all the people of the commonwealth, and especially toward the person requiring such security, for such term, not exceeding six months, as the court or justice may order. The court or justice may, for good cause, revoke such order or reduce the amount of the recognizance, or order that it be taken without surety.

Commitment
on failure to
recognize, etc.
1833, 63, § 1.
R. S. 134,
§§ 5, 6.
G. S. 169, § 5.
P. S. 211, § 5.
1894, 505, § 2.
R. L. 216, § 5.

SECTION 5. If the person complained of so recognizes, he shall be discharged, but if he refuses or neglects so to do, he shall be committed to the jail or house of correction during the period for which he was required to give security, or until within that time he so recognizes, stating in the warrant the cause of commitment and the sum and time for which security was required.

Complainant.
When to pay
expenses.
R. S. 134, § 7.
G. S. 169, § 6.
P. S. 211, § 6.
R. L. 216, § 6.

SECTION 6. If, upon such examination, it is found that there is not just cause to fear that such crime will be committed by the person complained of, he shall be forthwith discharged; and if it is found that the complaint is unfounded, frivolous or malicious, the complainant may be ordered to pay the expenses of prosecution.

Payment of
expenses.
1824, 128, § 2.
1834, 151, § 4.
R. S. 134, § 8.
G. S. 169, § 7.
P. S. 211, § 7.

SECTION 7. If a person is required to give security to keep the peace or for his good behavior, the court or justice may order him to pay the expenses of prosecution, or any part thereof, and that he shall stand committed until they are paid or he is otherwise legally discharged.

R. L. 216, § 7.

Appeal.
1833, 63, § 1.
R. S. 134, § 9.
1852, 14.
G. S. 169, § 8.
P. S. 211, § 8.
R. L. 216, § 8.

SECTION 8. Whoever is aggrieved by an order of a district court or trial justice, requiring him to recognize as aforesaid, may, upon giving the security required, appeal to the superior court, such appeal to be entered on the next return day.

Witnesses to
recognize.
R. S. 134, § 10.
G. S. 169, § 9.
P. S. 211, § 9.

SECTION 9. The court or justice shall require such witnesses as may be necessary to support the complaint to recognize for their appearance at the superior court.

R. L. 216, § 9.

Proceedings
on appeal.
R. S. 134, § 11.
G. S. 169, § 10.
P. S. 211, § 10.
R. L. 216, § 10.

SECTION 10. The superior court may affirm the order or discharge the appellant, or may require him to enter into a new recognizance, with sufficient sureties, in such sum and for such time as it may order, and may make such order relative to the expenses of prosecution as is just and reasonable.

Recognizance
to remain in
force if appeal
is not
prosecuted.

SECTION 11. If the appellant fails to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the court

4 or justice, and shall also stand as security for any expenses of prosecu-
5 tion which the superior court may order the appellant to pay.

R. S. 134, § 12
G. S. 169, § 11

P. S. 211, § 11.

R. L. 216, § 11.

1 SECTION 12. A person committed for not finding sureties, or for
2 refusing to recognize as required, may be discharged upon giving such
3 security.

Discharge
from commit-
ment upon
recognizing.

R. S. 134, § 13.

G. S. 169, § 12.

P. S. 211, § 12.

R. L. 216, § 12

1 SECTION 13. The recognizance taken pursuant to the foregoing pro-
2 visions shall be transmitted to the superior court on or before the next
3 return day, and shall be there filed of record by the clerk; and upon
4 a breach of the condition an action shall be commenced thereon by
5 the district attorney.

Recognizance
to be trans-
mitted to
superior court.
R. S. 134, § 11
1852, 14
G. S. 169, § 13.

P. S. 211, § 13.

R. L. 216, § 13.

1 SECTION 14. Whoever, in the presence of a justice named in section
2 one or before a court of record, makes an affray, or threatens to kill or
3 beat another, or to commit any violence or outrage against the person
4 or property of another, or contends with hot and angry words, to the
5 disturbance of the peace, may be ordered, without process or any other
6 proof, to recognize to keep the peace or be of good behavior for not
7 more than three months, and in case of refusal may be committed as
8 provided in section five.

Recognizance.
When to be re-
quired on view
of court or
justice.
1692-3, 18, § 6.
1794, 26, § 2.
R. S. 134, § 15.
G. S. 169, § 14
P. S. 211, § 14.
R. L. 216, § 14.

1 SECTION 15. Whoever, not being duly licensed, goes armed with a
2 dirk, dagger, sword, pistol or other offensive and dangerous weapon,
3 without reasonable cause to fear an assault or other injury or violence
4 to his person, or to his family or property, may, upon complaint of a
5 person who has reasonable cause to fear an injury or breach of the
6 peace, be required to find sureties for keeping the peace for not more than
7 six months, with the right of appeal as before provided.

Persons who
go armed to
find sureties
for the peace,
etc.
1692-3, 18, § 6.
1794, 26, § 2.
R. S. 134, § 16.
G. S. 169, § 15
P. S. 211, § 15.

R. L. 216, § 15.

1906, 172, § 2.

1908, 350, § 1.

1919, 207, § 2.

1 SECTION 16. If, upon a suit brought on such recognizance, the
2 penalty thereof is adjudged forfeited, the court may, upon petition of
3 a defendant, remit such portion of it as it finds ought to be remitted.

Remission of
penalty.
1810, 89.
R. S. 134, § 17.

G. S. 169, § 16.

P. S. 211, § 16.

R. L. 216, § 16.

1 SECTION 17. A surety in a recognizance to keep the peace, or for
2 good behavior, or both, shall have the same authority and right to
3 take and surrender his principal as if he were bail for him in a civil
4 cause; and after such surrender shall be discharged from all liability
5 for any act of the principal subsequent to such surrender which would
6 be a breach of the condition of the recognizance. The person so sur-
7 rendered may recognize anew with sufficient sureties for the residue of
8 the term, and shall thereupon be discharged.

Surrender of
principal by
surety.
R. S. 134, § 18
G. S. 169, § 17
P. S. 211, § 17.
R. L. 216, § 17.

CHAPTER 276.

SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST, EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION.

SECT.	SECT.
	SEARCH WARRANTS.
1. Issue.	36. Proceedings in case of default on recognizance.
2. Form.	37. Proceedings if defendant fails to recognize.
3. Disposition of property seized.	38. Conduct of examination.
4. Notice to parties before forfeiture.	39. Separation of witnesses.
5. Service of notice.	40. Testimony reduced to writing, etc.
6. Postponement of trial.	41. Discharge.
7. Sale or destruction of property seized.	42. Bail or commitment.
8. Appeal to superior court.	43. Prisoner may be carried through another county.
	44. Certificate of expenses.
	45. Witnesses to recognize.
	46. Same subject.
	47. Sureties required, when.
	48. Recognizances by minors.
	49. Commitment of witness.
	50. Deposition of witness.
	51. Discharge on recognizance, when.
	52. Treatment of witnesses in jail.
	53. Transportation of male and female prisoners.
	54. Treatment by officers of witnesses in custody.
	55. Discharge if injured party satisfied.
	56. Discharge a bar to civil action.
	57. Magistrates who may admit to bail. Money and certain securities may be deposited.
	58. Notice to officer if bail not fixed.
	59. Admission to bail by masters in chancery regulated.
	60. Bail in Suffolk county.
	61. Certificate of sureties required. In whose presence bail to be taken. Monthly statement to chief justice of superior court.
	61A. Court to be notified before disposal of certain real estate by surety. Penalty.
	61B. Professional bondsmen, registration, etc.
	62. Notice to district attorney.
	63. Fees for taking bail regulated.
	64. Bail on Sunday.
	65. Condition of recognizance.
	66. Return of recognizance and examination to court.
	67. Forfeiture of bail a bar to further bail.
	68. Surrender of principal before default. Return of certificate. New bail.
	69. Remission of penalty after default.
	70. Exoneration if unable to surrender principal.
	REWARDS.
9. Governor may offer reward.	
10. Mayor, etc., may offer reward.	
	FUGITIVES FROM JUSTICE.
11. Delivery and demand of fugitive.	
12. Proceedings.	
13. Warrant. Arrest.	
14. Opportunity to apply for writ of habeas corpus.	
15. Fees.	
16. Arrest of person liable to be demanded by another state.	
17. Recognizance.	
18. Commitment on failure to recognize.	
19. Proceedings and discharge.	
20. Expenses.	
	ARREST, EXAMINATION, COMMITMENT AND BAIL.
21. Warrants to arrest, by whom issued.	
22. Warrants, how issued.	
23. Service of warrants.	
24. When summons instead of warrant.	
25. Service of summons.	
26. Failure to obey summons a contempt.	
27. Recognizance.	
28. Arrest for misdemeanors.	
29. Recognizance out of county, if a misdemeanor.	
30. Magistrate, taking bail, to return recognizance and certificate to court, etc.	
31. Proceedings if prisoner not bailed.	
32. Conveyance of prisoner to county where warrant issued, if felony charged.	
33. Physical examination of and report on persons arrested.	
34. Examination of prisoner.	
35. Adjournment of trial or examination.	

<p>SECT.</p> <p>71. Default on recognizance.</p> <p>72. Surety may pay amount of recognizance, etc.</p> <p>73. Award of forfeiture out of penalty of recognizance.</p> <p>74. Action and judgment on recognizance.</p> <p>75. Irregularities not to defeat action.</p> <p>76. Review of judgment on forfeited recognizance.</p> <p>77. Service of petition.</p> <p>78. Proceedings if former judgment diminished.</p> <p>79. Deposit in lieu of surety.</p> <p>80. Upon default, sale of securities and payment of money out of proceeds of sale to county.</p> <p>81. Self-surrender of defendant. Disposition of deposit, etc.</p> <p>82. "Magistrate" includes bail commissioner.</p> <p style="text-align: center;">PROBATION OFFICERS.</p> <p>83. Probation officers.</p> <p>84. Bonds.</p> <p>85. Duties.</p> <p>86. Boston juvenile court may appoint deputy probation officers.</p> <p>87. Court may place certain persons in care of probation officer.</p>	<p>SECT.</p> <p>88. Clerical assistance.</p> <p>89. Temporary probation officers.</p> <p>90. Powers. Inspection of records.</p> <p>91. Boston juvenile court officers to serve process.</p> <p>92. Restitution to be made through probation officer.</p> <p>93. Money collected by probation officer to be paid to county if unclaimed, etc.</p> <p>94. Expenses of probation officers.</p> <p>95. Support of probationers.</p> <p>96. Penalty for neglect of duties.</p> <p>97. Duties of department of public welfare not affected.</p> <p style="text-align: center;">BOARD OF PROBATION.</p> <p>98. Board of probation, commissioner, etc.</p> <p>99. Powers and duties.</p> <p>100. Detailed reports to be made of the probation work, etc. Records. Accessibility of information.</p> <p>101. Annual report to general court.</p> <p>102. Authority of the courts not affected by four preceding sections.</p> <p>103. Board to be given notice of appointment or removal of probation officers.</p>
--	--

SEARCH WARRANTS.

1 SECTION 1. A court or justice authorized to issue warrants in criminal
 2 cases may, upon complaint on oath that the complainant believes that
 3 any of the property or articles hereinafter named are concealed in a par-
 4 ticular house or place, if satisfied that there is reasonable cause for such
 5 belief, issue a warrant to search for the following property or articles:

R. L. 217, § L.	3 Allen, 310.	119 Mass. 332.	145 Mass. 182.
2 Met. 329.	103 Mass. 456.	140 Mass. 147.	217 Mass. 446.

- 6 First, Personal property stolen, embezzled or obtained by false
 7 pretences. Stolen property.
- 8 Second, Personal property hired or leased or held as collateral security
 9 and fraudulently concealed. Concealed property
1865, 127, § 2.
- 10 Third, Personal property insured against loss or damage by fire which
 11 the complainant has reasonable cause to believe has been removed or is
 12 concealed for the purpose of defrauding the insurer. Insured property.
1890, 284.
- 13 Fourth, Counterfeit or spurious coin, forged bank notes and other
 14 forged instruments, or tools, machines or materials prepared or provided
 15 for making them. Counterfeit coin, notes, etc.
1823, 40, § 1.
- 16 Fifth, Counterfeits or imitations of a label, trade mark, stamp or form
 17 of advertisement recorded pursuant to the statutes of the commonwealth,
 18 goods upon which such counterfeit or imitation has been impressed,
 19 affixed or used, and any dies, plates, brands, moulds, engravings, printing
 20 presses, types or other tools, machines or materials prepared or provided
 21 for making such counterfeit or imitation. Counterfeit trade marks, etc.
1899, 359, § 1.
- 22 Sixth, Diseased animals or carcasses thereof, or any tainted, diseased,
 23 corrupted, decayed or unwholesome meat, fish, vegetables, produce, fruit Unwholesome meat or provisions.

1866, 253, § 2. 1894, 491, § 14.	or provisions of any kind, or the meat of any calf killed when less than four weeks old or any product thereof, if kept or concealed with intent to kill, sell or offer the same for sale for food.	24 25 26
Diseased animals.	Seventh, Diseased animals.	27
	1899, 408, § 16.	
Obscene literature, etc. 1862, 168, §§ 2, 4.	Eighth, Books, pamphlets, ballads, printed papers and other things containing indecent, impure or obscene language, or indecent, impure or obscene prints, pictures, figures or descriptions manifestly tending to corrupt the morals of youth, and intended to be sold, exhibited, loaned, circulated or distributed, or introduced into any family, school or place of education, and the type, forms, press, woodcuts, raw material and mechanical apparatus used and employed in printing and publishing such books, ballads, pamphlets or printed papers.	28 29 30 31 32 33 34 35
Drugs, medicines, etc. 1879, 159, § 2.	Ninth, Drugs, medicines, instruments and other articles intended to be used for self-abuse, or for the prevention of conception, or for causing unlawful abortion, and the raw materials, tools, machinery, implements, instruments and personal property used or intended to be used in the manufacture of such drugs, medicines, instruments or other articles.	36 37 38 39 40
Lottery tickets, etc. 2 Met. 329.	Tenth, Lottery tickets or other materials unlawfully made, provided or procured for the purpose of drawing a lottery.	41 42
	5 Cush. 369.	
Gaming apparatus and furniture. 1869, 364, § 2. 11 Met. 79 119 Mass. 332. 141 Mass. 114. 155 Mass. 165.	Eleventh, Gaming apparatus or implements used or kept and provided to be used in unlawful gaming in any gaming house, or in any building, apartment or place resorted to for the purpose of unlawful gaming, and the furniture, fixtures and personal property found in such place at a time when persons are engaged in unlawful gaming.	43 44 45 46 47
Pool tickets. 1885, 342, § 2.	Twelfth, Pool tickets or other materials unlawfully made, provided or procured for the purpose of buying or selling pools.	48 49
Rifles, etc. Ammunition. 1919, 179, § 1.	Thirteenth, An unreasonable number of rifles, shotguns, pistols, revolvers or other dangerous weapons or an unnecessary quantity of ammunition, if kept or concealed for any unlawful purpose.	50 51 52
Bombs, etc. 1919, 323, § 4.	Fourteenth, Bombs and explosives illegally kept.	53
Colored oleomargarine. 1924, 94, § 2.	Fifteenth, Oleomargarine colored in imitation of yellow butter, and uncolored oleomargarine, coloring matter and utensils used or intended to be used in making such colored oleomargarine, which the complainant has reasonable cause to believe are intended for unlawful sale or use.	54 55 56 57 58

Form. R. S. 142, §§ 3, 4. G. S. 170, §§ 3, 4. P. S. 212, §§ 3, 4 1899, 166. R. L. 217, § 2. 1919, 179, § 3. 2 Met. 329. 5 Met. 98. 3 Allen, 310. 103 Mass. 456.	SECTION 2. Search warrants shall designate and describe the place to be searched and the articles to be searched for, and shall be directed to the sheriff or his deputy or to a constable or police officer, commanding him to search, in the day time, or if the warrant so directs, in the night time, the house or place where the property or articles for which he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court or trial justice having jurisdiction.	1 2 3 4 5 6 7 8
	119 Mass. 332.	
	140 Mass. 147, 287.	
	145 Mass. 182.	

Disposition of property seized. R. S. 142, § 5. G. S. 170, § 5. P. S. 212, § 5. 1899, 452. 1894, 410, § 1: 491, § 14.	SECTION 3. If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence on any trial. As soon as may be afterward, all property seized under clauses one and two of section	1 2 3 4 5
---	--	-----------------------

6 one shall be restored to the owner thereof; property seized under clause
 7 three of said section shall be disposed of as the court or justice orders;
 8 property or other articles seized under clause six of said section shall, if
 9 upon a hearing the court or justice finds that they were so kept or con-
 10 cealed, be destroyed or disposed of in accordance with section one hun-
 11 dred and forty-six of chapter ninety-four by the board of health or
 12 by an officer designated by the court or justice, otherwise, they shall be
 13 returned to the owner; diseased animals seized under clause seven of
 14 said section one shall, if upon a hearing the court or justice finds that
 15 they were kept or concealed in a particular building, place or enclosure,
 16 be destroyed or disposed of by the division of animal industry of the
 17 department of conservation, without compensation to the owners thereof,
 18 otherwise, they shall be returned to their owners; property seized under
 19 clause thirteen of said section one, if found to have been kept for an un-
 20 lawful purpose, shall be forfeited and disposed of as the court or justice
 21 orders; and all other articles seized by virtue of such warrants shall be
 22 adjudged forfeited and be destroyed or sold as hereinafter provided.

1 SECTION 4. Before a decree of forfeiture of property seized under a
 2 search warrant is issued, the court or justice shall, unless otherwise
 3 expressly provided, issue a notice under seal, signed by the clerk of the
 4 court or by the justice, setting forth the substance of the complaint,
 5 and commanding the persons, if any, in whose possession the articles
 6 were found, and the owner, if alleged, and all other persons who claim
 7 an interest therein, to appear at a time and place therein named to show
 8 cause why the articles seized should not be forfeited.

Notice to
parties before
forfeiture.
1870, 242, § 2.
P. S. 212, § 6.
1894, 410, § 1.
R. L. 217, § 4.
1919, 179, § 3.
103 Mass. 456.

1 SECTION 5. The notice shall, not less than fourteen days before the
 2 time appointed for trial, be served upon the person, if any, alleged to be
 3 the owner of the articles seized, by an officer authorized to serve criminal
 4 process, by leaving an attested copy thereof with him personally or at
 5 his usual place of abode and by posting an attested copy thereof on the
 6 house or building in which the articles were seized, if they were found
 7 in a house or building; otherwise, in a public place in the town where
 8 they were seized.

Service of
notice.
1870, 242, § 3.
P. S. 212, § 7.
1894, 410, § 1.
R. L. 217, § 5.
1919, 179, § 3.

1 SECTION 6. If, at the time appointed for the trial, such notice has
 2 not been duly served, or if it appears necessary that any of the articles
 3 so seized should be kept longer for the purpose of being produced or
 4 used as evidence on any trial, or if other sufficient cause appears, the
 5 trial may be postponed to another day and place and further notice
 6 issued.

Postponement
of trial
1870, 242, § 4.
P. S. 212, § 8.
1894, 410, § 1.
R. L. 217, § 6.
1919, 179, § 3.

1 SECTION 7. If, upon the trial, the property is adjudged forfeited,
 2 the type, forms, press, woodcuts, raw material and mechanical apparatus
 3 described in clause eight of section one, the dies, plates, brands, moulds,
 4 engravings, printing presses, types or other tools, machines or materials
 5 described in clause five of said section, the raw materials, tools, machinery,
 6 implements, instruments and personal property described in clause nine
 7 of said section, and all furniture, fixtures and personal property described
 8 in clause eleven of said section, or so much thereof as the court or justice
 9 may order, shall be sold by the sheriff and the proceeds paid to the
 10 county, and the remainder of the property shall be destroyed as the

Sale or de-
struction of
property
seized.
1862, 165, § 5.
1869, 364, § 3.
P. S. 212, § 9.
1885, 66, § 1.
1894, 410, § 1.
1899, 359, § 8.
R. L. 217, § 7.
1908, 370.
1919, 179, § 3.
103 Mass. 456.
119 Mass. 332.
155 Mass. 165.

court or justice may order. The court or justice may order any article 11
not found to have been unlawfully used or intended for unlawful use, 12
or any article unlawfully used without the knowledge of its owner, 13
lessor or mortgagee, to be delivered to the party legally entitled to its 14
possession. 15

Appeal to
superior court.
1870, 242, § 1.
P. S. 212, § 10.
1894, 410, § 1.
R. L. 217, § 8.
1919, 179, § 3.

SECTION 8. A person aggrieved by a decree of forfeiture of a district 1
court or trial justice may appeal therefrom to the superior court; but 2
before his appeal is allowed, he shall recognize to the commonwealth 3
in the sum of two hundred dollars, with sufficient surety or sureties, to 4
prosecute his appeal and to pay all such expenses as may thereafter 5
arise, if final judgment is rendered against the articles adjudged forfeited, 6
and to abide the judgment of the superior court thereon; and upon such 7
appeal, any question of fact shall be tried by a jury. All proceedings in 8
the superior court, including the right of exception, shall conform so 9
far as may be to proceedings in criminal cases; and if, upon final judg- 10
ment, the articles are adjudged forfeited, they shall be disposed of under 11
the direction of the superior court as they might have been disposed of 12
had no appeal been taken. 13

REWARDS.

Governor may
offer reward.
1836, 4, § 18.
G. S. 170, § 6.
P. S. 212, § 11.
R. L. 217, § 9.
1914, 521.

SECTION 9. The governor, if he deems the public good so requires, 1
may offer a suitable reward of not more than one thousand dollars in any 2
one case to be paid by the commonwealth to any person who, in conse- 3
quence of such offer, apprehends, brings back and secures a person who 4
is convicted of or charged with a felony, who has escaped from prison 5
in the commonwealth, or to any person who, in consequence of such offer, 6
apprehends and secures a person charged with such crime, or for infor- 7
mation that shall lead to the arrest and conviction of any person who 8
has committed a felony, if the person cannot be arrested and secured in 9
the common course of proceedings. If more than one claimant applies 10
for the payment of such reward, the governor shall determine to whom it 11
shall be paid, and if to more than one person, in what proportion to each, 12
and his determination shall be final. 13

Mayor, etc.,
may offer
reward.
1840, 75.
G. S. 170,
§§ 7, 8.
1866, 9.
P. S. 212,
§§ 12, 13.
R. L. 217, § 10.
7 Met. 409.
5 Cush. 219.
7 Gray, 272,
374.
8 Allen, 477.
133 Mass. 233.
156 Mass. 28.

SECTION 10. The aldermen or the selectmen, if in their opinion the 1
public good so requires, may offer a suitable reward of not more than 2
five hundred dollars in any one case, to be paid by the town to any person 3
who, in consequence of such offer, detects or secures a person who has 4
committed a felony in such place, either before or after he has been charged 5
therewith, and such reward shall be paid by the treasurer upon the war- 6
rant of the aldermen or selectmen. If more than one claimant applies 7
for the payment of such reward, the aldermen or selectmen shall deter- 8
mine to whom it shall be paid, and if to more than one person, in what 9
proportion to each, and their determination shall be final. 10

FUGITIVES FROM JUSTICE.

Delivery and
demand of
fugitive.
1782, 31.
1801, 40, § 1.
1819, 76.
R. S. 142, § 6.
1859, 81.
G. S. 177, § 1.

SECTION 11. The governor, in any case which is authorized by the 1
constitution and laws of the United States, may, upon demand, deliver 2
to the executive of any other state or territory any person charged 3
therein with treason, felony or other crime; or may, upon application, 4
appoint an agent to demand of the executive authority of any other 5

6 state or territory any such offender fleeing from the justice of this
 7 commonwealth. Such demand or application shall be accompanied by
 8 sworn evidence that the person charged is a fugitive from justice and by
 9 a duly attested copy of an indictment or complaint made before a court
 10 or magistrate authorized to receive it. Such complaint shall be accom-
 11 panied by affidavits to the facts constituting the crime charged by per-
 12 sons who have actual knowledge thereof, and by such further evidence as
 13 the governor may require.

P. S. 218, § 1
 R. L. 217, § 11
 196 Mass. 223.
 112 Mass. 409.
 158 Mass. 149.
 219 Mass. 548.
 236 Mass. 493.
 258 Mass. 289.
 265 Mass. 101.
 1 Op. A. G. 116.
 220, 386.
 2 Op. A. G. 368,
 414.

3 Op. A. G. 432.

4 Op. A. G. 438.

Op. A. G. (1920) 181, 293.

1 SECTION 12. Upon such demand or application, the attorney general
 2 or a district attorney shall, if the governor so requires, forthwith investi-
 3 gate the grounds thereof and report to the governor all the material facts
 4 which may come to his knowledge, with an abstract of the evidence in
 5 the case, and, in case of a person demanded, whether he is held in custody
 6 or is under recognizance to answer for a crime against the laws of this
 7 commonwealth or of the United States or by force of any civil process,
 8 with an opinion as to the legality or expediency of complying therewith.

Proceedings.
 1834, 155, § 2.
 R. S. 142, § 7.
 G. S. 177, § 2.
 P. S. 218, § 2.
 R. L. 217, § 12.
 236 Mass. 493.
 258 Mass. 289.
 2 Op. A. G. 368,
 434.

1 SECTION 13. If the governor is satisfied that the demand conforms
 2 to law and ought to be complied with, he shall issue his warrant under
 3 the seal of the commonwealth to an officer authorized to serve warrants
 4 in criminal cases, directing him to arrest and deliver such person to the
 5 agent making the demand, and shall also, by the warrant, request such
 6 officers within this commonwealth to afford all needful assistance in the
 7 execution thereof.

Warrant.
 Arrest.
 1752, 31.
 1801, 10, § 2.
 R. S. 142, § 7.
 G. S. 177, § 3.
 P. S. 218, § 3.
 R. L. 217, § 13.
 1920, 399.
 9 Gray, 262.

106 Mass. 223.
122 Mass. 324.

236 Mass. 493.
258 Mass. 289.

2 Op. A. G. 380.

1 SECTION 14. A person arrested upon such warrant shall not be de-
 2 livered to such agent of a state or territory until he has been notified
 3 of the demand for his surrender and has had an opportunity to apply for
 4 a writ of habeas corpus, if he claims such right of the officer who makes
 5 the arrest. If such writ is applied for, notice thereof and of the time and
 6 place of hearing shall be given to the attorney general or district attorney
 7 for the district where the arrest is made. An officer who delivers a
 8 person in his custody upon such warrant to such agent for extradition
 9 without having complied with this section shall forfeit not more than
 10 one thousand dollars.

Opportunity
 to apply for
 writ of habeas
 corpus.
 1857, 289.
 §§ 1, 2.
 G. S. 177,
 §§ 4, 5.
 P. S. 218,
 §§ 4, 5.
 R. L. 217, § 14
 258 Mass. 289
 2 Op. A. G. 380.

1 SECTION 15. If the application for the arrest of a fugitive from the
 2 justice of the commonwealth is complied with and an agent is appointed,
 3 his account shall be paid like other expenses in criminal cases by the
 4 county where the proceedings are pending; but the governor may direct
 5 the whole or a part thereof to be paid by the commonwealth.

Fees.
 1801, 10, § 1.
 R. S. 142, § 6.
 G. S. 177, § 6.
 P. S. 218, § 6.
 1886, 267.
 R. L. 217, § 15.

1 SECTION 16. If a person found in this commonwealth is charged with
 2 a crime committed in another state or territory and is liable by the con-
 3 stitution and laws of the United States to be delivered upon the demand
 4 of the executive of such other state or territory, a court or justice au-
 5 thorized to issue warrants in criminal cases may, upon complaint on oath
 6 setting forth the crime and such other matters as are necessary to bring
 7 the case within the provisions of law, issue a warrant to bring the person
 8 charged before the same or another court or justice within the common-
 9 wealth to answer to such complaint as in other cases.

Arrest of
 person liable
 to be demanded
 by another
 state.
 R. S. 142, § 8.
 G. S. 177, § 7.
 P. S. 218, § 7.
 R. L. 217, § 16.
 5 Met. 536.

Recognizance. SECTION 17. If, upon examination of the person charged, the court
 R. S. 142, § 9. or justice has reasonable cause to believe that the complaint is true
 G. S. 177, § 8. and that such person may be lawfully demanded of the executive, he
 P. S. 218, § 8. shall, if not charged with a capital crime, be required to recognize with
 R. L. 217, § 17. sufficient sureties in a reasonable sum to appear before such court or
 justice at a day appointed, allowing a reasonable time to obtain the
 warrant of the executive, and to abide the order of the court or justice.

Commitment on failure to recognize. SECTION 18. If he does not so recognize, he shall be committed to
 R. S. 142, § 9. jail until such day, as if the crime charged had been committed within
 G. S. 177, § 9. the commonwealth; and if he fails to appear according to the condition
 P. S. 218, § 9. of his recognizance, he shall be defaulted and like proceedings had as
 R. L. 217, § 18. in case of other recognizances entered into before such court or justice.
 If charged with a capital crime, he shall be committed to jail until the
 day so appointed for his appearance.

Proceedings and discharge. SECTION 19. If the person so recognized or committed appears be-
 R. S. 142, § 10. fore the court or justice upon the day appointed, he shall be discharged
 G. S. 177, § 10. unless he is demanded by a person authorized by the warrant of the
 P. S. 218, § 10. executive to receive him, or unless the court or justice has cause to
 R. L. 217, § 19. commit him or to require him to recognize anew for his appearance on
 another day, and if, when ordered, he does not so recognize, he shall
 be committed and detained as before. If the person charged has recog-
 nized or is committed or discharged, a person authorized by the warrant
 of the executive may at any time take him into custody and the same
 shall be a discharge of the recognizance and not be an escape.

Expenses. SECTION 20. The complainant in such case shall be answerable for
 R. S. 142, § 11. all actual costs and charges and for the support in jail of a person so
 G. S. 177, § 11. committed, which shall be paid as by a creditor for his debtor committed
 P. S. 218, § 11. on execution. If the charge for support in jail is not so paid, the jailer
 R. L. 217, § 20. may discharge him as if he had been committed on execution.

ARREST, EXAMINATION, COMMITMENT AND BAIL.

Warrants to arrest, by whom issued. SECTION 21. Justices of the supreme judicial, superior or district
 R. S. 135, § 1. courts, and trial justices, may issue process for the apprehension of
 G. S. 170, § 9. persons charged with crime and to carry into effect sections twenty-two
 P. S. 212, § 14. to eighty-two, inclusive.
 R. L. 217, § 21.

126 Mass. 238.

Warrants, how issued. SECTION 22. Upon complaint made to any such justice that a crime
 R. S. 135, § 2. has been committed, he shall examine on oath the complainant and any
 G. S. 170, § 10. witnesses produced by him, reduce the complaint to writing, and cause
 1881, 127. it to be subscribed by the complainant, and, if it appears that a crime
 P. S. 212, § 15. has been committed, shall, except as otherwise provided, issue a war-
 R. L. 217, § 22. rant, reciting the substance of the accusation and requiring the officer
 1 Cush. 593. to whom it is directed forthwith to arrest the accused and to take him
 4 Gray, 31. before a court or trial justice of the county to be dealt with according to
 8 Gray, 463. law, and to summon such witnesses as shall be therein named to appear
 9 Gray, 113. and give evidence on the examination or trial.
 283.
 14 Gray, 382.
 119 Mass. 67.
 129 Mass. 238.
 139 Mass. 29.
 157 Mass. 556.
 219 Mass. 33.

Service of warrants. SECTION 23. Warrants and other processes issued for the apprehension
 1820, 52. of persons charged with crime may be directed to and served in any part

3 of the commonwealth by an officer authorized to serve criminal process R. S. 135, § 3.
 4 in any county. Such officer may command aid and exercise the same G. S. 170, § 11.
 5 authority as if in his own county.

P. S. 212, § 20.

1886, 247.

R. L. 217, §§ 23, 28.

1 SECTION 24. Upon a complaint for a crime punishable by fine only, When sum-
 2 or by imprisonment for not more than one year, with or without a fine, mons instead
 3 a summons may be issued instead of a warrant for arrest, if, in the judg- of warrant.
 4 ment of the court or justice receiving the complaint, there is reason to 1881, 127, § 1.
 5 believe that the defendant will appear upon a summons. P. S. 212, § 16.
 1890, 225.
 R. L. 217, § 24.

1912, 269.

1 SECTION 25. Such summons shall fix a day and hour of appearance Service of
 2 for trial, and shall be served by an officer authorized to serve criminal summons.
 3 process by giving to the defendant in hand or by leaving at his last and 1881, 127, § 2.
 4 usual place of abode an attested copy, not less than twenty-four hours P. S. 212, § 17.
 5 before the return hour. R. L. 217, § 25.

1 SECTION 26. If a defendant so summoned fails, without reasonable Failure to obey
 2 cause, to appear and abide the orders of the court or justice, he shall summons a
 3 be considered in contempt of court, and may be punished by a fine of contempt.
 4 not more than twenty dollars. A warrant, if necessary, may be issued 1881, 127, § 3.
 5 at any time after the issue of such summons, whether it has been served P. S. 212, § 18.
 6 or not. R. L. 217, § 26.

1 SECTION 27. If a defendant so summoned duly appears, he may be Recognizance.
 2 ordered to recognize for his further appearance but shall not be required 1881, 127, § 4.
 3 to give surety upon his recognizance at any stage of the prosecution P. S. 212, § 19.
 4 without a special order. R. L. 217, § 27.

1 SECTION 28. Any officer authorized to serve criminal process may Arrest for
 2 arrest and detain a person charged with a misdemeanor, without having misdemeanors.
 3 a warrant for such arrest in his possession, if the officer making such arrest 1912, 482.

1 SECTION 29. If the crime charged in a warrant is not a felony, and Recognizance
 2 the defendant requests to be taken before a magistrate of the county out of county,
 3 where he was arrested, for the purpose of entering into a recognizance if a misde-
 4 without a trial or examination, the officer who arrested him shall take meanor.
 5 him before a magistrate of that county, who may require from him a 1692-3, 18, § 6.
 6 recognizance, with sufficient surety or sureties, for his appearance at the 1783, 51, § 1.
 7 court which has jurisdiction of the crime and next to be held in the county 1784, 66, § 5.
 8 or judicial district in which it is alleged to have been committed, and 1794, 26,
 9 upon entering into such recognizance the defendant shall be released. §§ 1, 2.
 1804, 143, § 17.
 R. S. 135, § 4.
 G. S. 170, § 12.
 P. S. 212, § 21.
 R. L. 217, § 29.
 1931, 145, § 1.

16 Mass. 198.

13 Pick. 86.

11 Gray, 465.

168 Mass. 471.

1 SECTION 30. The magistrate who so admits the defendant to bail Magistrate,
 2 shall certify that fact upon the warrant, and deliver it, with the recogni- taking bail, to
 3 zance and certificate required by section sixty-one, to the officer, who return recog-
 4 shall cause the same to be delivered without unnecessary delay to the nizeance and
 5 clerk of the court before which the defendant was recognized to appear; certificate to
 6 and, upon application of the complainant, the justice who issued the court, etc.
 7 warrant or the district attorney shall cause such witnesses as he thinks R. S. 135, § 5.
 8 necessary to be summoned to the same court. G. S. 170, § 13.
 P. S. 212, § 22.
 R. L. 217, § 30.

Proceedings if
prisoner not
bailed.
R. S. 135, § 6.
G. S. 170, § 14.
P. S. 212, § 23.
R. L. 217, § 31.

SECTION 31. If a person is arrested in a county other than that where the crime was committed, and the magistrate before whom he is taken refuses to admit him to bail, or if no sufficient bail is offered, the officer shall take him before the court or trial justice to which or before whom the warrant is returnable.

1
2
3
4
5

Conveyance of
prisoner to
county where
warrant issued,
if felony
charged.

SECTION 32. If the crime charged in a warrant is a felony, the officer who makes the arrest in another county shall convey the prisoner to the county where the warrant was issued.

1
2
3

R. S. 135, § 7. G. S. 170, § 15. P. S. 212, § 24. R. L. 217, § 32.

Physical ex-
amination of
and report on
persons
arrested.
1913, 236; 728.
1919, 350,
§ 123.

SECTION 33. Whenever a person is arrested for a crime and is taken to or confined in a jail, police station or lockup, the officer in charge thereof shall immediately examine the prisoner, and if he finds any bruises, cuts or other injuries shall forthwith make a written report thereof to the chief of police of the town concerned, or in Boston to the police commissioner, and in towns where there is no chief of police to the selectmen. If the place of confinement is under control of the metropolitan district commission, the report shall be made to it. The requirement that the prisoner be examined shall not be deemed to compel the removal of clothing. When a person is transferred from one place of confinement to another prior to his arraignment in court or to his release, the requirement that he shall be examined shall apply only to the place to which he is first taken after his arrest. Whoever violates this section shall be punished by a fine of not more than ten dollars.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

Examination
of prisoner.
R. S. 135, § 8.
G. S. 170, § 16.
P. S. 212, § 25.
R. L. 217, § 33.
1 Cush. 503.

SECTION 34. Whoever is arrested by warrant for a crime shall, unless other provision is made for his examination, be taken before a court or trial justice having jurisdiction where the crime was committed; and the warrant, with a proper return thereon signed by the person making the arrest, shall be delivered to the court or justice.

1
2
3
4
5

Adjournment
of trial or
examination.
1821, 98, § 1.
R. S. 135, § 9.
G. S. 170, § 17.
P. S. 212, § 26.
R. L. 217, § 34.
1914, 465, § 1.
1931, 145, § 2.
145 Mass. 205.
175 Mass. 469.

SECTION 35. Except in proceedings under sections eleven to nineteen, inclusive, of chapter two hundred and seventy-three, the court or justice may adjourn an examination or trial from time to time, not exceeding ten days at any one time against the objection of the defendant, and to the same or a different place in the county. In the meantime, if the defendant is charged with a crime not bailable, he shall be committed; otherwise, he may recognize in a sum and with surety or sureties to the satisfaction of the court or justice, or without surety, for his appearance for such further examination, and for want of such recognizance he shall be committed.

1
2
3
4
5
6
7
8
9
10

Proceedings in
case of default
on recogni-
zance.
1821, 98, § 2.
R. S. 135, § 10.
G. S. 170, § 18.
P. S. 212, § 27.
R. L. 217, § 35.
1904, 164.
1929, 584, § 1.

SECTION 36. If the recognizer does not appear according to his recognizance, the court or justice may issue process to bring him into court for trial. After his failure so to appear, the court or justice may at any time order his default recorded; but it may be removed for good cause at any time to which the case may be continued. If such default is not removed, the recognizance shall be certified with a record of such default to the superior court, and like proceedings shall be had thereon as upon a breach of the condition of a recognizance for appearance before said superior court, except in cases where bank books, bonds or money have been deposited at the time of the recognizance.

1
2
3
4
5
6
7
8
9
10

1 SECTION 37. If the defendant fails to recognize, he may be committed
 2 to jail by an order stating concisely that he is committed for further
 3 examination on a future day to be named in the order, and on the day
 4 named he may be brought before the court or justice by a verbal order
 5 to the officer who made the commitment, or by a written order to a
 6 different person.

Proceedings if
 defendant fails
 to recognize
 R. S. 135, § 11
 G. S. 170, § 19
 P. S. 212, § 28
 R. L. 217, § 36.

1 SECTION 38. The court or justice before whom a person is taken
 2 upon a charge of crime shall, as soon as may be, examine on oath the
 3 complainant and the witnesses for the prosecution, in the presence of the
 4 defendant, relative to any material matter connected with such charge.
 5 After the testimony to support the prosecution, the witnesses for the
 6 prisoner, if any, shall be examined on oath, and he may be assisted by
 7 counsel in such examination and in the cross examination of the witnesses
 8 in support of the prosecution.

Conduct
 of examina-
 tion.
 R. S. 135,
 §§ 12, 13,
 G. S. 170,
 §§ 20, 21,
 P. S. 212,
 §§ 29, 30,
 R. L. 217, § 37
 11 Gray, 67.

1 SECTION 39. The court or justice may, while examining a witness,
 2 exclude from the place of examination all other witnesses, and may if
 3 requested, or if cause therefor appears, order the witnesses for or against
 4 the prisoner to be kept separate, so that they cannot converse with each
 5 other until their examination.

Separation of
 witnesses
 R. S. 135, § 14.
 G. S. 170, § 22.
 P. S. 212, § 31
 R. L. 217, § 38

1 SECTION 40. The testimony of the witnesses examined shall be re-
 2 duced to writing by, or under the direction of, the court or justice, if he
 3 considers it necessary, and shall, if required by him, be signed by the
 4 witnesses.

Testimony
 reduced to
 writing, etc.
 R. S. 135, § 15
 G. S. 170, § 23.

P. S. 212, § 32.

R. L. 217, § 39.

1 SECTION 41. If it appears, upon the whole examination, that no
 2 crime has been committed or that there is not probable cause for charging
 3 the prisoner therewith, he shall be discharged.

Discharge.
 R. S. 135, § 16.
 G. S. 170, § 24.

P. S. 212, § 33.

R. L. 217, § 40.

1 SECTION 42. If it appears that a crime has been committed and that
 2 there is probable cause to believe the prisoner guilty, the court or justice
 3 shall, if final jurisdiction is not exercised, admit the prisoner to bail, if
 4 the crime is bailable and sufficient bail is offered; otherwise, he shall be
 5 committed to jail for trial.

Bail or
 commitment.
 R. S. 135, § 17.
 G. S. 170, § 25
 P. S. 212, § 34.
 R. L. 217, § 41.

1 SECTION 43. If the journey from the town where the prisoner is held
 2 to the town where he is to be committed on the service of a mittimus
 3 can be made by railroad, the officer may convey the prisoner through
 4 any portion of another county in the prosecution of such journey.

Prisoner may
 be carried
 through an-
 other county.
 1862, 216, § 1.

P. S. 212, § 35.

R. L. 217, § 42.

1 SECTION 44. If the defendant is held to appear before the superior
 2 court, the copies and record of proceedings sent to the superior court
 3 shall contain the details of all fees and expenses allowed or paid in the
 4 district court or before the trial justice.

Certificate of
 expenses.
 1890, 440, § 10.
 R. L. 217, § 43.

1 SECTION 45. If the prisoner is admitted to bail or is committed, the
 2 court or justice shall bind by recognizance the material witnesses against
 3 the prisoner to appear and testify at the next sitting of the court having
 4 jurisdiction of the crime and in which the prisoner is held to answer.

Witnesses to
 recognize.
 R. S. 135, § 18.
 G. S. 170, § 26.
 P. S. 212, § 36
 R. L. 217, § 44.

Same subject 1885, 136, § 1. R. L. 217, § 45.	SECTION 46. If the examination or trial of a defendant charged with a felony is adjourned under section thirty-five, the court or justice may bind by recognizance the principal witnesses against the prisoner to appear and testify at the time and place to which the trial or examination is adjourned.	1 2 3 4 5
Sureties re- quired, when R. S. 135, § 19. G. S. 170, § 27. P. S. 212, § 37. 1885, 136, § 2. R. L. 217, § 46.	SECTION 47. The court or justice, if satisfied that there is good cause to believe that a witness will not perform the condition of his recognizance unless other security is given, may order the witness to enter into a recognizance with such sureties as the court or justice deems necessary for his appearance at court.	1 2 3 4 5
Recognizances by minors. R. S. 135, § 20. G. S. 170, § 28. P. S. 212, § 38. 1885, 136, § 2. R. L. 217, § 47.	SECTION 48. If a minor is a material witness, any other person may be allowed to recognize for his appearance; or, in the discretion of the court or justice, he may recognize in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding his minority.	1 2 3 4
Commitment of witness. R. S. 135, § 21. G. S. 170, § 29. 1872, 214, § 1. P. S. 212, §§ 39, 40. 1885, 136, § 2. 1892, 361 R. L. 217, § 48.	SECTION 49. A witness who, when required, refuses to recognize, either with or without sureties, shall, except as provided in the following section, be committed to jail until he complies with such order or is otherwise discharged; but if the court or justice finds that the witness, unless he is the prosecutor or an accomplice, is unable to procure sureties when so ordered, he shall, except in cases of felony, be discharged upon his own recognizance. Upon a complaint or indictment for a felony, against a defendant not in custody, a material witness committed for failure to furnish sureties upon his own recognizance may be held in custody for a reasonable time, pending the pursuit and apprehension of the defendant.	1 2 3 4 5 6 7 8 9 10 11
Deposition of witness. 1851, 71. G. S. 170, §§ 30, 31. P. S. 212, §§ 40, 41 1885, 136, § 2. R. L. 217, § 49.	SECTION 50. The court or justice may, with the consent of the defendant, take or cause to be taken by a magistrate authorized to take depositions in civil cases, in manner and form as provided in civil cases, the deposition of a witness whom he finds to be unable to furnish sureties upon his recognizance as ordered and who is not the prosecutor or an accomplice; and thereupon the witness shall be discharged. The attorney for the commonwealth who will have charge of the case at the trial shall have the same notice as parties in civil actions of the time and place of taking the deposition, and the assent of the defendant shall be endorsed upon the deposition. The fees shall be the same as in civil cases and shall be paid as other expenses in criminal cases are paid. The deposition shall be seasonably transmitted to the court at which the witness was ordered to appear. If the witness is unable to attend the trial, by reason of his absence from the commonwealth, or of his death, insanity, illness or infirmity, the deposition may be read in evidence upon the trial by either party, subject to all legal objections.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16
Discharge on recognizance, when. 1894, 406, § 1. R. L. 217, § 50.	SECTION 51. If a witness has been committed because of his inability to furnish sureties for his appearance before the superior court, the jailer shall forthwith give notice to the chief justice of the superior court, who shall direct the district attorney to inquire as to the importance of his testimony and the necessity for detaining him in jail, and the district attorney, if in his opinion the public interest will not suffer by the release	1 2 3 4 5 6

7 of the witness on his own recognizance, shall so report to the chief jus-
8 tice, who may thereupon order the witness to be released upon his own
9 recognizance.

1 SECTION 52. The commissioner of correction shall from time to
2 time make such rules relative to the diet, size of cells, amount of liberty
3 and exercise, correspondence, visits and such other matters as he con-
4 siders necessary regulating the treatment of witnesses held in jail as
5 will secure their clear distinction and separation from other prisoners so
6 far as possible, consistent with their safe custody and the prevention
7 of tampering with their testimony. Said commissioner may, with the
8 approval of the district attorney, remove such witnesses from the jail
9 where they are confined to a jail in another county, and shall, at the
10 request of the district attorney, cause them to be returned to the jail
11 whence they were removed. The proceedings for such removal shall be
12 the same as for the removal of prisoners from one jail or house of correc-
13 tion to another. The cost of support of a witness so removed and of both
14 removals shall be paid by the county whence he is removed.

Treatment of
witnesses in
jail.
1894, 270
R. L. 217, § 51.
1916, 241, § 1.
1919, 350,
§§ 82, 83.

1 SECTION 53. An officer who, having the custody or control of prison-
2 ers, causes or permits male and female prisoners to be transported to-
3 gether to or from a court in a vehicle, in a city of more than thirty
4 thousand inhabitants according to the latest census, shall be punished
5 by a fine of not more than twenty dollars.

Transportation
of male and
female
prisoners.
1894, 273
R. L. 217, § 52

1 SECTION 54. An officer who, having the custody of a witness com-
2 mitted because of his failure to furnish sureties, causes or permits him to
3 be handcuffed to a person, held in custody, charged with or sentenced
4 for crime, or to be transported within a city to or from any court or
5 prison in a vehicle with such person, shall be punished by a fine of not
6 more than twenty dollars.

Treatment by
officers of
witnesses in
custody.
1894, 160.
R. L. 217, § 53

1 SECTION 55. If a person committed to jail is under indictment or
2 complaint for, or is under recognizance to answer to, a charge of assault
3 and battery or other misdemeanor for which he is liable in a civil action,
4 unless the offence was committed by or upon a sheriff or other officer
5 of justice, or riotously, or with intent to commit a felony, and the person
6 injured appears before the court or justice who made the commitment or
7 took the recognizance, or before which the indictment or complaint is
8 pending, and acknowledges in writing that he has received satisfaction
9 for the injury, the court or justice may in its or his discretion, upon pay-
10 ment of such expenses as it or he shall order, discharge the recognizance
11 or supersede the commitment, or discharge the defendant from the
12 indictment or complaint, and may also discharge all recognizances and
13 supersede the commitment of all witnesses in the case.

Discharge if
injured party
satisfied.
R. S. 135, § 25;
136, § 27.
1846, 198.
G. S. 170, § 32;
171, § 28.
P. S. 212, § 43.
213, § 36.
R. L. 217, § 51
12 Allen, 102
115 Mass. 133
120 Mass. 403
216 Mass. 314

1 SECTION 56. Such order discharging the recognizance, indictment or
2 complaint of the person or the recognizance of witnesses shall be filed
3 in the office of the clerk before the sitting of the court at which they are
4 bound to appear; and such order superseding the commitment of the
5 person charged or of a witness shall be delivered to the keeper of the jail
6 where he is confined, who shall forthwith discharge him; and such order,
7 so filed and delivered, shall forever bar a civil action for such injury.

Discharge a
bar to civil
action.
R. S. 135, § 26;
136, § 27.
G. S. 170, § 34.
171, § 28.
P. S. 212, § 44;
213, § 36.
R. L. 217, § 55.
12 Allen, 402.

Magistrates
who may admit
to bail.
Money and
certain securi-
ties may be
deposited.
1812, 30.
R. S. 135, § 22.
1851, 92, § 2.
1855, 265, § 1.
G. S. 170, § 36.
1874, 306, § 4.
1878, 188, § 4.
1879, 228.
P. S. 212, § 46.
1898, 411, § 1.
R. L. 217, § 56.
1912, 226.
1914, 390, § 1.
1920, 584, § 2.
1922, 464, § 1.
1923, 436, § 1.
1926, 320, § 1.
251 Mass. 569.

SECTION 57. A justice of the supreme judicial or superior court, a clerk of courts or the clerk of the superior court for criminal business in the county of Suffolk, a standing or special commissioner appointed by either of said courts or, in the county of Suffolk, by the sheriff of said county with the approval of the superior court, a justice or clerk of a district court, a master in chancery or a trial justice, upon application of a prisoner or witness held under arrest or committed, either with or without a warrant, or held in the custody of an officer under a mittimus, may inquire into the case and admit such prisoner or witness to bail; and may admit to bail any person committed for not finding sureties to recognize for him. All persons authorized to take bail under this section shall be governed by the rules established by the supreme judicial or superior court. No person offering himself as surety shall be deemed to be insufficient if he deposits money of an amount equal to the amount of the bail required of him in such recognizance, or a bank book of a savings bank or of the savings department of a trust company or national bank, doing business in the commonwealth, properly assigned to the clerk or trial justice with whom the same is or is to be deposited, and his successors, and satisfactory to the person so authorized to take bail, or deposits non-registered bonds of the United States or of the commonwealth or of any county, city or town within the commonwealth equal at their face value to the amount of the bail required of him in such recognizance. The sheriff of Suffolk county may, with the approval of the superior court, appoint standing or special commissioners to take bail to a number not exceeding twenty and may, with like approval, remove them.

Before the amount of bail of a prisoner charged with an offence punishable by imprisonment for more than one year is fixed in court, the court shall obtain from its probation officer all available information relative to prior criminal prosecutions, if any, of the prisoner and to the disposition of each such prosecution.

Notice to
officer if bail
not fixed.
1851, 92, § 2.
1855, 265, § 1.
G. S. 170, § 37.
1879, 89.
P. S. 212, § 47.
R. L. 217, § 57.
1929, 216, § 3.
107 Mass. 227.

SECTION 58. If the person is committed without an order fixing the amount of the recognizance, he shall not be admitted to bail under the preceding section until reasonable notice of his application has been given to the officer by whom he was committed, or a hearing has been given to the officer in whose custody he is held; and if committed with such order, he shall not be admitted to bail, except by the supreme judicial or superior court or by a justice of either court, for a less amount than is required by the order or by an order of either court, or of a justice thereof, revising said amount.

Admission
to bail by
masters in
chancery
regulated.
1909, 235.

SECTION 59. After a person is committed to jail to await the action of the grand jury, he shall not be admitted to bail by a master in chancery who does not reside or have a usual place of business within the county where the jail is situated, except upon proof that written notice of the proposed application has been duly served upon the district attorney, or one of the assistant district attorneys, for the district, at least twenty-four hours before a hearing on the application, specifying the name of the person, the crime with which he is charged, the time and place of hearing, and the name, occupation and residence of the proposed sureties, or upon proof that the district attorney, or one of the assistant district attorneys, for the district has waived notice of the hearing on such proposed application.

1 SECTION 60. After a conviction or a plea of guilty or of nolo con-
 2 tendere in the superior court in Suffolk county, the prisoner shall not be
 3 admitted to bail except in open court; but when said court is not in ses-
 4 sion, bail may be taken by any judge of a court of record or by any com-
 5 missioner appointed under section fifty-seven, upon proof that written
 6 notice of the proposed application has been duly served upon the district
 7 attorney, or one of the assistant district attorneys for the Suffolk district,
 8 at least twenty-four hours before the hearing of such application, specify-
 9 ing the name of the prisoner, the crime of which he has been convicted,
 10 the time and place of hearing, and the name, occupation and residence of
 11 the proposed sureties. No person who has been once offered and rejected
 12 as surety shall afterward be accepted as surety for the same person in the
 13 same case.

Bail in Suffolk
 county
 1862, 159, § 1.
 P. S. 212, § 48.
 R. L. 217, § 58.
 1923, 436, § 2.
 151 Mass. 392.

1 SECTION 61. If bail is taken out of court, the person authorized to
 2 admit to bail in criminal cases shall cause a certificate to be signed and
 3 sworn to by each surety, which shall contain his name, his residence,
 4 including the name of the street and number, if any, of the dwelling house
 5 thereon, his occupation and place of business, a statement of the nature,
 6 location, purchase price, assessed value and fair market value of his
 7 property, and of the encumbrances, if any, thereon, the amount of his
 8 indebtedness, the amount and number of other bonds or recognizances
 9 on which he is or may be liable and all other matters pertinent to the
 10 amount and value of such property, each and all of which statements shall
 11 be deemed to be material statements in prosecutions for perjury, and
 12 shall return such certificate or certificates and a proper recognizance to
 13 the proper court. A surety may, instead of making such certificate, give
 14 his personal recognizance as surety and deposit money, bonds or a prop-
 15 erly assigned bank book of the kind and in the amount and under the
 16 conditions set forth in section fifty-seven for making deposit of like nature.
 17 A person authorized to take bail shall take such bail in the presence of the
 18 person to be bailed and the surety or sureties, except as otherwise provided
 19 in section one hundred and five of chapter one hundred and seventy-five.
 20 On the second Monday of each calendar month, every person taking
 21 bail out of court shall transmit to the chief justice of the superior court a
 22 written statement, setting forth each separate occasion, as defined in
 23 section sixty-one B, on which each bail or surety was accepted as aforesaid
 24 during the preceding calendar month, the name and address of each bail
 25 or surety, the date of such acceptance, the name of the defendant or
 26 defendants, the offense or offenses charged, and the court or trial justice
 27 before which or whom the defendant was required to appear.

Certificate of
 sureties re-
 quired
 In whose
 presence bail
 to be taken.
 Monthly state-
 ment to chief
 justice of
 superior court.
 1862, 159, § 2.
 P. S. 212, § 49.
 1898, 411, § 2.
 R. L. 217, § 59.
 1920, 584, § 3.
 1922, 465, § 1.
 1926, 310, § 3.
 1930, 240, § 2.
 119 Mass. 317.
 267 Mass. 496.

1 SECTION 61A. Whenever a person becomes bail or surety in a criminal
 2 case and has offered real estate as his qualification for his acceptance as
 3 such bail or surety, and subsequently and while the case in which he has
 4 qualified as bail or surety is pending, desires to dispose of or encumber
 5 such real estate, he shall in writing notify the court in which the case is
 6 then pending of his desire, and shall, unless expressly authorized by the
 7 court to continue as such bail or surety, terminate his liability as such bail
 8 or surety before he disposes of or encumbers such real estate. Any person
 9 violating any provision of this section shall be punished by a fine of not
 10 more than one thousand dollars or by imprisonment in the house of cor-
 11 rection for not more than one year, or both. Nothing in this section shall
 12 in any wise affect the title to such real estate.

Court to be
 notified before
 disposal of
 certain real
 estate by
 surety.
 Penalty.
 1922, 465, § 2.

Professional
bondsmen,
registration,
etc.
1922, 465, § 2.
1926, 340, § 1.
1929, 30.
1930, 240, § 1.
267 Mass. 496.

SECTION 61B. No person proposing to become bail or surety in a criminal case for hire or reward, either received or to be received, shall be accepted as such unless he shall have been approved and registered as a professional bondsman by the superior court or a justice thereof. No person proposing to become bail or surety in a criminal case in any calendar year after having become bail or surety in criminal cases on five separate occasions in said year shall be accepted thereafter during said year as bail or surety unless he shall have been approved and registered as a professional bondsman as aforesaid. A person who has been accepted as bail or surety, contrary to the provisions of this section, shall nevertheless be liable on his obligation as such bail or surety. Such approval and registration may be revoked at any time by such court or a justice thereof, and shall be revoked in case such a bondsman fails for thirty days after demand to satisfy in full a judgment recovered under section seventy-four or a new judgment entered on review under section seventy-six. The district attorney or prosecuting officer obtaining any such judgment which is not satisfied in full as aforesaid shall, forthwith upon the expiration of such period of thirty days, notify in writing the chief justice of such court. All professional bondsmen shall be governed by rules which shall be established from time to time by the superior court. Any unregistered person receiving hire or reward for his services as bail or surety in any criminal case, and any unregistered person becoming bail or surety in any criminal case in any calendar year after having become bail or surety in criminal cases on five separate occasions in said year, and any professional bondsman violating any provision of the rules established hereunder for such bondsmen, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. The provisions of this section shall not apply to surety companies or to probation officers.

A person shall be deemed to have become bail or surety on a separate occasion within the meaning of this section if he becomes such: (1) for a person in respect to a single offense; or (2) for a person in respect to two or more offenses wherefor he at one and the same time offers bail or surety, or in respect to two or more offenses committed at the same time or arising out of the same transaction or course of conduct wherefor he at different times offers bail or surety; or (3) for two or more persons at the same time offering bail or surety in respect to offenses committed jointly or in common course of conduct. Becoming bail or surety for the same person or persons in subsequent proceedings in connection with prosecution for the same offense or offenses shall not be deemed an additional occasion or occasions.

Notice to district attorney.
1862, 159, § 3.
P. S. 212, § 50.
1898, 411, § 3.
R. L. 217, § 60.

SECTION 62. If application is made to a person authorized to take bail in criminal cases in Suffolk county to accept bail out of court in a case in which no amount has been fixed, he shall, if the crime charged is not within the jurisdiction of the municipal court of the city of Boston, before fixing bail, cause notice of such application to be given to the district attorney or one of the assistant district attorneys for the Suffolk district, if any of said attorneys is at the time within said district.

Fees for taking bail regulated.
1862, 195, § 5.
1879, 254, § 1.
P. S. 212, § 51.
1885, 135.

SECTION 63. No justice of any court, except a special justice of a district court, shall receive any fee or compensation for taking and approving bail in criminal cases, and no person authorized to admit to bail in criminal cases shall receive from any source in connection with the ad-

5 mitting to bail anything of value in excess of the statutory fees therefor. R. L. 217, § 61.
 6 No person shall act as attorney in any case in which he has admitted a 1922, 465, § 3.
 7 prisoner or witness to bail. 1924, 18.

1 SECTION 64. Persons held in custody or committed upon a criminal Bail on
 2 charge, if entitled to be released upon bail, may, in the discretion of the Sunday.
 3 magistrate, be admitted to bail on Sunday. 1855, 265, § 2
 G. S. 170, § 38.
 P. S. 212, § 52. R. L. 217, § 62. 1906, 180.

1 SECTION 65. The condition of a recognizance of a person, either with Condition of
 2 or without surety, binding him to appear before a court or justice to recognizance.
 3 answer to a charge against him or to prosecute an appeal shall be so 1845, 166, § 2.
 4 framed as to bind him personally to appear at the time so expressed, and G. S. 170, § 39.
 5 at any subsequent time to which the case may be continued, unless pre- 1878, 188, § 1.
 6 viously surrendered or discharged, and so from time to time, until the P. S. 212, § 53.
 7 final decree, sentence or order of the court or justice thereon, and to R. L. 217, § 63.
 8 abide such final sentence, order or decree, and not depart without leave. 1930, 154, § 1.
 9 A recognizance of a person held to answer to a complaint before a district 7 Gray, 316.
 10 court which is required by law to sit in more than one municipality may, 143 Mass. 210.
 11 with his consent or at his request, be conditioned for his appearance at 172 Mass. 427.
 12 the next sitting of the court at any one of said municipalities. 267 Mass. 496.

1 SECTION 66. A recognizance and examination taken by a magistrate Return of
 2 under this chapter shall be certified and returned by him to the district recognizance
 3 attorney or to the clerk of the court before which the person charged is and examina-
 4 bound to appear, on or before the first day of the sitting thereof; and if tion to court
 5 he refuses or neglects to return the same, he may be compelled to do so R. S. 135, § 24
 6 forthwith by order of court, and, in case of disobedience, may be pro- G. S. 170, § 40.
 7 ceeded against as for contempt. P. S. 212, § 54.
 R. L. 217, § 64.
 9 Allen, 371.

1 SECTION 67. A person arrested on a criminal charge who forfeits or Forfeiture of
 2 makes default upon his bail bond or recognizance or has been surrendered bail a bar to
 3 by a probation officer shall not be again released upon further bail or further bail.
 4 recognizance in the same case, unless by order of a justice of the court 1862, 169, § 1.
 5 where such charge was pending at the time of said default or of such 1874, 306, § 1.
 6 surrender. 1879, 87.
 P. S. 212, § 55.
 1901, 215.
 R. L. 217, § 65.

13 Allen, 396. 126 Mass. 224. 233 Mass. 74.

1 SECTION 68. Bail in criminal cases may be exonerated at any time Surrender of
 2 before default upon their recognizance by surrendering their principal principal before
 3 into court or to the jailer in the county where the principal is held to default.
 4 appear, or by such voluntary surrender by the principal himself, and in Return of
 5 either event, in all cases where bank books, money or bonds are deposited certificate.
 6 by the surety, the court shall thereupon order the bank books, money New bail.
 7 or bonds so deposited to be returned to the surety or his order, and to 1863, 59, § 1.
 8 be reassigned to the person entitled thereto. They shall deliver to the P. S. 212, § 56.
 9 jailer their principal, with a certified copy of the recognizance, and he R. L. 217, § 66.
 10 shall be received and detained by the jailer, but may again be bailed in 1918, 257,
 11 the same manner as if committed for not finding sureties to recognize for § 459.
 12 him. The jailer shall forthwith notify the clerk or justice of the court 1919, 5.
 13 where the proceeding is pending of such surrender. 1920, 2;
 584, § 4.
 233 Mass. 74.

1 SECTION 69. Bail may surrender their principal at any time after Renission of
 2 default made upon the recognizance, or the principal may surrender him- penalty after
 default.

1863, 59, § 2. P. S. 212, § 57. R. L. 217, § 67. 1918, 257, § 460. 1919, 5. 1920, 2.	self, in the manner provided in the preceding section; and the court where the default is recorded may, upon application, remit the whole or any part of the penalty, if satisfied that the default of the principal was not with the connivance or consent of the bail.	3 4 5 6
Exonerated if unable to surrender principal. 1859, 131. G. S. 170, § 43. P. S. 212, § 58. R. L. 217, § 68.	SECTION 70. If, by the act of God, of the government of the United States, of any state or by sentence of law, bail are unable without their fault to surrender their principal, they shall, upon motion before final judgment on scire facias, be exonerated and discharged by the court, with or without costs as the court deems equitable.	1 2 3 4 5
Default on recognizance. 1813, 182, § 2. R. S. 135, § 27. 1845, 166, § 3. G. S. 170, § 46. P. S. 212, § 59. R. L. 217, § 69. 1920, 584, § 5.	SECTION 71. If a person under recognizance to appear and answer or to prosecute an appeal in a criminal case fails to appear according to his recognizance, and if a person under recognizance to testify in a criminal prosecution fails to perform the condition of his recognizance, his default shall be recorded, his obligation and that of his sureties forfeited, and process issued against them or such of them as the prosecuting officer directs; but in such suit no costs shall be taxed for travel. No such process shall issue in cases where bank books, bonds or money have been deposited at the time of such recognizance.	1 2 3 4 5 6 7 8 9
Surety may pay amount of recognizance, etc. R. S. 135, § 28. G. S. 170, § 47. P. S. 212, § 60. R. L. 217, § 70.	SECTION 72. A surety in such recognizance may, by leave of the court, after default, and either before or after process has been issued against him, pay to the county treasurer or clerk of the court the amount for which he was bound as surety, with such costs as the court shall direct, and shall be thereupon forever discharged.	1 2 3 4 5
Award of forfeiture out of penalty of recognizance. R. S. 138, § 9. G. S. 173, § 6. P. S. 212, § 61. R. L. 217, § 71.	SECTION 73. If, in a suit on a recognizance to prosecute an appeal, the penalty is adjudged forfeited, or if by leave of court such penalty has been paid without suit or before judgment as provided in the preceding section, and any forfeiture accrues by law to a person by reason of the crime of which the appellant was convicted, the court may award to such person the portion of the amount paid to which he is entitled.	1 2 3 4 5 6
Action and judgment on recognizance. 1810, 80. R. S. 135, § 29. G. S. 170, § 48. P. S. 212, § 62. R. L. 217, § 72. 1926, 340, § 2. 14 Mass. 45. 267 Mass. 496.	SECTION 74. If the penalty of a recognizance of a party or witness in a criminal prosecution is adjudged forfeited, the court may render judgment, upon such terms as it may order, against the principal or surety, or both, for the whole of the penalty with interest, or, in its discretion, for a part thereof, upon the filing in the case of a certificate of the district attorney or prosecuting officer stating that the interests of justice would be furthered thereby and setting forth specifically the reasons therefor; and no person shall, on behalf of the commonwealth, accept in satisfaction of any such judgment or any new judgment entered on review under section seventy-six any sum less than the full amount thereof.	1 2 3 4 5 6 7 8 9 10
Irregularities not to defeat action. R. S. 135, § 30. G. S. 170, § 49. P. S. 212, § 63. R. L. 217, § 73. 9 Met. 407. 7 Gray, 316. 138 Mass. 200. 143 Mass. 210.	SECTION 75. Such action shall not be barred or defeated, nor shall judgment be arrested, by reason of neglect or omission to note or record the default of any principal or surety at the time when it happens, nor by reason of a defect in the form of the recognizance, if it sufficiently appears from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized to require and take such recognizance.	1 2 3 4 5 6 7

1 SECTION 76. A court which has rendered judgment on a recognizance
 2 may, upon petition of any person interested, stating the ground relied
 3 upon and filed in said court, grant a review and a rehearing of the case,
 4 upon the surrender or recaption of the prisoner who was released, or for
 5 any sufficient cause which has occurred or been ascertained by the person
 6 interested after the rendition of such judgment, or at such time as not
 7 to have afforded opportunity for presenting the same in evidence.

Review of
 judgment on
 forfeited
 recognizance.
 1852, 126, § 1.
 G. S. 170, § 50.
 P. S. 212, § 64.
 R. L. 217, § 74.

1 SECTION 77. Notice of the petition and a copy thereof shall be given
 2 to or served upon the district attorney for the county where the petition
 3 is pending fourteen days at least before the return day expressed therein,
 4 and such notice shall be returnable on the first Monday of the first or
 5 second month after the filing of the petition.

Service of
 petition.
 1852, 126, § 2.
 G. S. 170, § 51.
 P. S. 212, § 65.
 R. L. 217, § 75.

1 SECTION 78. If the court finds that a part of the judgment has been
 2 actually paid to or for the county upon the recognizance or judgment
 3 and orders the judgment to be reversed or entered for a less amount than
 4 has been so actually paid, it may order the amount of the difference
 5 between the payment and the new judgment to be repaid to the person
 6 who made the payment or to his legal representatives. The treasurer
 7 or other county officer who received or then has the amount paid shall,
 8 upon presentation of a copy of the order certified by the clerk of the court,
 9 make said repayment. If, upon such petition, the review is not granted
 10 or the original judgment is not altered, the court may award reasonable
 11 costs against the petitioner.

Proceedings
 if former
 judgment
 diminished.
 1852, 126,
 §§ 3, 4.
 G. S. 170,
 §§ 52, 53.
 P. S. 212,
 §§ 66, 67.
 R. L. 217, § 76.

1 SECTION 79. A person held in custody or committed upon a criminal
 2 charge, if entitled to be released on bail, or a person held in custody
 3 or committed as a witness to a crime, may, instead of giving surety or
 4 sureties, at any time give his personal recognizance to appear before
 5 the court or trial justice and deposit the amount of the bail which he
 6 is ordered to furnish, or bonds or a properly assigned bank book, of the
 7 kind and in the amount and under the conditions set forth in section
 8 fifty-seven for making deposit of like nature, with the court, clerk of the
 9 court, trial justice or magistrate authorized to take such recognizance,
 10 who shall give him a certificate thereof, and upon delivering said certificate
 11 to the officer in whose custody he is, shall be released. The court, trial
 12 justice or magistrate shall forthwith, upon receipt of such amount, deposit
 13 it with the clerk of the court or with the trial justice before whom such
 14 person was recognized to appear.

Deposit in
 lieu of surety.
 1879, 126, § 1.
 P. S. 212, § 68.
 1882, 134
 R. L. 217, § 77.
 1906, 221
 1911, 160.
 1920, 584, § 6
 172 Mass. 427.
 187 Mass. 476.
 233 Mass. 74.
 251 Mass. 569.

1 SECTION 80. At any time after default of the defendant, the court
 2 or trial justice may order forfeited the money, bonds or bank books de-
 3 posited at the time of the recognizance and the court or clerk of the
 4 court with whom the deposit was made shall thereupon pay to the county
 5 treasurer any money so deposited. The clerk of the court, or trial jus-
 6 tice, shall immediately proceed to sell any bonds so deposited either at
 7 public or private sale, and shall forthwith pay the proceeds thereof, after
 8 deducting all expenses connected with such sale, to the county treasurer
 9 and if bank books are so deposited, the said clerk shall collect the amount
 10 of bail from the depository, and pay the same, less the expense of col-
 11 lection, to the county treasurer.

Upon default,
 sale of securi-
 ties and pay-
 ment of money
 out of proceeds
 of sale to
 county.
 1879, 126, § 5.
 P. S. 212, § 70.
 R. L. 217, § 78.
 1920, 584, § 7.
 187 Mass. 476.

Self-surrender
of defendant
Disposition of
deposit, etc.
1879, 126,
§§ 2, 4
P. S. 212,
§§ 69, 71.
R. L. 217, § 79.
1903, 236.
1920, 584, § 8.
1922, 361, § 1.
187 Mass. 476.

SECTION 81. The defendant may surrender himself at any time before a default, in the same manner as sureties in criminal cases may surrender their principal, and the court shall thereupon order the bank books to be reassigned and the money or bonds so deposited to be returned to the person in whose name the deposit is made or to his order. At any time after default, on the surrender or recaption of the defendant, the court may order the whole or any part of the money so deposited or of the bonds, or of the amount of the net proceeds of the sale of said bonds, or the bank books, or the whole or any part of the amount collected from the depository thereunder, to be returned to the person in whose name the deposit is made or to his order. If the amount realized by sale or collection pursuant to the preceding section exceeds the amount of the recognizance, the court shall, on an application made at any time, order such excess to be returned to the party found by the court to be entitled thereto. The foregoing provisions shall apply to cases in which forfeiture has been ordered.

"Magistrate"
includes bail
commissioner.
1874, 306, § 5.
P. S. 212, § 73.
R. L. 217, § 80.

SECTION 82. The term "magistrate", in any section of the statutes which provides for admitting persons to bail in criminal cases, shall be construed to include a bail commissioner, so far as to give him authority to admit prisoners to bail.

PROBATION OFFICERS.

Probation
officers.
1880, 129, § 1.
P. S. 212, § 74.
1882, 125.
1891, 350,
§§ 1, 6.
1892, 242; 276,
§§ 1, 3
1897, 266,
§§ 1, 3.
1898, 511,
§§ 1, 2
R. L. 217,
§§ 81, 92.
1905, 295.
1906, 329;
489, § 6.
1907, 223; 261.
1908, 190; 637.
1909, 216
1910, 332; 479.
1911, 116; 470.
1912, 648, § 2;
664.
1913, 612, § 1.
1915, 89, § 1;
254, § 1.
227 Mass. 598.
254 Mass. 100.
Op. A. G.
(1918) 22.

SECTION 83. The superior court, the chief justice of the municipal court of the city of Boston, subject to the approval of the associate justices thereof, and the justice of each other district court and of the Boston juvenile court may appoint such male and female probation officers as they may respectively from time to time deem necessary for their respective courts; and if there is more than one probation officer in one court, one of such officers may be designated as chief probation officer. All officers so appointed shall hold office during the pleasure of the court making the appointment. The compensation of each probation officer appointed by the superior court shall be fixed by that court and by it apportioned from time to time among the counties wherein said officer performs his duties. In the municipal court of the city of Boston the chief justice of said court, subject to the approval of the associate justices thereof, and in other district courts and the Boston juvenile court, the justice thereof, shall fix the compensation of each probation officer appointed for such court, which compensation shall be subject to approval by the county commissioners and shall be paid by the county on vouchers approved respectively by the chief justice of the municipal court of the city of Boston or by the justice of such other district or juvenile courts.

Bonds.
1913, 120.

SECTION 84. Before performing any official duty, each probation officer shall give bond to the county treasurer, in a sum to be fixed and with sufficient sureties to be approved by a justice of the superior court, conditioned to account for and pay, as and when required by law, all moneys or property received by him in the exercise of his official duty. Failure to so give bond shall be sufficient cause for removal from office.

Duties.
1880, 129,
§§ 3-5, 11.

SECTION 85. In addition to the other duties imposed upon him, each probation officer shall, as the court may direct, inquire into the nature

3 of every criminal case brought before the court under the appointment of
 4 which he acts, and inform the court, so far as is possible, whether the
 5 defendant has previously been convicted of crime and in the case of a
 6 criminal prosecution before said court charging a person with an offence
 7 punishable by imprisonment for more than one year the probation officer
 8 shall in any event present to the court such information as the board of
 9 probation has in its possession relative to prior criminal prosecutions, if
 10 any, of such person and to the disposition of each such prosecution, and
 11 all other available information relative thereto, before such person is
 12 admitted to bail in court and also before disposition of the case against
 13 him by sentence, or placing on file or probation. When it comes to the
 14 knowledge of a probation officer that the defendant in a criminal case
 15 before his court charged with an offence punishable by imprisonment for
 16 more than one year is then on probation in another court or is then at
 17 liberty on parole or on a permit to be at liberty, such probation officer
 18 shall forthwith certify the fact of the presence of the defendant before his
 19 court to the probation officer of such other court or the parole authorities
 20 granting or issuing such parole or permit to be at liberty, as the case may
 21 be. He may recommend to the justice of his own court that any person
 22 convicted be placed on probation. He shall perform such other duties
 23 as the court requires. He shall keep full records of all cases investigated
 24 by him or placed in his care by the court, and of all duties performed by
 25 him. Every person released upon probation shall be given by the pro-
 26 bation officer a written statement of the terms and conditions of the
 27 release.

P. S. 212,
 §§ 75-77, 79.
 1891, 356.
 §§ 3, 4.
 1892, 276, § 2.
 1897, 266, § 2.
 1898, 511, § 1.
 R. L. 217,
 §§ 84, 96.
 1911, 8.
 1926, 320, § 2.
 1929, 179, § 2.
 266 Mass. 156.

1 SECTION 86. The justice of the Boston juvenile court may appoint
 2 as many deputy probation officers, without salary, as he may deem de-
 3 sirable, who shall assist probation officers in such way as the court may
 4 direct in making investigations of cases of children against whom com-
 5 plaints have been made, and in the care of children placed on probation.

Boston
 juvenile court
 may appoint
 deputy proba-
 tion officer.
 1906, 489, § 6.

1 SECTION 87. The superior court may place upon probation under any
 2 of its probation officers any person before it charged with crime and any
 3 court may place any person convicted before it in the care of its probation
 4 officer for such time and upon such conditions as it deems proper; pro-
 5 vided, that no person convicted of a felony by a district court shall be
 6 placed on probation by said court in such case if it shall appear that he
 7 has been previously convicted of any felony.

Court may
 place certain
 persons in
 care of proba-
 tion officer
 1880, 129, § 4.
 P. S. 212, § 76.
 1891, 356, § 3.
 1898, 511, § 1.
 R. L. 217, § 84.

1911, 8. 1926, 271, § 1; 296. 183 Mass. 238. 199 Mass. 44.

1 SECTION 88. Every court appointing probation officers may employ
 2 such clerical assistance as it deems necessary to keep, index and consoli-
 3 date the records required to be kept by probation officers and for such
 4 other work in connection with its probation service as the court may
 5 determine. The compensation for such service, together with such other
 6 necessary expenses as the court shall incur in connection with such work,
 7 shall be paid by the county upon vouchers approved by said court.

Clerical
 assistance.
 1891, 427,
 §§ 6, 7.
 R. L. 212, § 40.
 1908, 440
 1913, 612, § 2.
 1914, 739.
 1915, 89, § 2;
 254, § 2
 1918, 257,
 § 452.

1919, 5. 1920, 2. 1930, 400, §§ 5, 7-9. 1931, 301, § 49.

1 SECTION 89. The justice of a district court may, in the absence of a
 2 probation officer, appoint a temporary probation officer, who shall have
 3 the powers and perform the duties of such probation officer and shall
 4 receive from the county as compensation for each day's service an amount

Temporary
 probation
 officers.
 1894, 372.
 R. L. 217, § 82.
 1910, 275, § 1.
 266 Mass. 156.

equal to the rate by the day of the compensation of the officer in whose place he serves; but compensation so paid to a temporary probation officer for any excess over thirty days' service in any one year shall be deducted by the county treasurer from the compensation of the probation officer in whose place such service is rendered.

Powers. In-
spection of
records
1880, 129,
§§ 1, 5
P. S. 212, § 74.
1891, 356, § 2.
1898, 511, § 1.
R. L. 217, § 83.

SECTION 90. A probation officer shall not be an active member of the regular police force, but so far as necessary in the performance of his official duties shall, except as otherwise provided, have all the powers of a police officer, and if appointed by the superior court may, by its direction, act in any part of the commonwealth. He shall report to the court, and his records may at all times be inspected by police officials of the towns of the commonwealth.

Boston
juvenile court
officers to
serve process.

SECTION 91. Probation officers appointed by the Boston juvenile court may serve such process as may be directed to them by the court.

1906, 489, § 6.

Restitution
to be made
through proba-
tion officer.
1907, 335.
266 Mass. 156.

SECTION 92. If a person is placed on probation upon condition that he make restitution or reparation to the person injured by him in the commission of his offence, and payment is not made at once, the court may order that it shall be made to the probation officer, who shall give receipts for and keep record of all payments made to him, pay the money to the person injured and keep his receipt therefor, and notify the clerk of the court whenever the full amount of the money is received or paid in accordance with such order or with any modification thereof.

Money col-
lected by proba-
tion officer
to be paid to
county if
unclaimed, etc.
1920, 122.

SECTION 93. Except as provided by section one of chapter two hundred and seventy-nine, money collected by a probation officer under order of the court by which he is appointed, if unclaimed after one year from the time of its collection, shall, upon further order of the court, be paid to the treasurer of the county where the court is situated for the use of the county; provided, that any part of the said money may be paid to persons establishing a lawful claim thereto before the county commissioners within five years of its payment to said treasurer, unless sooner paid over by order of the said commissioners.

Expenses of
probation
officers.
1894, 229.
1898, 511, § 2.
1900, 279;
449, § 6
R. L. 217, § 93.
1906, 489, § 6.
1927, 166.
1929, 231.

SECTION 94. The reasonable expenses incurred by probation officers of the superior court in the performance of their duties shall be approved and apportioned by the court, and paid by the county to which they are thus apportioned. Money to be used for the necessary expenses to be incurred by such a probation officer in going outside the commonwealth for the purpose of bringing back for surrender to the court a person who is on probation shall be advanced by the treasurer of the county in which such person was placed on probation, upon presentation of a certificate signed by the probation officer and approved by said court. After his return such probation officer shall account for such money by filing with said county treasurer itemized vouchers, duly sworn to, approved by the court, setting forth the necessary expenses so incurred and any unexpended balance of such money shall be paid to said county treasurer. Probation officers of district courts and of the Boston juvenile court shall be reimbursed by the county for their actual disbursements for necessary expenses incurred while in the performance of their duties, including their reason-

17 able traveling expenses in attending conferences authorized by section
18 ninety-nine, not exceeding three hundred dollars to each in any one year,
19 upon vouchers approved by the court by which they are appointed.

1 SECTION 95. The superior court, the Boston juvenile court or a Support of
2 district court, except the municipal court of the city of Boston, may probationers.
3 authorize a probation officer to expend such amount as the court con- 1894, 368.
4 siders expedient for the temporary support or transportation, or both, R. L. 217, § 94.
5 of a person placed on probation, and such amount shall be repaid to the 1906, 440.
6 probation officer by the county upon vouchers approved by the court. 489, § 6.
7 A record of any amount so authorized shall be entered on the clerk's 1914, 491.
8 docket of the case.

9 The chief probation officer of the municipal court of the city of Boston
10 may provide for the temporary support or transportation, or both, of a
11 person placed on probation in said court, or for the relief of the immediate
12 distress of such person, in any manner which he may deem proper, and
13 for these purposes may annually expend a sum not exceeding two thou-
14 sand dollars for all such cases of relief. At the end of each month said
15 chief probation officer shall submit to the chief justice of said court a
16 list of the expenses so incurred, with proper vouchers, and upon approval
17 of the chief justice the amount thereof shall be paid to the chief proba-
18 tion officer by Suffolk county.

1 SECTION 96. Any probation officer who refuses or neglects to perform Penalty for
2 any of the duties required of him shall forfeit two hundred dollars to the neglect of
3 use of the commonwealth. duties.
1891, 356, § 8. 1892, 276, § 3. 1897, 266, § 3. R. L. 217, § 95.

1 SECTION 97. The fourteen preceding sections shall not authorize a Duties of de-
2 probation officer to interfere with any of the duties required of the depart- partment of
3 ment of public welfare under the law relative to juvenile offenders. public welfare
not affected.
1889, 129, § 12. 1886, 101, § 4. R. L. 217, § 97.
P. S. 212, § 81. 1891, 356, § 9. 1919, 350, § 87.

BOARD OF PROBATION.

1 SECTION 98. There shall be a board of probation of five persons, Board of
2 appointed by the chief justice of the superior court, one or more of whom probation,
3 may be justices of the courts. Said chief justice shall annually appoint commis-
4 one member of the board to serve for five years from the second Wednes- sioner, etc.
5 day in July. A vacancy in the board shall be filled in the same manner 1900, 449, § 8.
6 for the unexpired term. Any member of the board may be removed by R. L. 217, § 90.
7 the chief justice. The board shall appoint a commissioner of probation 1908, 465,
8 as its executive officer, who shall hold office during its pleasure. He shall §§ 1, 6.
9 perform such duties as may be required of him by the board and shall 1914, 191.
10 receive such salary as it shall, subject to the approval of the governor 1929, 179, § 1.
11 and council, determine. The board shall be provided with suitable office 4 Op. A. G. 467,
12 accommodations, in the Suffolk county court house or elsewhere, and may 576.
13 employ such assistance as is needed to perform its work. The members
14 of the board shall receive no compensation for services hereunder, but
15 they and the commissioner shall be allowed the necessary expenses in-
16 curred in the performance of their official duties. The board may expend
17 for the purposes for which it is established such sums as the general court
18 may appropriate.

Powers and duties.
 1900, 449, §§ 4-6.
 R. L. 217, §§ 86-88.
 1908, 465, §§ 2, 6.
 1916, 241, § 1.
 1919, 350, §§ 82, 83, 87.
 1929, 179, § 1.
 1931, 57, § 1.

SECTION 99. The board of probation shall prescribe the form of all records and of all reports from probation officers and of reports from justices, and shall make rules for the registration of reports and for the exchange of information between the courts. It shall provide for such organization and co-operation of the probation officers in the several courts as may seem advisable. To promote co-ordination in the probation work of the courts, the board may call a conference of any or all of the justices of the district courts and the Boston juvenile court, or a conference of any or all of the probation officers and assistant probation officers, and a member of the board shall preside. With the approval of the board, the commissioner of correction or the department of public welfare may hold a conference with any or all of the probation officers to secure their co-operation in keeping trace of the whereabouts of persons who are at liberty from the prisons of the commonwealth. The traveling expenses of said justices or officers in attending any conference herein named shall be paid as the other expenses of the respective courts are paid.

Detailed reports to be made of the probation work, etc. Records. Accessibility of information.
 1880, 129, § 2.
 P. S. 212, § 80.
 1891, 356, § 5.
 1900, 449, §§ 3, 4.
 R. L. 217, §§ 85, 86.
 1902, 196.
 1908, 465, §§ 3, 6.
 1916, 241, § 1.
 1919, 350, §§ 82, 83, 87.
 1926, 320, § 3.
 1929, 179, § 1.
 1931, 57, § 2.

SECTION 100. Every probation officer, or the chief or senior probation officer of a court having more than one probation officer, shall transmit to the board of probation, in such form and at such times as it shall require, detailed reports regarding the work of probation in the court, and justices shall transmit to the board reports of cases coming before them in such form and at such times as the board may require, and the commissioner of correction, the penal institutions commissioner of Boston and the county commissioners of counties other than Suffolk shall transmit to the board, as aforesaid, detailed and complete records relative to all paroles and permits to be at liberty granted or issued by them, respectively, to the revoking of the same and to the length of time served on each sentence to imprisonment by each prisoner so released specifying the institution where each such sentence was served; and under the direction of the board a record shall be kept of all such cases as the board may require for the information of the justices and probation officers. Police officials shall co-operate with the board and the probation officers in obtaining and reporting information concerning persons on probation. The information so obtained and recorded shall be accessible at all times to the justices and officers of the courts, to the police commissioner of Boston, and to all chiefs of police and city marshals. The commissioner of correction and the department of public welfare shall at all times give to the board and the probation officers such information as may be obtained from the records concerning prisoners under sentence or who have been released.

Annual report to general court.
 1900, 449, § 7.
 R. L. 217, § 89.
 1908, 465, § 4, 6.
 1929, 179, § 1.

SECTION 101. The board of probation shall make an annual report to the general court of the probation work of the courts for the year ending on September thirtieth preceding. The report shall include such information as the board may consider useful, with its suggestions or recommendations.

Authority of the courts not affected by four preceding sections.
 1908, 465, § 5.
 1929, 179, § 1.

SECTION 102. The four preceding sections shall not affect the authority of the courts to require the keeping by their probation officers of probation records in addition to those necessary to conform to forms of records and reports prescribed by the board of probation nor the author-

5 ity of the courts to approve expenses and disbursements relating to the
6 probation system.

1 SECTION 103. Upon the appointment or removal of a probation
2 officer, the clerk of the court by which the appointment or removal is
3 made shall forthwith give notice thereof to the board of probation.

Board to
be given notice
of appointment
or removal of
probation
officers.

1880, 129, § 2.
P. S. 212, § 74
1891, 356, § 5.

1898, 511, § 3.
R. L. 217, § 91.

1910, 485
1929, 179, § 1

CHAPTER 277.

INDICTMENTS AND PROCEEDINGS BEFORE TRIAL.

SECT.

GRAND JURY.

1. Grand jurors.
2. Grand jurors in Suffolk.
- 2A. Special grand jury.
3. Jurors, how drawn, etc.
4. Deficiency in grand jurors.
5. Impanelling and oath.
6. Affirmation in lieu of oath.
7. Foreman.
8. Foreman, duty and term of service.
Temporary foreman.
9. Administration of oaths to witnesses.
List of witnesses.
10. Clerk and record.
11. Re-summoning at same sitting.
12. Disclosure of indictment found for-
bidden.
13. Disclosure of proceedings forbidden.
14. Grand juror not to be traverse juror.

INDICTMENTS AND COMPLAINTS.

15. Discharge of prisoner not indicted.
16. Commitment if not indicted by reason
of insanity.
17. Contents of indictment.
18. Circumstances of the act.
19. Name of defendant.
20. Time and place.
21. Mens.
22. Description of written instrument.
23. Description of money.
24. Description of value or price.
25. Description of ownership.
26. Description of public place.
27. Description of animal.
28. Description of judicial proceedings.
29. General intent.
30. Intent to injure or defraud.
31. Alternative descriptions.
32. Continuing offences.
33. Unnecessary and immaterial allega-
tions.
34. Immaterial defects.
35. Variance.

SECT.

- 35A. Amendments of indictments and
complaints.
36. Scope of word "oath".
37. Exceptions and provisos.
38. Allegations, presumptions and proof
in prosecutions under certain sec-
tions of chapter 94.
39. Meaning of certain words and
phrases.
40. Bill of particulars.
41. Indictment for larceny.
42. Indictment for receiving stolen prop-
erty.
43. Indictment for perjury.
44. Indictment for subornation of per-
jury.
45. Indictment for unnatural and lasciv-
ious acts.
46. Different counts for different offences
in same indictment.

PROCEEDINGS UPON ARRAIGNMENT IN CAP- ITAL CASES.

47. Arraignment.
48. Assignment of counsel in capital case
in district court.
49. Compensation to counsel.
50. Indictments in Dukes and Nantucket
counties.
51. Change of venue.
52. Transmission of papers.
53. District attorney to conduct case in
new venue.
54. Custody of prisoner.
55. Compensation of counsel of prisoner.
56. Expenses of counsel of prisoner.

VENUE OF SPECIFIC CRIMES.

57. Crime near boundary line.
- 57A. Venue in certain doubtful cases.
58. Venue of larceny.
59. Venue of indictment for obtaining
money by false pretences.

SECT.	SECT.
60. Venue of indictment if injury is in one county and death in another.	67. Other prisoners entitled to copy of indictment.
61. Venue of indictment for crime committed at sea, etc.	68. Prosecuting officers may issue subpoenas.
62. Venue of indictment if injury is in this commonwealth and death outside.	69. Witnesses for commonwealth to attend without fees.
LIMITATION OF CRIMINAL PROSECUTIONS.	
63. Limitation of criminal prosecutions.	70. Witness to recognize, when.
64. Limitation of new indictment against corporation after abatement of former one, etc.	70A. Entry of a nolle prosequi regulated.
ARREST, ARRAIGNMENT AND OTHER PROCEEDINGS.	
65. Prisoner to be served with copy of indictment, etc.	70B. Placing cases on file regulated.
66. Prisoner to have list of jurors and process for witnesses.	71. Arraignment. Standing mute.
	72. Limit of time of trial.
	73. Compensation of persons discharged in certain cases.
	74. Verification of plea in abatement.
	75. Form of plea of former acquittal, etc.
	76. Commission to examine witnesses.
	77. Commission, how executed. Deposition, how used.
	78. Civil remedies not barred by criminal proceedings.
	79. Effect of annexed forms.

GRAND JURY.

Grand jurors. C. L. 86, § 2. 1694-5, 24, § 1. 1784, 4, §§ 1, 2. 1807, 140, § 4. 1832, 130, § 6. R. S. 136, § 1. 1840, 74. G. S. 171, § 1. 1860, 143. P. S. 213, § 1. 1897, 490, § 7. R. L. 218, § 1. 1924, 311, § 6. 2 Cush. 149. 119 Mass. 326.

SECTION 1. The clerk of the courts for each county, except Suffolk, shall, not less than twenty-eight days before the commencement of the first sitting of the superior court for criminal business in each year, issue writs of venire facias for twenty-three grand jurors to be returned to that court, who shall serve until the first regular sitting in the year next after they have been impanelled and until another grand jury has been impanelled in their stead. In counties where sittings of the court are established for the transaction of criminal business, they shall be required to attend only at such sittings.

171 Mass. 459.

Grand jurors in Suffolk. 1844, 44, § 3. G. S. 171, § 2. 1860, 143. P. S. 213, § 2. R. L. 218, § 2. 1924, 311, § 7.

SECTION 2. The clerk of the superior court for criminal business in Suffolk county shall, not less than twenty-eight days before each sitting commencing on the first Mondays of January and July, issue writs of venire facias for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from Boston, and one from Chelsea, Revere or Winthrop, who shall serve for each sitting thereof for six months and until another grand jury has been impanelled in their stead.

Special grand jury. 1922, 466.

SECTION 2A. The clerk of the courts in any county, or in Suffolk the clerk of the superior court for criminal business, shall, upon written request of the attorney general accompanied by a certificate that public necessity requires such action, signed by the chief justice of the superior court, issue writs of venire facias for twenty-three grand jurors for service as a special grand jury to hear, consider and report on such matters as the attorney general may present. Said jurors shall serve for a period of six months, unless sooner discharged by the attorney general or by the said chief justice, and shall be drawn, summoned and returned in the same manner, and shall have the same powers and receive the same compensation, as grand jurors summoned for service under sections one and two, and the provisions of sections four to fourteen, so far as apt, shall apply to such jurors.

1 SECTION 3. Grand jurors shall be drawn, summoned and returned in
 2 the same manner as traverse jurors; and, if drawn at the same time
 3 with traverse jurors, the number of persons required whose names are
 4 first drawn shall be returned as grand jurors, and those whose names
 5 are afterward drawn shall be returned as traverse jurors.

Jurors, how
 drawn, etc.
 R. S. 136, § 3.
 G. S. 171, § 3.
 P. S. 213, § 3.
 R. L. 218, § 3.

1 SECTION 4. If there is a deficiency of grand jurors, writs of venire
 2 facias may be issued to the constables of such towns as the court orders
 3 to return forthwith the further number of grand jurors required.

Deficiency in
 grand jurors.
 1784, 7, § 6.

1807, 140, § 7.
 R. S. 136, § 4.

G. S. 171, § 4.
 P. S. 213, § 4.

R. L. 218, § 4.
 119 Mass. 326.

1 SECTION 5. The clerk of the court shall prepare an alphabetical list
 2 of the names of all persons returned as grand jurors, and, when they
 3 are to be impanelled, the first two persons named thereon shall be first
 4 called, and the following oath shall be administered to them:

Impanelling
 and oath.
 C. L. 167, § 2.
 1692-3, 35.
 1784, 4, § 1.
 1807, 140,
 §§ 10, 14.
 R. S. 136, § 5.
 G. S. 171, § 5.
 P. S. 213, § 5.
 R. L. 218, § 5.
 147 Mass. 585.
 157 Mass. 516.
 231 Mass. 584.
 240 Mass. 264.

You, as grand jurors of this inquest for the body of this county of
 do solemnly swear that you will diligently inquire, and true presentment make,
 of all such matters and things as shall be given you in charge; the common-
 wealth's counsel, your fellows' and your own, you shall keep seeret; you shall
 present no man for envy, hatred or malice, neither shall you leave any man un-
 presented for love, fear, favor, affection or hope of reward; but you shall present
 things truly, as they come to your knowledge, according to the best of your under-
 standing; so help you God.

5 The other jurors shall then be called in such divisions as the court con-
 6 siders proper, and the following oath shall be administered to them:

The same oath which your fellows have taken on their part, you and each of
 you on your behalf shall well and truly observe and keep; so help you God.

1 SECTION 6. If a person who is returned as a grand juror is con-
 2 scientiously scrupulous of taking the oath prescribed, he may affirm.

Affirmation
 in lieu of
 oath.

1807, 140, § 14.
 R. S. 136, § 6.

G. S. 171, § 6.
 P. S. 213, § 6.

R. L. 218, § 6.
 168 U. S. 532.

1 SECTION 7. After the grand jurors have been impanelled and have
 2 received their charge from the court, they shall retire with the officer
 3 appointed to attend them, and shall forthwith, by ballot, elect one of
 4 their number as foreman and give notice thereof to the court, and the
 5 clerk shall record the same.

Foreman.
 1807, 140, § 10.
 R. S. 136, § 7.
 G. S. 171, § 7.
 P. S. 213, § 7.
 R. L. 218, § 7.
 116 Mass. 61.

1 SECTION 8. The foreman so elected shall be foreman for the whole
 2 period the grand jurors are required to serve, but in his absence another
 3 foreman shall be elected in the same manner, who shall perform the
 4 duties during such absence, and, in case of the death of the foreman,
 5 for the residue of their period of service.

Foreman, duty
 and term of
 service.
 Temporary
 foreman.
 1832, 130, § 6.
 R. S. 136, § 8.

G. S. 171, § 8.

P. S. 213, § 8.

R. L. 218, § 8.

1 SECTION 9. The foreman of the grand jury or the prosecuting officer
 2 before them may administer oaths and affirmations to witnesses who
 3 appear to testify before the jury, and the foreman shall under his hand
 4 return to the court a list of all witnesses sworn before the grand jury
 5 during the sitting, which shall be filed of record by the clerk.

Administration
 of oaths to
 witnesses.
 List of wit-
 nesses.
 1807, 140, § 10.
 R. S. 136, § 9.

G. S. 171, § 9.
 P. S. 213, § 9.
 R. L. 218, § 9.

4 Gray, L.
 163 Mass. 453.

207 Mass. 259.
 238 Mass. 379.

Clerk and record. SECTION 10. The grand jury may appoint one of their number to be their clerk, and he shall keep a record of their proceedings and, if the jury so direct, shall deliver it to the attorney general or district attorney.

Re-summoning at same sitting. SECTION 11. If the grand jury are dismissed before the court is adjourned without day, they may be summoned to attend again in the same sitting, at such time as the court orders.

R. L. 218, § 11.

Disclosure of indictment found forbidden. SECTION 12. No grand juror or officer of the court shall disclose the fact that an indictment has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on the indictment.

R. L. 218, § 12.

Disclosure of proceedings forbidden. SECTION 13. No grand juror shall be allowed to state or testify in any court in what manner he or any other member of the jury voted on any question before the grand jury, or what opinion was expressed by any juror relative thereto. In charging the grand jury, the court shall remind them of the provisions of this and the preceding sections.

Grand juror not to be traverse juror. SECTION 14. No member of the grand jury which has found an indictment shall serve upon the jury for the trial thereof.

R. S. 137, § 2. G. S. 172, § 2. P. S. 214, § 4. R. L. 218, § 14.

INDICTMENTS AND COMPLAINTS.

Discharge of prisoner not indicted. SECTION 15. The grand jury shall, during its session, make daily return to the court of all cases wherein it has finally determined not to present an indictment against an accused person held in custody pending its action, and such person shall thereupon forthwith be discharged by order of the court unless he is held on other process. Whoever is held in custody on a charge of crime shall be discharged if he is not indicted before the end of the second sitting of the court at which he is held to answer, unless the court finds that the witnesses for the prosecution have been enticed or kept away, or are detained and prevented from attending the court by illness or accident, and except as provided in the following section.

Commitment if not indicted by reason of insanity. SECTION 16. If the grand jury does not indict a person who is held in custody on a charge of crime by reason of his insanity, they shall so certify to the court, which, if satisfied that he is insane, may order him committed to a state hospital, except the Bridgewater state hospital, under such limitations as it may order; or, if the court finds that he has been a criminal or is of vicious tendency, it may order him committed to the Bridgewater state hospital, and if he is charged with felony his expenses in any such hospital or in any state charitable institution to which he may be transferred shall be paid by the commonwealth.

Contents of indictment. SECTION 17. An indictment shall contain —
 First, The caption, which shall consist of the name of the commonwealth, county and court in which the indictment is presented, and the

4 time of the sitting of the court. One caption shall be sufficient, although
 5 the indictment contains more than one count.
 6 Second, A plain and concise description of the act which constitutes
 7 the crime, or the appropriate legal term descriptive of such act, without a
 8 detailed description thereof. The words used in a statute to define a
 9 crime, or other words conveying the same meaning, may be used.

189 Mass. 12
 193 Mass. 464.
 213 Mass. 135.
 228 Mass. 308.
 242 Mass. 532.
 248 Mass. 511.

1 SECTION 18. The circumstances of the act may be stated according
 2 to their legal effect, without a full description thereof.

Circumstances
 of the act.

1899, 409, § 13. R. L. 218, § 18. 189 Mass. 12. 248 Mass. 511.

1 SECTION 19. If the name of an accused person is unknown to the
 2 grand jury, he may be described by a fictitious name or by any other
 3 practicable description, with an allegation that his real name is unknown.
 4 An indictment of the defendant by a fictitious or erroneous name shall not
 5 be ground for abatement; but if at any subsequent stage of the proceed-
 6 ings his true name is discovered, it shall be entered on the record and may
 7 be used in the subsequent proceedings, with a reference to the fact that
 8 he was indicted by the name or description mentioned in the indictment.

Name of de-
 fendant.
 1899, 409, § 8.
 R. L. 218, § 19.
 189 Mass. 12.
 254 Mass. 556.
 259 Mass. 453.
 268 Mass. 25.

1 SECTION 20. The time and place of the commission of the crime need
 2 not be alleged unless it is an essential element thereof. The allegation
 3 of time in the caption shall, unless otherwise stated, be considered as an
 4 allegation that the act was committed before the finding of the indict-
 5 ment, after it became a crime, and within the period of limitations. The
 6 name of the county and court in the caption shall, unless otherwise stated,
 7 be considered as an allegation that the act was committed within the
 8 territorial jurisdiction of the court. All allegations of the indictment
 9 shall, unless otherwise stated, be considered to refer to the same time
 10 and place.

Time and
 place.
 1899, 409, § 10.
 R. L. 218, § 20.
 189 Mass. 12.
 205 Mass. 128.
 212 Mass. 253.
 231 Mass. 598.
 249 Mass. 555.
 261 Mass. 345.

1 SECTION 21. The means by which a crime is committed need not be
 2 alleged in the indictment unless an essential element of the crime.

Means.
 1899, 409, § 14.

R. L. 218, § 21. 189 Mass. 12. 207 Mass. 259. 235 Mass. 449.

1 SECTION 22. If an allegation relative to a written instrument con-
 2 sisting wholly or in part of writing, print or figures is necessary, it may
 3 describe such instrument by any name or designation by which it is
 4 usually known, or by the purport thereof, without setting out a copy or
 5 facsimile of the whole or of any part thereof; and no variance between
 6 such recital or description and the instrument produced at the trial shall
 7 be material, if the identity of the instrument is evident and the purport
 8 thereof is so described as not to prejudice the defendant.

Description of
 written instru-
 ment.
 1899, 409, § 15.
 R. L. 218, § 22.
 227 Mass. 57.
 231 Mass. 449.

1 SECTION 23. If an allegation relative to any bullion, money, notes,
 2 bank notes, checks, drafts, bills of exchange, obligations or other securities
 3 for money of any country, state, county, city, town, bank, corporation,
 4 partnership or person is necessary, it may describe it as money, without
 5 specifying any particulars thereof; and such descriptive allegation shall
 6 be sustained by proof of any amount of bullion, money, notes or other
 7 securities for money as aforesaid, although the particular nature thereof
 8 shall not be proved.

Description
 of money.
 1834, 186, § 2.
 R. S. 133, § 10.
 1845, 215.
 1846, 171, § 2.
 G. S. 161, § 42.
 1878, 186.
 P. S. 203, § 44.
 1899, 409, § 16.
 R. L. 218, § 23.
 100 Mass. 1.

- SECTION 24.** The value or price of property need not be stated, unless an essential element of the crime. If the nature, degree or punishment of a crime depends upon the fact that the property exceeds or does not exceed a certain value, it may be described, as the case may be, of more than that value, or of not more than that value.
- Description of value or price.*
1899, 409, § 17.
R. L. 218, § 24.
- SECTION 25.** If an indictment for a crime involving the commission or attempted commission of an injury to property describes the property with sufficient certainty in other respects to identify the act, it need not allege the name of the owner.
- Description of ownership.*
1899, 409, § 18.
R. L. 218, § 25.
- SECTION 26.** If one element of the criminality of an act is its commission in a public place, and if such place is not more particularly defined in the statute, the act may be alleged generally to have been committed "in a public place".
- Description of public place.*
1899, 409, § 19.
R. L. 218, § 26.
- SECTION 27.** In an indictment for the larceny of an animal, or for any other crime in respect thereof, it may be described by the name by which it is commonly known, without stating its age or sex or whether it is alive or dead.
- Description of animal.*
1899, 409, § 20.
R. L. 218, § 27.
- SECTION 28.** If it is necessary to set forth the judicial proceedings in any case then or formerly pending in any court, civil or military, or any proceedings before a justice of the peace or any other magistrate, only the substance of said proceedings or such part thereof as shall constitute in whole or in part the crime charged need be alleged.
- Description of judicial proceedings.*
1899, 409, § 21.
R. L. 218, § 28.
- SECTION 29.** An allegation that the defendant committed the act charged shall be a sufficient allegation that he was criminally responsible therefor.
- General intent.*
1899, 409, § 9.
R. L. 218, § 29.
188 Mass. 13.
- SECTION 30.** If an intent to injure or defraud is an essential element of a crime, an intent to injure or defraud may be alleged generally, without naming the person, corporation or government intended to be injured or defrauded. Proof of an intent to injure or defraud any person or body corporate shall be competent to support the allegation.
- Intent to injure or defraud.*
R. S. 127, § 14.
G. S. 162, § 13.
P. S. 204, § 13.
1899, 409, § 23.
R. L. 218, § 30.
12 Met. 446.
100 Mass. 12.
231 Mass. 449.
- SECTION 31.** Different means or different intents by or with which a crime may be committed may be alleged in the same count in the alternative.
- Alternative descriptions.*
1899, 409, § 25.
R. L. 218, § 31.
243 Mass. 472.
- SECTION 32.** An allegation that a crime was committed or that certain acts were done during a certain period of time next before the finding of the indictment shall be a sufficient allegation that the crime alleged was committed or that the acts alleged were done on divers days and times within that period.
- Continuing offences.*
1899, 409, § 11.
R. L. 218, § 32.
212 Mass. 253.
- SECTION 33.** Presumptions and conclusions of law, matters of which judicial notice is taken and allegations not required to be proved need not be alleged. An indictment shall not be considered defective or insufficient because it omits to allege that the crime was committed, or the act was done "traitorously", "feloniously", "burglariously", "wil-
- Unnecessary and immaterial allegations.*
R. S. 137, § 14.
1858, 181, § 4.
1846, 62; 95, § 15.
1852, 37, § 3.
1858, 23.

6 fully", "maliciously", "negligently", "unlawfully" or otherwise sim-
 7 ilarly to describe the crime, unless such description is an element of the
 8 crime charged, or because it omits to allege that the crime was com-
 9 mitted or done with "force and arms", or "against the peace", or against
 10 the form of the statute or statutes, or against a by-law, ordinance, order,
 11 rule or regulation of any public authority, or because it omits to state or
 12 misstates the title, occupation, estate or degree of the defendant or of
 13 any other person named in the indictment, or of the name of the county,
 14 city, town or place of his residence, unless such omission or misstatement
 15 tends to the prejudice of the defendant, or by reason of describing a fine or
 16 forfeiture as enuring to the use of the commonwealth instead of to the
 17 use of the county, city or town, or by reason of any misstatement as to
 18 the appropriation of any fine or forfeiture, or by reason of its failure to
 19 allege or recite a special statute or a by-law or ordinance of a city or
 20 town or order of the mayor and aldermen or selectmen or rules or regu-
 21 lations of any public board of officers.

G. S. 168, § 2;
 171, § 16; 172,
 § 19.
 1860, 191, § 10.
 P. S. 210, § 2;
 213, §§ 16, 17.
 1885, 144.
 1886, 53.
 1899, 409, §§ 3,
 6, 9.
 R. L. 218, § 33
 150 Mass. 66.
 156 Mass. 234.
 175 Mass. 325.
 247 Mass. 197.
 264 Mass. 378.

1 SECTION 34. An indictment shall not be quashed or be considered
 2 defective or insufficient if it is sufficient to enable the defendant to under-
 3 stand the charge and to prepare his defence; nor shall it be considered
 4 defective or insufficient for lack of any description or information which
 5 might be obtained by requiring a bill of particulars under section forty.

Immaterial
 omissions.
 1899, 409, § 5.
 R. L. 218, § 34
 212 Mass. 255.
 225 Mass. 89.
 231 Mass. 598.
 232 Mass. 588.
 235 Mass. 449.

243 Mass. 472. 248 Mass. 511. 257 Mass. 260. 258 Mass. 609.

1 SECTION 35. A defendant shall not be acquitted on the ground of
 2 variance between the allegations and proof if the essential elements of
 3 the crime are correctly stated, unless he is thereby prejudiced in his
 4 defence. He shall not be acquitted by reason of an immaterial misnomer
 5 of a third party, an immaterial mistake in the description of property or
 6 the ownership thereof, failure to prove unnecessary allegations in the
 7 description of the crime or any other immaterial mistake in the indict-
 8 ment.

Variance.
 1864, 250, § 1.
 P. S. 214, § 26.
 1899, 409, § 4.
 R. L. 218, § 35.
 97 Mass. 570.
 98 Mass. 9.
 107 Mass. 199,
 227.
 114 Mass. 263.
 126 Mass. 472.
 133 Mass. 393.
 209 Mass. 38.

211 Mass. 578. 254 Mass. 320. 258 Mass. 609.
 235 Mass. 449. 255 Mass. 510. 267 Mass. 591.
 238 Mass. 250. 257 Mass. 260. 269 Mass. 598.
 241 Mass. 131.

1 SECTION 35A. Upon motion of the district attorney or prosecuting
 2 officer, the court may order the complaint or indictment amended in
 3 relation to allegations or particulars as to which the defendant would
 4 not be prejudiced in his defence.

Amendments
 of indictments
 and complaints.
 1926, 227,
 296.

264 Mass. 378. 269 Mass. 598.

1 SECTION 36. The word "oath" as used in an indictment shall include
 2 an "affirmation".

Scope of word
 "oath".

1899, 409, § 22. R. L. 218, § 36.

1 SECTION 37. An excuse, exception or proviso not stated in the enact-
 2 ing clause of a statute creating a crime or stated only by reference to
 3 other provisions of the statute need not be negated in the indictment
 4 unless necessary for a complete definition of the crime. If any statute
 5 shall prescribe a form of indictment in which an excuse, exception or
 6 proviso is not negated, it shall be taken that it is not necessary to a
 7 complete definition of the crime that they should be negated. If a
 8 statute creating a crime permits an act, therein declared to be criminal, to

Exceptions
 and provisos.
 1899, 409, § 26.
 R. L. 218, § 37.
 228 Mass. 308.
 254 Mass. 454

be performed without criminality under stated conditions, such conditions need not be negatived. 9 10

Allegations, presumptions and proof in prosecutions under certain section of chapter 94. 1917, 275, §§ 16, 17.

SECTION 38. In a prosecution under any provision of sections one hundred and ninety-seven to two hundred and thirteen, inclusive, of chapter ninety-four, for unlawfully prescribing, selling, furnishing, giving away or delivering a narcotic drug in violation of any provision of said sections, it shall be sufficient to allege that the defendant did unlawfully prescribe, sell, furnish, give away or deliver, as the case may be, the alleged narcotic drug, without any further allegations, and without naming the person prescribed for, or the amount or quantity of the drug, or the person to whom such sale, furnishing, giving away or delivery was made; but the defendant shall be entitled to a bill of particulars under section forty. In such a prosecution, a defendant relying upon a prescription, written order, registration, appointment or authority as a defence or justification shall prove the same, and until he has proved it the presumption shall be that he is not so justified or authorized. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

Meaning of certain words and phrases. 1899, 409, § 12; R. L. 218, § 38; 184 Mass. 320; 187 Mass. 581; 202 Mass. 121, 379; 222 Mass. 504; 224 Mass. 42; 231 Mass. 149; 232 Mass. 588; 238 Mass. 379; 252 Mass. 116; 255 Mass. 506.

SECTION 39. The words used in an indictment may, except as otherwise provided in this section, be construed according to their usual acceptance in common language; but if certain words and phrases are defined by law, they shall be used according to their legal meaning. 1 2 3 4

The following words, when used in an indictment, shall be sufficient to convey the meaning herein attached to them: 5 6

Adultery. — Sexual intercourse by a married man with a woman not his wife, by an unmarried man with a married woman, by a married woman with a man not her husband. 7 8 9

Affray. — Fighting together of two or more persons in a public place to the terror of the persons lawfully there. 10 11

False Pretences. — False representations made by word or act of such a character, or made under such circumstances and in such a way, with the intention of influencing the action of another, as to be punishable. 12 13 14

Forgery. — The false making, altering, forging or counterfeiting of any instrument described in section one of chapter two hundred and sixty-seven, or any instrument which, if genuine, would be a foundation for or release of liability of the apparent maker. 15 16 17 18

Fornication. — Sexual intercourse between a man and an unmarried woman. 19 20

230 Mass. 567.

Murder. — The killing of a human being, with malice aforethought. 21

Rape. — The unlawful forcible carnal knowledge by a man of a woman against her will or without her consent; or the carnal knowledge by a man of a female child under the statutory age of consent. 22 23 24

Robbery. — The taking and carrying away of personal property of another from his person and against his will, by force and violence, or by assault and putting in fear, with intent to steal. 25 26 27

Stealing. Larceny. — The criminal taking, obtaining or converting of personal property, with intent to defraud or deprive the owner permanently of the use of it; including all forms of larceny, criminal embezzlement and obtaining by criminal false pretences. 28 29 30 31

Bill of particulars. 1887, 436, § 2; 1899, 409, §§ 10, 13, 14; 16, 24, 27; R. L. 218, § 39

SECTION 40. The court may, upon arraignment of the defendant, or at any later stage of the proceedings, order the prosecution to file a statement of such particulars as may be necessary to give the defendant and the court reasonable knowledge of the nature and grounds of the crime 1 2 3 4

5 charged, and if it has final jurisdiction of the crime, shall so order at the 184 Mass. 320.
 6 request of the defendant if the charge would not be otherwise fully, 187 Mass. 551.
 7 plainly, substantially and formally set out. If there is a material variance 189 Mass. 12.
 8 between the evidence and the bill of particulars, the court may order the 195 Mass. 100.
 9 bill of particulars to be amended, and may postpone the trial, which may 199 Mass. 583.
 10 be before the same or another jury, as the court may order. If, to prepare 202 Mass. 379.
 11 for his defence, the defendant desires information as to the time and place 207 Mass. 259,
 12 of the alleged crime or the means by which it is alleged to have been com- 572.
 13 mitted, or more specific information as to the exact nature of the property 213 Mass. 135.
 14 described as money, or, if indicted for larceny, as to the crime which he 218 Mass. 507.
 15 is alleged to have committed, he may apply for a bill of particulars as 227 Mass. 57.
 16 aforesaid. 231 Mass. 449.
 241 Mass. 131.
 242 Mass. 532.
 245 Mass. 177.
 248 Mass. 511.
 255 Mass. 369.
 257 Mass. 353.
 266 Mass. 391.
 269 Mass. 598.

1 SECTION 41. In an indictment for criminal dealing with personal Indictment for
 2 property with intent to steal, an allegation that the defendant stole said larceny
 3 property shall be sufficient; and such indictment may be supported by 1899, 409, § 24
 4 proof that the defendant committed larceny of the property, or embezzled R L 218, § 40
 5 it, or obtained it by false pretences. 183 Mass. 461
 202 Mass. 379.
 222 Mass. 504

265 Mass. 45.

1 SECTION 42. In prosecutions for buying, receiving or aiding in the Indictment for
 2 concealment of stolen property known to have been stolen, it shall not receiving stolen
 3 be necessary to allege or prove that the person who stole the property has property.
 4 been convicted. 1804, 143, § 11.
 R S 126, § 24.

G. S. 161, § 45.
 P. S. 203, § 50.

R. L. 218, § 41.
 3 Mass. 126.

260 Mass. 233.

1 SECTION 43. In an indictment for perjury alleged to have been com- Indictment
 2 mitted in a criminal case an allegation of the substance of the crime shall for perjury.
 3 be sufficient; if alleged to have been committed in a civil case, an allega- 1869, 186, § 1.
 4 tion of the nature of the controversy in general terms shall be sufficient. P S 205, § 5.
 5 In both cases, the court or magistrate before whom the oath or affirmation R L 218, § 42.
 6 was taken shall be alleged, but no part of the proceeding in which, or the 12 Mass. 273.
 7 commission or authority of the court or person before whom, the perjury 6 Gray, 274.
 8 was committed need be alleged. 5 Allen, 499.
 105 Mass. 582.
 107 Mass. 227.
 119 Mass. 317.
 122 Mass. 449.

152 Mass. 498.

164 Mass. 398.

166 Mass. 174.

1 SECTION 44. If, in an indictment for subornation of perjury or for Indictment for
 2 attempting to incite or procure another person to commit perjury, it is subornation of
 3 alleged that perjury has been committed, an allegation of the perjury as perjury
 4 provided in the preceding section and an allegation that the defendant 1869, 186, § 2.
 5 wilfully incited or procured said person to commit said perjury shall be P S 205, § 6.
 6 sufficient. If it is not alleged that such perjury has been committed, an R L 218, § 43.
 7 allegation of the substance of the crime with which the defendant is 152 Mass. 498.
 8 charged shall be sufficient, without allegations as to matters or things 155 Mass. 224.
 9 which by the preceding section are declared to be unnecessary.

1 SECTION 45. In an indictment under section thirty-five of chapter Indictment
 2 two hundred and seventy-two, an allegation that the defendant com- for unnatural
 3 mitted an unnatural and lascivious act with the person named or referred and lascivious
 4 to in the indictment shall be sufficient. acts
 1887, 436, § 2.

R. L. 218, § 44.

160 Mass. 536.

1 SECTION 46. Two or more counts describing different crimes depend- Different
 2 ing upon the same facts or transactions may be set forth in the same counts for
 different

offences in same indictment.

indictment if it contains an averment that the different counts therein are different descriptions of the same acts. 3 4

1861, 181.	102 Mass. 487.	134 Mass. 201.	159 Mass. 56.
P. S. 213, § 18.	127 Mass. 15.	150 Mass. 394.	181 Mass. 184.
R. S. 81,	128 Mass. 46.	152 Mass. 276,	243 Mass. 472.
§§ 15, 16.		283.	
G. S. 112,			
§§ 8, 9, 20.			
P. S. 150, § 19.			
1891, 379, § 4.			
1893, 365.			
R. L. 157, § 10.			
5 Cush. 386.			
9 Allen, 585.			

PROCEEDINGS UPON ARRAIGNMENT IN CAPITAL CASES.

Arraignment. 1820, 14, § 8. 1832, 130, § 6. R. S. 81, §§ 15, 16. G. S. 112, §§ 8, 9, 20. P. S. 150, § 19. 1891, 379, § 4. 1893, 365. R. L. 157, § 10. 5 Cush. 386. 9 Allen, 585.

SECTION 47. If a prisoner, under indictment for a capital crime, pleads guilty, upon being arraigned, the court shall award sentence against him; if he does not plead guilty, the court may assign him counsel and take all other measures preparatory to a trial, which shall, subject to section seventy-two, be held as soon after the finding of the indictment as the other official duties of the justices will admit and the circumstances of the case require. 1 2 3 4 5 6 7

12 Allen, 155.

104 Mass. 537.

Assignment of counsel in capital case in district court. 1911, 432, § 1.

SECTION 48. If a defendant in a capital case does not plead guilty upon being arraigned before a district court or trial justice, the superior court may assign him counsel upon his petition, and upon certification to the superior court of the record of the arraignment and plea by the clerk of the district court, or by the trial justice before whom the arraignment was held. The case shall thereupon be continued until the assignment of counsel has been made, and certification thereof received by the clerk of the district court or by the trial justice. 1 2 3 4 5 6 7 8

Compensation to counsel. 1911, 432, § 2.

SECTION 49. The superior court may allow reasonable compensation for the services of counsel in the district court assigned to defend the prisoner, if he is otherwise unable to procure counsel, and such compensation shall be paid by the county where the indictment is found. 1 2 3 4

Indictments in Dukes and Nantucket counties. 1832, 130, § 6. R. S. 81, § 46. G. S. 112, § 24. 1878, 151. P. S. 150, § 24. 1891, 379, § 5. R. L. 157, § 11.

SECTION 50. An indictment for a capital crime found in Dukes or Nantucket county shall be tried in Bristol county; and the court for that purpose shall be convened and held, and all proceedings relative thereto conducted, as though the indictment had been originally found in Bristol county. The court may in such case, from time to time while the indictment is pending, make orders relative to the place of confinement of the prisoner, and the expense of his keeping shall in all cases be paid by the county where the indictment is found. 1 2 3 4 5 6 7 8

Change of venue. 1871, 240, § 1. P. S. 150, § 26. 1891, 379, § 6. R. L. 157, § 12.

SECTION 51. Upon petition of a person indicted for a capital crime, the court may, if in its opinion an impartial trial cannot be had in the county where the case is pending, order a change of venue to any county adjoining the county where the indictment was found; and on such order, the court shall have jurisdiction in the county to which such change may be made. All other proceedings in such case shall be the same, as nearly as may be, as if the indictment had been originally entered in such adjoining county. 1 2 3 4 5 6 7 8

Transmission of papers. 1871, 240, § 2. P. S. 150, § 27. 1891, 379, § 7. R. L. 157, § 13.

SECTION 52. The clerk of the courts in the county where the indictment is pending, or, if pending in Suffolk county, the clerk of the superior court for criminal business, shall forthwith, upon the entry of such order upon the docket, transmit the original indictment, with the papers in the case and a duly certified copy of said order, to the clerk of the courts for the county to which the venue has been changed, or, 1 2 3 4 5 6

7 if the last named county is Suffolk county, to the clerk of the superior
8 court for criminal business; and the clerk, upon receiving the indict-
9 ment so transmitted, shall make immediate entry of the case upon the
10 docket of the superior court for such county.

1 SECTION 53. After the venue has been changed under the two pre- District at-
2 ceding sections, the district attorney for the county where the indict- torney to
3 ment was found shall have the same authority and duty in the case as conduct case
4 if the venue had not been changed. in new venue.
1871, 240, § 3.

P. S. 150, § 28.

1891, 379, § 8.

R. L. 157, § 14.

1 SECTION 54. If a change of venue is ordered, the sheriff having Custody of
2 custody of the prisoner shall forthwith deliver him to the sheriff of the prisoner.
3 county to which the venue has been changed, who shall receive and 1871, 240, § 4.
4 safely keep him as if the indictment had been found in such county. P. S. 150, § 29.
1891, 379, § 9.

R. L. 157, § 15.

1 SECTION 55. A justice of the court, sitting at the trial or other Compensation
2 proceedings upon an indictment for murder, may allow reasonable of counsel of
3 compensation for the services of counsel assigned to defend the pris- prisoner.
4 oner if he is otherwise unable to procure counsel, and such compensa- 1893, 394, § 2.
5 tion shall be paid by the county where the indictment is found. R. L. 157, § 16.

1 SECTION 56. The reasonable expenses incurred and paid by counsel Expenses of
2 assigned by the court for the defence of a person indicted for murder, counsel of
3 who is otherwise unable to procure counsel, shall be paid by the county prisoner.
4 where the indictment is found after approval by a justice sitting at the 1893, 394, § 1.
5 trial or other proceedings of the case. R. L. 157, § 17.

VENUE OF SPECIFIC CRIMES.

1 SECTION 57. A crime committed on or within one hundred rods of Crime near
2 the boundary line of two counties may be alleged to have been com- boundary line.
3 mitted, and may be prosecuted and punished, in either county; and 1794, 31, § 1.
4 if committed on or within fifty rods of the boundary line of two judicial R. S. 133, § 7.
5 districts, it may be alleged to have been committed, and may be prose- G. S. 171, § 17.
6 cuted and punished, in either district. A crime committed upon the 1874, 271, § 5.
7 sea within one league of the shore may be prosecuted and punished in P. S. 154, § 50;
8 an adjacent county. 213, § 19.
1885, 322.
1893, 396, § 34.
1894, 431.
R. L. 218, § 46.
2 Allen, 502.

118 Mass. 1.

167 Mass. 173.

216 Mass. 214.

1 SECTION 57A. A defendant shall not be discharged for want of juris- Venue in cer-
2 diction if the evidence discloses that the crime with which he is charged tain doubtful
3 was actually committed without the county or the territorial jurisdiction cases.
4 of the court in which he is being tried; provided, that the attorney general 1923, 340.
5 or the district attorney petitions to the court before proceeding with the
6 trial for leave to proceed, stating that he is in doubt from the state of the
7 evidence then in his possession as to whether or not the crime was com-
8 mitted within the county or the territorial jurisdiction of the court, and
9 the court after hearing said petition orders the trial to proceed.

1 SECTION 58. Larceny, whether at common law or as defined by Venue of
2 section thirty of chapter two hundred and sixty-six, may be prosecuted larceny.
3 and punished in any county where the defendant had possession of the 1878, 105.
4 property alleged to have been stolen. P. S. 213, § 20.
R. L. 218, § 47.

165 Mass. 526.

188 Mass. 308.

210 Mass. 443.

Venue of indictment for obtaining money by false pretences. 1863, 248, § 1. P. S. 213, § 21. R. L. 218, § 48. 188 Mass. 308.

SECTION 59. The crime of obtaining money or a personal chattel by a false pretence, and the crime described in section thirty-one of chapter two hundred and sixty-six, may be alleged to have been committed, and may be prosecuted and punished, in any county where the false pretence was made, written or used, or in or through which any of the property obtained was carried, sent, transported or received by the defendant.

Venue of indictment if injury is in one county and death in another. 1795, 45, § 1.

SECTION 60. If a mortal wound is given, or if other violence or injury is inflicted, or if poison is administered, in one county, by means whereof death ensues in another county, the homicide may be prosecuted and punished in either county.

R. S. 133, § 8. R. L. 218, § 49. 118 Mass. 1.
G. S. 171, § 18. 2 Pick. 549. 216 Mass. 314
P. S. 213, § 22.

Venue of indictment for crime committed at sea, etc. 1795, 45, § 2. R. S. 133, § 9. G. S. 171, § 19. P. S. 213, § 23.

SECTION 61. If a mortal wound is given, or if other violence or injury is inflicted, or if poison is administered, on the high seas or on land either within or without the commonwealth, by means whereof death ensues in any county thereof, the homicide may be prosecuted and punished in the county where the death happens.

R. L. 218, § 50. 101 Mass. 1. 123 Mass. 430.

Venue of indictment if injury is in this commonwealth and death outside. P. S. 213, § 24. R. L. 218, § 51.

SECTION 62. If a mortal wound is given, or if other violence or injury is inflicted, or if poison is administered, in any county of the commonwealth, by means whereof death ensues without the commonwealth, the homicide may be prosecuted and punished in the county where the act was committed.

LIMITATION OF CRIMINAL PROSECUTIONS.

Limitation of criminal prosecutions. R. S. 136, § 16. G. S. 171, § 20. P. S. 213, § 25. R. L. 218, § 52. 205 Mass. 128.

SECTION 63. An indictment for murder may be found at any time after the death of the person alleged to have been murdered. An indictment for any other crime shall be found and filed within six years after the crime has been committed; but any period during which the defendant is not usually and publicly resident within the commonwealth shall be excluded in determining the time limited.

Limitation of new indictment against corporation after abatement of former one, etc. 1867, 164. P. S. 213, § 26. R. L. 218, § 53.

SECTION 64. If an indictment, duly found and returned within the time limited by law against a corporation to recover a pecuniary penalty, is abated or otherwise avoided or defeated by reason of any matter of form, or if after a verdict against such corporation judgment is arrested, or if a judgment against such corporation is reversed on writ of error, a new indictment for the same cause may be found and filed within one year after the abatement of the former indictment or the reversal of the judgment as aforesaid.

ARREST, ARRAIGNMENT AND OTHER PROCEEDINGS.

Prisoner to be served with copy of indictment, etc. 1872, 130, § 6. R. S. 136, § 18, 19. G. S. 171, § 22. 1869, 433, § 1. 1878, 151, § 2. P. S. 213, § 28. 1891, 379, § 11.

SECTION 65. After the finding of an indictment for murder, the defendant, if in custody, shall forthwith be served by the sheriff or his deputy with a copy thereof and with an order of the court notifying him that the indictment will be entered forthwith upon the docket of the superior court for the county where found, or, if found in Dukes or Nantucket county, that it will be entered forthwith upon the docket of the superior court for Bristol county.

R. L. 218, § 54. 5 Cush. 386.

1 SECTION 66. A prisoner indicted for a crime punishable with death
 2 or imprisonment for life, upon demand by him or his counsel upon the
 3 clerk, shall have a list of the jurors who have been returned and process
 4 to summon witnesses who are necessary to his defence, at the expense of
 5 the commonwealth.

P. S. 213, § 31. 13 Mass. 591. 255 Mass. 369.
 R. L. 218, § 55. 104 Mass. 537.

Prisoner to have list of jurors and process for witnesses.
 R. S. 136, § 23.
 G. S. 171, § 24.

1 SECTION 67. Whoever, having been indicted for felony, is under re-
 2 cognizance or in custody to answer therefor shall be entitled to a copy
 3 of the indictment and of all endorsements thereon without charge.

G. S. 171, § 25. P. S. 213, § 32. R. L. 218, § 56.

Other prisoners entitled to copy of indictment.
 R. S. 136, § 24.

1 SECTION 68. The attorney general and district attorneys may issue
 2 subpoenas under their hands for witnesses to appear and testify on behalf
 3 of the commonwealth, and such subpoenas shall have the same force, and
 4 be obeyed in the same manner, and under the same penalties, in case of
 5 default, as if issued by the clerk of the court.

R. L. 218, § 57.

Prosecuting officers may issue subpoenas.
 R. S. 136, § 25.
 G. S. 171, § 26.
 P. S. 213, § 33.

1 SECTION 69. Witnesses summoned in behalf of the commonwealth
 2 shall attend without the payment of fees, and shall be punishable for
 3 non-attendance; but if the court finds that they are unable to defray
 4 their expenses, it shall order their fees which have accrued to be paid,
 5 and may make such further order for the payment of their fees as may be
 6 considered reasonable. The court may at each sitting pass a general
 7 order for the payment of the fees of such witnesses.

Witnesses for commonwealth to attend without fees.
 R. S. 136, § 26.
 1859, 62.
 G. S. 171, § 27.
 P. S. 213, § 34.
 R. L. 218, § 58.

1 SECTION 70. A justice of a court of record may at any time order a
 2 witness for the commonwealth in a criminal case or in a case under sec-
 3 tions fifty-two to sixty-four, inclusive, of chapter one hundred and nine-
 4 teen, pending in such court to recognize, with or without sureties, to
 5 appear and testify at the next or any succeeding sitting of said court,
 6 and may issue a warrant to bring such witness before him to recognize as
 7 aforesaid; but a witness unable to procure sureties shall not on that ac-
 8 count be committed to jail except in cases of felony.

Witness to recognize, when.
 1868, 69.
 1872, 214.
 P. S. 213, § 35.
 R. L. 218, § 59.

1 SECTION 70A. Except as otherwise provided by law, a nolle prosequi
 2 entered by a district attorney or assistant district attorney in a criminal
 3 case shall be accompanied by a written statement, signed by the district
 4 attorney or assistant district attorney making such entry, setting forth
 5 the reasons for such disposition. Said statement shall be filed with the
 6 pleadings.

Entry of a nolle prosequi regulated.
 1922, 458.

1 SECTION 70B. Except as otherwise provided by law, a criminal case
 2 shall not be placed on file, on motion of a district attorney or assistant
 3 district attorney, unless such motion is accompanied by a written state-
 4 ment of the reasons for such disposition, signed by the district attorney
 5 or assistant district attorney, which shall be filed with the pleadings, and
 6 also accompanied by a statement of any previous criminal record of the
 7 accused.

Placing cases on file regulated.
 1922, 458.

1 SECTION 71. If a defendant upon arraignment refuses to plead or
 2 does not confess the indictment to be true, the court shall order a plea of

Arraignment. Standing mute.

1795, 45, § 3. not guilty to be entered, and shall thereupon proceed as if he had pleaded 3
 R. S. 136, not guilty. It shall not be necessary in any case to ask a prisoner how 4
 §§ 28, 29. he will be tried. 5
 G. S. 171, § 29.
 P. S. 213, § 37.

R. L. 218, § 60. 13 Allen, 563. 155 Mass. 296.
 10 Met. 222. 125 Mass. 397. 354 Mass. 556.

Limit of time of trial. SECTION 72. Whoever is held in custody upon an indictment shall, 1
 1784, 72, § 13. if he requires it, either be tried at the sitting of the court next after the 2
 R. S. 136, § 30. expiration of six months from the time when he was imprisoned or be 3
 G. S. 171, § 39. bailed upon his own recognizance, unless the court finds that the wit- 4
 P. S. 213, § 38. nesses on behalf of the government have been enticed or kept away or 5
 R. L. 218, § 61. have been detained and prevented from attending the court by illness or 6
 109 Mass. 340. inevitable accident. 7

Compensation of persons discharged in certain cases. 1911, 577. SECTION 73. Any person in the commonwealth kept in confinement 1
 awaiting trial for more than six months after having been indicted, and 2
 finally acquitted or discharged without trial, if the delay in trial was not 3
 at his request or with his consent, or at the request or with the consent 4
 of his attorney of record, may receive compensation for the period of his 5
 confinement after the lapse of said six months and until his acquittal or 6
 discharge; provided, that the payment of compensation is approved by 7
 the justice who presided at the trial, or in case of a discharge without trial, 8
 by a justice of the superior court sitting at a session for criminal business 9
 in and for the county where the indictment was found. Such compen- 10
 sation shall be paid by the county where the indictment was found and 11
 shall be equivalent to the amount which the indicted person earned or 12
 received from his regular employment for any period of equal length 13
 during the two years immediately preceding his confinement; and if he 14
 had no employment, the compensation shall be such reasonable sum as 15
 shall be determined by the justice who presided at the trial, or, in case of 16
 a discharge without trial, by a justice of the superior court sitting at a 17
 session for criminal business in and for the county where the indictment 18
 was found. The justice, upon application by the person acquitted or 19
 discharged, shall give a hearing at which such person or his representa- 20
 tive may be present, if he so desires, and the district attorney or other 21
 officer representing the commonwealth or the county may also be present, 22
 and the person acquitted or discharged and the commonwealth or county 23
 may offer testimony as in any civil case. The decision of the justice 24
 shall be final. 25

Verification of plea in abatement. R. S. 136, § 31. G. S. 171, § 31. SECTION 74. The court may refuse to receive a plea in abatement or 1
 other dilatory plea to an indictment until its truth has been proved by 2
 affidavit or other evidence. 3
 P. S. 213, § 39. R. L. 218, § 62.

Form of plea of former acquittal, etc. 1864, 250, § 4. P. S. 213, § 40. R. L. 218, § 63. S. Allen, 545. 113 Mass. 200. SECTION 75. In a plea of autrefois acquit or autrefois convict, an 1
 allegation that, at a certain sitting of a certain court, which shall be set 2
 forth, the defendant was lawfully acquitted or convicted, as the case 3
 may be, of the same crime with which he is again charged shall be 4
 sufficient. 5

Commission to examine witnesses. R. S. 136, § 32. G. S. 171, § 32. SECTION 76. If an issue of fact is joined upon an indictment, the 1
 court may, upon application of the defendant, grant a commission to 2
 examine any material witnesses residing out of the commonwealth, in 3

4 the same manner as in civil causes; and the prosecuting officer may join
5 in such commission, and may name any material witnesses to be ex-
6 amined on the part of the commonwealth.

P. S. 213, § 41.
R. L. 218, § 64.
5 Met. 412

1 SECTION 77. When such commission is issued, the interrogatories to
2 be annexed thereto shall be settled and the commission executed and
3 returned as is provided in relation to commissions in civil cases, and
4 the depositions taken thereon and returned shall be read in the same
5 manner and with the like effect, and subject to the same exceptions,
6 as in civil cases; but if the defendant on his trial declines to use the
7 deposition so taken, the prosecuting officer shall not, without the de-
8 fendant's consent, make use of any deposition taken on behalf of the
9 commonwealth.

Commission,
how executed.
Deposition,
how used.
R. S. 136, § 33.
G. S. 171, § 33.
P. S. 213, § 42.
R. L. 218, § 65

1 SECTION 78. No proceedings against a person for a crime shall bar a
2 civil action which might otherwise be maintained by a person aggrieved
3 by the commission of the crime.

Civil remedies
not barred by
criminal
proceedings.

1851, 151, § 6.
1856, 123, § 6.

G. S. 171, § 34.
P. S. 213, § 43.

R. L. 218, § 66.

1 SECTION 79. The provisions of this chapter, and the forms hereto
2 annexed, shall apply as well to complaints as to indictments, and such
3 forms shall be sufficient in cases to which they are applicable. In other
4 cases, forms as nearly like the forms hereto annexed as the nature of the
5 cases and the provisions of law will allow may be used; but any other
6 form of indictment or complaint authorized by law may be used.

Effect of
annexed forms.
1899, 409.
§§ 1, 2, 28.
R. L. 218, § 67.
1917, 275.
§ 18.
189 Mass. 12.
232 Mass. 588.

240 Mass. 402.
245 Mass. 177.

255 Mass. 369,
506.

266 Mass. 391.
267 Mass. 591.

SCHEDULE OF FORMS OF PLEADINGS.

Forms of pleadings.

CAPTION AND COMMENCEMENT OF INDICTMENT.

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

At the Superior Court holden at (Boston,) within and for the County of
(Suffolk,) for the transaction of criminal business, on the day of
in the year of our Lord one thousand, etc.

Caption and
commencement
of indictment.

The jurors for the said Commonwealth on their oath present

CAPTION AND COMMENCEMENT OF COMPLAINT.

(To a Police, District or Municipal Court.)

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

To the court of holden at for the trans-
action of criminal business, within the County of , A. B. of
in behalf of the Commonwealth of Massachusetts on the day of
in the year , on oath complains that

Caption and
commencement
of complaint.

(To a Trial Justice.)

To A. B., a Trial Justice in and for the County of and Com-
monwealth of Massachusetts, C. D. of (etc. as in form above).

(To a Justice of the Peace commissioned to Issue Warrants.)

To A. B., Justice of the Peace in and for the County of and Com-
monwealth of Massachusetts, designated and commissioned to issue warrants
in criminal cases, C. D. of (etc. as in form above).

(If the statute requires a particular person to make complaint, this should be alleged.)

Abduction.

Abduction. (Under Chap. 272, §§ 1, 2.) — (1) That A. B. did fraudulently and deceitfully entice (and take away) one C. D., an unmarried female under the age of sixteen years, from the house of her father (or guardian, etc., as the case may be), without the consent of the said father (or guardian, etc., as the case may be), under whose care and custody said C. D. was living, for the purpose of effecting a clandestine marriage of said C. D. without the consent of her said father (or guardian, etc., as the case may be).

(2) That A. B. did fraudulently and deceitfully entice (and take away) C. D., a woman or girl, from her father's house (or if elsewhere, state it, as the case may be), for the purpose of prostitution (or for the purpose of unlawful sexual intercourse with her).

Abortion.
195 Mass. 100.

Abortion. (Under Chap. 272, § 19.) — (1) That A. B., with intent to procure the miscarriage of C. D., did unlawfully administer to her (or advise, or prescribe for her, or cause to be taken by her) a certain drug (or medicine or other noxious thing, as the case may be).

If the woman dies, add "and in consequence thereof said C. D. died".

(2) That A. B., with intent to procure the miscarriage of C. D., did unlawfully use a certain instrument upon the body of said C. D., and in consequence thereof said C. D. died.

(3) That A. B., with intent to procure the miscarriage of C. D., did unlawfully do certain things (*naming them*) to (or upon the body of) said C. D.

Accessory
before the
fact.
202 Mass. 121.

Accessory before the fact. (Under Chap. 274, § 2.) — *Charge principal felony and proceed:* That A. B., before the said felony was committed, did incite, procure, aid, counsel, hire or command the said (principal) the said felony to do and commit.

Accessory
after the fact.

Accessory after the fact. (Under Chap. 274, § 4.) — *Charge principal felony and proceed:* That A. B. afterwards, well knowing the said C. D. to have committed the felony aforesaid, did harbor, (conceal, maintain,) or assist said C. D., with intent that said C. D. should avoid or escape (detention, arrest,) trial, or punishment; the said A. B. not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity, affinity or adoption to the said C. D.

Adultery.

Adultery. (Under Chap. 272, § 14.) — (1) That A. B. and C. D., a married woman, they not being married to each other, did commit adultery with each other.

(2) That A. B., a married man, did commit adultery with C. D., they not being married to each other.

Affray.

Affray. — That A. B. and C. D. did make an affray.

Armed with
dangerous
weapon when
arrested.

Armed with dangerous weapon when arrested. (Under Chap. 269, § 9.) — (1) That A. B., while being lawfully arrested on a sufficient warrant on a criminal charge, was armed with a dangerous weapon, to wit, a slung shot (or other dangerous weapon, as the case may be).

(2) That A. B., while committing the crime of (*here state crime*), was lawfully arrested by C. D., sheriff of said county, and when so arrested was armed with, and had on his person, a certain dangerous weapon (a slung shot, etc., as the case may be).

Arson.

Arson. (Under Chap. 266, §§ 1, 2, 4.) — (1) That A. B. wilfully and maliciously did burn the dwelling house of C. D. in _____ in said county.

(2) That A. B. wilfully and maliciously did burn a building adjoining the dwelling house of C. D. in _____ in said county.

(3) That A. B. wilfully and maliciously did set fire to a building in _____ by the burning whereof the dwelling house of C. D. was burned.

(4) That A. B. wilfully and maliciously, in the night time, did burn
(a) A meeting house (or church, town house, etc.) in _____ in said county, erected for public use.

(b) A banking house (or warehouse, etc.) of C. D. in _____ in said county, of the value, with the property therein, of one thousand dollars and not the property of (the defendant).

(c) A barn (or stable or shop or office) of C. D., in _____ in said county, the same being there within the curtilage of the dwelling house of said C. D.

(5) That A. B. wilfully and maliciously did burn a building, by the burning whereof [(a), (b), or (c)] was burned in the night time.

(6) That A. B. wilfully and maliciously did burn a banking house (or other structure mentioned in the statute, as the case may be) of C. D., in _____ in said county.

Assault and
battery.

Assault and battery. — That A. B. did assault and beat C. D.

Assault to maim, etc. (Under Chap. 265, § 15.) — That A. B. did assault C. D., with the malicious intent to maim (or disfigure) said C. D. by cutting out his tongue (or other facts required by the nature of the case).

Assault to maim, etc.

Assault to murder. (Under Chap. 265, § 15.) — That A. B. did assault C. D. with intent to murder him.

Assault to murder.

Assault to rape. (Under Chap. 265, § 24.) — (1) That A. B. did assault C. D. with intent to commit rape upon her.

Assault to rape.

(2) That A. B. did assault C. D., a female child under the age of sixteen years, with intent unlawfully and carnally to know and abuse her.

Assault with dangerous weapon, with intent to rob, etc. (Under Chap. 265, § 18.) — That A. B., being armed with a dangerous weapon, did assault C. D., with intent to rob him (or to murder him).

Assault with dangerous weapon to rob, etc.

Assault upon an officer. — That A. B. did assault and beat C. D., who was a police officer of the (city of Boston) (or whatever the fact may be), and who was also in the lawful discharge of his duties as such officer, as said (defendant) well knew, (and knowingly resisted and obstructed him in the discharge of his lawful duties). *This clause may be added if facts require.*

Assault upon an officer.

Assuming to be an officer. (Under Chap. 268, § 33.) — That A. B. did falsely assume and pretend to one C. D. that he, said A. B., was a police officer of (the city of) (or a constable of the city of), and did take upon himself to act as such officer, and did (state what he did if desired).

Assuming to be an officer.

Attempt to break and enter. (Under Chap. 274, § 6.) — That A. B. did attempt to break and enter a certain building in said (Boston) of one C. D., in the (night) time, with intent therein to commit larceny, and in such attempt did (set out the overt act relied on); but did fail in the perpetration of said attempted offence (or was intercepted and prevented in the execution of said attempted offence).

Attempt to break and enter.

Attempt to commit crime. (Under Chap. 274, § 6.) — That A. B. did attempt to commit larceny of the property of (another), (or such other crime as may be intended to be charged), and in such attempt did (set out the overt act relied on); but did fail in the perpetration of said attempted offence (or was intercepted and prevented in the execution of said attempted offence).

Attempt to commit crime; 177 Mass. 267.

Attempt to steal from person. (Under Chap. 274, § 6.) — That A. B. did attempt to steal from the person of C. D., and in such attempt did put his hand against the person and into the pocket of the said C. D.; but did fail in the perpetration of said attempted offence (or was intercepted and prevented in the execution of said attempted offence).

Attempt to steal from person.

Breaking, entering, etc. (Under Chap. 266, §§ 16-19.) — (1) That A. B. did break and enter in the night time the building (or ship or vessel) of one X., situated in said (Boston), with intent therein to commit murder (or rape, robbery, etc.).

Breaking, entering, etc.

(2) That A. B. did break and enter (or entered in the night time without breaking) a building (or ship or vessel) of one X., in said (Boston), with intent (as above), the said X. (or other person), who was lawfully therein, being put in fear.

(3) That A. B. did break and enter (or entered in the night time without breaking) a railroad car situated in said (Boston), of the (name of the railroad), with intent therein to commit larceny (or murder, etc., as the case may be).

(4) That A. B. did enter in the night time the dwelling house of one X., in said (Boston), with intent therein to commit larceny (or murder, etc., as the case may be).

(5) That A. B. did break and enter a building (or ship or vessel) of one X., in said (Boston), with intent therein (etc. as above).

Breaking glass. (Under Chap. 266, § 114.) — That A. B. did wantonly (or maliciously) break certain panes of glass in and part of a certain building, the property of C. D. in said (Boston).

Breaking glass.

Burglarious implements. (Under Chap. 266, § 49.) — That A. B. knowingly did have in his possession certain machines, tools and implements adapted and designed for cutting through, forcing and breaking open buildings, rooms, vaults, safes (and other depositories), in order to steal therefrom such money and other property as might be found therein, said A. B. knowing said machines, tools and implements to be adapted and designed for the purpose aforesaid, and intending to use and employ them therefor.

Burglarious implements.

Burglary, etc. (Under Chap. 266, §§ 14, 15.) — (1) That A. B. in the night time did break and enter the dwelling house of C. D., situated in said (Boston), with intent therein to commit larceny (or murder, rape or robbery, as the case may be).

Burglary, etc.

(If desired add actual larceny in the building.)

(2) That A. B. did enter the dwelling house of one X., situated in said (Boston), with intent therein to commit larceny, and after having so entered with said intent did break said dwelling house in the night time, X. being lawfully therein, and said A. B. being armed with a dangerous weapon at the time of such entry (or such breaking) (or arming himself with a dangerous weapon in said house) (or did make an assault on said X., who was lawfully therein).

(3) That A. B. did break and enter the dwelling house of one X., in said (Boston), in the night time, with intent therein to commit larceny (or murder, etc., as the case may be).

Burning to defraud insurance company. 177 Mass. 267.

Burning to defraud insurance company. (Under Chap. 266, § 10.) — That A. B. did burn a certain building in _____ in said county, [or certain goods, wares and merchandise (or other chattels — name the property)] which was (or were) at the time of such burning insured in the _____ Insurance Company, a corporation duly established by law, against loss or damage by fire, with the intent thereby to injure the said insurer.

Common drunkard

Common drunkard. (Under Chap. 272, § 53.) — That A. B., during the three months next before the making of this complaint, was a common drunkard.

Common night-walker. 207 Mass. 572.

Common nightwalker. (Under Chap. 272, § 53.) — That A. B., during the three months next before the making of this complaint, was a common nightwalker, habitually walking in the streets in the night time for the purpose of prostitution.

Concealing mortgaged personal property.

Concealing mortgaged personal property. (Under Chap. 266, § 82.) — That A. B. did mortgage to X. in due form of law certain personal property (*setting out the mortgaged property*), and that afterward, the said mortgage being in full force and effect, and the said X. remaining the owner thereof (*if such be the fact*), said A. B. did remove and conceal the said property with fraudulent intent to place the same beyond the control of the said X.

Conspiracy.

Conspiracy. — (1) That A. B. and C. D. conspired together to murder one E. F.

(2) That A. B. and C. D. conspired together to commit rape upon E. F.

(3) That A. B. and C. D. conspired together to steal the property, money, etc., of E. F.

Cruelty to animals.

Cruelty to animals. (Under Chap. 272, § 77.) — (1) That A. B. did overdrive (overload) (drive when overloaded) (overwork) (torture) (torment) (deprive of necessary sustenance) (cruelly beat) (cruelly mutilate) (cruelly kill) a certain horse (or dog, etc.).

(2) That A. B. did cause and procure one C. D. to overdrive (etc.) a certain horse (etc.).

(3) That A. B., having the charge and custody of a certain horse (etc.), did inflict unnecessary cruelty upon it.

(4) That A. B., having the charge and custody of a certain horse (etc.), did unnecessarily fail to provide it with proper food (or drink or shelter or protection from the weather).

Disorderly house.

Disorderly house. (Under Chap. 219, § 27.) — That A. B., during the three months next before the finding of this indictment, at said (Boston) did keep and maintain a certain and common, noisy, ill-governed and disorderly house, resorted to for the purpose of drinking, quarrelling, making great noises, and breaking and disturbing the peace, to the common nuisance of all the people.

Drunkenness.

Drunkenness. (Under Chap. 272, § 48.) — That A. B. was, by the voluntary use of intoxicating liquor, drunk.

Eavesdropping.

Eavesdropping. (Under Chap. 272, § 99.) — That A. B. did commit the crime of eavesdropping.

Escape, 1920, 558, § 4.

Escape. (Under Chap. 268, § 16.) — That A. B., being lawfully imprisoned in the House of Correction (or State Prison), in said county, did break therefrom and escape.

Exposure of person.

Exposure of person. — That A. B., in a public place in said (Boston), wherein were great numbers of people, indecently did expose to the view of the said people his body and person naked and uncovered.

Forged endorsement.

Forged endorsement. — That A. B. did forge a certain endorsement in and upon the back of, and as a part of, a certain promissory note, with intent to injure and defraud. (*The purport or substance of the note and endorsement may be set forth.*)

Forgery.

Forgery. (Under Chap. 267, § 1.) — That A. B., with intent to injure and defraud, did forge a certain instrument purporting to be, etc. (*give the name of the instrument, description, tenor or substance as the pleader chooses*).

Fornication.

Fornication. (Under Chap. 272, § 18.) — That A. B. did commit fornication with C. D., a single woman.

Gaming.

Gaming. (Under Chap. 139, § 15.) — That A. B., during the three months next before the finding of this indictment, at said (Boston), did keep and main-

tain a certain common nuisance, to wit, a tenement resorted to and used for illegal gaming.

House of ill fame. (Under Chap. 272, § 24.) — That A. B., during the three months next before the finding of this indictment, did keep at said (Boston) a certain house of ill fame, resorted to for purposes of prostitution and lewdness. House of ill fame.

House of ill fame — Nuisance. (Under Chap. 139, § 15.) — That A. B., during the three months next before the finding of this indictment, at said (Boston), did keep and maintain a certain tenement used for prostitution, assignation and lewdness (or in which acts of prostitution, assignation and lewdness occurred), to the common nuisance of all the people.

Idle and disorderly person. (Under Chap. 272, § 53.) — That A. B., during the three months next before the making of this complaint, was an idle and disorderly person, and neglected all lawful business and habitually mis-spent his time by frequenting houses of ill fame, gaming houses or tippling shops. Idle and disorderly person.

Illegitimacy. (Under Chap. 273, § 11.) — That A. B. did get C. D. with child, which is now living (or of which she is now pregnant), he, the said A. B., not then nor since being the lawful husband of her, the said C. D. Illegitimacy. 1931, 256, § 6

Incest. (Under Chap. 272, § 17.) — That A. B., being the father of C. D. (or state such relationship as will show the parties to be within the degree of consanguinity within which marriages are prohibited or declared by law to be incestuous and void), did have carnal knowledge of the body of said C. D. Incest.

(A. B. being married to another woman than said C. D., *if such be the fact, and it be desired to cover adultery.*)

Larceny. (Under Chap. 266, § 30.) — (1) That A. B. did steal one horse of the value of more (or less, as the case may be) than one hundred dollars, of the property of C. D. Larceny. 202 Mass. 379. 210 Mass. 445. 213 Mass. 225. 218 Mass. 507. 224 Mass. 42.

(2) That A. B. did steal six cows, each of the value of twenty dollars, of the property of C. D.

Larceny from a conveyance. (Under Chap. 266, § 30.) — That A. B. did steal from a certain conveyance, to wit, the wagon of one C. D., one book of the value, etc., of the property of C. D., the said C. D. being a common carrier (or a person carrying on the express business), and said conveyance being used by the said C. D. in said business. Larceny from a conveyance.

Larceny from realty. (Under Chap. 266, § 41.) — That A. B., by a trespass, with intent to steal, did take and carry away from the realty, to wit, from the building of C. D., in said (Boston), ten pounds of lead pipe, each of the value of (etc.), of the property of C. D., against his will, the said lead pipe being annexed to and a part of said building. Larceny from realty.

Larceny in building. (Under Chap. 266, § 20.) — That A. B. did steal (one coat of the value of more than _____ or less than _____), of the property of X., in a certain building (or ship or vessel or railroad ear) of the said X., situated in said (Boston). Larceny in building.

Larceny of beast or bird. (Under Chap. 266, § 46.) — That A. B. did steal a certain domesticated animal (or bird which was ordinarily kept in confinement), which was the property of C. D. Larceny of beast or bird.

Lewd and lascivious cohabitation. (Under Chap. 272, § 16.) — That A. B. and C. D., not being married to each other, did during one month next before the finding of this indictment (or such time as the evidence requires), lewdly and lasciviously associate and cohabit together. Lewd and lascivious cohabitation.

Lewdness. (Under Chap. 272, § 53.) — That A. B., during the three months next before the finding of this indictment, was a lewd, wanton and lascivious person in speech and behavior. Lewdness.

Liquor. (Under Chap. 138, § 2.) — That A. B. did expose and keep for sale intoxicating liquors, with intent unlawfully to sell the same. Liquor.

Liquor — Sale. (Under Chap. 138, § 2.) — That A. B. unlawfully did sell intoxicating liquors to C. D.

Liquor — Nuisance. (Under Chap. 139, § 15.) — That A. B., during the three months next before the finding of this indictment, without legal authority, did keep and maintain a certain tenement in said (Boston), by him used for the illegal sale and illegal keeping for sale of intoxicating liquor, to the common nuisance of all the people.

Lord's Day. (Under Chap. 136, § 5.) — That A. B., on the _____ day of _____, in the year of our Lord one thousand, etc., that day being the Lord's Day, did keep open his shop in said (Boston), for the purpose of doing business therein (or did labor or business or work), the same not being a work of necessity or charity. Lord's Day.

- Lottery.** *Lottery.* (Under Chap. 271, § 7.) — (1) That A. B. did set up and promote a lottery for money.
 (2) That A. B. was concerned in the setting up (*or managing or drawing*) of a certain lottery for money.
 (3) That A. B. did dispose of a certain horse of the value of ten dollars to C. D., by way of a lottery.
 (4) That A. B., under the pretext of the sale of certain property, to wit: (*state the property*) to C. D., did dispose of to said C. D. certain other personal property, to wit: (*state the property*), with intent of said A. B. to make the said disposal of said (property) dependent upon a chance by lot, and that such chance was made an additional inducement to the disposal and sale of said (property).
- Maiming, etc.** *Maiming, etc.* (Under Chap. 265, § 14.) — That A. B. did assault C. D., and, with malicious intent to maim and disfigure said C. D., did cut out his tongue.
- Malicious injury.** *Malicious injury.* (Under Chap. 266, § 127.) — That A. B. did wilfully and maliciously injure (*or destroy*) certain personal property (*name it and allege value*) of C. D.
Malicious injury to real property. (Under Chap. 266, § 104.) — That A. B. did wilfully (*or maliciously*) destroy (*or deface or mar*) a certain building of C. D. in said (Boston).
- Manslaughter.** *Manslaughter.* (Under Chap. 265, § 13.) — That A. B. did assault and beat C. D., and by such assault and beating did kill C. D.
- Manslaughter by negligence.** *Manslaughter by negligence.* — That A. B., being under the legal duty, and being of sufficient ability to provide C. D., who was his wife, with sufficient food and drink for her sustenance and maintenance, did neglect and refuse so to do; by reason whereof said C. D., being unable to provide sufficient food and drink for herself, became and was mortally sick and died.
- Murder.** *Murder.* (Under Chap. 265, § 1.) — That A. B. did assault and beat C. D., with intent to murder him (by striking him over the head with an axe), and by such assault and beating did (kill and) murder C. D. (and the jurors further say that the defendant is guilty of murder in the second degree and not in the first degree). *This may be added if murder in the first degree is not alleged.*
- Neglect of wife or minor child.** *Neglect of wife or minor child.* (Under Chap. 273, § 1.) — That A. B., during the three months next before the making of this complaint, being of sufficient ability, did unreasonably neglect to provide for the support of C. D., his lawful wife (and E. D., his minor child).
- Obtaining signature by false pretences.** *Obtaining signature by false pretences.* (Under Chap. 266, § 31.) — That A. B. designedly and with intent to defraud did falsely pretend to C. D. that, etc., and by means of said false pretences, which said C. D. believed and relied upon, did obtain the signature of said C. D. to a certain written instrument, the false making whereof would be punishable as forgery, to wit, a certain promissory note (*describe as in forgery*); that the pretences so made to C. D. were false and were known to be false by the said A. B. at the time when he so made them.
- Open and gross lewdness.** *Open and gross lewdness.* (Under Chap. 272, § 16.) — That A. B. was guilty of open and gross lewdness and lascivious behavior in the presence of C. D.
- Perjury.** *Perjury.* (Under Chap. 268, § 1.) — That in a proceeding in the course of justice before the (*set forth the tribunal*), on an issue within the jurisdiction of said court duly joined, and tried before a jury of the county between X. as plaintiff and Y. as defendant, A. B. was lawfully sworn as a witness.
 Whereupon it became and was material to said issue whether (*say what*), and to this the said A. B. did wilfully and corruptly testify and say in substance and effect that (*say what*); all his said testimony as above set forth being false, as he well knew.
- Polygamy.** *Polygamy.* (Under Chap. 272, § 15.) — (1) That A. B. unlawfully married C. D., the said A. B. having at the time he so unlawfully married a lawful wife living other than said C. D.
 (2) That A. B., having a lawful wife living, to wit: X., did at (*state place*) unlawfully marry and have for his wife one C. D., after which the said A. B. did, while said X. was still living, on, at, etc., unlawfully cohabit and continue to cohabit in (Boston) with the said C. D.
- Rape.** *Rape.* (Under Chap. 265, §§ 22, 23.) — (1) That A. B. did assault C. D., with the intent to commit rape upon her; and her, the said C. D., did commit rape upon.
 (2) That A. B., in and upon C. D., a female child under the age of sixteen years, did make an assault with the intent her, the said C. D., unlawfully and carnally to know and abuse; and her, the said C. D., did unlawfully and carnally know and abuse.

Receiving stolen property. (Under Chap. 266, § 60.) — That A. B., one watch of the value of _____ dollars, the property of one C. D., then lately before stolen, did buy, receive, and aid in the concealment of, the said A. B. well knowing the said property to have been stolen as aforesaid. Receiving stolen property.

Rescue. (Under Chap. 268, § 15.) — That A. B. did forcibly rescue and take out of the lawful custody of E. F. one C. D., the said C. D. being a prisoner arrested by and held in the lawful custody of E. F., upon the charge of the crime of (larceny), the said E. F. being a police officer of (said city), duly authorized to arrest and hold in custody the said C. D. upon the charge aforesaid. Rescue.

Robbery. (Under Chap. 265, § 19.) — That A. B. did assault C. D. with intent to rob him, and thereby did rob and steal from the person of said C. D. (*mention the property*) of the property of said C. D. Robbery.

Sodomy, etc. (Under Chap. 272, § 34.) — That A. B. did commit the abominable and detestable crime against nature with a (*state the person or beast*). Sodomy, etc.

Stubborn child. (Under Chap. 272, § 53.) — That A. B., a minor, during the three months next before the making of this complaint, was a stubborn child, and stubbornly refused to submit to the lawful and reasonable commands of C. D., whose commands said A. B. was bound to obey. Stubborn child.

Threats to extort. (Under Chap. 265, § 25.) — That A. B. did verbally (*or by a written or printed communication*) maliciously threaten one C. D., to accuse him of the crime of (*name it*), with the intent thereby to extort money from the said C. D. Threats to extort.

Unlawful appropriation. (Under Chap. 266, § 63.) — That A. B. did wilfully, mischievously and without right take, drive and use a certain horse, the property of one C. D., without the consent of the said owner of said horse, or any person having the legal custody, care or control of the same. Unlawful appropriation.

Unnatural act. (Under Chap. 272, § 35.) — That A. B. did commit an unnatural and lascivious act with one C. D. Unnatural act.

Uttering. (Under Chap. 267, § 5.) — That A. B., with intent to injure and defraud, did utter and publish as true a certain forged instrument (*describe as in forgery*), well knowing the same to be forged. Uttering.
199 Mass. 583.

Vagabond. (Under Chap. 272, §§ 53, 68.) — That A. B., for three months next before the making of this complaint, was a vagabond, and wandered about from place to place, neglecting all lawful calling and employment, and not having any home or means of support. Vagabond.
207 Mass. 572

Vagrant. (Under Chap. 272, § 66.) — That A. B., during the three months next before the making of this complaint, was an idle person who, not having visible means of support, lived without lawful employment (and wandered abroad and visited tippling shops, and lodged in outhouses, and in the open air, and did not give a good account of himself, and wandered abroad and begged, and went about from door to door and placed himself in public places to beg and to receive alms). Vagrant.

The complaint may stop at the word "employment", or such part of the matter in parentheses may be added as the case requires.

(Under Chapter 94, Sections 197-213.)

Common nuisance. — That A. B., during the three months next before the finding of this indictment, at said (Boston), did keep and maintain a certain tenement resorted to by habitual users of narcotic drugs for the purpose of using narcotic drugs. Common nuisance.
1917, 275, § 18.

Unlawful possession. — That A. B. did have in his possession unlawfully certain narcotic drugs, to wit, morphine (*or cocaine or heroin or the name of the drug as it is commonly known*). Unlawful possession.

Unlawful possession with intent to sell. — That A. B. did have in his possession, with intent unlawfully to sell and deliver, a certain narcotic drug (*naming the drug*). Unlawful possession with intent to sell.

Conspiracy. — That A. B. and C. D. conspired together to engage in unlawful traffic in narcotic drugs. Conspiracy.

Sale and delivery. — That A. B. did unlawfully sell (*or give away or deliver*) a narcotic drug, to wit, morphine (*or name drug is commonly known by*). Sale and delivery.

Unlawful prescribing and delivery, etc., by physician, etc. — That A. B., a physician (*or pharmacist or dentist or veterinarian, etc.*), did unlawfully prescribe (*or sell, give away, furnish or deliver*) a certain narcotic drug, to wit, (*naming it*). Unlawful prescribing and delivery, etc.

Possession of hypodermic instrument. — That A. B. did have in his possession unlawfully a hypodermic syringe and needle. Possession of hypodermic instrument.

Sale and delivery of hypodermic instrument.
False making of prescription.

Sale and delivery of hypodermic instrument. — That A. B. did unlawfully sell (or deliver) a hypodermic syringe (or needle).
False making of prescription. — That A. B. did falsely make (or alter) a prescription for a narcotic drug.

Uttering a false prescription.

Uttering a false prescription. — That A. B. did utter and publish as true a certain false prescription for a narcotic drug, well knowing the same to be falsely made (or altered).

Misrepresentation.

Misrepresentation. — That A. B. did falsely represent to C. D. (a physician, or dentist, veterinarian, pharmacist, etc.), for the purpose of obtaining a narcotic drug, that (*state the substance of the statements claimed to be representations*).

CHAPTER 278.

TRIALS AND PROCEEDINGS BEFORE JUDGMENT.

SECT.	SECT.
1. Trial list of criminal cases.	21. Copies to be transmitted.
2. Issues of fact, how tried.	22. Statement of fees.
3. Opinious disqualifying juror in capital case.	23. Certain acts not to be used as evidence in trials of criminal cases.
4. Oath of jurors.	24. If appeal not entered, appellant to be sentenced.
5. Affirmation of jurors.	25. Withdrawal of appeals in criminal cases.
6. Presence of defendant at trial, etc.	26. Fees allowed to jailer.
7. Burden on defendant to prove license.	27. Decisions on plea in abatement final.
8. Justification in cases of libel.	28. Appeal to supreme judicial court.
9. Proof of ownership of property.	29. New trial.
10. Night time defined.	30. Report.
11. Jury to decide law and fact.	31. Exceptions.
12. Proceedings on conviction of part of crime charged.	32. Affirmance of judgment upon non-entry of appeal.
13. Commitment of person acquitted by reason of insanity.	33. Transmission of papers.
14. Person acquitted, etc., not liable for fees.	33A. Transcript of evidence in capital, etc., cases.
15. Discontinuance of prosecution under by-law.	33B. Filing claim of appeal in such cases.
16. Counsel for inmates of reform school.	33C. Same subject. Preparation of record.
16A. Public may be excluded at trials of certain crimes involving minors under age of eighteen.	33D. Same subject. Assignment of errors by defendant.
17. Objection to formal defects, when to be taken.	33E. Same subject. Transmission of record to supreme judicial court.
18. Appeals in criminal cases to superior court.	33F. Same subject. Dismissal of appeal.
19. Recognizance of witnesses.	33G. Same subject. Rules governing exhibits, printing, etc.
20. Transmission of papers.	34. Motions in arrest of judgment.
	35. Trial of female defendants.

Trial list of criminal cases.
1870, 290.
P. S. 214,
§§ 1, 2
1884, 193.
1889, 432.
R. L. 219, § 1.

SECTION 1. At each session of the superior court for criminal business, the district attorney, before trials begin, shall make and deposit with the clerk, for the inspection of parties, a list of all cases to be tried at that session, and the cases shall be tried in the order of such trial list, unless otherwise ordered by the court for cause shown. Cases may be added to such list by direction of the court, upon motion of the district attorney or of the defendant.

Issues of fact, how tried
R. S. 137, § 1.
G. S. 172, § 1.

SECTION 2. Issues of fact joined upon an indictment or complaint shall, in the superior court, be tried by a jury drawn and returned in the

3 manner provided for the trial of issues of fact in civil causes, unless the
 4 person indicted or complained against elects to be tried by the court as
 5 provided by law.

12 Allen, 155. 254 Mass. 190. 258 Mass. 262. 272 Mass. 94.

P. S. 214, § 3;
 R. L. 219, § 2;
 1929, 185, § 2.

1 SECTION 3. A person whose opinions are such as to preclude him from
 2 finding a defendant guilty of a crime punishable with death shall not
 3 serve as a juror on the trial of an indictment for such crime.

R. S. 137, § 6. G. S. 172, § 5. P. S. 214, § 7. R. L. 219, § 3.

Opinions dis-
 qualifying
 juror in
 capital case.

1 SECTION 4. The following oath shall be administered to the jurors
 2 for the trial of all criminal cases which are not capital:

You shall well and truly try the issue between the commonwealth and the
 defendant, (or the defendants, as the case may be,) according to your evidence;
 so help you God.

Oath of
 jurors.
 C. L. 167, § 3.
 1692-3, 35.
 1807, 140, § 14.
 R. S. 137, § 7.
 G. S. 172, § 6.
 P. S. 214, § 8.
 R. L. 219, § 4.

3 The following oath shall be administered to the jurors for the trial of
 4 capital cases:

You shall well and truly try, and true deliverance make, between the com-
 monwealth and the prisoner at the bar, whom you shall have in charge, according
 to your evidence; so help you God.

1 SECTION 5. A juror who is conscientiously scrupulous of taking either
 2 of the oaths above prescribed shall be allowed to affirm.

R. S. 137, § 8. G. S. 172, § 7. P. S. 214, § 9. R. L. 219, § 5.

Affirmation
 of jurors
 1807, 140, § 14.

1 SECTION 6. A person indicted for a felony shall not be tried unless he
 2 is personally present during the trial; but if indicted for a misdemeanor,
 3 he may, at his request and by leave of the court, be tried in his absence,
 4 if represented by an attorney duly authorized for that purpose.

P. S. 214, § 10. 121 Mass. 371. 165 Mass. 133.
 R. L. 219, § 6. 163 Mass. 458. 246 Mass. 12.

Presence of
 defendant at
 trial, etc.
 R. S. 137, § 9.
 G. S. 172, § 8.

1 SECTION 7. A defendant in a criminal prosecution, relying for his
 2 justification upon a license, appointment, admission to practice as an
 3 attorney at law, or authority, shall prove the same; and, until so proved,
 4 the presumption shall be that he is not so authorized.

G. S. 172, § 10. 100 Mass. 204. 133 Mass. 574.
 1864, 121. 108 Mass. 292. 138 Mass. 490, 511.
 P. S. 214, § 12. 110 Mass. 107, 357, 414. 141 Mass. 420.
 R. L. 219, § 7. 115 Mass. 139. 142 Mass. 533.
 1909, 49. 119 Mass. 206. 236 Mass. 281.
 2 Allen, 292. 122 Mass. 8, 36. 252 Mass. 126.

Burden on de-
 fendant to
 prove license.
 1844, 102.
 1859, 160.

1 SECTION 8. The defendant in a prosecution for writing or publishing
 2 a libel may introduce in evidence the truth of the matter contained in
 3 the publication charged as libellous, and the truth shall be a justification,
 4 unless actual malice is proved.

G. S. 129, § 77; 172, § 11. R. L. 219, § 8. 136 Mass. 441.
 P. S. 167, § 80; 214, § 13. 3 Pick. 304. 151 Mass. 127.
 9 Met. 410. 259 Mass. 152.
 124 Mass. 338.

Justification in
 cases of libel.
 1826, 107, § 1.
 R. S. 133, § 6.
 1855, 396.

1 SECTION 9. In the prosecution of crimes which relate to or affect
 2 real or personal estate, it shall be sufficient, and shall not be a variance,
 3 if it is proved on the trial that, at the time when the crime was com-
 4 mitted, either the actual or constructive possession or the general or

Proof of
 ownership of
 property.
 R. S. 133, § 11.
 G. S. 172, § 12.
 P. S. 214, § 14.
 R. L. 219, § 9.

10 Met. 422.
9 Gray, 108.
10 Gray, 469.

special property in the whole or any part of such real or personal estate was in the person or community alleged to be the owner thereof. 5
6

5 Allen, 517.	108 Mass. 466.	124 Mass. 449.
11 Allen, 110.	469.	144 Mass. 587.
103 Mass. 425.	110 Mass. 503.	172 Mass. 187.
435.	114 Mass. 272, 299.	181 Mass. 424.
104 Mass. 552.	122 Mass. 454.	187 Mass. 581.

Night time defined.
1847, 13.
G. S. 172, § 13.
P. S. 214, § 15.
R. L. 219, § 10.
2 Cush. 582.

SECTION 10. If a crime is alleged to have been committed in the night time, night time shall be deemed the time between one hour after sunset on one day and one hour before sunrise on the next day; and the time of sunset and sunrise shall be ascertained according to mean time in the place where the crime was committed. 1
2
3
4
5

Jury to decide law and fact.
1807, 139, § 15.
1855, 152.
G. S. 172, § 15.
P. S. 214, § 17.
R. L. 219, § 13.
10 Pick. 477.
20 Pick. 206.
10 Met. 263.
5 Gray, 185.
6 Allen, 445.
100 Mass. 146.
116 Mass. 37.

SECTION 11. The jury shall try, according to established forms and principles of law, all criminal causes committed to them, and, after having received the instructions of the court, shall decide, in their discretion, by a general verdict, both the fact and the law involved in the issue, or they may, at their election, find a special verdict. The court shall superintend the course of the trials, decide upon the admission and rejection of evidence, upon all questions of law raised during the trials and upon all collateral and incidental proceedings, and shall charge the jury. 1
2
3
4
5
6
7
8

125 Mass. 203.	147 Mass. 423.	149 Mass. 68.
132 Mass. 8.	576.	272 Mass. 94.

Proceedings on conviction of part of crime charged.
1784, 66, § 11.
1805, 88, § 2.
R. S. 137, § 11.
G. S. 172, § 16.
P. S. 214, § 18.
R. L. 219, § 14.
19 Pick. 479.

SECTION 12. If a person indicted for a felony is acquitted by the verdict of part of the crime charged, and is convicted of the residue, such verdict may be received and recorded by the court, and thereupon the defendant shall be adjudged guilty of the crime, if any, which appears to the court to be substantially charged by the residue of the indictment, and shall be sentenced and punished accordingly. 1
2
3
4
5
6

1 Met. 258.	2 Allen, 163.	115 Mass. 150.	230 Mass. 567.
2 Met. 193.	97 Mass. 59.	142 Mass. 454.	254 Mass. 390.
10 Gray, 11.	109 Mass. 349.	162 Mass. 466, 195.	

Commitment of person acquitted by reason of insanity.
1816, 28, §§ 1-3.
1834, 150, § 3.
R. S. 137, § 12.
G. S. 172, § 17.
1862, 223, § 17.
P. S. 214, § 19.
1883, 148, § 2.
1889, 90.
1895, 390, § 4.
R. L. 219, §§ 15, 17.
1909, 504, § 98.
1921, 262.
136 Mass. 489.
1 Op. A. G.
322, 528.

SECTION 13. If a person charged with crime other than murder or manslaughter is acquitted by the jury by reason of insanity, the jury shall state that fact to the court, which, if satisfied that he is insane, may, under such limitations as it deems proper, order him committed to a state hospital, except the Bridgewater state hospital; but such person, if a male, or any person coming within the provisions of section one hundred and one hundred and one of chapter one hundred and twenty-three, may be committed or removed to Bridgewater state hospital if, in the opinion of the court, he has been a criminal or is of vicious tendency; and if he has been held on a charge of felony, the expense of his support in any such hospital or in any state charitable institution to which he may be transferred shall be paid by the commonwealth. The court may at any time revise or revoke the order of commitment as it may deem proper. 1
2
3
4
5
6
7
8
9
10
11
12
13

Person acquitted, etc., not liable for fees.
R. S. 137, § 13.
G. S. 172, § 18.
P. S. 214, § 22.

SECTION 14. No prisoner or person under recognizance, acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees or for any charge for subsistence while he was in custody. 1
2
3
4

R. L. 219, § 18

Discontinuance of prosecution under by-law.
1853, 179, § 2

SECTION 15. In a prosecution before a district court or trial justice under the by-laws, ordinances, orders, rules or regulations of a city or town, the city solicitor, town counsel or other person appointed to repre- 1
2
3

4 sent such city or town may enter a nolle prosequi or do anything relative
5 to such prosecution which may be done by the district attorney.

R. L. 219, § 19. 1918, 257, § 461. 1919, 5. 1920, 2.

G. S. 172, § 20,
P. S. 214, § 23

1 SECTION 16. The court may assign counsel to an inmate of any
2 institution for the reformation of juvenile offenders who is to be tried
3 for an offence alleged to have been committed therein; and shall, upon
4 application, order the superintendent or other officer of such institution
5 to produce at the trial such inmates thereof as, in the opinion of the
6 counsel for the defence, certified in writing, or of the judge, in the absence
7 of counsel, are material witnesses for the defence; and such officer shall
8 obey the order and provide for the custody and safe return of such inmates.

Counsel for
inmates of
reform school.
1877, 184.
P. S. 214, § 21
R. L. 219, § 20.

1 SECTION 16A. At the trial of a complaint or indictment for rape,
2 incest, carnal abuse or other crime involving sex, where a minor under
3 eighteen years of age is the person upon, with or against whom the crime
4 is alleged to have been committed, or at the trial of a complaint or indict-
5 ment for getting a woman with child out of wedlock, or for the non-sup-
6 port of an illegitimate child, the presiding justice shall exclude the general
7 public from the court room, admitting only such persons as may have a
8 direct interest in the case.

Public may be
excluded at
trials of cer-
tain crimes
involving
minors under
age of
eighteen.
1923, 251.
1931, 205.

1 SECTION 17. An objection to a complaint, indictment or other criminal
2 process for a formal defect apparent on the face thereof shall be taken by
3 demurrer or by motion to quash, assigning specifically the objections
4 relied on, before a judgment has been rendered by a district court or a
5 trial justice, or before a jury has been sworn in the superior court.

Objection to
formal defects,
when to be
taken
1864, 250, § 2.
P. S. 214, § 25.
R. L. 219, § 21.
19 Allen, 193.

11 Allen, 238.	129 Mass. 489.	147 Mass. 29.
13 Allen, 550, 554.	131 Mass. 584.	154 Mass. 405.
98 Mass. 6.	133 Mass. 383, 571.	157 Mass. 386, 462.
105 Mass. 173, 176.	135 Mass. 530, 552.	170 Mass. 228.
108 Mass. 441, 457.	136 Mass. 155.	242 Mass. 532.
110 Mass. 67, 103.	137 Mass. 560.	247 Mass. 580.
111 Mass. 417, 420.	138 Mass. 484.	248 Mass. 511.
113 Mass. 10.	141 Mass. 420.	250 Mass. 211.
116 Mass. 13.	143 Mass. 113, 167, 467.	253 Mass. 581.
123 Mass. 251, 252.	145 Mass. 103.	261 Mass. 309.
126 Mass. 235, 248, 472.	146 Mass. 512.	271 Mass. 41.

1 SECTION 18. Whoever is convicted of a crime before a district court
2 or trial justice may appeal to the superior court, and at the time of con-
3 viction shall be notified of his right to take such appeal. The case shall
4 be entered in the superior court on the return day next after the appeal
5 is taken, and the appellant shall be committed to abide the sentence of
6 said court until he recognizes to the commonwealth, in such sum and with
7 such surety or sureties as the court or trial justice requires, with condition
8 to appear at the superior court on said return day and at any subsequent
9 time to which the case may be continued, if not previously surrendered
10 and discharged, and so from time to time until the final sentence, order
11 or decree of the court thereon, and to abide such final sentence, order or
12 decree, and not depart without leave, and in the meantime to keep the
13 peace and be of good behavior. If the appellant is committed for failure
14 to recognize, the superior court shall thereupon have jurisdiction of the
15 case for the purpose of revising the amount of bail required as aforesaid.
16 In cases of misdemeanor the appellant may, in the discretion of the court
17 or trial justice, be held on his own recognizance. The appellant shall not
18 be required to advance any fees upon claiming his appeal or in prosecuting
19 the same.

Appeals in
criminal cases
to superior
court
1783, 51, § 3.
1831, 70, § 4.
R. S. 85,
§ 28; 87, § 36;
138, § 1.
1845, 166, § 2.
1849, 51.
G. S. 119, § 32;
173, § 31, § 4.
P. S. 154, § 20;
157, § 58, 61.
1803, 306, § 47.
1814, 431.
1897, 190, § 3.
R. L. 219, § 22.
1905, 319.
1913, 652.
1929, 216, § 4.
O. Gray, 343.
115 Mass. 151.
112 Mass. 457.
115 Mass. 375.
181 Mass. 15.
205 Mass. 155.
206 Mass. 417.
243 Mass. 90.
246 Mass. 464.

Recognizance of witnesses. SECTION 19. Upon such appeal, said courts and trial justices shall have the like power to bind witnesses in the case by recognizances as they have by chapter two hundred and seventy-six when a prisoner is admitted to bail or committed.

1856, 130.
G. S. 173, § 2.
P. S. 154, § 11;
155, § 59.
1893, 396, § 48

1894, 431. R. L. 219, § 23. 243 Mass. 90.

Transmission of papers. SECTION 20. Upon such appeal, the clerk of the district court shall transmit to the clerk of the superior court a copy of the complaint and of the record of conviction, the original recognizances, a list of the witnesses, the appearance of the attorney for the defendant, if any is entered, and a statement of the expenses; and no other papers need be transmitted.

1862, 217, § 3.
P. S. 154, § 61.
1893, 396, § 49.
1894, 431.
R. L. 219, § 24.

1918, 257, § 162.
1919, 5.
1920, 2.
14 Gray, 398, 399.

97 Mass. 541.
111 Mass. 422.
113 Mass. 203.

117 Mass. 150.
140 Mass. 481.
147 Mass. 578.

Copies to be transmitted. SECTION 21. Upon such appeal, the trial justice shall make a copy of the conviction and other proceedings in the case, and transmit them, with the recognizance, the appearance of the attorney for the defendant, if any is entered, and a statement of the expenses, to the clerk of the superior court.

R. S. 138, § 2.
G. S. 173, § 3.
P. S. 155, § 60.
1890, 440, § 10.
R. L. 219, § 25.
1918, 257, § 463.

1919, 5.
1920, 2.
2 Met. 18.
8 Gray, 482.

11 Gray, 313
14 Gray, 398, 399.
97 Mass. 541
111 Mass. 428.

115 Mass. 139, 146.
117 Mass. 150.
126 Mass. 267.

131 Mass. 417
147 Mass. 539, 578.
155 Mass. 296.

Statement of fees SECTION 22. Upon such appeal, the copies and records sent to the superior court shall contain the details of all fees and expenses allowed or paid in the district court or before the trial justice.

1890, 440, § 10.
1891, 325, § 1.
R. L. 219, § 26.

Certain acts not to be used as evidence in trials of criminal cases. SECTION 23. At the trial of a criminal case in the superior court, upon indictment or appeal, the fact that the defendant did not testify at the preliminary hearing or trial in the lower court, or that at such hearing or trial he waived examination or did not offer any evidence in his own defence, shall not be used as evidence against him, nor be referred to or commented upon by the prosecuting officer.

1912, 325.
235 Mass. 26.

If appeal not entered, appellant to be sentenced. SECTION 24. If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance and the superior court may impose sentence upon him for the crime of which he was convicted, as if he had been convicted in said court, and, if he is not then in custody, may issue process to bring him into court to receive sentence.

1783, 51, § 3.
R. S. 138, § 4.
G. S. 173, § 5.
P. S. 154, § 12;
155, § 62.

1893, 396, § 50.
1894, 431.
R. L. 219, § 27.

108 Mass. 5.
109 Mass. 361.

160 Mass. 354.
210 Mass. 445.

Withdrawal of appeals in criminal cases. SECTION 25. The appellant may, at any time before the next sitting of the superior court for criminal business, come personally before the court or trial justice from whose judgment the appeal was taken and withdraw his appeal. If the appellant has been committed, the officer in charge of the jail, within forty-eight hours after his commitment, shall notify him of his right to withdraw his appeal and shall furnish him with a blank form of withdrawal, which, if signed by him, shall be witnessed by said officer; thereupon, or if prior to said notice the appellant notifies the said officer of his desire to withdraw his appeal, the said officer shall forward the defendant, with the signed form of withdrawal, to the court or trial justice before whom the appeal was taken. In such

1874, 33, §§ 1, 2.
P. S. 154, § 12;
155, §§ 63, 64.
1893, 396, §§ 51, 52.
1894, 431, § 1.
R. L. 219, §§ 28, 29.
1909, 381.
1910, 244.

12 case the court or trial justice may order the appellant to comply with the
 13 sentence appealed from, in the same manner as if it were then first im-
 14 posed, or may revise or revoke the same if satisfied that cause for such
 15 revision or revocation exists; provided, that the court or trial justice
 16 shall not increase the sentence as first imposed, and if sureties had rec-
 17 ognized with the appellant to prosecute his appeal they shall be dis-
 18 charged. If the copy of the record of conviction has been transmitted
 19 to the superior court, the court or trial justice shall notify the clerk of
 20 the superior court of the withdrawal of the appeal, who shall thereupon
 21 make a memorandum thereof upon the record of the superior court.

1 SECTION 26. In such case, compensation shall be allowed and paid
 2 by the town where the crime was committed to the jailer for his expenses
 3 in the conveyance and custody of the appellant, at the same rate as is
 4 allowed to officers serving a mittimus. If the appeal was from a sentence
 5 to pay a fine, the fees of the jailer shall be paid by the appellant if, after
 6 the appeal is withdrawn, he pays the fine.

	Fees allowed to jailer 1874, 33, § 3 P. S. 154, § 12; 155, § 65. 1800, 328, § 2; 440, § 2 1891, 325, § 1. 1893, 396, § 53.
1894, 431.	R. L. 219, § 30

1 SECTION 27. Decisions of the superior court upon questions raised
 2 upon a plea in abatement to an indictment or complaint shall be final.

1859, 196, § 27. G. S. 115, § 7.	1880, 118. P. S. 153, § 8.	R. L. 219, § 31. 238 Mass. 379.
-------------------------------------	-------------------------------	------------------------------------

1 SECTION 28. A defendant aggrieved by a judgment of the superior
 2 court founded upon matter of law apparent upon the record in any crim-
 3 inal proceeding, except a judgment upon a plea in abatement, may appeal
 4 therefrom to the supreme judicial court.

R. S. 82, § 28; 138, § 5. 1859, 196, § 26. G. S. 114, § 10. P. S. 152, § 10.	R. L. 219, § 32 110 Mass. 188. 156 Mass. 61, 348. 160 Mass. 307.	208 Mass. 162. 210 Mass. 360 238 Mass. 379 254 Mass. 46.
---	---	---

1 SECTION 29. The superior court may, at the sitting in which an indict-
 2 ment is tried, or within one year thereafter, or, in capital cases, within
 3 said year or at any time before sentence, upon motion in writing of the
 4 defendant, grant a new trial for any cause for which by law a new trial
 5 may be granted or if it appears to the court that justice has not been done,
 6 and upon such terms or conditions as the court shall order.

R. L. 219, § 33. 1922, 508, § 1. 1 Met. 428. 111 Mass. 439. 123 Mass. 418.	183 Mass. 199 242 Mass. 427 244 Mass. 568. 246 Mass. 12 255 Mass. 369	261 Mass. 12, 29, 209, 295 Mass. 113, 273 Mass. 249.
--	---	---

1 SECTION 30. If, upon the trial of a person convicted in the superior
 2 court, a question of law arises, which, in the opinion of the presiding
 3 justice, is so important or doubtful as to require the decision of the
 4 supreme judicial court, he shall, if the defendant desires or consents to
 5 it, report the case so far as necessary to present the question of law aris-
 6 ing therein; and thereupon the case shall be continued to await the de-
 7 cision of the supreme judicial court.

219 Mass. 386. 224 Mass. 42.	233 Mass. 535. 245 Mass. 163.	250 Mass. 528. 265 Mass. 425.
---------------------------------	----------------------------------	----------------------------------

1 SECTION 31. Exceptions may be alleged by a defendant in a criminal
 2 case who is aggrieved by an opinion, ruling, direction or judgment of the
 3 superior court rendered upon any question of law arising at the trial of
 4 such case or upon a motion for a new trial, but not upon a plea in abate-

	Report. 1830, 113, § 4 1832, 130, § 5. R. S. 138, § 12. G. S. 173, § 8. P. S. 214, § 29 R. L. 219, § 34. 105 Mass. 468. 126 Mass. 248. 183 Mass. 461.
--	--

1851, 261
 1859, 196,
 §§ 27, 29
 G. S. 115, §§ 7,
 8, 10, 11.
 1863, 180, § 2.
 1880, 118
 P. S. 153, §§ 8,
 10, 12, 13.
 1891, 379, § 2.
 1894, 204,
 412.
 1895, 153, § 1.
 R. L. 219, § 35
 1923, 279, § 2.
 1926, 329, § 6.
 3 Cush. 212.
 110 Mass. 491.
 119 Mass. 208.
 126 Mass. 258.
 156 Mass. 61.
 208 Mass. 162.
 217 Mass. 473.
 238 Mass. 379.
 255 Mass. 227.
 264 Mass. 324,
 564.
 265 Mass. 436.
 271 Mass. 323.
 273 Mass. 240.

ment; provided, that exceptions alleged in any proceedings or trial upon 5
 an indictment for murder or manslaughter, or upon an indictment or com- 6
 plaint for any other felony by order of the justice of the superior court 7
 presiding at such proceedings or trial made subject to sections thirty-three 8
 A to thirty-three G, inclusive, shall be governed by said sections, and 9
 authority to make any such proceedings or trial subject to said sections 10
 is hereby granted to said presiding justice, and no bill of exceptions shall 11
 be entered or considered in the supreme judicial court in any such pro- 12
 ceedings or trial. The exceptions shall be reduced to writing and filed 13
 with the clerk and notice thereof given to the commonwealth within three 14
 days after the verdict or after the opinion, ruling, direction or judgment 15
 excepted to is given, unless a further time, not exceeding five days, except 16
 by consent of the district attorney, is allowed by the court. The clerk, 17
 immediately upon the filing of the exceptions, shall present them to the 18
 court, and if, upon examination thereof by the presiding justice, they are 19
 found conformable to the truth, they shall be allowed by him. In all 20
 cases, the district attorney shall have an opportunity to be heard con- 21
 cerning the allowance of such exceptions. The provisions of sections one 22
 hundred and fifteen to one hundred and seventeen, inclusive, of chapter 23
 two hundred and thirty-one, so far as appropriate, shall apply to excep- 24
 tions taken in criminal cases. 25

Affirmance of
 judgment upon
 non-entry of
 appeal.
 1817, 185, § 5.
 1820, 79, § 4.
 1832, 130, § 3.
 R. S. 82, § 10;
 138, § 8.
 G. S. 112, § 16.
 P. S. 150, § 16.
 1888, 94
 1900, 372, § 1.

SECTION 32. If the defendant neglects to enter his appeal, exceptions 1
 or report in the supreme judicial court, or neglects to take the necessary 2
 measures for the hearing of the cause in the supreme judicial court, the 3
 superior court may, upon the application of the district attorney and 4
 after notice, order that the appeal, exceptions or report be dismissed and 5
 that the judgment, opinion, ruling or order appealed from, excepted to 6
 or reported be affirmed. 7

R. L. 219, § 36.

236 Mass. 326.

Transmission
 of papers
 R. S. 138, § 6.
 1859, 196,
 §§ 26, 34.
 G. S. 115, § 12.
 1864, 111
 P. S. 153, § 15.
 R. L. 219, § 37.
 1929, 265, § 7.

SECTION 33. Copies and papers relative to a question of law which 1
 arises in a criminal case in the superior court upon appeal, exception, 2
 report or otherwise shall be prepared by the clerk of the court at the 3
 expense of the commonwealth and shall thereupon be transmitted to and 4
 entered in the law docket of the supreme judicial court for the common- 5
 wealth, or for the proper county, as soon as may be after such question 6
 of law has been reserved and duly made matter of record in the superior 7
 court. Copies and papers as aforesaid shall be as specified by, and the 8
 number of copies to be prepared hereunder and the persons for whose use 9
 the same shall be transmitted shall be as provided in, the provisions of 10
 section one hundred and thirty-five of chapter two hundred and thirty- 11
 one relative to appellate proceedings in civil cases, except as otherwise 12
 provided in respect to the transcript of the evidence by sections thirty- 13
 three A to thirty-three G, inclusive, and the rules made thereunder, in 14
 criminal cases subject to said sections. Entry of a case hereunder shall 15
 not transfer the case, but only the question to be determined. 16

Transcript of
 evidence in
 capital, etc.,
 cases.
 1923, 279, § 1.
 1926, 329, § 1.
 260 Mass. 288.
 261 Mass. 299.
 262 Mass. 408.
 264 Mass. 221,
 324, 564
 270 Mass. 319.

SECTION 33A. In any proceedings or trial upon an indictment for 1
 murder or manslaughter, or upon an indictment or complaint for any 2
 other felony by order of a justice of the superior court made subject to 3
 this and the six following sections as provided in section thirty-one, the 4
 evidence shall be taken by an official stenographer or by a stenographer 5
 appointed by the court, and transcribed in such number of copies as the 6

7 court may direct. The evidence transcribed shall be designated as the
 8 "Transcript of the Evidence", shall be certified by the stenographer and
 9 shall, with such corrections as are made therein by direction of the court,
 10 be regarded as a true record of the evidence. Alleged errors in the tran-
 11 script of the evidence must be seasonably called to the attention of the
 12 court. Exceptions taken during the proceedings and trial shall be num-
 13 bered consecutively in the transcript of the evidence.

1 SECTION 33B. A defendant in a case of murder or manslaughter, or
 2 other felony made subject to sections thirty-three A to thirty-three G,
 3 inclusive, as aforesaid, aggrieved by an opinion, ruling, direction or
 4 judgment of the superior court, rendered upon any question of law arising
 5 out of such case or upon a motion for a new trial, but not upon a plea in
 6 abatement, who desires to appeal therefrom and whose exceptions thereto
 7 have been seasonably saved shall, within twenty days after verdict, file
 8 a claim of appeal in writing with the clerk, who shall forthwith notify the
 9 district attorney of such claim.

Filing claim
 of appeal in
 such cases.
 1925, 279, § 1.
 1926, 329, § 2.
 260 Mass. 288.
 264 Mass. 221.
 324, 564
 265 Mass. 114.
 270 Mass. 319.

1 SECTION 33C. Upon the filing of a claim of appeal, one copy of the
 2 transcript of the evidence shall be delivered to the clerk, who shall forth-
 3 with cause it to be substantially bound into volumes of convenient size
 4 and inscribed with the name of the court from which the appeal is taken,
 5 the title and number of the case, and the term "Transcript of the Evi-
 6 dence". The clerk shall forthwith prepare a concise summary of the
 7 record, which shall also include a copy of the indictment or complaint and
 8 of such pleadings and motions as the district attorney or defendant may
 9 designate. Written notice of the completion of the summary shall be
 10 given by the clerk to the defendant or his counsel of record and the fact
 11 that such notice was given shall be certified upon the record.

Same subject.
 Preparation
 of record.
 1925, 279, § 1.
 1926, 329, § 3.
 260 Mass. 288.
 264 Mass. 221.
 324, 564
 270 Mass. 319.

1 SECTION 33D. Within ten days after the notice provided for in the
 2 preceding section the defendant shall file an assignment of errors. For
 3 cause shown, a justice of the superior court may extend the time for filing
 4 such assignment of errors; provided, that no assignment of errors may
 5 be filed more than thirty days after such notice except upon order of a
 6 justice of the supreme judicial court. The specific grounds upon which
 7 any claim of error is based shall be set forth in a concise form. The mere
 8 statement that the evidence was inadmissible or immaterial or irrelevant,
 9 without other grounds, shall not be a sufficient assignment of error. There
 10 shall be no statement of testimony in the assignment of errors other than
 11 by reference to pages in the transcript, except when it is essential to
 12 clarify the point raised.

Same subject.
 Assignment of
 errors by
 defendant.
 1925, 279, § 1.
 264 Mass. 221.
 264, 324, 564
 270 Mass. 319

1 SECTION 33E. The clerk shall, as speedily as possible but in any event
 2 within ten days after the filing of the assignment of errors or within such
 3 further time as a justice of the superior court may for cause allow, trans-
 4 mit the bound copy of the transcript of the evidence, the summary of the
 5 record and the assignment of errors, which together shall constitute the
 6 record on appeal, to the supreme judicial court for the county in which
 7 the case is pending or to the supreme judicial court for the commonwealth
 8 whichever first has a law sitting, including an adjourned sitting in the case
 9 of the court for the commonwealth, after the assignment of errors is filed,
 10 and upon receipt of the same such appeal shall forthwith be entered by

Same subject.
 Transmission
 of record to
 supreme
 judicial court.
 1925, 279, § 1.
 1926, 329, § 4.
 260 Mass. 288.
 264 Mass. 221.
 324, 564
 270 Mass. 319.

the clerk on the docket of such court. The entry thereof shall not transfer 11
 the case but only the questions to be determined. The supreme judicial 12
 court shall consider all questions of law fairly raised. 13

Same subject.
 Dismissal of
 appeal.
 1925, 279, § 1.
 1926, 329, § 5.
 260 Mass. 288.
 264 Mass. 324.
 270 Mass. 319.

SECTION 33F. If the defendant neglects to file an assignment of errors 1
 within the time specified in section thirty-three D, the appeal shall be 2
 dismissed by the superior court as a matter of course, unless further time 3
 is granted by a justice of the supreme judicial court, and the judgment 4
 appealed from be affirmed. If the defendant neglects to take the neces- 5
 sary measures for the hearing of the cause in the supreme judicial court, 6
 a justice of said court may order that the appeal be dismissed and that 7
 the judgment appealed from be affirmed or make such other orders as may 8
 be necessary to the furtherance of justice. 9

Same subject.
 Rules govern-
 ing exhibits,
 printing, etc.
 1925, 279, § 1.
 264 Mass. 324.
 270 Mass. 319.

SECTION 33G. The supreme judicial court may make rules and regula- 1
 tions governing exhibits and the number of copies, form, printing, filing 2
 and disposition of all documents relating to appeals under the six preced- 3
 ing sections; provided, that the transcript of the evidence shall not be 4
 printed. 5

Motions in
 arrest of
 judgment.
 1864, 250, § 3.
 P. S. 214, § 27.

SECTION 34. No motion in arrest of judgment shall be allowed for 1
 a cause existing before verdict, unless it affects the jurisdiction of the 2
 court. 3

- | | | |
|------------------|---------------------|----------------|
| R. L. 219, § 38. | 160 Mass. 307, 354. | 213 Mass. 135. |
| 10 Allen, 193. | 162 Mass. 339. | 247 Mass. 580. |
| 129 Mass. 489. | 170 Mass. 460. | 249 Mass. 555. |
| 151 Mass. 394. | 202 Mass. 379. | 251 Mass. 550. |
| 153 Mass. 444. | 210 Mass. 445. | 253 Mass. 549. |
| 159 Mass. 61. | | |

Trial of
 female
 defendants.
 1904, 218.

SECTION 35. In all trials in district courts, male and female prisoners 1
 shall not be placed at the same time in the same dock, unless they are 2
 complained of jointly. 3

CHAPTER 279.

JUDGMENT AND EXECUTION.

- | | |
|---|---|
| <p>SECT.</p> <p>1. Execution of sentences may be sus-
 pended, etc., except in case of sec-
 ond conviction of driving under
 influence of intoxicating liquor or
 second conviction of felony.</p> <p>1A. Same subject. Probation.</p> <p>2. Execution of certain orders of com-
 mitment to Massachusetts reform-
 atory and other institutions may be
 suspended, etc.</p> <p>3. Arrest of person on probation, etc.</p> <p>3A. Expedition of sentence.</p> <p>4. Sentence notwithstanding appeal,
 etc.</p> <p>4A. Courts to obtain criminal records of
 defendants before disposition of
 certain cases.</p> | <p>SECT.</p> <p>5. Sentence if no punishment is provided
 by statute. Service of sentence in
 certain cases.</p> <p>6. Sentence to jail or house of correc-
 tion.</p> <p>7. Same subject.</p> <p>8. Commitments upon two or more sen-
 tences.</p> <p>8A. When "from and after" sentence
 takes effect.</p> <p>9. Second sentence for non-payment of
 fine.</p> <p>10. Conditional sentence.</p> <p>11. Remission of fine or imprisonment
 where law prescribes both.</p> <p>12. Husband assaulting wife to recognize,
 etc.</p> |
|---|---|

SECT.	SECT.
13. Recognizance to keep the peace in other cases.	32. Indeterminate sentence to reformatory.
14. Proceedings on forfeiture of recognizance.	33. Length of sentences at reformatory.
15. Sentence to jail, etc., in any county.	34. Sheriff, etc., to execute sentences.
16. Female sentenced to reformatory, when.	35. Copy of indictment, etc., to be transmitted to warden, etc.
17. Sentences to reformatory for women.	36. Sentences to state farm.
18. Term of sentences to reformatory for women	37. Name of crime to be stated in mittimus.
19. Place of imprisonment of women.	38. Powers of officer in execution of a warrant of commitment.
20. Imprisonment of women sentenced to confinement at hard labor, where executed.	39. Return of precept to magistrate. Copy with jailer, etc.
21. [Repealed.]	40. Service of new mittimus upon convict.
22. Boy to be sentenced to jail instead of state prison, when.	41. Default of corporation.
23. Sentences to jail and house of correction limited.	42. Warrant of distress.
24. Indeterminate sentence.	43. Appointment of time for execution of a death sentence.
25. Punishment of habitual criminals.	44. Confinement of prisoner under sentence.
26. Further sentence of convict in state prison.	45. Sentence, when executed.
27. Sentence to state prison may be executed immediately.	46. Death penalty, how inflicted.
28. Same subject.	47. Insane person or woman quick with child not to be sentenced.
29. Form of sentence. Solitary imprisonment.	48. Respite of execution in such cases.
30. Offices forfeited by sentence to state prison.	49. Respite in other cases.
31. Persons punishable in reformatory.	49A. Stay of execution.
	50. Witnesses of the execution.
	51. Post mortem examination of certain bodies.
	52. Return of warrant.

1 SECTION 1. When a person convicted before a district court is
 2 sentenced to imprisonment, the court may direct that the execution of
 3 the sentence be suspended, and that he be placed on probation for such
 4 time and on such terms and conditions as it shall fix. When a person so
 5 convicted is sentenced to pay a fine, and to stand committed until it is
 6 paid, the court may direct that the execution of the sentence be suspended
 7 for such time as it shall fix, and that he be placed on probation on condi-
 8 tion that he pay the fine within such time. If the fine does not exceed
 9 fifteen dollars and the court finds that the defendant is unable to pay it
 10 when imposed, the execution of the sentence shall be suspended and he
 11 shall be placed on probation, unless the court shall find that he will prob-
 12 ably default, or that such suspension will be detrimental to the interests
 13 of the public. If he is committed for non-payment of a fine, the order of
 14 commitment shall contain a recital of the findings of the court on which
 15 suspension is refused. The fine shall be paid in one payment, or in part
 16 payments, to the probation officer, and when fully paid the order of com-
 17 mitment shall be void. The probation officer shall give a receipt for
 18 every payment so made, shall keep a record of the same, shall pay the
 19 fine, or all sums received in part payment thereof, to the clerk of the court
 20 at the end of the period of probation or any extension thereof, and shall
 21 keep on file the clerk's receipt therefor. If during or at the end of said
 22 period the probation officer shall report that the fine is in whole or in part
 23 unpaid, and in his opinion the person is unwilling or unable to pay it, the
 24 court may either extend said period, place the case on file or revoke the
 25 suspension of the execution of the sentence. When such suspension is

Execution of sentences may be suspended, etc., except in case of second conviction of driving under influence of intoxicating liquor or second conviction of felony.
 1900, 449, § 1.
 R. L. 220, § 1.
 1905, 338.
 1912, 154.
 1913, 653.
 1924, 175, § 1.
 1925, 297, § 2.
 1926, 271, § 2.
 296.
 205 Mass. 155.
 243 Mass. 90.
 246 Mass. 57.
 250 Mass. 493.

revoked, in a case where the fine has been paid in part, the defendant may be committed for default in payment of the balance.

The provisions of this section shall not permit the suspension of the execution of the sentence of a person convicted of operating a motor vehicle while under the influence of intoxicating liquor if such offence was committed within a period of six years immediately following his final conviction of a like offence by a court or magistrate of the commonwealth, or of a person convicted of a felony if it shall appear that he has been previously convicted of any felony.

Same subject.
Probation
1924, 175, § 2.
1926, 271, § 3;
296.

SECTION 1A. When a person convicted before a district court is sentenced to fine and imprisonment, the court may direct that the execution of the sentence be suspended as to the fine or the imprisonment or both, and that he be placed on probation for such time and on such terms and conditions as it shall fix; the court may direct, as one of such terms and conditions, that payment of the fine may be made to the probation officer in one payment, or in part payments, during the period of probation or any extension thereof, and when such fine shall have been fully paid the order of commitment as to the fine shall be void, but the order of commitment as to imprisonment shall not be affected by such payment. The probation officer shall give a receipt for every payment so made, shall keep a record of the same, shall pay the fine, or all sums received in part payment thereof, to the clerk of the court at the end of the period of probation or any extension thereof, and shall keep on file the clerk's receipt therefor. If during or at the end of said period the probation officer shall report that the fine is in whole or in part unpaid, and in his opinion the person is unwilling or unable to pay it, the court may either extend said period, place the case on file or revoke the suspension of the execution of the sentence. When such suspension is revoked, in a case where the fine has been paid in part, the defendant may be committed for default in payment of the balance, and may also be committed for the term of imprisonment fixed in the original sentence. This section shall not permit the suspension of the execution of the sentence of any person convicted of a felony if it shall appear that he has been previously convicted of any felony.

Execution of certain orders of commitment to Massachusetts reformatory and other institutions may be suspended, etc.
1908, 103
1913, 471, § 2.

SECTION 2. In all cases the execution of orders of commitment to the Massachusetts reformatory, the reformatory for women, any training school, however named, the Lyman school, the industrial school for girls, the industrial school for boys and the department of public welfare may be suspended, and such suspension continued or revoked, in the same manner and with the same effect as the execution of sentences in criminal cases.

1919, 350, § 87.

1931, 426, § 48

4 Op A G 628

Arrest of person on probation, etc.
1897, 236
1903, 449, § 2.
R. L. 229, § 2.
1926, 266, 296.
1927, 140, § 1.
183 Mass. 238.
199 Mass. 44
246 Mass. 57.

SECTION 3. At any time before final disposition of the case of a person placed on probation in the custody of a probation officer, the probation officer may arrest him without a warrant and take him before the court, or the court may issue a warrant for his arrest. When taken before the court, it may, if he has not been sentenced, sentence him or make any other lawful disposition of the case, and if he has been sentenced, it may continue or revoke the suspension of the execution of his sentence. If such suspension is revoked, the sentence shall be in full force and effect.

1 SECTION 3A. Not later than seven days after a plea of guilty or after
 2 a verdict of guilty and in any event before adjournment of the sitting at
 3 which such plea or verdict has been taken and recorded in a case of felony
 4 not punishable by death wherein no question of law has been reported for
 5 decision by the supreme judicial court, the district attorney shall move
 6 for sentence.

Expedition of
 sentence
 1926, 245, 296.

1 SECTION 4. Sentence shall be imposed upon conviction of a crime
 2 not punishable by death, although exceptions have been alleged or an
 3 appeal taken. The reservation, filing or allowance of exceptions, or the
 4 entry of an appeal, shall not stay the execution of the sentence unless
 5 the justice imposing it, or a justice of the supreme judicial court, files
 6 a certificate that in his opinion there is reasonable doubt whether the
 7 judgment should stand. If sentence is so stayed, the justice may at the
 8 same time make an order relative to the custody of the prisoner or for
 9 admitting him to bail.

Sentence not-
 withstanding
 appeal, etc.
 1891, 362.
 1895, 469.
 R. L. 220, § 3.
 167 Mass. 13,
 144.
 170 Mass. 16.
 175 Mass. 37.
 187 Mass. 288.
 210 Mass. 445.
 224 Mass. 42.
 235 Mass. 357.

265 Mass. 436.

2 Op. A. G. 482.

1 SECTION 4A. Before disposition by sentence or placing on file or
 2 probation of any criminal prosecution for an offence punishable by im-
 3 prisonment for more than one year, the court shall obtain from its proba-
 4 tion officer all available information relative to prior criminal prosecu-
 5 tions, if any, of the defendant and to the disposition of each such prose-
 6 cution.

Courts to ob-
 tain criminal
 records of
 defendants
 before dis-
 position of
 certain cases.
 1926, 320, § 4.

1 SECTION 5. If no punishment for a crime is provided by statute,
 2 the court shall impose such sentence, according to the nature of the
 3 crime, as conforms to the common usage and practice in the common-
 4 wealth. If a person is convicted of a misdemeanor punishable by im-
 5 prisonment, he may, unless otherwise expressly provided, be sentenced
 6 to imprisonment either in the jail or in the house of correction.

Sentence, if
 no punishment
 is provided
 by statute.
 Service of
 sentence in
 certain cases.
 1782, 9, § 1.
 R. S. 139, § 1.

G. S. 174, § 1.
 P. S. 215, § 1.
 R. L. 220, § 4.

1902, 544, § 34.
 13 Allen, 581.
 165 Mass. 446.

189 Mass. 76.
 256 Mass. 539.
 264 Mass. 51.

1 SECTION 6. Whoever is convicted of a crime punishable wholly or
 2 in part by imprisonment in jail may be sentenced to such imprisonment
 3 in the house of correction or to solitary imprisonment and confinement
 4 at hard labor either in the jail or house of correction; and if convicted
 5 of a crime punishable by imprisonment in the house of correction may
 6 be sentenced to such imprisonment in a jail.

Sentence to
 jail or house
 of correction.
 1834, 151, § 17.
 R. S. 143, § 17.
 G. S. 174, § 4.
 P. S. 215, § 3.
 1882, 241, § 1.
 R. L. 220, § 5.

2 Met. 419.
 4 Met. 360.

161 Mass. 120.
 184 Mass. 320.

188 Mass. 413.
 215 Mass. 525.

1 SECTION 7. Whoever is convicted of a crime punishable by a fine,
 2 and is liable to imprisonment in the jail for its non-payment, may be
 3 sentenced to such imprisonment in the house of correction, or to con-
 4 finement at hard labor either in the jail or house of correction.

Same subject.
 1845, 118.
 G. S. 174, § 5.
 P. S. 215, § 4.
 R. L. 220, § 6.

2 Met. 408.

1 SECTION 8. A convict upon whom two or more sentences to imprison-
 2 ment are imposed may be fully committed upon all such sentences at
 3 the same time, and shall serve them in the order named in the mittimuses
 4 upon which he is committed; but when fine and imprisonment are
 5 named in one of the sentences the prisoner shall always be committed
 6 upon the term sentence first.

Commitments
 upon two or
 more sen-
 tences.
 1884, 265.
 R. L. 220, § 7.
 1911, 179.

When "from and after" sentence takes effect. 1924, 165.

SECTION 8A. For the purpose only of determining the time of the taking effect of a sentence which is ordered to take effect from and after the expiration of a previous sentence, such previous sentence shall be deemed to have expired when a prisoner serving such previous sentence shall have been released therefrom by parole or otherwise. Nothing in this section shall be construed to alter or control any provision of section one hundred and thirty-one or one hundred and forty-nine of chapter one hundred and twenty-seven.

1
2
3
4
5
6
7
8

Second sentence for non-payment of fine. 1874, 253. P. S. 215, § 5. R. L. 220, § 8.

SECTION 9. If a convict is sentenced to pay a fine in more than one case and has been committed to a jail, house of correction or other prison for refusing to pay such fine, the subsequent sentence shall take effect upon the expiration of the imprisonment under the former sentence.

1
2
3
4

Conditional sentence. 1788, 53, §§ 1, 2. 1834, 151, § 17. R. S. 139, § 2, 3. G. S. 174, §§ 6, 7. P. S. 215, §§ 6, 7. R. L. 220, § 9. 5 Met. 559.

SECTION 10. If a person has been convicted of a crime punishable, at the discretion of the court, by fine or imprisonment in the jail or house of correction or by fine or imprisonment in the state prison, the court may impose upon him a conditional sentence, and order him to pay a fine within a limited time which shall be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law. He shall be forthwith committed to the custody of an officer in court or to the jail, to be detained until the sentence is complied with; and if he does not within the time limited pay the fine imposed, the sheriff shall cause the other part of the sentence to be executed forthwith.

1
2
3
4
5
6
7
8
9
10

Remission of fine or imprisonment where law prescribes both. R. S. 139, § 4. 1855, 215, §§ 39. G. S. 174, § 8. 1866, 280, § 1. P. S. 215, § 8. 1896, 397, § 17. R. L. 220, § 10.

SECTION 11. Whoever is convicted of a crime, punishable by fine and imprisonment either in the jail or house of correction, except a person convicted under section thirty-three of chapter one hundred and thirty-eight, may at the discretion of the court, be sentenced to be punished by imprisonment only, or by a fine only, if he shows to the satisfaction of the court that he has not before been convicted of a similar crime.

1
2
3
4
5
6
7

12 Allen, 421, 428. 127 Mass. 452. 236 Mass. 281.
13 Allen, 581. 155 Mass. 8. 250 Mass. 211.
109 Mass. 361. 184 Mass. 320.

Husband assaulting wife to recognize, etc. 1879, 42. P. S. 215, §§ 9, 10. R. L. 220, § 11.

SECTION 12. Except as provided in section twenty-eight of chapter two hundred and eighteen and in section twenty of chapter two hundred and nineteen, if a husband is convicted of an assault upon his wife, the court may, in addition to the other penalties imposed, or in lieu thereof, order him to recognize with surety or sureties to keep the peace for any term of not more than two years, and may at any time revoke such order or reduce the amount required or order that the recognizance be taken without surety.

1
2
3
4
5
6
7
8

Recognizance to keep the peace in other cases. R. S. 139, § 5. G. S. 174, § 10. P. S. 215, § 11. R. L. 220, § 12. 2 Allen, 61.

SECTION 13. Except as provided in section twenty-eight of chapter two hundred and eighteen and in section twenty of chapter two hundred and nineteen, whoever is convicted of a misdemeanor may, in addition to the punishment prescribed by law, be required to recognize, with sufficient sureties, in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term of not more than two years, and to stand committed until he so recognizes.

1
2
3
4
5
6
7

1 SECTION 14. Such recognizance shall be filed of record in the superior
 2 court for the county, and, upon a breach of the condition thereof, the
 3 proceedings shall be as provided in chapter two hundred and seventy-five
 4 relative to recognizances to keep the peace and be of good behavior.

R. L. 220, § 13.

Proceedings
 on forfeiture of
 recognizance.
 R. S. 139, § 6.
 G. S. 174, § 11.
 P. S. 215, § 12.

1 SECTION 15. Whoever is convicted of a crime, punishable by imprison-
 2 ment in the jail or house of correction, may be sentenced to a jail or house
 3 of correction of any county, and the master or keeper shall receive and
 4 detain him in the same manner as if he had been sentenced by a court
 5 sitting in the county where such jail or house of correction is situated.

12 Allen, 424. 1 Op. A. G. 309.

Sentence to
 jail, etc., in
 any county.
 1818, 123, § 6.
 1866, 280, § 2.
 1870, 370, § 4.
 P. S. 215, § 13.
 R. L. 220, § 14.

1 SECTION 16. A female, convicted of a crime punishable by imprison-
 2 ment in a jail or house of correction, may be sentenced to the reformatory
 3 for women.

Female sen-
 tenced to
 reformatory,
 when.

1874, 385, § 17.	1903, 209.	1911, 181.
1881, 189.	1906, 282.	1914, 635.
P. S. 215, § 14.	1907, 251, § 1.	256 Mass. 539.
R. L. 220, § 15.		

1 SECTION 17. The court or trial justice, imposing a sentence to the
 2 reformatory for women, shall not prescribe the limit of the sentence
 3 unless it is for more than five years.

Sentences to
 reformatory
 for women.

1903, 209, § 1.	1911, 181.	215 Mass. 525.	256 Mass. 539.
-----------------	------------	----------------	----------------

1 SECTION 18. A female sentenced to the reformatory for women for
 2 larceny or any felony may be held therein for not more than five years,
 3 unless she is sentenced for a longer term, in which case she may be held
 4 therein for such longer term; if sentenced to said reformatory for any
 5 other offence, she may be held therein for not more than two years.

Term of sen-
 tences to
 reformatory
 for women.
 1903, 209,
 §§ 2, 3.
 1906, 282, § 1.

1907, 251, §§ 1-3.	1911, 181.	256 Mass. 539.
1910, 347.	215 Mass. 525.	

1 SECTION 19. The sentence to imprisonment of a female convicted
 2 of a felony shall be executed in the reformatory for women; or the court
 3 imposing sentence in such a case may impose the sentence in a jail or house
 4 of correction provided by law in the case of male prisoners, if it does not
 5 exceed two and one half years.

Place of im-
 prisonment of
 women.
 1906, 282, § 1.
 1907, 251, § 1.
 1911, 181.
 1914, 635.

215 Mass. 525.	256 Mass. 539.
----------------	----------------

1 SECTION 20. Subject to the preceding section, a sentence of a female
 2 convict of whatever age to confinement at hard labor shall be executed
 3 in a jail or house of correction or the reformatory for women as the
 4 court orders.

Imprisonment
 of women
 sentenced to
 confinement
 at hard labor,
 where
 executed.

1818, 123, § 8.	1874, 385, § 17.	R. L. 220, § 16.	12 Cush. 237.
1834, 151, § 16.	P. S. 215, § 15.	1904, 224.	215 Mass. 525.
R. S. 143, § 18.	1889, 113.	1911, 181.	256 Mass. 539.
G. S. 174, § 14.			

1 SECTION 21. [REPEALED, 1931, 426, § 49.]

1 SECTION 22. If a boy under sixteen, convicted of felony and sen-
 2 tenced to solitary imprisonment and confinement at hard labor for not
 3 more than three years, has not been previously sentenced to the state
 4 prison, or to any state prison or penitentiary in the United States, the
 5 sentence shall, subject to the following section, be executed in the jail.

G. S. 174, § 13. P. S. 215, § 17. R. L. 220, § 18.

Boy to be
 sentenced to
 jail instead of
 state prison,
 when.
 1818, 123, § 8.
 1834, 151, § 16.
 R. S. 143, § 18.

Sentences to jail and house of correction limited.

SECTION 23. No sentence of a male convict to imprisonment or confinement for more than two and one half years shall be executed in any jail or house of correction.

- | | | | |
|------------------|-------------------|------------------|----------------|
| 1818, 123, § 1. | P. S. 215, § 19. | 1920, 2. | 188 Mass. 330. |
| 1834, 151, § 14. | R. L. 220, § 19. | 1931, 426, § 50. | 215 Mass. 209. |
| R. S. 143, § 19. | 1918, 257, § 464. | 152 Mass. 1. | 235 Mass. 357. |
| G. S. 174, § 16. | 1919, 5. | 161 Mass. 120. | 238 Mass. 532. |
| 1870, 206, § 1. | | | |

Indeterminate sentence.
R. S. 139, § 9.
G. S. 174, § 17.
1877, 190.
1880, 15, § 1.
P. S. 215, § 20.
1895, 504, § 1.
1897, 294, § 1.
R. L. 220, § 20.
1924, 152.
152 Mass. 1.
161 Mass. 120.

SECTION 24. If a convict is sentenced to the state prison, except for life or as an habitual criminal, the court shall not fix the term of imprisonment, but shall fix a maximum and a minimum term for which he may be imprisoned. The maximum term shall not be longer than the longest term fixed by law for the punishment of the crime of which he has been convicted, and the minimum term shall not be less than two and one half years.

- | | | |
|----------------|----------------|----------------------|
| 167 Mass. 144. | 172 Mass. 264. | 188 Mass. 330. |
| 169 Mass. 592. | 174 Mass. 369. | Op. A. G. (1920) 73. |

Punishment of habitual criminals.
1887, 435, § 1.
R. L. 220, § 21.
1904, 303.
155 Mass. 163.
158 Mass. 598.
163 Mass. 226.
165 Mass. 133.
173 Mass. 322.
175 Mass. 202.
180 U. S. 311.

SECTION 25. Whoever has been twice convicted of crime and sentenced and committed to prison in this or another state, or once in this and once or more in another state, for terms of not less than three years each, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of a felony, be considered an habitual criminal and be punished by imprisonment in the state prison for the maximum term provided by law as a penalty for the felony for which he is then to be sentenced.

Further sentence of convict in state prison.

SECTION 26. A convict under sentence of imprisonment in the state prison may be sentenced for a further time of not less than one year.

- | | | |
|----------------|------------------|------------------|
| 1880, 15, § 2. | P. S. 215, § 21. | R. L. 220, § 22. |
|----------------|------------------|------------------|

Sentence to state prison may be executed immediately.
1881, 139.
P. S. 215, § 22.
R. L. 220, § 23.

SECTION 27. If a convict serving a sentence of imprisonment in a jail or house of correction is convicted of a felony, the court may impose sentence of imprisonment in the state prison and order it to take effect forthwith, notwithstanding the former sentence. The convict shall thereupon be removed to the state prison, and shall be discharged at the expiration of his sentence thereto.

Same subject.
1891, 200.
R. L. 220, § 24.

SECTION 28. If a convict serving a sentence of imprisonment in the Massachusetts reformatory is convicted of a crime punishable by imprisonment in the state prison or house of correction, the court may impose sentence of imprisonment therein and may order it to take effect forthwith, notwithstanding the former sentence. The convict shall thereupon be removed accordingly, and shall be discharged at the expiration of his sentence thereto.

Form of sentence. Solitary imprisonment.
R. S. 139, § 8.
G. S. 174, § 18.
1866, 254.
P. S. 215, § 23.
R. L. 220, § 25.
4 Met 360.
8 Met. 533.
11 Met 575.
161 Mass. 120.
167 Mass. 11.
215 Mass. 209.

SECTION 29. The form of a sentence to the state prison shall be, that the convict be punished by confinement at hard labor and by solitary imprisonment for such term, not exceeding twenty days at one time, as the court orders. In the execution of such sentence, the solitary imprisonment shall precede the punishment by hard labor, unless the court otherwise orders; but in case of severe illness of the convict, the warden, upon the certificate of the prison physician, may postpone the solitary imprisonment until the health of the convict is so far restored that his life will not be endangered thereby.

1 SECTION 30. If a convict sentenced by a court of the commonwealth
 2 or of the United States to imprisonment in the state prison holds an
 3 office under the constitution or laws of the commonwealth at the time of
 4 sentence, it shall be vacated from the time of sentence. If the judgment
 5 against him is reversed upon writ of error, he shall be restored to his office
 6 with all its rights and emoluments; but, if pardoned, he shall not by rea-
 7 son thereof be restored, unless it is so expressly ordered by the terms of
 8 the pardon.

Offices for-
 feited by
 sentence to
 state prison
 R. S. 144, § 31.
 G. S. 174, § 19.
 P. S. 215, § 24.
 R. L. 220, § 26.
 24 Pick. 277.

1 SECTION 31. A male under thirty years of age, not previously
 2 sentenced for felony more than three times, convicted of a crime punish-
 3 able by imprisonment in the state prison or in a jail or house of correction
 4 may be sentenced to the Massachusetts reformatory. District courts and
 5 trial justices shall have the same jurisdiction to sentence such person to
 6 said reformatory as they have to sentence him to such jail or house of
 7 correction.

Persons
 punishable
 in reformatory.
 1884, 255, § 8.
 1885, 356.
 1886, 323, § 5.
 1888, 49.
 R. L. 220, § 27.
 1908, 232.
 1928, 28, § 1.

1 SECTION 32. The court imposing a sentence of imprisonment in the
 2 Massachusetts reformatory shall not fix the term thereof unless it exceeds
 3 five years, but shall merely impose a sentence of imprisonment therein;
 4 but prisoners may be received and held therein who have been sentenced
 5 thereto by a court of the United States for a fixed or limited term.

Indeterminate
 sentence to
 reformatory.
 1884, 255,
 §§ 8, 9.
 1886, 323,
 §§ 1, 6.

R. L. 220, § 28.

216 Mass. 594

1 SECTION 33. Whoever is sentenced to the Massachusetts reformatory
 2 for larceny or for any felony may be held therein for not more than five
 3 years unless sentenced for a longer term, in which case he may be held
 4 therein for such longer term; if committed to said reformatory as a de-
 5 linquent child he may be held therein for not more than two years; if
 6 sentenced to said reformatory for drunkenness he may be held therein for
 7 not more than one year; if sentenced to said reformatory for any other
 8 offence he may be held therein for not more than two years.

Length of
 sentences at
 reformatory.
 1886, 323,
 §§ 2, 3.
 1892, 302.
 R. L. 220, § 29.
 1907, 252.
 1910, 356,
 §§ 1, 2.

1 SECTION 34. When a convict is sentenced to pay a fine or to be im-
 2 prisoned, the clerk of the court shall forthwith make out and deliver to
 3 the sheriff or to some officer in court a duly certified transcript from the
 4 minutes of the court of the conviction and sentence, which shall authorize
 5 the officer to execute such sentence, and he shall execute it accordingly.

Sheriff, etc.,
 to execute
 sentences.
 R. S. 139, § 7.
 G. S. 174, § 20.
 1880, 120, § 1.
 P. S. 215, § 25.
 R. L. 220, § 30.

243 Mass. 90

1 SECTION 35. When a person is committed to the state prison, the
 2 Massachusetts reformatory, the reformatory for women or to any other
 3 public penal institution, on conviction of felony, the clerk of the court
 4 shall, without charge, transmit with the mittimus an attested copy of
 5 the complaint or indictment under which such person was convicted, and
 6 the names and addresses of the witnesses who testified for and against
 7 such person at the trial, together with a record containing the names
 8 and addresses of the presiding justice, district attorney and of the attorney
 9 for the defendant.

Copy of in-
 dictment, etc.,
 to be trans-
 mitted to
 warden, etc.
 1881, 114, § 1.
 P. S. 215, § 26.
 1884, 255, § 10.
 R. L. 220, § 31.
 1914, 310.

1 SECTION 36. In imposing a sentence of imprisonment at the state
 2 farm, the court or trial justice shall not fix or limit the duration thereof.
 3 Whoever is sentenced to the state farm for drunkenness may be there

Sentences to
 state farm.
 1898, 443, § 1.
 R. L. 85, § 37.

held in custody for not more than one year, and if so sentenced for any other offence may be there held in custody for not more than two years. 4 5

Name of crime to be stated in mittimus. 1910, 316. 1918, 257, § 465. 1919, 5. SECTION 37. Every warrant for the commitment of a person sentenced by a district court or trial justice shall set forth the statutory name, if any, of the crime of which the person was convicted, and shall contain a citation of the statute, if any, under which the complaint was drawn. 1 2 3 4

1920, 2.

Powers of officer in execution of a warrant of commitment. 1870, 370, § 5. 1879, 294, § 7. 1880, 120, § 3. P. S. 215, § 27. SECTION 38. A sheriff, deputy sheriff or constable, when engaged in the execution of a warrant for the commitment of a person to a penal institution which is not in his own county, shall have the same powers in any county through which he may pass as he would have in his own county in the performance of a similar duty. 1 2 3 4 5

R. L. 220, § 32.

Return of precept to magistrate. Copy with jailer, etc. 1859, 233. G. S. 174, § 22. 1880, 120, § 2. P. S. 215, § 28. R. L. 220, § 33. 11 Gray, 468. SECTION 39. The officer serving the precept in a criminal case shall, without charging travel therefor, return it with his doings and fees endorsed thereon to the court or magistrate issuing it, who shall tax, allow and certify the fees as a part of the expenses in the case. In case of commitment, the officer shall leave with the jailer or keeper of the prison an attested copy of the precept, with his return thereon, which shall authorize the detention of the person committed. 1 2 3 4 5 6 7

Service of new mittimus upon convict. G. S. 174, § 23. P. S. 215, § 29. R. L. 220, § 34. SECTION 40. If a convict imprisoned under sentence is again sentenced to confinement in a prison other than that in which he is then held, the warrant for his commitment in pursuance of the second sentence shall be placed in the hands of the warden, superintendent, master or keeper of the prison where the convict is held, and said warden, superintendent, master or keeper, upon the expiration of the first sentence, shall commit the convict in obedience to said warrant. 1 2 3 4 5 6 7

Default of corporation. 1851, 348, § 1. G. S. 174, § 29. P. S. 215, § 30. R. L. 220, § 35. 206 Mass. 417. SECTION 41. If a corporation, after being duly served with process, fails to appear and answer to an indictment or complaint brought against it under the laws of the commonwealth, its default shall be recorded, the charges in the indictment or complaint taken to be true, and judgment rendered accordingly. 1 2 3 4 5

Warrant of distress. 1851, 348, § 2. G. S. 174, § 30. P. S. 215, § 31. R. L. 220, § 36. 206 Mass. 417. SECTION 42. If judgment is rendered against a corporation upon an indictment or complaint under the laws of the commonwealth, the court may issue a warrant of distress to compel payment of the penalty prescribed by law, with interest. 1 2 3 4

Appointment of time for execution of a death sentence. C. L. 30, § 1. 1776-7, 32, § 24. R. S. 139, § 11. 1852, 274, §§ 2, 3. 1847, 37. G. S. 174, § 24. 1876, 166, § 1. P. S. 215, § 32. 1898, 326, § 1. R. L. 220, § 37. 118 Mass. 1. 246 Mass. 12. SECTION 43. In pronouncing sentence of death upon a person convicted of a capital crime, the court shall appoint a week within which the sentence shall be executed. The clerk of the court shall, as soon as may be, make out and deliver to the governor a certified copy of the whole record of the conviction and sentence, and shall immediately thereafter make out, sign and deliver to the sheriff of the county where the conviction was had a warrant under the seal of the court stating the conviction and sentence, and the week appointed for the execution thereof, and shall at the same time transmit to the warden of the state prison a certified copy of the warrant. Such warrant shall be directed to 1 2 3 4 5 6 7 8 9 10

11 the warden of the state prison commanding him to cause execution to be
12 done in accordance with the provisions of such sentence upon a day within
13 the week so appointed.

1 SECTION 44. After a convict has been sentenced to the punishment
2 of death, he shall be confined in jail in the county where he was con-
3 victed until within ten days of the first day of the week appointed for the
4 execution of the sentence of death. He shall, within such ten days, at
5 a time chosen by the sheriff, be conveyed by him or a deputy designated
6 by him, as secretly as may be, to the state prison, and shall, with the war-
7 rant, be delivered to the warden thereof or to the officer performing the
8 duties thereof. He shall, unless lawfully discharged from such imprison-
9 ment, be kept in a cell provided for the purpose from the time of such
10 delivery until the sentence of death is executed upon him, and no person
11 shall be allowed access to him without an order of the court, except the
12 officers and employees of the prison, his counsel, and such physicians,
13 priest or minister of religion as the warden may approve, and the mem-
14 bers of his family who are identified to the satisfaction of the warden. If
15 the execution of the sentence of death is respited by the governor, or is
16 otherwise delayed by process of law, the convict may, in the discretion of
17 the warden, be confined in a cell used for solitary confinement.

Confinement
of prisoner
under sentence.
1898, 326, § 2.
1901, 520.
R. L. 220, § 38.
178 Mass. 549.

1 SECTION 45. The sentence of death shall be executed by the warden
2 of the state prison, or by a person acting under his direction, within the
3 week appointed by the court, unless the governor pardons the crime,
4 commutes the punishment therefor or respites the execution or said execu-
5 tion is otherwise delayed by process of law. If the execution is respited or
6 stayed by process of law, the sentence of death shall be executed within
7 the week beginning on the day next after the day on which the term of
8 respite or stay expires. The sentence of death shall be executed upon
9 such day within the week appointed as the warden elects, at some time
10 between midnight and sunrise; but no previous announcement thereof
11 shall be made, except to such persons as may be permitted to be present.

Sentence, when
executed.
1776-7, 32,
§ 24.
R. S. 139,
§§ 11, 12.
G. S. 174,
§§ 24, 25.
1876, 166, § 2.
P. S. 215, § 33.
1898, 326, § 3.
R. L. 220, § 39.
1929, 133, § 2.
178 Mass. 549.
210 Mass. 609.

1 SECTION 46. The punishment of death shall be inflicted by causing a
2 current of electricity of sufficient intensity to cause death to pass through
3 the body of the convict, and the application of such current shall be con-
4 tinuous until he is dead. The sentence shall be executed within an en-
5 closure or building for that purpose adjoining the state prison and the
6 company which furnishes the electric power or light to the state prison
7 shall provide all necessary electricity for executions at such times as the
8 warden orders.

Death penalty,
how inflicted.
R. S. 139, § 13.
1833, 286, § 2.
1837, 37.
G. S. 174, § 26.
P. S. 215, § 37.
1898, 326,
§§ 4, 6, 10.
R. L. 220, § 40.
5 Cush. 386.
11 Cush. 604.

178 Mass. 549.

1 SECTION 47. If a person convicted of a capital crime is, at the time
2 when motion for sentence is made, found by the court to be insane, it may
3 cause such person to be removed to one of the state hospitals for such term
4 and under such limitations as it may order. If a woman convicted of a
5 capital crime is, at the time when motion for sentence is made, found by
6 the court to be quick with child, the court shall not pass sentence upon
7 her until it finds that she is no longer quick with child.

Insane person
or woman
quick with
child not to
be sentenced.
1876, 166, § 3.
P. S. 215, § 34.
R. L. 220, § 41.

1 SECTION 48. If it appears to the satisfaction of the governor and
2 council that a convict under sentence of death has become insane, the

Respite of
execution in
such cases.
R. S. 139, § 12.

G. S. 174, § 25. governor, with the advice and consent of the council, may, from time to 3
 1876, 166, § 4. time for stated periods, respite the execution of said sentence, until it 4
 P. S. 215, § 35. appears to their satisfaction that the convict is no longer insane. If it 5
 R. L. 220, § 42. appears to the satisfaction of the governor and council that a female convict 6
 257 Mass. 386. under sentence of death is quick with child, the governor, with the 7
 advice and consent of the council, shall from time to time respite the 8
 execution of said sentence for stated periods until it appears to their 9
 satisfaction that she is no longer quick with child. 10

Respite in other cases. SECTION 49. The governor, with the advice and consent of the council, 1
 1876, 166, § 5. may from time to time respite the execution of a sentence of death for 2
 P. S. 215, § 36. stated periods so long as he may consider it necessary to afford him, with 3
 R. L. 220, § 43. the advice and consent of the council, an opportunity to pardon the convict 4
 and to investigate and consider the facts of the case for that purpose. 5

Stay of execution. SECTION 49A. The execution of a sentence of death may be stayed 1
 1929, 133, § 1. from time to time for definite and stated periods by the supreme judicial 2
 court, or a justice thereof, pending the final determination of any judicial 3
 question arising in or out of the case in which the sentence is imposed. 4

Witnesses of the execution. SECTION 50. There shall be present at the execution of the sentence 1
 R. S. 139, § 14. of death, in addition to the warden, deputy warden and such officers of the 2
 G. S. 174, § 27. state prison as the warden deems necessary, the person performing the 3
 P. S. 215, § 38. execution under the direction of the warden, the prison physician, the 4
 1898, 326, § 5. chief surgeon of the militia, a medical examiner for Suffolk county, or, 5
 R. L. 220, § 44. if they are unable to be present, such physicians as the warden approves. 6
 The physicians present shall be the legal witnesses of the execution. 7
 There may also be present the sheriff of the county where the defendant 8
 was convicted or his deputy, a priest or minister of religion and, with 9
 the approval of the warden, not more than three other persons. 10

Post mortem examination of certain bodies. SECTION 51. There shall be a post mortem examination by a medical 1
 1911, 274, § 1. examiner for Suffolk county of the body of every person electrocuted in 2
 conformity with the sentence of a court. 3

Return of warrant. SECTION 52. When the warden has executed the sentence of death 1
 R. S. 139, § 15. upon a convict in obedience to a warrant from the court, he shall forth- 2
 G. S. 174, § 28. with make return thereof under his hand, with the doings thereon, to the 3
 1876, 166, § 6. office of the clerk of said court. 4
 P. S. 215, § 39.
 1898, 326, § 7.

R. L. 220, § 45.

CHAPTER 280.

FINES AND FORFEITURES.

SECT.

1. Fines and forfeitures, how recovered.
2. Payment of certain fines and forfeitures.
3. Counsel in proceedings for penalties.
4. County to pay expense of prosecution.
5. Expense of briefs in criminal cases.
6. Expenses of prosecution.
7. Certificates of fines.
8. Accounts of fines, etc.
9. Same subject.
10. Payment of witness fees.
11. Fines, etc., to be paid to sheriff, and by him to county.

SECT.

12. Sheriff suffering escape to pay fines, etc.
13. Remedy if sheriff neglects to pay over fines.
14. Payments to jailer or master of house of correction.
15. Jailer and master of house of correction to make quarterly returns.
16. Expenses to be paid by county treasurer if demanded within three years, etc.

1 SECTION 1. Fines and forfeitures exacted as punishments for offences
 2 or violation or neglect of any duty imposed by statute may, unless other-
 3 wise provided, be prosecuted for and recovered by indictment or com-
 4 plaint or by an action of tort in the name of the commonwealth in a court
 5 having jurisdiction of the offence or action.

Fines and forfeitures, how recovered.
 1793, 43, § 4.
 1800, 57, § 4.
 R. S. 118, § 12;
 133, § 14.

G. S. 176, § 2.	108 Mass. 139.	151 Mass. 60.	265 Mass. 353.
P. S. 217, § 2.	124 Mass. 277.	183 Mass. 491.	1 Op. A. G. 638.
R. L. 221, § 1.	144 Mass. 170.	216 Mass. 344.	2 Op. A. G. 125.

1 SECTION 2. A fine or forfeiture imposed by the superior court shall,
 2 except as otherwise provided, be paid over to the treasurer of the county
 3 where the proceeding in which the fine or forfeiture was imposed was
 4 tried, or in Suffolk county to the collector of Boston, except that in cases
 5 appealed from district courts or trial justices, in counties other than
 6 Suffolk, the fine or forfeiture shall be paid into the treasury of the
 7 county where it was imposed, and the treasurer of the said county shall
 8 pay to the town where the offence was committed the costs as certified
 9 by the clerk of the inferior court from which the case was appealed.
 10 A fine or forfeiture imposed by a district court or trial justice shall, ex-
 11 cept as otherwise provided, be paid to the town where the crime or offence
 12 was committed. If the whole or any part of a fine is by law payable
 13 to a complainant or informant or to a person or corporation as benefi-
 14 ciary, the court or trial justice may apportion the fine or forfeiture be-
 15 tween such complainant, informant or other beneficiary and the county
 16 or town, respectively. This section shall not apply to fines payable into
 17 the state treasury under section thirty-four of chapter ninety.

Payment of certain fines and forfeitures.
 R. S. 133, § 14.
 1839, 135.
 G. S. 176, § 1.
 1860, 191, § 10.
 P. S. 217, § 1.
 1890, 440, § 5.
 1891, 416, § 1.
 R. L. 221, § 2.
 1911, 250,
 §§ 1, 2.
 1931, 426,
 § 316.
 153 Mass. 211.
 157 Mass. 14.
 407.
 216 Mass. 344.
 1 Op. A. G. 638.

1 SECTION 3. In proceedings in the name of the commonwealth for the
 2 recovery of fines, forfeitures or penalties, the whole or any part of which
 3 do not enure to the benefit of the commonwealth, the court may, upon
 4 motion of the district attorney, appoint an attorney to conduct the cause
 5 under his direction; but such attorney so appointed shall have no right
 6 to control the cause or receive compensation from the commonwealth.

Counsel in proceedings for penalties.
 1870, 313, § 2.
 P. S. 217, § 3.
 R. L. 221, § 3.
 216 Mass. 344.

1 SECTION 4. Expenses arising in a criminal prosecution, including fees
 2 of grand and traverse jurors for travel and attendance therein, shall
 3 be paid by the county where the prosecution is pending; but no part of

County to pay expense of prosecution.
 1764-5, 26, § 6.
 1782, 55.

1787, 39.
1791, 53, § 2.
1817, 145.

the expenses arising under a prosecution for the violation of a by-law or ordinance, except witness fees, shall be paid by the county. 4 5

1824, 117. 1845, 227. 1880, 120, § 2. 1898, 204, § 4.
1825, 73, § 2. 1850, 68. P. S. 217, § 4. R. L. 221, § 4.
R. S. 141, § 1. G. S. 176, § 4. 1890, 440, § 2. 2 Op. A. G. 112.
1841, 74, § 1. 1860, 191, § 10.

Expense of briefs in criminal cases.
1879, 54
P. S. 17, § 11.
R. L. 221, § 5.

SECTION 5. In a criminal case in which questions of law are carried to the supreme judicial court, the attorney general or district attorney may have necessary copies of the brief for the commonwealth printed, and the expense thereof shall be paid in the same manner as other expenses in the case. 1 2 3 4 5

Expenses of prosecution.
1830, 328, § 1;
440, § 3.
R. L. 221, § 6.

SECTION 6. Before imposing a fine as a penalty or part penalty for a crime, the court or justice shall determine the reasonable and actual expenses of the prosecution, including the services of officers and witnesses, the detention and support of the defendant and the expense of serving a mittimus or other warrant of commitment; and may impose a fine, not exceeding the maximum fine prescribed for the crime, which shall include the whole or any part of the amount of the expenses so found and determined. If the presiding justice is of opinion that the maximum fine is an inadequate penalty for the crime committed, he may impose such maximum fine and order the defendant to pay the whole or any part of the expenses of the prosecution. Defendants who pay such expenses after commitment shall also pay the expense of commitment. 1 2 3 4 5 6 7 8 9 10 11 12

Certificates of fines.
C. L. 151, § 4.
1693-4, 2, § 1.
1700-1, 21, § 1.
1783, 44, § 2.
R. S. 141, § 8.
G. S. 176, § 5.
1861, 184.

SECTION 7. At the end of every sitting of the superior court for the transaction of criminal business, the clerk shall make and deliver to the treasurers of the respective counties, cities or towns certificates of all fines imposed by the court, to the use of the commonwealth, county, city or town. 1 2 3 4 5

P. S. 217, § 8. 1890, 218, § 2. R. L. 221, § 7.

Accounts of fines, etc.
1891, 236, § 1.
R. L. 221, § 8.

SECTION 8. The clerk of the superior court for the transaction of criminal business for Suffolk county, the clerks of the municipal courts in Boston, the sheriff, master of the house of correction or other officer, except those named in the following section, upon receiving fines, fees or other money in any criminal proceedings, payable to Suffolk county or to Boston, shall, before the tenth day of every month, pay over to the collector of said city and account, on oath, for all fines, fees or other money so received during the preceding calendar month, and make the detailed statements required by law. 1 2 3 4 5 6 7 8 9

Same subject.
1891, 236, § 3.
R. L. 221, § 9.

SECTION 9. The clerks of all courts in Suffolk county, except those named in the preceding section, who are required to account to Boston shall, on or before the tenth day of each month, pay over to the collector of said city and account, on oath, for all fines, fees and other money received by them in any criminal proceedings during the preceding calendar month remaining after the payments therefrom allowed by law. 1 2 3 4 5 6

Payment of witness fees.
1891, 236, § 2.
R. L. 221, § 10.
1918, 257, § 466.
1919, 5.
1920, 2.

SECTION 10. The treasurer of Boston shall pay to the persons entitled thereto all witness fees or other money due for services rendered or expenses incurred in any of the courts named in section eight, or for any of the aforesaid officers, upon presentation to him of a certificate 1 2 3 4

5 stating the name of the claimant, of the court and of the case, the nature
 6 of the services rendered or expenses incurred and the amount due therefor,
 7 signed by the clerk of the court or by the officer for whom the service
 8 was rendered.

1 SECTION 11. Except as otherwise provided in section eighty of
 2 chapter two hundred and seventy-six, fines and forfeitures imposed in
 3 criminal prosecutions by the superior court to the use of the common-
 4 wealth, or to any county, or to Boston, and all amounts found to be due
 5 on forfeited recognizances, shall, under the direction of the court, be
 6 certified by the clerk to the sheriff. The sheriff or his deputy may re-
 7 ceive such fines and forfeitures, but the sheriff shall, except as otherwise
 8 provided by law, within ten days after the final adjournment of the
 9 sitting of the court, pay the same without deduction to the county
 10 treasurer and render to him, or in Suffolk county to the collector of
 11 Boston, an account, on oath, of all amounts which he has received since
 12 the last preceding sitting of the court for fines, forfeitures and forfeited
 13 recognizances and the names of the persons from whom received and
 14 against whom awarded. If a sheriff neglects for thirty days to render
 15 such account he shall be liable to a penalty of two hundred dollars, which
 16 shall be recovered in the manner provided in section thirteen.

Fines, etc., to
 be paid to
 sheriff, and by
 him to county.
 1693-4, 2, § 1.
 1791, 53, § 2.
 R. S. 141, § 9.
 1857, 107, § 1.
 G. S. 176,
 §§ 9, 12.
 1881, 52, § 1.
 P. S. 217,
 §§ 9, 12.
 1890, 218, § 1.
 R. L. 221, § 11.
 1918, 257,
 § 467.
 1919, 5.
 1920, 2.
 2 Gray, 428.

1 SECTION 12. A sheriff who, having a person in his custody by virtue
 2 of the sentence of a court, voluntarily or negligently suffers him to escape
 3 shall be held to have received the fines, forfeitures or forfeited recog-
 4 nizances described in the preceding section, at the time of the escape,
 5 and shall be liable for the same, with interest and costs, as if he had
 6 received them.

Sheriff suffer-
 ing escape
 to pay fines,
 etc.
 1791, 53, § 3.
 R. S. 141, § 9.
 1857, 107, § 1.
 G. S. 176, § 10.
 P. S. 217, § 10.

R. L. 221, § 12.

1 SECTION 13. If a sheriff neglects to make such payment for thirty
 2 days, the county treasurer shall recover of him in contract the amount
 3 of such fines, forfeitures and forfeited recognizances, with interest at the
 4 rate of twelve per cent from the time of receiving or from the time he is
 5 held to have received the same and costs.

Remedy if
 sheriff neglects
 to pay over
 fines.
 1791, 53, § 3.
 R. S. 141, § 9.
 1857, 107, § 1.

G. S. 176, § 11.

P. S. 217, § 11.

R. L. 221, § 13.

1 SECTION 14. A person committed to a jail or house of correction in
 2 default of payment of a fine may pay it to the keeper of the jail or master
 3 of the house of correction, and the warrant for his commitment shall
 4 designate the town where the offence for which the fine was imposed was
 5 committed and the uses to which such fine is payable by the officer
 6 receiving it.

Payments to
 jailer or
 master of
 house of
 correction
 1881, 52, § 1.
 P. S. 217, § 14.
 1891, 416, § 2.
 R. L. 221, § 14.

1 SECTION 15. Every keeper of a jail and master of a house of correc-
 2 tion shall, except in Suffolk county as provided in section eight, on the
 3 first days of January, April, July and October, pay over to the persons
 4 entitled thereto all money received by him under the preceding section
 5 during the preceding three months, and render to the county treasurer
 6 an account, on oath, showing the names of the prisoners by whom pay-
 7 ments have been so made, the court by which each was committed and
 8 the amount received from each.

Jailer and
 master of
 house of
 correction to
 make quarterly
 returns.
 1881, 52, § 2.
 P. S. 217, § 15.
 1891, 416, § 3.
 R. L. 221, § 15.

Expenses to
be paid by
county
treasurer if
demanded
within three
years, etc.
1809, 93, § 1.
R. S. 141, § 12.
G. S. 176, § 17.
1860, 191,
§§ 8, 10.
1861, 184.
P. S. 217, § 16.
R. L. 221, § 16.
14 Allen, 217.

SECTION 16. The county treasurer shall pay over to the persons
entitled thereto all amounts allowed to them for expenses or fees in crim-
inal prosecutions, or allowed by the courts as rewards or compensations
to prosecutors, which have been duly certified by the clerks, if demanded
within three years after the allowance thereof; but he shall pay no such
amounts to a trial justice, or to a clerk of a district court, until the trial
justice or clerk has rendered a written account of all fines received by
him since his last return, and of all fees which have remained in his
hands for one year after their allowance.

1
2
3
4
5
6
7
8
9

PART V.

THE GENERAL LAWS, AND EXPRESS REPEAL OF CERTAIN ACTS AND RESOLVES.

CHAPTER 281. The General Laws and their Effect.

CHAPTER 282. Express Repeal of Certain Acts and Resolves. [OMITTED.]

CHAPTER 281.

THE GENERAL LAWS AND THEIR EFFECT.

SECT.

- 1. General Laws, how cited, when to take effect.
- 2. General Laws to be a continuation of former acts.
- 3. Repeal by General Laws not to revive former acts, etc.
- 4. Repeal by General Laws not to affect acts done, etc. Effect in probate appeals.

SECT.

- 5. Repeal by General Laws not to affect penalties or forfeitures, except, etc.
- 6. Repeal by General Laws not to affect criminal actions commenced, etc.
- 7. Tenure of office preserved.
- 8. Salaries to continue.
- 9. Periods of limitation to continue to run.
- 10. Temporary laws to continue in force.

1 SECTION 1. This act shall not in any citation or enumeration of the
 2 statutes be reckoned as one of the acts of nineteen hundred and twenty,
 3 but may be designated as the General Laws, adding the number of the
 4 chapter and section when necessary, and shall take effect from and after
 5 December thirty-first, nineteen hundred and twenty.

General Laws,
 how cited,
 when to take
 effect.
 R. S. 146,
 §§ 1, 2,
 G. S. 181,
 §§ 1, 2.

P. S. 223, § 1. R. L. 226, § 1. 203 Mass. 539. 246 Mass. 340.

1 SECTION 2. The provisions of the General Laws, so far as they are
 2 the same as those of existing statutes, shall be construed as a continua-
 3 tion thereof and not as new enactments, and a reference in a statute
 4 which has not been repealed to provisions of law which are revised and
 5 re-enacted herein shall be construed as applying to such provisions as
 6 so incorporated in the General Laws.

General Laws
 to be a con-
 tinuation of
 former acts.
 G. S. 181, § 9.
 P. S. 223, § 2.
 R. L. 226, § 2.
 138 Mass. 593.
 181 Mass. 522.

186 Mass. 376. 210 Mass. 588. 213 Mass. 79. 239 Mass. 349.

1 SECTION 3. The repeal of a law by this act shall not revive a law
 2 heretofore repealed or superseded, nor an office heretofore abolished.

Repeal by
 General Laws
 not to revive
 former acts,
 etc.

R. S. 146, §§ 3, 9. G. S. 181, § 3. P. S. 223, § 3. R. L. 226, § 3.

1 SECTION 4. The repeal of a law by this act shall not affect any act
 2 done, ratified or confirmed, any liability incurred, or any right accrued
 3 or established, or any action, suit or proceeding commenced or had in a

Repeal by
 General Laws
 not to affect
 acts done,
 etc. Effect in

probate appeals.
R. S. 146, § 5.
G. S. 181, § 4.
P. S. 223, § 4.
R. L. 226, § 4.
1919, 274
18 Pick. 417.
532.

civil case, before the repeal takes effect, but the proceedings in such case shall, when necessary, conform to the provisions of the General Laws; provided, that appeals from orders, decrees or denials of probate courts made before this act takes effect shall be governed by the law then in effect, notwithstanding its subsequent repeal by this act. 4 5 6 7 8

19 Pick. 578. 2 Allen, 49, 496. 186 Mass. 376.
20 Pick. 99. 3 Allen, 153. 239 Mass. 443.
21 Pick. 109, 210. 5 Allen, 150. 253 Mass. 314.
5 Met. 400. 125 Mass. 316. 2 Op. A. G. 180.
4 Gray, 86.

Repeal by General Laws not to affect penalties or forfeitures, except, etc.
R. S. 146, § 6.
G. S. 181, § 5.
P. S. 223, § 5.

SECTION 5. The repeal of a law by this act shall not affect any punishment, penalty or forfeiture incurred under such law, except that any provision of the General Laws by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal. 1 2 3 4 5

R. L. 226, § 5.

Repeal by General Laws not to affect criminal actions commenced, etc.
R. S. 146, § 7.
G. S. 181, § 6.
P. S. 223, § 6.

SECTION 6. The repeal of a law by this act shall not affect any action, suit or prosecution pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the laws repealed, except that the proceedings therein shall, when necessary, conform to the provisions of the General Laws. 1 2 3 4 5

R. L. 226, § 6. 1 Allen, 1.

Tenure of office preserved.
R. S. 146, § 8.
G. S. 181, § 8.
P. S. 223, § 7.
R. L. 226, § 7.

SECTION 7. Whoever, when said repeal takes effect, holds an office under any of the laws repealed shall continue to hold it according to the tenure thereof, unless it is abolished or unless a different provision relative thereto is made by the General Laws. 1 2 3 4

Salaries to continue.

SECTION 8. The salary or compensation of any incumbent of any office or position at the time when the General Laws take effect shall not be diminished thereby, notwithstanding the repeal therein of any act establishing such salary or compensation and notwithstanding that the General Laws establish a different salary or compensation for the office or position. 1 2 3 4 5 6

Periods of limitation to continue to run.
1836, 7, § 4.
G. S. 181, § 7.
P. S. 223, § 8.
R. L. 226, § 8.
1921, 486, § 38.
253 Mass. 314.

SECTION 9. If a limitation or period of time prescribed in any of the acts repealed for acquiring a right, barring a remedy or any other purpose has begun to run, and the same or a similar limitation is prescribed in the General Laws, the time of limitation shall continue to run and shall have like effect as if the whole period had begun and ended under the operation of the General Laws. If a shorter period of time is prescribed by the General Laws in any matter relating to wills or to the administration of the estates of deceased persons, and the limitation has begun to run, it shall continue to run for the time fixed by the law in effect at the time when it began to run, notwithstanding the repeal thereof by the General Laws. 1 2 3 4 5 6 7 8 9 10 11

Temporary laws to continue in force.

SECTION 10. All acts and resolves or parts thereof in force at the time of the taking effect of the General Laws which are of limited duration shall continue in effect according to their terms, notwithstanding any provisions of said General Laws inconsistent therewith. 1 2 3 4

CHAPTER 282.

EXPRESS REPEAL OF CERTAIN ACTS AND RESOLVES.

[Chapter omitted.]

NOTE: The provisions of this chapter as originally enacted are set forth in chapter 282 of the General Laws (Edition of 1920). For reference to certain legislation affecting the schedule of acts and resolves expressly repealed by said chapter in connection with the original enactment of the General Laws, see the table of changes relating to chapter 282 appearing in the volume containing the laws and resolves of 1931.

